

this special day with their parents or special friends.

I would like to read into the RECORD names of these young men and women who are with me:

From A.M. Barbe High School, Mariah Celestine, Lake Charles, LA; from Country Day School, Isabel Coleman, New Orleans, LA; from St. Peters School, Dominique Cravins, Washington, DC; from Amite West Side Middle School, Sarah Ellen Edwards, Amite, LA; from Georgetown Day School, Caroline Gottlieb, Washington, DC; from A.E. Phillips Lab School, Devin Herbert, Ruston, LA; from Georgetown Day School, Sydney Kamen, Washington, DC; from Alexandria Country Day School, Larkin Massie, Alexandria, VA; Emma May, Lafayette, LA; from Mount Carmel Academy, Ebony Marie Morris, New Orleans, LA; from Miami Country Day School, Isabela Osorio, Miami Beach, FL; from Miami Country Day School, her sister, Megan Osorio, Miami Beach, FL; from Episcopal High School, Natalie Ross, Plaquemine, LA; from Rye High School, Heather Schindler, Rye, NY; from Georgetown Day School, my own daughter, Mary Shannon Snellings, Washington, DC; from Ernest Gallet Elementary, Cathy Tran, Lafayette, LA; and from Acadiana Christian School, Savannah Trumps, Lafayette, LA.

I thank them for joining me today in the Senate. I encourage all Senators and staff to think about this day as an opportunity for young people to come to the Capitol and learn about what we do, have a fuller appreciation for the way our government works. I particularly thank majority leader HARRY REID, who has been very supportive of this day, allowing a tour of the Senate floor earlier this morning, having special events throughout the complex. I thank him for his special interest in this occasion.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Ms. CANTWELL. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### FINANCIAL REGULATORY REFORM

Ms. CANTWELL. Madam President, this speech is not meant to target or malign anyone. It is simply to talk about the responsibilities we have as Members of Congress to our constituents.

Our country has been rocked by a financial crisis of epic proportions, one that will have Americans paying for generations to come. It has shaken the public's faith not only in Wall Street but in this institution, the Congress.

Whether it is Enron or Amaranth or Bernie Madoff or the Wall Street bailout, the American people are asking themselves a fundamental question: Can I even trust those guys in Washington to look out for me when it comes to the special interests creating rules of the game that tilt the board in their favor?

Some people listening today may be smiling and thinking: Senator, that is one of the oldest questions and most frequently asked in Washington, DC: Whose side are you on? But never has this question of "whose side are you on" had such dramatic consequences for the economic lives of millions of Americans. Over 2 million people have lost their homes, many going into bankruptcy, 7.3 million jobs have been lost, and our government has put something like \$24 trillion on the line to help Wall Street in this meltdown—something taxpayers will be paying for decades, to say nothing of the kids who will not go to college because college tuition went up 32 percent or workers whose 401s have been wiped out, making it almost impossible to retire.

The American people have been let down by those involved in government oversight who have feigned: Oh, this stuff is too complex for us to understand. We better listen to those outside interests. They understand this better than I do.

It takes a mighty man, who was in control of our financial markets for nearly two decades, like Fed Chairman Alan Greenspan to admit his philosophy was wrong. But it took even more dogged oversight by the likes of HENRY WAXMAN to take a subject that some people think is too complex to understand and boil it down to a simple yes-or-no question.

Congressman WAXMAN to Mr. Greenspan:

Mr. Greenspan, the premise that you could trust markets to regulate themselves, were you wrong?

Mr. Greenspan, in response:

Yes.

Mr. WAXMAN to Mr. Greenspan:

Mr. Greenspan, you found that your view . . . your ideology was not right.

Mr. Greenspan, in response:

Precisely.

This debate we are about to have on financial reform, in my mind, is really about the backbone of Congress. The central issue before us today is whether Congress is going to continue to trust Wall Street and those who represent them because there is too much complexity for Congress to understand. Really? Is it any more complicated than national security or the Medicare GPCI reimbursement formulas or our Tax Code in general? Really? Is it too complicated?

P.J. O'Rourke, at a recent dinner honoring journalists, said:

It's a fundamental principle of the rule of law, a fundamental principle of economics, and a fundamental principle of politics. . . . that beyond a certain point, complexity is fraud.

I agree with him. How is it that average Americans know that a back-alley craps game with fixed dice is a no-win situation, yet a dark market with fixed financial instruments is allowed to carry on for more than a decade under the mischaracterized title of "free market"?

The issue is, we were told over the last 10 years by the Bush economic working group—and, for that matter, the Clinton economic working group and now even some members of the Obama economic working group—that these issues are too complex to understand. Really? Is that what happened when Bernie Madoff literally made off with millions of investors' life savings in a Ponzi scheme? It was not complex. And regulators were either afraid, lazy, or paid off when they failed to ask a simple question: Let me see your books. When we deregulated energy markets and Enron had at least one manipulation scheme for every day of the week—Death Star, Get Shorty, Ricochet, Fat Boy, just to name a few—these issues were not complex; it was simply shorting supply to drive up the price.

No, the issue is not complexity. It is about the central issue of markets. They have to have transparency and oversight to operate effectively. Never more have the American people been counting on their Members of Congress to act like David against the big Goliath, Wall Street interests.

We have been repeatedly warned about derivatives. The Long-Term Capital Management crisis almost took down the world economy in 1998 because it started using complex mathematical formulas to do derivatives.

Then-Chairman Brooksley Born of the Commodity Futures Trading Commission proposed regulating derivatives. That was her agency's primary role. Not only was she told by the President's working group she could not, they helped mastermind a strategy with Congress to stop her. So instead of regulating derivatives, Congress passed a law making sure the oversight agency could not regulate them. And just for extra measure, we also prohibited State attorneys general from regulating them as well.

Well, why, if you were on Wall Street, would you ever worry about what exotic financial tools you were cooking up if you knew there was no oversight? Let me say that there are people on Wall Street who operate ethically, without fraud, without manipulation, and provide an essential tool to our economy and functioning markets. But when you take away the accountability of Wall Street, something happens to the accounting on Wall Street.

We have had many votes here in the last 10 years to regulate and have oversight of the derivatives market and bring them out of the dark, and those efforts have primarily failed because the so-called smartest guys in the room stopped us. Did it really take another near 1933 Depression to remind us of our fundamental role? I ask my colleagues to check their previous votes on derivatives and tell me whether they still want to vote the same way.

My constituents have been so disgusted by our lack of holding Wall Street accountable, they have said: If

you can't beat them, then at least break them up. So I will be offering an amendment to return us to Glass-Steagall, the law of the land previous to 2000, to help protect consumers for decades. And I will be offering an amendment to strengthen our antimaniipulation laws to make sure that if manipulation happens in the future, there will be a price to be paid.

I will also say that my constituents want us to get this right and get capital flowing to small business. While Treasury turned the keys over to Wall Street to bail them out, small business is still being strangled by the lack of access to capital.

As one quote says:

This then is more than the tale of one company's fall from grace. It is at its base the story of a wrenching period of economic and political tumult as revealed through a single corporate scandal. It is a portrait of America in upheaval at the turn of the century, torn between the worship of fast money and its zeal for truth, between greed and high mindedness, between Wall Street and Main Street. Ultimately it is a story of untold damage wreaked by a nation's folly—a folly that in time we are all but certain to see again.

I wish that quote was about our current crisis that started in 2008, but it is not. That quote is from a book called "Conspiracy of Fools" by Kurt Eichenwald that was written in 2005. He warned us that what was happening was just a tremor leading up to a massive earthquake that was about to happen. We did not listen. Are we listening now?

I am going to be working with my colleagues to offer several amendments on the floor to strengthen this legislation, to make it the strongest legislation possible, to be accountable to my constituents, and to make sure we are putting derivatives back into the clear light of day.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

#### IMPROPER PRACTICES ON WALL STREET

Mr. SPECTER. Madam President, I thank the Chair. I have sought recognition to comment briefly on a hearing which will be held by the Criminal Law Subcommittee of the Committee on the Judiciary on May 4 concerning allegations of improper practices on Wall Street.

In light of the allegations of misconduct on Wall Street in recent years and the consequential damages to the economy of the United States and worldwide, serious consideration should be given to whether civil liability and fines are sufficient or whether jail sentences are required to deal with such conduct and as a deterrence to others. With civil liability or a fine, the companies or individuals calculate it as part of the cost of doing business, but a jail sentence is enormously different.

The charges brought by the Securities and Exchange Commission accus-

ing Goldman Sachs of securities fraud in a civil lawsuit has brought intense public concern to conduct on Wall Street which has long been questioned. According to the SEC complaint, Goldman permitted a client who was betting against the mortgage market to heavily influence which mortgage securities to include in the portfolio. Goldman then sold the investments to pension funds, insurance companies, and banks. The client was betting the securities would decline in value based on his knowledge of the underlying value. Similar practices have been defended by investment bankers on the ground that the investors are sophisticated and have a duty to protect themselves without relying on the investment counsel. There is a contention that the only issue is whether the investments are suitable, with the denial that there is a fiduciary duty. That defense further contends that there is no conflict of interest.

Some of the issues to be considered at the hearing to be held by the Criminal Law Subcommittee of the Judiciary Committee on May 4 are the following:

First: Precisely what are the structures of the complex commercial transactions involving securitizing mortgages, selling short hedge funds, derivatives, et cetera?

Second: Under what circumstances, if any, do the investment bankers have a fiduciary duty to the investors?

Third: Where, if at all, do conflicts of interest arise in such transactions?

Fourth: Is there a legitimate distinction between the investment council's duty to provide only a "suitable" investment without a fiduciary duty involved?

Fifth: When the investment banker recommends or offers an investment, is there an implicit representation that it is a good investment?

In my judgment, Congress should examine these complicated transactions with a microscope and make a public policy determination as to whether such conduct crosses the criminal line. Congress should investigate and hold hearings to find the facts. Congress should then define what is a fiduciary relationship, what is a conflict of interest, and what conduct is sufficiently antisocial to warrant criminal liability and a jail sentence.

As a starting point, it should be emphasized that the SEC complaint contains allegations which have yet to be proved. The numerous newspaper stories and other media reports are hearsay, so the task remains to find the facts. These inquiries on Wall Street practices are being made in the context that they triggered or at least contributed to a global financial crisis.

Larry Summers, on March 13, 2009, said:

On a global basis, \$50 trillion in global wealth has been erased over the last 18 months. That includes \$7 trillion in the U.S. stock market wealth which has vanished, \$6 trillion in housing wealth which has been de-

stroyed, 4.4 million jobs which have already been lost, and the unemployment rate now exceeds 8 percent.

In the intervening year, a total of 6.5 million jobs are now the total lost, and the unemployment rate stands at 9.7 percent.

I have long been concerned about the acceptance of fines instead of jail sentences in egregious cases. There are many illustrative cases, but three will suffice to make the point. In each of these cases, I registered my complaint with the Department of Justice.

First: On September 2, 2009, Pfizer agreed to pay \$2.3 billion to resolve criminal and civil liability for committing health care fraud for selling Bextra, for off-label uses the FDA declined to approve because they were unsafe. For a company with revenues in excess of \$48 billion and an income in excess of \$8 billion in fiscal year 2008, it was chalked off as the cost of doing business.

The second case: On December 15, 2008, Siemens AG entered guilty pleas to violations of the Foreign Corrupt Practices Act and agreed to pay \$1.6 billion in fines, penalties, and disgorgements with no jail sentences. Again, that amounts to a calculation as part of the cost of doing business for a company which had revenues of \$104 billion and a net income of \$2.5 billion in fiscal year 2008, after the penalty.

The third case, briefly: On May 8, 2007, Purdue Pharma agreed to pay \$19.5 million to 26 States to settle complaints that Purdue encouraged physicians which prescribed excessive doses of OxyContin in violation of an FDA ruling which resulted in numerous deaths. Company officials paid fines, nobody went to jail; again, part of the cost of doing business.

From my days as district attorney of Philadelphia, where my office convicted the chairman of the Housing Authority, the Stadium Coordinator, the deputy commissioner of Licenses and Inspections, and others, my experience has convinced me that criminal prosecutions are an effective deterrent.

The deterrent effect of prison was succinctly stated by Mr. William Mercer, chairman of the Sentencing Guidelines Subcommittee of the Attorney General's Advisory Committee, on behalf of the Department of Justice, in a 2003 publication. He said:

[W]e believe that the certainty of real and significant punishment best serves the purpose of deterring fraud offenders and particularly white collar criminals. [O]ffenders usually decide to commit fraud and other forms of white collar crimes not with passion, but only after evaluating the cost and benefits of their actions. If the criminally inclined think the risk of prison is minimal, they will view fines, probation, home arrest, and community confinement merely as a cost of doing business. We aim to remove the price tag from a prison term. We believe that if it is unmistakable that the automatic consequence for one who commits a fraud offense is prison, many will be deterred, and at least those who do the crime will indeed do the time.