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Senators Consider Whether Financial Fraud Should Mean More Prison Time

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Amid the flurry of securities fraud investigations, a Senate Judiciary subcommittee today is considering whether the laws governing conduct on Wall Street need an overhaul.

The subcommittee on crime and drugs, chaired by Sen. Arlen Specter, D-Pa., is hearing testimony from academics, advocates and at least one voice from Big Law. One major point of dispute: a proposed requirement for some financial services employees to meet a fiduciary duty to their customers, or else face criminal charges and potential prison time.

"I have long believed that it is insufficient to have fines for fraud," Specter said in an opening statement, adding that fines from the Securities and Exchange Commission are "calculated as part of doing business."

The Justice Department has brought criminal fraud charges stemming from the financial crisis, but one of its biggest cases, against two former Bear Stearns hedge fund managers, [ended in acquittal](#) in November.

Among those testifying at the hearing is [Andrew Weissmann](#), former director of the Justice Department's Enron Task Force. Now the co-chair of the white-collar defense practice at Jenner & Block, he said a new criminal statute relating to fiduciary duty would raise questions of fairness and proper notice to those who might be covered.

"Would every breach of a duty of care now become a crime?" Weissmann asked this morning.

Another witness, Damon Silvers, associate general counsel of the AFL-CIO, said such a statute would not be unique. "I would submit that there's nothing particularly exotic about criminalizing willful breaches of fiduciary duty. It's a well-known feature of our pension law today," Silvers said.

[Click here](#) for video of the hearing, which is likely to last much of today. Assistant Attorney General Lanny Breuer, head of the Justice Department's Criminal Division, is scheduled to testify at 2 p.m.

Sen. Ted Kaufman, D-Del., said the public is demanding some action by Congress, especially in the wake of [last week's congressional testimony](#) by Goldman Sachs executives. "I just think there's a crisis, in terms of people thinking there are two sets of rules," Kaufman said.

This article first appeared on [The BLT: The Blog of Legal Times](#).