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 antimanipulation 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 accusing 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 destroyed, 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 Guideline 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.

These are some of the considerations which will be taken up at the subcommittee hearing.

I thank the Chair and I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF DENNY CHIN TO BE UNITED STATES CIRCUIT JUDGE

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nomination which the clerk will report.

The legislative clerk read the nomination of Denny Chin, of New York, to be United States Circuit Judge for the Second Circuit.

The PRESIDING OFFICER. There is 60 minutes, equally divided, on this nomination.

The Senator from Vermont.

Mr. LEAHY. Madam President, yesterday the Senate was forced to devote the entire day to so-called ''debate'' on two nominations that Republican objections had stalled for months. The good news is, the majority leader's filing of cloture motions to end the filibusters on these nominations succeeded. The votes took place. Each was confirmed with more than 70 votes, a bipartisan majority of the Senate. The debate amounted to statements by Senators in support of the nominations. Let me emphasize that. The only people who spoke, spoke in support of the nominations. During the entire day, not a single Republican Senator came to the floor to oppose the nominations, nor did a single Senator come to the floor to explain why there have been months of delay that left a key office of the Justice Department without a head for the last year. None came to explain why their objections left a longstanding vacancy in the U.S. Court of Appeals for the Third Circuit.

Instead, there was silence. There is no explanation for what continues to be a practice by Senate Republicans of secret holds and a Senate Republican leadership strategy of delay and obstruction of President Obama's nominations. That is wrong.

Throughout the week, a number of Senators have come before the Senate to discuss this untenable situation. They have asked for consent to proceed to scores of nominations that are totally noncontroversial. Yet Republicans objected because, after all, these nominees had committed the horrible sin of being nominated by a Democratic President. It makes no sense. I am in my 36th year in the Senate. I have never seen anybody treat any President, Republican or Democratic, in this way.

Pursuant to our Senate rules which were enacted after bipartisan efforts, those Republican Senators who are objecting have an obligation to come forward and justify those objections. I am going to be interested to see which Senators are objecting to proceeding on 18 judicial nominees. Eighteen nominees who were reported unanimously—every Democrat, every Republican in support of them from the Judiciary Committee—and then they are held by these secret holds. I will be interested in knowing what basis there is for not proceeding on those 18 nominees. In fact, I would like to know why we can't proceed to the 11 Justice Department nominees who were reported without objection—U.S. attorneys, U.S. marshals, and Directors of important institutes and bureaus within the Justice Department. Most of these people are involved with critical law enforcement matters. These stalled nominations extend back into last year, even though they had unanimous support from the committee, Republicans and Democrats alike. Even though most of them are in key law enforcement positions, they have been stopped, they have been held up, they have been stalled. This is wrong, and it should end.

Today, the Senate has another opportunity to make progress by completing action on the long-stalled nomination of Judge Denny Chin of New York to the U.S. Court of Appeals for the Second Circuit, which is the circuit of the distinguished Presiding Officer and of this Senator. The vacancy he has been nominated to fill, which has been delayed by some anonymous Republican objection, has been classified as a judicial emergency by the nonpartisan Administrative Office of the U.S. Courts. It is not unusual. There are 40 other judicial emergency vacancies and judges being held up. It is one of the four current vacancies in the Second Circuit's panel of 13 judges. All are judicial emergencies. Almost one-quarter of the court is being held vacant. That is wrong.

It reminds me of the years during the Clinton administration when similar Republican practices led to Chief Judge Winter, himself a Republican, having to declare the entire circuit an emergency in order to continue to operate with panels containing only a single Second Circuit judge. That is wrong. During that era, we had 61 pocket filibusters of a Democratic President's judges. That is wrong.

Yesterday, Republicans insisted on 3 hours of ''debate'' before a vote on Judge Vanaskie and another 3 hours of ''debate'' for a vote on Professor Schroeder, but none of them came down to debate. Then they were both confirmed by overwhelming margins. We should be thankful that today they have insisted on only 1 hour before this long overdue vote. I will be interested to see whether a single Republican Senator comes to speak in opposition of Judge Chin's nomination or to explain why they have delayed this vote for 19 weeks.

The Judiciary Committee unanimously voted to report Judge Chin's nomination last December—all Republicans and all Democrats. None of the Republican Senators serving on the committee opposed it—not Senators SESSIONS, HATCH, GRASSLEY, KYL, GRAHAM, CORNYN, or Senator COBURN. Not one. He is an outstanding district court judge. He has the strong support of both of his State's Senators and a number of conservative leaders. Yet his nomination has been stuck on the calendar since December. He has been waiting 133 days for the Senate to act. Contrast this with the practice Democrats followed during the first 2 years of the Bush administration when we proceeded to vote on his circuit court nominations, on average, within 7 days of their being reported by the Judiciary Committee. Now we wait 133 days and more.

This dramatic departure from the Senate's traditional practice of prompt and routine consideration on noncontroversial nominations has led to a backlog of nominations and a historically low rate of judicial confirmations, and it damages the integrity of our courts. Our Federal system of judges has been the envy of most other countries because we keep them out of politics. Here we are sinking them into politics.

In fact, by this date in President Bush's Presidency, the Senate had confirmed 45 Federal circuit and district court judges. As of today, only 19 Federal circuit and district court confirmations have been allowed by the Republicans. This is despite the fact that President Obama began sending judicial nominations to the Senate 2 months earlier than President Bush did, so the Senate is way behind the pace we set during the Bush administration.

In the second half of 2001 and through 2002 the Senate confirmed 100 of President Bush's judicial nominees. Given Republican delay and obstruction this Senate will not likely achieve half that. Last year the Senate was allowed to confirmed only 12 Federal circuit and district court judges all year. That was the lowest total in more than 50 years. Meanwhile, judicial vacancies have skyrocketed to more than 100.

Judge Chin is a well-respected jurist who is widely celebrated for one of his most newsworthy decisions in which he sentenced Ponzi scheme operator Bernard Madoff to 150 years in prison. He previously served for 4 years as a Federal prosecutor, and he spent a decade as a lawyer in private practice. You would think they would be saying: Why don't we move forward with the man who sentenced Bernie Madoff? It is almost as if we are punishing him for going after Bernie Madoff.

In fact, Judge Chin's impressive track record garnered the respect of former judge and former Attorney General Michael Mukasey who wrote to the