Center for American Progress

A POLICY ADDRESS BY

ATTORNEY GENERAL ELIOT SPITZER
(D-NY)

"HOW PLAYING BY THE RULES HELPS STRENGTHEN THE ECONOMY"

INTRODUCTION:

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JOHN PODESTA: Thank you for joining us today. Long ago I was once told that, in the middle of Missouri, there was an old county courthouse and above its doorway were inscribed the words: “Oh Justice, when expelled from other habitations, make this thy dwelling place.” Today those words could easily appear over the door of New York’s attorney general, Eliot Spitzer. Because at a time when corporate irresponsibility and abuse is accepted by some as simply being the status quo, Attorney General Spitzer has demonstrated – over and over again – that protecting the public interest must be everyone’s business.

Thanks to his leadership, consumers, working people and small businesses throughout New York are on a more level playing field … because, throughout New York, more corporations are now playing by the rules. As an educational institution, we do not seek to advance the interests of any particular political party or candidate for office. As a nonpartisan educational institution, we believe his initiatives and vision are critical to the national debate not just on corporate accountability, but on the proper role of government regulation. That is especially true as we see leaders here in Washington move to rollback generations of the protections Americans have come to depend on from laws governing bankruptcy … to environmental safeguards … to workplace safety rules to a wide array of other regulatory efforts. Against that backdrop, Attorney General Spitzer’s work to protect the public has become more prominent – and, in our judgment, more important than ever.

We all know of his investigations of Wall Street while our federal regulators seemed asleep at the wheel. We all know how he uncovered conflicts of interest by investment bankers, illegal trading practices by mutual funds and bid rigging in the insurance industry. His investigations revealed fundamental institutional flaws that enabled analysts and others to push bad stocks on trusting investors.

Not only has Attorney General Spitzer recovered billions of dollars for small investors and other consumers, but his investigations have been the catalyst for industry-wide reforms that will strengthen the rights of consumers for years to come. And despite the hostility of the Bush administration, Attorney General Spitzer has taken action against polluting power plants in the Midwest and achieved significant reductions in the emissions that are responsible for acid rain and smog in the northeast. Attorney General Spitzer has exposed pharmaceutical companies who are concealing information about the clinical trials of their drugs. Just yesterday he won the largest Medicare fraud award in history. He’s also focused on the exploitation of the weakest amongst us. For example, in the Bushwick section of Brooklyn, his office has joined forces with community activists to crack down on employer abuse of immigrant workers.

But the actions of the attorney general haven’t just been about saving consumers billions of dollars or ensuring that they have better health care, though those are some of the results of his work: at the heart of all of his initiatives is a fundamental understanding that has been often lost in the conversations in Washington; that is, that a fundamental function of government is to protect the interests of all of our citizens. Attorney General Spitzer understands that by ensuring that our markets are governed by fair rules for all we can better protect all of us, the middle class and its investments. Even George Will argued that it's government rules that allow markets to function and to expand.

In light of his leadership, it's no surprise that Attorney General Spitzer was named crusader of the year by *Time* magazine. And the *Reader's Digest* magazine called him America's best public servant because he understands that public service is about working on behalf of average Americans, protecting their interests, ensuring they have a fair shot. I know I speak for everyone here at the Center for American Progress when I say we are proud that he could join us today, not just for his work but for his vision. Please join me in welcoming the attorney general of the State of New York, the Honorable Eliot Spitzer.

(Applause.)

ELIOT SPITZER: Thank you very much, John. That really was gracious and moving, and you hit all the points I wanted to hit so I'm ready for questions. (Laughter.) And I mean it: that was really a wonderful encapsulation of everything not only I've been trying to argue over the past few years based upon the cases, but I will try to argue to you folks here today, and so I appreciate the depth and the citation of the cases. And I will go on for a few minutes, and then hopefully you'll ask some questions that will push back, because as John said, there are those who disagree with the wonderful interpretation John put on everything we have done, and I am honest enough about – when I read the press to realize there are alternative worldviews out there.

I want to begin by just letting you know the day began very poorly for me, although John refers to the case we won yesterday, which is great. That was in the papers. But the day began really for me when I got to the airport this morning, and I had left early, so I called home just to make sure that the alarm had gone off so my wife had gotten up and gotten the kids up. And anybody who has children knows the craziness of trying to get three kids ready for school and on the bus. And the phone was answered by my 15-year-old. We have a 10-, a 12-, and a 15-year-old. And she said to me, "Dad, you're in trouble." And I said, "Oh?" I was a little timorous about that. And she said, "Mom cooked pancakes today."

Now, you need to understand – and this story actually has a moral that will relate to what I'm going to talk about. Normally when I'm home they either get a toasted frozen waffle or on a good day I will throw a bagel in the oven and put a little cream cheese on it. On weekends I really push myself. I make scrambled eggs. Now, for my wife to make pancakes mid-week sort of opens a new dimension to this battle. And because I believe that the market and competition work, it now means that I need to match that tomorrow. (Laughter.)

And I'm telling this not just because it means that tomorrow I have to set the alarm half an hour earlier – actually I'm not going to be home till Sunday, but that's a separate issue. (Laughter.) When I'm going to be there I now need to get up earlier and work harder, but to prove that I believe that this competition in the marketplace works even if it's in the quixotic location of our kitchen, so that is how my life has been going recently.

Let me, so as not to take too much time – although I'll tell you a story. This is a true story that I just can't avoid telling you. There are days in this business when – at the end of which you just want to be ignored because even though elected officials love to be recognized and they love to have people come up and say you're doing a good job and this and that because it means that people know who they are and that's a good thing usually, there are also days at the end of which you just want to be done and recede into a shell. I had such a day a couple weeks ago. I was in Florida and I was flying back on the last flight from West Palm Beach back to JFK on JetBlue Airlines. Anybody here know JetBlue? I mean, JetBlue is wonderful. I mean, I can't do product placements, but you have a TV and a biscotti and, you know, what more could you ask for? You can watch TV. You know, John would be watching C-SPAN and the rest of us would be watching VH1, but that's all right.

And so there I am. I get on the plane. I'm waiting in the area actually. Everybody is coming up. It's a flight from Florida, so a lot of people know me, and they want to talk about insurance or mutual funds or whatever, and that's wonderful. I get on the plane and the only thing I want is to be ignored. So I sit down and I look to my right, and the couple kind of – I get the sense they're from Florida and they don't know who I am, which is great. The wife looks over at me says, aren't you the president of JetBlue? And then I kind of look at her like, where did that come from? And I said, "No, no, no. I'm not the president of JetBlue. If I were the president of JetBlue, I'd already have my biscotti." And so, you know, and I put my head down.

The husband pulls out a copy of *USA Today* and he opens it to the business section, and there's an article about a small insurance company, you may have heard of it, AIG, it's a little company that apparently we've had some back-and-forth with and it was news to me. And above this headline about AIG there's a picture of me. And so I put my head down saying, oh, it's sort of inevitable he's going to make some association. The wife turns, looks at the picture, and immediately points right at it and says, wasn't he just sentenced to jail for 15 years? (Laughter.)

And, you know, it's one thing to be ignored but it's another thing to be a felon. And so I got really upset. I said, I'm working hard, I'm doing what I can do, and now this is what I get back. So I don't say anything, of course. And the husband sort of broke into this refrain, "No, no, no. That's the attorney general from New York," and went down – it was kind of like John's introduction. It was very nice. So I'm sort of puffing out my chest saying this is pretty good. And then I say, but he's going to realize that I'm sitting next to him and it's going to be very embarrassing. He looks up at me after a minute or two and says, "You look like him." (Laughter.) To which I say what I normally do, "I feel sorry for him." A couple minutes later he figured it out and then I had to talk about insurance for an hour. But anyway, that was – so much for that.

Here's what I do want to argue, and I want to sort of frame a debate for you that I think is a very real debate that is going on out in society at large, certainly in the halls of our administrative agencies, in the courts, and that debate does resolve around what John alluded to, which is what is the appropriate role for government in its intervention in the marketplace?

And I think that the genesis of this debate, obviously it's been a debate that has gone for centuries, but the more recent modern incarnation of this debate began in 1976, when President Reagan sought the Republican nomination and lost, but began to plant the seeds of what became the current coda of a certain worldview, which is that government was too big: deregulate, government should recede from the marketplace. And obviously during his eight years as president and then even during the presidency of President Clinton and certainly George Bush, this debate has continued. To a great extent, that worldview has succeeded and has won.

And I would say that there have been two intellectual strands. President Reagan laid the political foundation for it, but the two intellectual strands were the new federalism, which was essentially an argument that power should devolve, to use their words, from Washington to the states. You know, without getting partisan or rancorous about this, I always thought that that was really a smoke shield just as a way to limit federal government; nobody believed the states would pick up the mantel and run with ball or use the power that was given to them, but nonetheless, the new federalism was a way to articulate this notion of limiting federal power. And then the other intellectual strand was the Chicago school, which I use as shorthand for this notion that markets solve all and any government intervention of any sort is necessarily going to lead to inefficiencies and a misallocation of resources, et cetera.

Those two strands combined into what I think is the way the – laid the intellectual foundation of what has become the guiding principle certainly of the current administration, and I would say many that have preceded it since 1976.

That worldview has led to a massive withdrawal of federal power, to the point where I would argue to you the federal agencies have essentially been so beaten down and neutered and diminished that they have been rendered incapable of fulfilling their fundamental mandate. They have not only been rendered incapable, but they've been sapped of the desire. And if you were to go through any 30-year period where the prevailing rhetoric from a leadership position is that what is being done in the agencies in Washington – wherever it may be – is not only unimportant but is affirmatively injurious to the market. Is it surprising then that we look back and say, gee, these agencies have not been fulfilling their mandate. I don't think it should surprise us that after that many years of being denigrated, diminished, not only do we have a more difficult time attracting the best and the brightest to work in those agencies, but we don't see the creativity, we don't see the drive, we don't see the energy that we would like to see from agencies that may or may not, depending upon your worldview, have a fundamentally important role to play.

Now, the interesting thing about the debate, and there obviously is another perspective that, you know, I don't want to say I – you know, I'm certainly from that other perspective. Many people have articulated it with great eloquence. But the interesting thing about the debate is that both sides of the debate use the same heroes. We both invoke the same icons to make our points. And it's not surprising because when you look back at our history there are certain people you just want to latch onto and claim them, and you can twist the history to support your argument because, you know, they're people who have immense popularity. And to a certain extent it depends on whose biography has been written most recently. But it's Alexander Hamilton and Teddy Roosevelt who were certainly the flavor of the decade, right? I mean if you've read the biographies of these guys you understand that they got it. You know, they understood how government should act in a way that was not only protective of the values and the principles we believe in, but also created the core and foundation for an economy that worked. And so both sides of the debate invoke Teddy Roosevelt and Alexander Hamilton, and for understandable reasons.

The fascinating thing is that – and this is why – I mean I liked to use TR not only because he was brilliant and parenthetically they're both New Yorkers, but, you know, I'm in Washington so I won't harp on that. (Laughter.) But what I like about Teddy Roosevelt in particular as an icon is that 100 years ago – 101 years ago now, when he was running for the presidency – he was reviled by the business community. He was anathema to them. And everything he said, did, and stood for they looked at and said, "You're an enemy of capitalism. You're an enemy to your class. You know, we obviously didn't teach you properly at Harvard. You didn't understand your lessons." I mean, this guy was abused by the business leadership in the most remarkable way because they thought that the cases he was bringing – challenging the cartels, challenging the corruption in the marketplace – would destroy capitalism.

Now, the interesting thing – and I'm not here to replay those cases of course, but I think the historical record has been pretty well made that those cases in fact released the energy in the economy that permitted the economic growth that came thereafter. Teddy Roosevelt actually understood the necessary inputs to capitalism: competition, fair play, integrity, and that the concentration of power that had evolved to the point that he felt compelled to attack it, indeed it was that concentration of power that was injurious to the marketplace, and so the cases that were reviled 100 years ago by the business leadership were absolutely essential to all the economic successes that came thereafter.

So I think that's an interesting metaphor if you then fast forward to today where once again we are seeing a very significant business push-back against the sort of cases that we are bringing and others are bringing that we believe – and I'll argue in a minute – are absolutely essential to restoring competition, credibility and fairness to the marketplace just as Teddy Roosevelt was 100 years ago now. And I listened very carefully to John's disclaimers that the IRS makes everybody say and so I'm not going to violate them. I promise you. But I do have to make one observation that is marginally partisan, which is that Republicans do love to point out Teddy Roosevelt was a

Republican, and while that is historically accurate for a limited period of time, I also always feel compelled to point out the moment he left the White House he abandoned their party and he never would have joined it thereafter, so I just put that as a little footnote. (Laughter.) And if I get into an IRS trouble for you – I know a good lawyer for you, so that's – you know, that's a historical fact, exactly. That was not a partisan argument.

Now, here's what I want to do. I want to give you sort of some anecdotes – some vignettes from some of the cases that we made that I think will argue to you that what we're doing – you know, because just as I say, Teddy Roosevelt did it; therefore, our doing it today doesn't mean that what he did was right and therefore what we're doing is right. But I want to give you some of the cases we've made and some of the vignettes that come out of them because I think if you listen to these story lines you'll understand that the same metaphor does continue and that the argument for our intervention in the marketplace is as legitimate and applicable as what he did.

And I will begin with what I call the analyst cases, which are the cases revolving around the tension between the analytical work that the investment banks put out into the investment world versus the underwriting that the same investment banks wanted to do, and the conflict of interest inherent in trying to get both pieces of business. Because the reason that they – 99 percent of the stock recommendations they gave were strong buys is because they were going to those same companies saying, we want to do your underwriting, and you couldn't very well say we want to do your underwriting if you don't have a strong buy on the stock. So that inherent tension, that conflict of interest, drove the lack of intellectual integrity in the analytical work and ultimately was what we focused on.

So anyway, presume that that conflict existed, as it did, and in fact presume that most people in Wall Street or on Wall Street understood that it was there. And in fact the first defense we got was everybody knows, which is a morally suspect defense, which I'll get to in a moment. We approached the first investment bank that we had built a record about based on these e-mails that then got a fair bit of play because – one piece of gratuitous advice from me: presume that every e-mail you write will some day be read by somebody like me. I mean it will – you know, nothing gets destroyed. If you type it and send it, it's saved somewhere, as Morgan Stanley found out the hard way, but I won't go on about that at this point. But presume it is saved and somebody will read it.

In fact, I do have to tell you: among the many papers I read every day is the *Wall Street Journal*. And I'm turning the pages one day and I come to a full-page ad, and the ad is a picture of a leather-bound book. Embossed on the cover of this leather-bound book is a title *My Favorite Emails* by Eliot Spitzer. Honest. This is not a joke. And I'm looking at this saying, what is going on? I haven't published that book yet. (Laughter.) And farther down it's an ad for a company called Iron Mountain. Iron Mountain is a document retention company. And in the small print it says, "let us read them before he does." And so this is – it's good to know somebody is making money on this endeavor even if we're not.

So anyway, these e-mails make the case. We go to the company and we say, “You’ve got a problem here. How do you want to resolve this?” And we negotiate – get pretty far along to negotiating a resolution that will be a structural separation of analytical work and underwriting to resolve the conflict of interest. It falls apart over the notion that they want us to seal the evidence. Now, we can’t seal the evidence. First, I think it’s unethical for a government official to seal evidence in that context, and I tell them that, and second I say, “Understand that there will be private litigation that follows on whatever we do, and whatever we have discovered will come out in the private litigation. You’ll look silly and I’ll look worse for having sealed it, so we just can’t do it.” Negotiations broke down. I have the final conversation with the lawyer for the other side. He calls me on a Friday afternoon. He says, “Eliot,” and this is a direct quote, he says, “Eliot, be careful, we have powerful friends.” And that was an interesting negotiating style. (Laughter.) And what I said to him was, “Thank you for telling me. If you’d only told me that two weeks ago I would have dropped the case.” (Laughter.) Yeah, that’s not exactly what I told him.

In DC, you remember – now other audiences don’t – you remember what Vice President Cheney said to Senator Leahy? You remember that? The FCC got very upset I think when C-SPAN tried to broadcast it. It was more akin to that. And in fact, it that was times – exponentially stronger, quite frankly. But it was – because, you know, it’s wrong. You don’t talk to any lawyer like that. You don’t talk to the attorney general of the state like that. Not that I think I’m different or more powerful or anything. It’s just wrong. You don’t do it that way. And it doesn’t work, as he found out the next Monday when we filed our suit.

So we filed our suit on Monday and their market cap dropped by $8 billion, which is never fun to see, because the victims there are the shareholders who are not really the culpable party, and so you don’t enjoy seeing that and that’s a very real harm, value, assets that you hate to see diminished. Although I was tempted to call him and say, “Where are you friends?” I hadn’t – you know, “I didn’t see them buying up your stock to save you,” but I didn’t.

But anyway, here’s where the story becomes relevant. He and his multitude of lawyerly colleagues came in the middle of that week to negotiate with us, and here’s what he said. And there are probably a fair number of lawyers in the room, and you know that traditionally in that context – and I’ve been on both sides of this equation. I’ve been at the big firms. I’ve been a prosecutor. Usually you say, “You took the evidence out of context. You don’t understand the industry. That’s not really what they meant if you look at the surrounding words, et cetera, et cetera.” That’s not what they said. They came to me and they said, “Eliot, you were right, but we’re not as bad as our competitors.” Now think about that as a defense. Think about this as a defense. I mean that’s really what they said. And I looked at them in amazement and I said, “Keep talking, I like this.” You know, I picked up my pad and I said – you know, usually – I’ve done organized crime prosecutions for a bunch of years. Usually it took us months if not longer to turn a witness to the point where they would admit that and start the conversation. These guys, you know, no honor among thieves was my first thought. (Laughter.) You know, I just was kind of disappointed in them. (Laughter.)

But the point he was making was right at several different levels. One, he was acknowledging that we were right factually, which was nice for him to acknowledge. I knew it was the case, but it's nice when they acknowledge it. Two, he was acknowledging that he knew that their competitors were acting worse, which we suspected, but hadn't yet proven, and we would get to that in the succeeding months. And third and most importantly, what it acknowledged was that they all knew what they were doing, and they had all descended to a lowest common denominator. And that even though they all knew that they were putting out analytical work that was misleading, that was wrong, that lacked intellectual rigor, and that was fundamentally causing losses for individuals who could hardly afford those losses, rather than either individually or collectively stand up and say, "How do we remedy the problem? How do we internally resolve this ethical conundrum?" they had descended to that lowest common denominator because that is where competition drew them.

And that to me was what was so revealing about this moment because as we continued the discussion with them they said, "You know, we'd be happy to play by any set of rules that you articulate, and you're right, the rules need to be changed, but we don't want to be singled out and we want to play on a level playing field. As long as you make the rules applicable to our competitors, we'll be fine."

And indeed that is what happened. It took another most of a year to get the global deal with all the firms, and everybody is playing on a level playing field we hope – everybody in that little quadrant of the market. But they were so concerned about a level playing field that they didn't have the moral fortitude to stop behavior that they knew was fundamentally wrong and that was causing massive losses to individuals.

That's what – now, interestingly – I don't want you to think that the government agencies fared much better as the story played out because the first meeting I had with the NASD, the SEC, and the NYSE stock exchange, I invited them all in and we got together a couple days later, and I said, "Look, we have a problem here. What do we do?" And I threw out some very simple ideas – ideas that ultimately made their way into global deals – to sever compensation because, let's face it, compensation drives incentive structures. How you pay people determines how they act. When analysts were being compensated, as they were, based on bonuses that were pegged to how much underwriting revenue they brought in, of course they were doing something improper.

So I said to them, "Why don't we just insist that they sever the relationship between the analysts and underwriting revenue?" And they said, "We can't do that." This is the government agency saying this. And I said, "Why not?" And the answer from them, you know, the SEC, the NYSE, the NASD was, "Because industry won't like it." And I looked at them in amazement. I said, "Who cares?" I mean again, I don't want anybody to think I'm better, different, or anything else, but I – you know, I hadn't been initiated to this mode of thinking yet. I said, "Who cares? It's not your job to care whether they care.

It's your job to insist that the rules and the law be abided by." And ultimately, of course, we did impose that on them, but that was the first governmental response. And indeed, the story has another little footnote to it.

There had been a meeting between – had been called by Harvey Pitt. I assume you remember, he was the chairman of the SEC for a little period of time. I'm not sure anybody told him that, but I think he was the chairman of the SEC. And he convened a meeting of the CEOs of the largest investment banks, and he initiated the meeting by circulating a memo that said, "There's a problem with the quality of your analytical work." But then he said in the e-mail, "But it's your problem, not mine. I will let you deal with it." They did nothing. They did nothing about it. Because it's true, as I said, they all knew the problem, but industry did nothing and government – the SEC and others – gripped by these sort of theories that intervention was necessarily a bad thing, also did nothing, hence perpetuating this fraud.

Now, let me tell you, I'm – do I have a few more minutes?

MR. PODESTA: Yeah, go ahead.

MR. SPITZER: All right. I want to tell you some other stories because I don't want you to think that we're extrapolating from one incident and it's gotten a lot of ink and therefore you're basing the whole sort of premise – worldview on it. That's not the case.

I'll mention the Paxil situation. This was a case that – involving pharmaceutical. Paxil is an antidepressant. It was marketed by GlaxoSmithKline. It was marketed to adolescents for off-label usage, which means the FDA hadn't gone through the entire approval process. The interesting thing was that Glaxo was saying it is both safe and efficacious. Now, the problem they had was that they had done five clinical tests, or three and two follow-ons. One of them had shown marginal efficacy; the other four had shown either/or – I mean it's some kind of – sort of bizarre combination. It doesn't really matter – that it was ineffective and/or that it generated suicidal tendencies on the part of adolescents.

Now, so when they went out there and marketed this just saying it's safe and efficacious, they were fundamentally misleading doctors, parents, patients, and they had suppressed the other four studies. We went to them and we said, we don't think this is right. And we had gotten our own experts to crunch the data and it was very hard to do. What was their response? Again, I'll short-circuit through to the end, the bottom line on this one. Their response to us wasn't "You're wrong," because we weren't. I mean the data was the data. They said, "Okay, but why are you holding us to a different standard than our competitors?" The identical thing. In other words, it wasn't that you're wrong or it's not – you know, that we're not doing anything improper; it was how come you're singling us out and not letting us play at the lowest common denominator that others have descended to?

And so when we went to them and said the only thing we want in a settlement is that you reveal the data, because we actually believe in the marketplace and believe that if you release this data into the market and then doctors and journalists, patients and parents won't crunch the numbers, we have no capacity to do that, but the medical journals will, some of the doctors will, so information will spread. Release the data so that your claims can be tested. They said, "Okay, we'll do that if we have to, but please make sure that others do it also." And we settled with GSK, and to their credit they have now created this website that releases the data. Forrest Labs has done the same thing. Others are being pressured, I hope, by other cases to do the same thing, and think there'll be progress there. But again, the moral of the story is the lowest common denominator to which they had descended was one where they felt comfortable keeping information out.

Now, to complete the cycle here, where does government stack up in this critique? What has the FDA done about this issue? Nothing. Absolutely nothing. And the answer is really pretty simple. I'm not a doctor. The last thing anybody here would want would be for me to be making the judgment about whether or not a pharmaceutical is good, bad, indifferent. I have no idea. You know, I, like my kids, I can't even take pills. I mean I gag on them. But the one thing I do know is that the data with respect to their clinical tests should be evaluated by people who do have the capacity to understand that, and releasing this data would resolve all of the problems that we have seen about the misstatements and claims that turn out to be false about so many antidepressants over the last year or so. All of these issues could be resolved if the FDA were willing to address the problem. But why has the FDA not been willing to address it? Again, it comes back to that intellectual theory, and I'm giving them credit believing it's an intellectual theory, not something crasser, but the intellectual theory that they have embraced that says any government intervention in the marketplace is flawed. And they're wrong because what it has done is drive us to that lowest common denominator.

One more story. And I'm not going to talk about insurance or some of the other things because that's too current. But – and too much going on. Unless you ask the right question, in which case I will. And let me – from a different sphere, and that is a consumer case that we had, which I think also will show where the federal agencies have – what they've descended to.

We had got a call one day from a lawyer in Rensselaer County, which is east and southeast of Albany, and the story is as follows. The lawyer said, you know, I have a client, a fellow who 30 years ago – and remember that number, 30 years ago – took out a 25-year mortgage, okay. So got the mortgage arranged – even back then I guess they had automatic deductions from checking accounts – arranged for automatic deductions because he never wanted to fall behind, and the deductions were made with regularity. The loans, as we all know, are securitized, bought and sold so a different bank owning the bank, but nonetheless the deductions were being made. He was divorced, this and that, but the deductions were made every day first of the month. He realized – that was 30 years ago – he realized a year or two ago that they were still taking money out of his checking account, so he called the bank and he said, you know, far be it for me to complain, but I think I've paid you guys off. Can you stop? And their response was to threaten to foreclose on his house.

He called a lawyer. He said, look, I must not know the right words to say, and maybe that's why people go to law school. I was – this is the lawyer talking. The lawyer called the bank and the lawyer was told to take a hike, we're foreclosing on your client next week. So the lawyer did what the lawyer thought was reasonable and called my office and said, well, I don't know, maybe the AG's office is the right place to do something about it. This we called the bank, and here's where the story gets interesting. And, you know, we were very polite with the bank. I know some people have said we're not always polite. We were really were polite. I promise you. We were polite. And we called the bank and we said, "Let's work through this together." Thirty years ago he entered a mortgage, and it was a 25-year mortgage. Let's do the math. Five from zero, you have to carry, so it's a little complicated, but we think we can prove to you – I'm glad my uncle is here. He was an algebra professor. I think he'll verify the math is right – that the mortgage is fully paid off by now.

The bank – here's where it got really interesting. The bank said to us, "Go away. You're a state agency. You have been preempted by the OCC." The Office of the Controller of the Currency had issued regs and had issued a memorandum of some form that went out to all the banks in the nation, federally-chartered, stated-charted as well, that said, you do not need to answer inquiries from state agencies. They said – they really said – the bank was kind of rude, and they said, "Go away. Take a hike." Now, the mistake they made was to leave this on a voice-mail. Voice-mails are almost as good as e-mail, so we could play it back for people, and we did that. And we said this is now the world we're living in, where when we simply call up a federal agency to say help – or call a bank to say, you know, stop trying to foreclose on this guy's house because you've already collected on the mortgage – they invoke a federal agency as protection against us because we've been preempted by a federal agency that doesn't want us to protect consumers.

And it caused a little bit of a back-and-forth. The OCC was forced to withdraw that memorandum, although they are still trying to preempt us with respect to mortgage protection for consumers, our investigation of whether or not banks are properly lending to minorities and women. They are trying to intercede on behalf of the banks keeping us from getting the data we need. As recently as two days ago I got a phone call from the very top of the OCC saying, "We think you're preempted." Well, I don't think we are and we're going to find out in court some day. But whether or not they have the capacity to, that is what the agencies are doing. They are not out there ensuring that there's fairness, equity, or integrity in the marketplace. They're preempting us so that we can't do what is reasonable.

Now, I've told you a number of stories. There are many others that I could continue with involving the EPA, the FDA, and some of the other agencies that would make the same point. The federal agencies have so receded from the marketplace that there's really no protection against the type of improper behavior that competition will drive people to. Now, competition is a wonderful thing. It's what drives the market. Lest anybody misunderstand what I'm saying, I am more devoted to the market than anybody else, but I believe that for the market to work there must be rules enforced and that the market itself will not necessarily enforce those rules; it is the role of government to do it. We have to be smart in the way we enforce those rules. We have to understand that there are unintended consequences. We have to understand that for every remedy there are consequences that we can't predict. Options 10 years ago were reviewed as the great answer to CEO compensation. Obviously it didn't work, and so not every answer is a good one. But certainly problems must be addressed, and we have to think creatively and understand that the market itself won't do the trick.

Now, let me end with one sort of thought, and that is that one of the patterns or shifts in our society that worries me enormously is that partly as a result of this complete withdrawal or the desire to withdraw from the marketplace that we have seen on the part of the current administration and prior administration driven by this intellectual theory, we are beginning to change the nature of our society. The most wonderful creation of progressive politics over the last century, I think, was the middle class. The middle class was created by virtue of affirmative government policies that worked to support wages, bargaining power for workers, and fairness in the marketplace. We created a bell-curve society, a bell curve which had most people concentrated in the middle earning enough, working hard enough, so that they could do better than their parents, and it continued generation after generation.

What we have seen recently I think is not only a flattening of the middle class but a tendency towards becoming what I call a barbell society. Where instead of looking like a bell curve with that concentration in the middle, we're looking like a barbell at a gym where we have many people down here who are poor, fewer people in the middle, and a small bump at the other ends of those who are extraordinarily wealthy. Now, not that this data proves it, but it is interesting that the ratio – and one of my favorite ratios – in 1980, the ratio of CEO compensation to the average worker was 41 to 1. By 2002, the ratio was 530 to 1. Now, one could say that that was purely a consequence of market forces; it was all justified. As I said, you could say it, I think you'd be wrong, and I think that everything we'd see about CEO comp would lead most people to conclude that that simply wasn't justified, it was an aberration that was a result of a breakdown in corporate governance, but put that aside.

The worry about becoming the barbell society is accentuated by the concerns that Thomas Friedman in his book, *The World is Flat*, talks about, which is that we are becoming not only a global economy but a global economy where our – where our comparative advantage has been piece by piece stripped away by nations with whom we were not competing in terms of intellectual capital five, 10, and 20 years ago. And if that is the case and we are competing in that way as we inevitably will, then the pressures on the middle class will go – it will become tougher and tougher and tougher and the obligation to have creative policy from government that addresses these problems to sustain the middle class becomes that much more important.

So we have some incredibly tough challenges ahead of us. Not only do we have to, in my view, change and flip a 30-year presumption against any sort of government intervention, but we then need to be creative enough to deal with what government can do in the marketplace to address a much more complicated, competitive economic environment than we have seen in – certainly in the history that I have studied.

So thank you for your patience and questions are welcome. So thank you so much.

(Applause.)

MR. PODESTA: Theo has got a mike. If you could please state your name and identify yourself. And no speeches, please.

Q: Rick Peltz. Just a question. The guy in Rensselaer County, did he get foreclosed or did that get –

MR. SPITZER: No, we were actually to get them to back off.

Q: I thought I remembered.

MR. SPITZER: Yeah, no, we were able to get them to back off with a bit of hard pushing, but they did. And actually the OCC is – we were still – as I say, we're still in the middle of this with the OCC in terms of whether or not they will continue to push their preemption. It ended up getting before the House Financial Services Committee where bipartisan – there was bipartisan push-back against the OCC. I think it was Commissioner Crow – Hawk, excuse me. I always know it's a bird, but I'm sorry, it's Commissioner Hawk who was pushing it.

Yes, sir?

Q: Sam Pitsagotti (ph). Rewards for executive success in corporate America today, as you noted in your remarks, are much, much higher than they were a generation ago. Do you think that the enormous size of these potential rewards for CEOs and other executives act as an irresistible incentive to the sorts of fraud that you've been uncovering?

MR. SPITZER: Oh, I don't want to say anything is irresistible because I think then I'd be suggesting that somehow there was a more universal failure of moral values, which I certainly don't want to suggest. I do think that the size of the – the dollars have gotten pretty enormous. And I actually think it's a different issue, and I don't mean to go into a whole separate area. There was a larger breakdown of corporate governance there. There was what I call the imperial – year of the imperial CEO. And it was not my phrase; other people have used it. Power flowed to the CEO boards, audit committees, outside lawyers, investment bankers, all abdicated their responsibilities, so CEOs became so powerful that there were not checks and balances. Just as we had the imperial presidency with Richard Nixon and it led to improper exercise of power, imperial CEOs had the same problem, and they fell prey to it. So I think that's one part of the problem.

The other confusion that I think has emerged over the last couple years is the confusion between management and equity. CEOs in many companies have wanted to arrogate to themselves the rights of equity ownership, even though they have not had real equity. They've been managers. They're there as fiduciaries. They're fiduciaries to their shareholders, their employees, however – you know, fair debate to whom that duty, but nonetheless they are managers. They have begun to believe that they deserve a big piece of the upside and that's an upside that should go to the equity stakeholders, not to them. And so they have tried to glom onto it and take it, and that has been part of the confusion as well.

Q: Hi. My name is Abby Jones. I'm actually a middle-class kid from Rensselaer County, New York.

MR. SPITZER: All right, I like it. New Yorkers.

Q: So my question is somewhat vague actually: we heard about CEOs and the disappearing pension issue with United and Polaroid, and what role you think both the government and progressives can play in that issue?

MR. SPITZER: That is a huge issue. I'm not going to give you answers because I don't know what the answer is right now, but I will tell you when I read the articles last week about the – essentially the shift of the pension obligations from United over to the Federal Pension Guarantee, PG – whatever the acronym is – I said to myself, this is the business model of the future. All of United's competitors are going to be looking at this and saying, "Wait a minute, they just relieved themselves of a multibillion-dollar liability," and so we will see this almost inevitably sweep through the airline industry. People were writing the next day that the auto sector was going to follow shortly thereafter.

What we could see is an entire shift of the private sector's pension obligations that companies have had over to the public sector. And we can't afford it. And it makes you wonder what sort of stewardship there has been of those assets that were supposed to be there in the pension funds. Now, I can't give you an answer. I haven't thought the issue through enough to say here's what we should be doing. But is it an example of where you need government to enforce those obligations and say to Untied and the executives at United and others, "Wait a minute, guys. Uh-uh. You just can't unload that obligation on everybody else. It is yours. Where are your bonuses? Where are your perks? We're taking them back before you unload these obligations on everybody else." So there are many things that have to be thought through, but I think that the pension issue is clearly one of the waves that are going to hit us down the road.

Yes, sir?

Q: Sheldon Ray. Regarding the Wall Street settlement, what is the status of the research monitors who were to be appointed to report to the SEC and you guys at the end of the day, and if it's not too late, where would one apply for such a job?

MR. SPITZER: Well, I think it's too late. I think the independent consultants have been chosen by each of the investment banks. They've been hired. In fact they have hired the independent research analysts whose information is now being funneled through to the retail clientele of these companies. And I won't bore you with the details, but the idea was to basically infuse $400 million that could either have just been taken by government, but infuse it into independent research to try to revitalize the independent research sector where you desperately need more research, both broader and deeper.

And the problem we've had, and one of the problems in the market has been that there's been no revenue stream for research, and so this was an idea to see if we could make people give it a go. And in fact, the quality of research has improved, most of the data suggests, because of this competition. Again, it goes back to the market. Competition works. Because the research analysts in-house are seeing three – minimum – other research reports that go out to the retail base simultaneously with theirs, they know they've got to perform better, and so everybody is performing better. It's not perfect, but we've made a fair bit of progress. I forget who to call to – you know, there's somebody in my office I could – whose name I could give you if you actually want to find out where to send your résumé.

ANNOUNCER: Two more questions.

Q: I'm Pia Von Hughes (sp).

MR. SPITZER: Hi.

Q: I was wondering if you think that the Securities and Exchange Commission has done any better of a job since it experienced regulatory competition from the states and what might happen should that regulatory competition recede.

MR. SPITZER: It's a great question. I mean competition works both in the private sector and in a way in government. And the federalism that we've embraced over 200 years does create this duality and creates competition. Now, there's always a concern that there'll be over-regulation, too much intercession in the marketplace because of it. But I think you're right, the pressure from the states has forced federal agencies to wake up and do better. The SEC has performed much better. And now Bill Donaldson has certainly been, you know, much more effective of a chair than Harvey Pitt had been. Steve Cutler, who left I guess a month or so ago, was stupendous as head of – chief of enforcement of the SEC. He's a friend. He did a great job. And so I have nothing but good things about the way they've tried to turn the ship.

I don't think, parenthetically – I mean having said those nice things about it, not to undercut it, but I don't think that their problem was ever a lack of resources. You know, for a period of time they were saying we don't have enough money, we don't have enough money. That was not really the problem. They had vast resources; they just weren't using them. And all the stuff we've done – on Wall Street we've done with 15 lawyers, so I think it was not a lack of resources. It was a lack of drive, willpower, desire to make the cases. But competition works. They've done much, much better.

ANNOUNCER: This will be the last question.

Q: Hi. I'm Dan Ericson. I really appreciate your talk today. And I think you gave a great diagnosis of problem, but I wanted to press you a little more on what you see as the solution. In particular, there are two or three things that you think – or changes that could be made in federal agencies and regulatory agencies that could help to address some of the problems that we've been seeing?

MR. SPITZER: Well, I'll give you a real quick answer. I don't think that the – that I and the lawyers in my office are any brighter, smarter, better than the lawyers elsewhere. Maybe I think that the lawyers in my office are a little better, but that's hubris on my part. But the desire to make the cases. It's, you know, embracing an ideology that says what we're doing matters and is important, and that the cases are important because by making these cases and enforcing integrity, transparency, and fair play as guiding principles in the marketplace, you are protecting not only consumers but also the market.

When you don't have that ideology and that core belief deep inside you and you have embraced the notion that, gee, I'm here, and I'm a bureaucrat and I'm meddling and I really shouldn't be doing these cases, then you don't make the cases that should be made. So I think that that's why the real fight is the intellectual fight. We need to get the folks who are at the agencies to understand and appreciate the importance of what they're doing. And if they have that as core belief, then they'll do better. And I think that what I have tried to do in my office, whether it's the environmental bureau, labor bureau, securities, civil rights, Internet, whatever, is get people to appreciate why what we're doing matters and where helping the marketplace through these enforcement actions actually will change things for the better. And if people get that, then the cases will follow. It's not much more than that.

All right. Thank you so much. It's been a real pleasure.

(Applause.)

(END)