

## The Sarbanes-Oxley Act: The First Decade July 30, 2012

**PROFESSOR MARK BEASLEY:** Good afternoon. Welcome to The Sarbanes-Oxley Act: The First Decade. My name is Mark Beasley. I am the Deloitte Professor of Enterprise Risk Management and Professor of Accounting in the Poole College of Management at North Carolina State University which is based in Raleigh, North Carolina.

It is a pleasure to welcome our audience here at the Jack Morton Auditorium on the campus of The George Washington University in Washington D.C. as well as those who are joining us live via the internet through the SEC Historical Society's virtual museum at [www.sechistorical.org](http://www.sechistorical.org). It is a pleasure to welcome you all here today.

Ten years ago today, President George Bush signed into law The Sarbanes-Oxley Act of 2002 after it was approved by the House with a vote of 423 to 3 and by the Senate with a vote of 99 to 0. At the time in 2002, we were on the heels of the corporate scandals at Enron, WorldCom and others that followed, Adelphia and Tyco and beyond, as well as the dotcom crisis. We were also dealing with the impact of 9/11 as well.

The Sarbanes-Oxley Act was designed to enhance and strengthen corporate governance, particularly over the financial reporting processes in public companies in the United States. As you know, the act had a number of provisions primarily to enhance corporate governance, to place more responsibilities and authority on the shoulders of boards of directors, particularly audit committees, as well as to strengthen the accountabilities for management of public companies, the auditors of the financial statements, and to try to enhance the strength of internal controls, financial reporting and particularly to increase transparency over the financial reporting and disclosure process.

It has also served to create the Public Company Accounting Oversight Board, which has responsibility for overseeing the auditors of public companies. The PCAOB registers the firms that audit the publicly-traded companies in the United States, sets standards for auditors, both in the auditing standards area as well as quality control, independence and ethics, and oversees the audit profession through the inspections process.

Since its enactment, the Sarbanes-Oxley Act has received quite a bit of debate and discussion with both praise and then criticism. We are now ten years to the day of it being signed by President Bush. It is my great honor and privilege to have with me today the authors of the act, those that were responsible for its creation in leadership through Congress: Senator Paul Sarbanes, former Senator from the State of Maryland, and Representative Michael Oxley from the 4th District of the State of Ohio. Both were very instrumental in being part of the creation of the act ten years ago. So thank you both for being willing to join us today on this very historic occasion. We are very grateful that you are here.

Over the next hour we are going to try to create a conversation primarily between these two gentlemen about their perspectives of the act, as we sit back ten years later looking

at it, helping us understand a little bit of the context at the time but also looking at it from the perspective of the effectiveness of the act and their visions of it for the future.

Today's program is made possible through the partnership of the SEC Historical Society and the Center for Audit Quality, who have joined together to host this program today to help us focus on this significant occasion.

As many of you know, the Center for Audit Quality is an autonomous public policy organization that is fostering high quality audits by the members of our profession who audit public companies. The CAQ also advocates policy and standards that have helped promote the effectiveness and responsiveness of auditors of publicly traded companies. They also convene and collaborate on important issues to help create dialog and focus on things to advance the discussion of critical issues such as this historic occasion today.

The virtual museum and archive of the SEC Historical Society is also responsible for helping us host today's event and the museum, too, is celebrating its tenth anniversary this year. The SEC Historical Society helps to preserve and advance knowledge of the history of financial regulation through its rich archive and museum at [www.sechistorical.org](http://www.sechistorical.org). The SEC Historical Society is independent and separate from the U.S. Securities and Exchange Commission and does not receive any public funding. We are grateful both to the Center for Audit Quality and the SEC Historical Society for providing this program today.

Let's begin our conversation on The Sarbanes-Oxley Act: The First Decade. Again, ten years ago today, the legislation was signed by President Bush and at the time of his signing of the act, he said "The era of low standards and false profits is over. No boardroom in America is above or beyond the law." I would like to start with Paul Sarbanes, and then ask for Representative Oxley to respond as well. On balance, as you look back ten years, are you satisfied with what has been accomplished through the passage of the act ten years ago?

**PAUL S. SARBANES:** Well, the simple answer to that is, yes, it has worked pretty well. I think it has become part of the standard process for public companies that are listed on exchanges in the U.S. I think that has made an important contribution to providing investor protection, restoring investor confidence which was at a very low level in the aftermath of the Enron and WorldCom and all the other companies sort of in between. It strengthened our capital markets and helped to sustain and maintain their integrity. The integrity and honesty of the U.S. capital markets is a very important economic asset for this country. And anything that undermines that has a broad impact and it has a very detrimental impact on the workings of the economy. So it is very important that we make sure that these financial reports are on. Now we don't cover everything. Now people say what about the recent financial crisis? But the recent financial crisis from most reports had very little false accounting in it. It might be some here and there but not compared with what we had to deal with in terms of Enron.

Enron was the seventh largest company in the country and it was engaged in phony book-keeping. It was showing results in their financial returns that were completely a departure from reality. So you know we tried to address that question and I think we have done a pretty good job of it.

**PROFESSOR MARK BEASLEY:** Representative Oxley, how would you assess it as you look back?

**MICHAEL G. OXLEY:** I look back on it as an effort to try to restore investor confidence that was badly shaken with revelations of Enron, WorldCom and some of the other companies. The tenet behind restoring investor confidence in the act was more transparency and accountability; that was what the law was all about. But investor confidence is a very fragile thing. As a result of the revelations about Enron, WorldCom and others we lost almost \$8 trillion of market cap. Almost \$8 trillion. A lot of people forget about that. A lot of people forget about how outraged the public was when they saw on television virtually every night and read in the newspapers, and not just about the job losses. Imagine if you were an Enron employee; not only did you lose your job, but you lost your entire retirement. And that happened to thousands of workers all over the country. As Paul said, Enron was the seventh largest company in the country who, by the way, had announced early in 2001 the strongest code of ethics of any company in the country. But saying it and doing it were two different things. So I think at the end of the day, after ten years, if we have encountered an Enron or a WorldCom on that scale? The answer is no. So the Act has worked as it is supposed to do, to prevent this kind of thing from ever happening again and not having to go through another situation where we lost trillions of dollars in market cap.

If you think about it back then, with Enron and WorldCom, I would suggest, there was not a financial advisor out there that wasn't advising to have some Enron and WorldCom stock in individual portfolios. They would have probably gotten sued for malpractice if they hadn't done so. Everybody had a stake in this and that is why the public reaction was so intense. It would be dangerous sometimes to go to the House floor because I would be set upon by my colleagues who wanted to tell me the latest horror story about one of their constituents who had lost money in the market or maybe their jobs or both. It became a very personal thing with the American investor and the American public and that is why they demanded that the Congress act.

**PROFESSOR MARK BEASLEY:** When you think about the act, there are a number of provisions in it, so does one provision particularly stand out in your mind? We obviously hear a lot about 404, but is that the one that stands out in your mind?

**MICHAEL G. OXLEY:** Not really, no. It is interesting. One of the things that was never really discussed about the success of SOX as we call it, was the whole idea of backdating stock options. That was kind of floating around out there. And there were a lot of revelations about corporate insiders backdating stock options. It led to just one more example of the individual investor feeling that he was on the outside looking in and this was a game just for insiders. And so we changed the time by which you had to file with the SEC. The law required that corporate insiders filed within 48 hours on the SEC website. That basically stopped that in its tracks and had an amazingly positive effect. But again it went back to this whole idea of the individual investor washing his hands off the whole process because he didn't feel that he was being treated fairly and others were taking advantage of him.

**PROFESSOR MARK BEASLEY:** Are there any provisions in the act that stand out or you would say are some of the important provisions?

**PAUL S. SARBANES:** Well, there is a whole range. First of all, we established the PCAOB, the Public Company Accounting Oversight Board, to oversee auditors and so that the monitoring of the conduct of auditors shifted from self review, peer review which had been the case up to this point and you had an outside independent objective body to do that job. I think the consequence of that has been the significantly enhanced auditing standards and auditing practices. And the profession generally agrees with that. I mean they perceive it the same way. What we tried to do is interesting, we tried to build into the operations, the safeguards, these checks and balances so that the internal watchmen, the policing would be done to the extent possible within the organization or within the established procedures. Corporations have to have an internal system of financial controls. Chief executives are responsible; they have to sign the statements amongst other things. The auditing firms now relate with an independent audit committee rather than the management. I mean they are overseeing the auditors who ought to come in from outside and render an independent judgment; they are not to be part and parcel of the management. And one way to try to contribute to that is to shift who they report to, who they are hired by and fired by to the audit committee. We sought to strengthen their law within the workings of the corporation. There is another check to screen out improper conduct and I think it is contributed to that and I am encouraged by the extent to which all of these requirements seem to have become part and parcel of the normal way of doing business and that's an important step forward.

**PROFESSOR MARK BEASLEY:** So let us touch on that a little bit more. You talked about strengthening the role of the audit committee. So do you see that as a positive and has that had a lasting impact, do you think, in the governance process?

**PAUL S. SARBANES:** Well, so far and we need to do more I think to strengthen particularly in the potential communications between the auditors and the audit committee including what kind of information the auditors furnish and so forth and so on. But the audit committees are working overtime now, they will tell you as much. Anyone who is a member of an audit committee of a public company will be the first to admit that the workload has increased significantly, which is as it should be. I think they are making an important difference. We required that some members at least of the audit committee have financial expertise so that they were in a position to bring some knowledge and experience to this responsibility and they act as a check. The management gets more concerned about honesty. All we want is honest record-keeping, that's what we are trying to get. That's it. It sounds like a pretty simple thing to say but we weren't getting it out of a lot of significant companies. I mean they were really playing absolutely outrageous games and they put out these financial statements which had no connection with reality.

**PROFESSOR MARK BEASLEY:** So when you think about the role of the board and the audit committee in trying to strengthen that through the act and today's context of the financial crisis of the last three or four years, do you see a connection between the act and the financial crisis we had been through or do you see them as separate issues?

**MICHAEL G. OXLEY:** I think they are separate issues. Again ours is about accounting fraud at the end of the day. I think the recent financial situation was based on a lot of opaque activities, unregulated over the counter transactions. It was about excessive risk. I think ours was a different approach and a different time. Paul was talking about that when the House first put our bill together early in 2002, we were struck by the report that came from Enron. The Enron Board had commissioned a group to look to see what

went wrong, headed by the Dean of the University of Texas Law School, William Powers, and Bill McLucas, who had been at the SEC. They did a superb job and the real important part of their report, and what we based our approach on, was that they said in the case of Enron, in every case what they called the gatekeepers, had fallen down on the job, whether it is the attorneys, the accountants, the board, the credit rating agencies. All of what they called the gatekeepers in one way or another had failed the investor at a critical time when Enron was getting away with all this stuff. So that really became the nexus, the heart of our legislation, we started in the House and the Senate continued with and I really do think that set the example.

**PAUL S. SARBANES:** We had to enhance the status of the gatekeepers. One of the things we tried to do was to make the auditors more independent so they really were to some extent an outside party judging the activities of the corporation. So we put certain limitations on what services auditing companies could provide to the company. We had one case in which the auditing company set up the valuation system for the company in terms of valuing its assets. They established the internal valuation system. Then they came along as the auditors from the outside to examine the company. What kind of exam do you think they gave to the valuations which had been made by their own system which they had provided to the company as consultants? It didn't encourage the notion that they were exercising an outside independent judgment. So you try to eliminate those potential conflicts of interest, so you get people calling it as they see it. And it is not being compromised by these other connections.

**PROFESSOR MARK BEASLEY:** You mentioned that one of the provisions was creation of the PCAOB, so I would be curious about your assessment of PCAOB up to this point and what it has done and opportunities for the future there?

**PAUL S. SARBANES:** I think it is amazing how quickly the SEC moved to establish the PCAOB and how quickly they were able to get the PCAOB as a full fledged organization and it worked. I think they have done a good job. They have a very good procedure in terms of establishing standards. I mean they have a very careful proposal process, a hearing process, people can be heard. These are complicated issues you are dealing with often. And they need careful examination. There are a lot of very competent people in the field and they have a lot to contribute. So they are enabled to work through that I think quite well. Of course they have enforcement dimension to their activities and they have been vigorous there. So I think the PCAOB gets high marks.

**PROFESSOR MARK BEASLEY:** Representative Oxley, I would be curious about your views on the PCAOB and the role it has played.

**MICHAEL G. OXLEY:** Considering the fact that they were essentially created out of a whole cloth in the act and then we gave them pretty short time periods to get in, I think the SEC did a superb job. They tackled some really difficult issues in a short period of time and very effectively and they have continued to do that and I think that the process, well, it has been not perfect, obviously it has been a plus. If you go back to the old days of self regulation and then compare it now, I think we have a far better and fairer system.

**PROFESSOR MARK BEASLEY:** One of the provisions we focused on was the gatekeeper piece: auditor, the board and the others. But let us go to management, the author of the financial report to address the Section 302 provision where the CEO, CFO must certify the financial statements. Can you give us a little historical perspective of

what led to that and then more importantly your assessment of what was the impact of having to certify financial statements if you are a CEO or a CFO?

**MICHAEL G. OXLEY:** The idea was essentially tone at the top. These scandals don't happen from the bottom up. They happen from the top down or at the top. And so the idea was to have in this case the CEO and the CFO sign the financials understanding that, I think it will be human nature, to make sure that down the line there the people that are reporting to them also provided that assurance. So you had it up and down the line first of all because you had potentially severe penalties of going forward with having a false signature and a false report being signed. That, I think, got everybody's attention and I think it's had the positive effect that we looked for. Some critics say, well, you haven't had many CEOs and CFOs criminally penalized. But the fact is the SEC has used other means including civil action against them which also had a deterrent effect against that kind of a thing.

In terms of restatements, actually the restatements were less than a third after a few years than what they were before. I think that is also a positive development that there is a metric that you can actually point to.

**PAUL S. SARBANES:** That's a very interesting point, the last one because in the short run the restatements went up because you had a lot of companies that have not been playing fair and square, so they scrambled out there to do the restatement. So first the figure went up, then it went down and it stayed down. I think that reflects the fact that they are doing a better job is being done in terms of the book-keeping. Now I think there is nothing that sort of gives a jolt to a CEO or a Chief Financial Officer than actually having to sign the reports indicating that they believe that these are fair representation of the financial condition of the company. In fact what a lot of them are doing now is requiring what amounts to sub-certifications within the organization so people down the line that are feeding the material up have to in effect provide to the top people a sub-service. So the whole operation is alerted to this challenge and has to respond to it. So I think that brings home in a very poignant way what the responsibilities are. That's an important thing.

**PROFESSOR MARK BEASLEY:** Let us turn to what many would say is obvious and that is Section 404. For many, Section 404 is now synonymous with SOX. They look at that as the same thing. Let's look at 404 and what is your overall take on the effectiveness of that particular provision that required the management assertion on the internal controls effectiveness and then the audited opinion on that?

**PAUL S. SARBANES:** Well, first of all let me say, I think 404 is a very important provision. They somehow wanted you to invest money in their company and you said I might be interested, how is your system of internal financial controls? They said you know we don't have a system of internal financial controls. We don't believe in that, we think it is a burden. It is burdensome. Would you put your money in their company? Would an investor put their money in that company? So I think the internal financial controls are a very important part of this process. It is another way of screening out the bad actors early on before it ever gets to a regulator, before it ever requires some kind of a punishment by an outside public authority. So to the extent that can be done within the corporation I think that is a plus. We had some problems because initially the assertion was made, it was too expensive to do these, to get the attestation from the auditors. And of course the PCAOB and the SEC working together they changed the protocol and they

succeeded in reducing the cost. Usually companies find that if they don't have a good system of internal financial controls it's going to cost them some money initially to put one in the place. Once they get it in the place then the cost in subsequent years drop off. But it's an important asset. Michael Gallagher who is on the Center for Audit Quality executive committee testified in front of the Congress the other week and he made the point that the trend among investors is to start looking at the quality of the internal controls of the company. If the company has judged they have good internal controls, that becomes a positive to the investor in terms of putting their money into that company. Well, that's an interesting development and it is a very interesting comment about the importance of internal controls.

**MICHAEL G. OXLEY:** Representative Oxley, what is your take on 404 and that specific provision?

**MICHAEL G. OXLEY:** I think that it is clear that the costs have come down. I think a lot of the criticism that I hear is based on early years and it is all indicated start up cost and the like. but frankly in terms of the software now that has been developed most companies I have talked to now have come to terms with that whole process using sophisticated software to help them get better numbers and more accurate numbers and in fact has reduced the cost dramatically. The CAQ study showed a 30% decrease in the average cost between 2006 and 2008. I would expect that those numbers will continue to go down. So, yes, in the first part I think you had this kind of a learning process of beginners dealing with it and the cost came down. Now I think the benefits and the costs are better weighted and I think that is a positive development. But also you have to look at what happened, when the worst of the news came out of WorldCom and Enron we were in the process of losing \$8 trillion. I talked to a lot of CEOs. If they complained about 404 I say look what was your market cap on July 30<sup>th</sup> 2002 and what is it now? And virtually every one of them saw their market cap go down dramatically in '01 and '02 and came back as investor confidence came back. And so from that standpoint I think it was valuable for all companies, all publicly traded companies, because it eventually got the investors back in the game. At the end of the day this bill was all about the investing public and restoring that investor trust.

**PROFESSOR MARK BEASLEY:** So when you think about that provision and now we have had several years of companies complying with it. I was with a CEO of a company last week who asked, "Do you think it continues to add value year after year after year? I have provided my assertion and it's been audited now for seven years or eight years. At some point is there a diminishing return?"

**MICHAEL G. OXLEY:** We have not seen it yet if there is. I think that once that concept is kind of ingrained in the corporate structure it would be a folly it seems to me to go in a different direction and invite that kind of thing. I had dinner the other night with an old friend who is the chairman of the board of a major regional bank in the Midwest. And he said I know 404 gets a lot of criticism. Frankly it gives me a lot of feeling of reliability to know that those numbers are coming out and that I as the chairman of the board feel that we are complying with those standards and he thinks that is worth it to our investing public.

**PAUL S. SARBANES:** You have to be willing to put the time and the energy and resources into assuring that your company is operating in an honest and straightforward manner. And if you fail to do that there is always a danger then that something will go

wrong. If something goes wrong you make it the kind of extreme consequences Michael was talking about in terms of what happens to market cap and so forth and so on. People want to go public. There are good reasons to go public and there are advantages or a gain by going public. But you also have to understand that if you go public responsibilities come with that as well. And one of the responsibilities, at least I think is that your company is going to be operating in an honest straight forward manner so that the financial reports are presenting a true and accurate picture of the status of the company that some flim-flam is not going on. Enron was putting things off budget and then they bring them back on budget and then they take them off budget again. You know the quarterly statement was coming up they wanted to reflect a certain figure so they play around with moving things in and out and so forth and so on. It was all a shell game that was going on. And they were the seventh largest company. Everyone thought, as Michael said, it was the hottest stock in town. Everyone was investing in it. They were reporting earnings going up 20% a quarter, quarter to quarter earnings were going up 20%.

In October of 2001 they restated their earnings for the first time. That was the time when Ken Lay was telling the employees that the stock was a terrific buy. Of course because of the loophole in the law which we closed he had not had to report that at the time he was making that speech, he was selling his holdings in the company, so directly contradicting what he was saying in the statement. In November they restated again, the first week in December they declared bankruptcy. Biggest bankruptcy in our history up to that time. So you had all these games. The investors lost confidence and they kind of fled the markets with all the economic consequences of that.

**PROFESSOR MARK BEASLEY:** So given the positive support for 404, what are your thoughts on the Dodd-Frank exemption of non-accelerator filers from providing an audited statement from their auditor on the effectiveness of their internal controls?

**MICHAEL G. OXLEY:** Well, the law of course gave that capability to SEC to delay or to exempt smaller \$75 million market cap or less. The SEC I think had up to seven years and really never ever came to a conclusion on it. I don't know if they could ever balance what they thought was the cost versus benefits or not, anyway it didn't happen. So in a way I think the Congress did what the SEC couldn't do. They just made it permanent. And I think given that it was probably a good idea. A lot of the companies that I had a contact with were below \$75 million and some of them were close had basically for their own benefit had gone in and adopted a lot on their own laterally some of the best practices that were set up in the act. I think they stand a better stead perhaps than others who simply ignored and hoped it would go away. At the end of the day I think the marketplace may determine that the same kind of thing with the JOBS Act Congress recently passed. It would be interesting to see if investors who are now used to getting some critical information on the corporation will now not have access to that whether they are willing to take that leap of faith, I think it will be a very interesting study to see how that those investment decisions are made or if they are made at all.

**PAUL S. SARBANES:** I am concerned about this erosion. I don't support it. I mean there are different degrees of the erosion taking place. I think some of those smaller companies feel a pressure to conform to Sarbanes-Oxley because it becomes a good behavior card and I think that is going to increase and more and more going to see that if they grow they have to. Now the JOBS Act has got... I mean you are talking about a company of \$700 million in market cap, a \$1 billion in revenue, would be exempt for five



years from the application of the 404 financial controls provisions. That in my opinion is a scandal waiting to happen. The New York Times had an editorial was headed “Do they never remember?” It went from there and I think that one should keep that editorial in their file; it is going to become relevant some time.

**MICHAEL G. OXLEY:** What is going to happen is you are going to have a scandal. And the investors are going to complain that the regulators screwed it up or it is Sarbanes-Oxley’s fault or something else. In fact they made that decision with their eyes wide open and it will be interesting to see the revisions in history after that happens.

**PROFESSOR MARK BEASLEY:** You both attest to the Act’s effectiveness and the benefits of it. But one of the challenges I know from an academic perspective when trying to do research on it is how do I measure the benefit versus the cost of the legislation? And there are a lot of people who want to put a number to it. How do you go about thinking about the effectiveness of the act when it is in a lot of ways qualitative? I would be curious about how you measure benefits of the Act.

**MICHAEL G. OXLEY:** I think it is tougher to put a quantity on the success. Again I go back to has it prevented that from happening in ten years? Yes, it has. That in itself is a huge accomplishment. Think of all the jobs we saved. Think of all the investors that are better off now than they were when they lost all that money. So that in a macro sense really is important but it is also I think if you look at polling, if you look at polling with investors and people in virtually all walks of life. Most people support the concept. They may have some problems with costs and all that but at the end of the day they support the concept and I think that is truly what we tried to do. There is absolutely more recognition of having tone at the top, having safeguards. I chair the Ethics Resource Center. We recently did a study of which we reported up in New York last week. 96% of employees polled knew about the corporate structure and about some of the guidelines they put in place in terms of ethics and compliance, 96%. I bet ten years ago those numbers were half that. So we made enormous progress.

**PAUL S. SARBANES:** That is a good question. Because we are the quantitative measures are hard to come by because one measure as a bad thing didn’t happen. You know bad thing didn’t happen. These safeguards prevented something like Enron and WorldCom from happening again. But it is not there to be measured in a sense. The Center for Audit Quality which is of course committed to enhancing the audit quality and it has only been going ten years and it has been going about the length of the statute. But they do surveys and those surveys most business people come in and say we think the legislation has enhanced audit quality. We think it has provided important safeguards and it’s a significant contribution to working. Bill Donaldson, who was the chairman of the SEC when the PCAOB was established, I think did a terrific job. He had been appointed chairman of the SEC by President Bush. He made a speech at the National Press Club back then and he said that Sarbanes-Oxley and the efforts of the SEC and the PCAOB which had been established by Sarbanes-Oxley was an effort to enhance honest business. It wasn’t directed at curtailing honest business. It was meant to enhance honest business. He went on to say that this notion of honesty and integrity and the business dealings ought to become part of the DNA of every company. And you see that. I mean we had companies who testified in front of us. And you could see the heads of companies who were committed to this notion, the kind of how that commitment would be reflected in the activities of their company all the way up and down the line. I remember we had a CEO who says that is one thing we don’t tolerate. If there is a

departure, deviation from that standard we come down very hard on them. And you create that kind of atmosphere within your company. Actually this legislation is designed to help people who want to do the right thing. It is designed to try to screen out, get them out of the process, the corner-cutters, the people who want to cheat, the people who you know use any means to try to get to their end even though that may in fact undermine the whole workings of the marketplace.

**PROFESSOR MARK BEASLEY:** One of the criticisms that I am sure you have seen and heard is that the provisions and the costs associated with them in essence have made the U.S. less competitive relative to other markets in the world. What is your take on that?

**PAUL S. SARBANES:** First of all other countries are establishing their versions of Sarbanes-Oxley. So they are moving in our direction which is encouraging because there was some concern. Are we going to the lowest standard or are we going to go to a higher standard and generally speaking the world is going to a higher standard. The U.S., always prevailed because our markets were perceived as having strong standards. The SEC was seen as a vigorous enforcer. And as I said that is an economic plus.

**PROFESSOR MARK BEASLEY:** There are some anecdotal conversations and people writing about -- companies moving from U.S. markets and exchanges, particularly to London. Is that more anecdotal, do you think?

**MICHAEL G. OXLEY:** It is really overstated. The Brits were making a big deal about it and about a year later 40% of the companies have gone bankrupt. So they found out I think to their chagrin they had to rush to the bottom isn't a very good idea. Paul and I talked about how the rest of the world... Japan adopted that they called JSOX and the European Union called it ESOX. Paul and I were in Moscow a few years ago and we met the last morning in Russia with the American Chamber going out to breakfast. And they were talking about a package they were going to put together in the Duma to replicate what we did over here. And I told about JSOX and ESOX. I said what are you going to call it in Russia? They said we are going to call it REDSOX. I think they are still working on that over there.

**PROFESSOR MARK BEASLEY:** What provisions of the Act give the sort of universal feel to the Act that allow it to be then replicated around the world?

**MICHAEL G. OXLEY:** I think the whole concept of honesty and ethics in the workplace and the idea of having a tone at the top but a way to enforce it or make it work. I think they saw what happened over here. They didn't want it happening to them and therefore a move in that direction. I think it was a historic kind of a thing but frankly surprised me. I thought as Paul referred there might be this initial rush to the bottom. I think only probably U.K. followed that initially but I think they found out it was a failed system.

**PAUL S. SARBANES:** It reached a point in the UK where institutional investors were complaining to the financial regulator that they were concerned about what was taking place. London had a two tier market is what it amounted to. They had one tier that played by all the standards and then they had this other one that sort of you know anyone could presumably run into and was doing. And these U.K. institutional investors expressed deep concern about what was happening and what the implications of that were.

**PROFESSOR MARK BEASLEY:** You mentioned the New York Times editorial. Help us remember what it felt like to be in both of your shoes. You were on Capitol Hill. You talked about the Enron bankruptcy in December 2001 and the 9/11 event as a backdrop. You have in June '02 the WorldCom situation. What did it feel like to be a Representative and a Senator with that going on? Can you give us a sense for what it felt like to be on Capitol Hill?

**PAUL S. SARBANES:** You were in the middle of the storm. You were in the eye of the storm, no question about it. The media were full of these stories. One horror after another was being revealed. The pressure obviously was on to do something. Now you got to be very careful to do the right thing. We held the extended hearings in the Senate over a two-month period and we brought in some of the best people. We started off with five former chairmen of the SEC and moved along through these hearings. We got terrific testimony. A little later on we had the three chief accountants and former chief accountants from the SEC at the hearing. I had a colleague sitting over on that side of the aisle with his microphone on. I hope he didn't realize it because he says at one point listening to this testimony he says, "This is really boring." Well, he was right but he shouldn't have said it with his microphone on in the hearing room. At which point Mike Enzi, a Republican Senator from Wyoming and a terrific guy and he was constructive through this whole process. He was the only CPA in the U.S. Senate. Of the 100 members of the Senate he is the only CPA. So when this comment was made about how boring the three former chief accountants were, he gets into the discussion which is so unlike him. And he says, "It may be boring to you but I haven't had this much fun since I came to the United States Senate."

**MICHAEL G. OXLEY:** I think one of the things that I read about all the time is how Congress rushed this bill through. Our committee had the first hearing on Enron, that was in December of '01, nine months. Mainly by Congressional standards it is quick but it wasn't an overnight kind of a thing. Our committee had extensive hearings; Paul's committee had extensive hearings; we had mark-ups. We went through the whole process the way it should be done. But to give you an idea about how intense it was. I represented a very conservative Republican pro-business district. My home town of Findlay, Ohio has two Fortune 500 companies in it. They are pro-business to the core. But every time I would go home and visit my local Rotary Club, it is made up of businessmen, attorneys, doctors, all investors, all very pro-business. And the attitude they had literally towards CEOs at the time was give them a fair trial and then hang them! As I told that story about how I would interact with my colleagues, it was the same kind of thing. I would hear from all over the country, Republicans and Democrats who had just been besieged by their constituents. Why? I think because we had become a nation of investors. Over the last 20-25 years we had really changed the way that we save for our future. All of a sudden you had people, everyday people worked on the line at Cooper Tire and Rubber Company in Findlay who were investors and many who were saving money or investing money so they could send their first generation to college, saving for their retirement. And they were paying attention to the capital markets for the first time. 54% of American households owned stock, owned equities yet you had 401(k)s, IRAs, you had people with individual stock, younger people trading stocks online.

So this became a nation of investors. And for that nation of investors to be brought up short with the activities in Houston, Texas with Enron and then later WorldCom and

others, it was a severe shock to our system, to the core of the capital system that depends on honesty and integrity and on having investors believing in the companies they invest in. and that was really the shock to me as a pro-business Republican who was looking at what I thought was the disintegration of the capital market. And that's really what we tried to restore. Was it perfect? No, but believe me had we not done anything it would have gotten a heck of a lot worse.

**PAUL S. SARBANES:** There have been a number of studies over the previous 25 years about accounting deficiencies. You had these blue ribbon commissions. Manny Cohen headed one up, the Treadwell Commission; you had the Moss-Metcalf hearings in the Congress. All these reports, quite good ones actually, were sitting on the shelf. I mean nothing had ever happened. We took these reports and went through them very carefully and pulled out of them a lot of things that were very relevant to the situation in which we found ourselves. But those had all been, I mean you had had expert people studying and coming in with these excellent reports that had not been acted upon. So we had that left to our efforts.

**MICHAEL G. OXLEY:** I remember I heard a lot of reports that the bill was controversial, you announced that vote and that is not controversial. 423 to 3 is not controversial, it's a blowout. Okay. It's a big basketball score. 99 to 0 in the Senate is not controversial. It was not rushed through. It is interesting also there was no organized opposition except the accounting industry. People forget that the only organized opposition to SOX was the accounting industry. The Business Roundtable endorsed the bill. The Chamber of Commerce didn't even list it as a key vote. As far as I know they never lifted a finger in opposition. So there is a lot of information out here that simply isn't true. I would ask anybody to go back and look at the press accounts. Go back and look at the records and I think you will find an interesting history there that took place some ten years ago.

**PAUL S. SARBANES:** It was not as easy as it looks though with that vote because here is what happened. You are trying to move this thing along and for the people lying out in the weeds they can knock you off track. But as we moved along finally what happened is WorldCom broke. Well, that just gave a huge boost to the effort to enact legislation. I mean it became ordained at that point. And so it was just a question of guiding it on through. But when we started out in the process it was clear that something would have to be done. But how much could be done was in question. As we moved along these things kept happening. Every time one of these things happened it took us up another notch in terms of what we could do.

**MICHAEL G. OXLEY:** When Paul was working on their version we passed our bill in April when they were working on that bill in summer, earlier that summer. And after WorldCom we had Bernie Ebbers to come in and testify which he came in with Scott Sullivan, his CFO and they both very publicly took the Fifth Amendment which obviously caused a lot of stories and more coverage in the newspapers which also tended to enrage the public as well. So I think that was a big big wave going on that everybody could feel. It was interesting when Paul and I went to the White House after Paul had passed his bill and we had set up a conference committee. I remember the President made it very clear that he wanted that bill on his desk before the August recess. And as Paul I know there is nothing more sacrosanct in the halls of Congress than the August recess, particularly for our spouses. So knew we had to get to work pretty fast and this is when we had the potential anthrax threat. We made up in your office because our offices were closed. So we had with good graces and lots of pizza and finally got it done.

**PAUL S. SARBANES:** I have got to tell one story about making a part of the ethos of the company. I had one guy come up to me after I spoke to a group. He says, I think your bill is terrific. So I said to him, well, thank you. Thank you very much. Because usually the people come up after you have usually spoken are usually critical, they want to chew you out for one thing or other. He says, I think your bill is terrific. I said to him, what do you do? He says, I am the head of the division of internal audits in my corporation. He says, I have been the head for many years; before your bill came along, he said if I wanted to see the CEO or the CFO I could never get in to see them. Just never been in their office. He says now since your bill anytime I want to see him I walk right into their office.

**PROFESSOR MARK BEASLEY:** When you think about the conference committee, do you recall any provisions that sort of got left on the table that didn't make it into the final Act?

**MICHAEL G. OXLEY:** We got in with the FAIR fund. We set up a fund within the SEC that would be a receptacle for disgorgements and fines and then they would be paid back to the investors. And Enron and WorldCom and the like in billions of dollars and we were very pleased to do that. We agreed to put it in and it has been a very effective thing. One thing we dropped out. I don't wish to tell this story Biden remembers this or not but Joe Biden headed one which would provide that the non-executive chair sign the financials along with the CFO and CEO and it passed unanimously in the Senate. And I started getting phone calls almost immediately when I became chairman of the conference committee from CEOs all over the country saying this does not a whole lot of sense and he is not part of the overall day to day activities then why should he be subject to going to jail for that? And to Paul's credit he agreed it probably wasn't wise... but that was what you know, the kind of the tenor of the times. And we said sorry to the vice president but we had to take that off.

**PAUL S. SARBANES:** Actually we had a good conference. Mike was a very effective chairman. We were able to work closely together. By that time we were almost there, there wasn't a lot of tough issues remaining. In fact if anything we were trying to hold back some members who really wanted to go even much further really way out there. The WorldCom situation changed the whole atmosphere, no question about it.

**MICHAEL G. OXLEY:** We had one of the members on the floor of the House asking to federalize the entire accounting industry, and it got about 25 votes.

**PROFESSOR MARK BEASLEY:** We unfortunately have a minute left. I would like each of you to give us your perspective of how you would like your act to be remembered not ten years from today but 15, 25 years and beyond? How do you hope it is remembered as far as effecting financial reporting process here in the United States? I will start with you, Senator Sarbanes.

**PAUL S. SARBANES:** My hope is that the act becomes so much a part of the way business is done in this country, so much part of establishing the standards that it is not seen as something separate and apart. It really becomes part of the very structure of the business world. And what comes out of that, of course, higher standards, more ethical behavior and to the benefit of everyone. I think we are moving in that direction. We have to guard against these efforts to undo it. I mean people for a while wanted to blame

everything on Sarbanes-Oxley. I said to one group if anything goes wrong. If you go home and have an argument with your spouse about something I would say Sarbanes-Oxley did it, and a woman comes up to me, she says you are absolutely right. When the water fountain doesn't work in our company, they say what is wrong with the water fountain? Some say Sarbanes-Oxley.

**MICHAEL G. OXLEY:** I think Paul hit it right on the head. I think we can look back another ten years from now and we are still around to do that the fact that we haven't had another WorldCom and Enron in that period of time and I am confident we will not. And I think that it is spread worldwide now in use in places far off. They will continue their march forward all to the benefit frankly at the end of the day to the investing public, the people that invest in companies that create jobs and make it a better life for everybody else. That is really what it is all about.

**PROFESSOR MARK BEASLEY:** Senator Sarbanes, Representative Oxley, I want to say a huge thank you for today but more importantly thank you both for your public service to our country and the leadership that you have provided and your willingness to help us recap and look at the Sarbanes-Oxley Act's first decade. We are very grateful to you for being here today.

Today's program will be permanently archived at the [www.sechistorical.org](http://www.sechistorical.org) location that I mentioned earlier today's broadcast. An edited transcript will be added in the future.

I also wanted to encourage you to listen to Senator Sarbanes presentation which is archived at that website in the Programs section and Representative Oxley's 2012 interview in the Oral Histories section in addition to today's program.

So on behalf of the SEC Historical Society I want to thank the Center for Audit Quality for hosting today's program and for our audience that has been here at The George Washington University in Washington as well as through the internet. Good day.