

**THE SEC: A NEW ERA
TUESDAY JUNE 8, 2004**

CHRISTOPHER BREISETH: Ladies and gentleman, we're going to proceed with our program right away. Keep eating. Enjoy but doing it as quietly as possible. My name is Christopher Breiseth. I am the president of the Franklin and Eleanor Roosevelt Institute. We are delighted to have you all here today at the National Press Club to join in this Four Freedoms Roundtable to commemorate the 70th Anniversary of the Securities & Exchange Commission, one of the remarkable pieces of legislation developed during those early days of the New Deal under Franklin Roosevelt. We are sponsored today in this lunch that we helped to defray the cost by the Bernard and Audrey Rappaport Foundation in Waco, Texas, and we are particularly grateful to Rappaport for his support. The Roosevelt Institute is located in the Presidential Library, the FDR Presidential Library. We are very much aware of Presidential Libraries in this present period as we are in mourning for President Reagan. In the center of his life in the last several years and now perpetually will be his resting place at the Ronald Reagan Presidential Library, just as the final resting place for FDR and Mrs. Roosevelt is at Hyde Park.

This is the first of a series of Four Freedoms Roundtables by the Roosevelt Institute to put focus on the extraordinary presidential legacy of FDR. And we're joined in the sponsorship today by the Securities & Exchange Commission Historical Society, and you're going to hear in just a moment from their vice-chair. I would like before proceeding any further to just have a moment of silence in memory and in honor of President Ronald Reagan. [silence] Thank you very much.

I want to identify some of the folks who are here today. Among our Roosevelt Institute Board Members past and present, if they would stand as I introduce them, but don't give them any applause, just see them and at the end you may put your hands together: Allida Black, Don Fowler, Senator Sarbanes himself, is Lesley Dunbar here yet, Philip Kaiser, and representing her father, Forrest Church and the granddaughter of Senator Frank Church, Nina Church. Now you can applaud. [applause] Our partnership in Hyde Park with the FDR Library is also a partnership with the National Archives and Records Administration, and we have a particularly close relationship with the staff here in Washington. I'm delighted that we have with us today Sharon Fawcett, John Constance, Susan Cooper, Stacy Bredhoff and Chris Smith. We welcome our friends from the National Archives. [applause]

And as you all know, staff make the world go round in Washington and elsewhere, and I'd like to acknowledge Carla Rosati of the SEC's Historical Society who [applause] is finishing a very creative week of the commemoration of the 70th Anniversary of the SEC, and our own staff from Hyde Park, David Woolner, Robert Bullock and Elaine Murphy. [applause]

I would now like in calling on our partner from the SEC Historical Society to introduce Richard Rowe, the Vice-President of the Board of Trustees to bring greetings.

RICHARD ROWE: Thank you, Christopher. I am Richard Rowe, a vice-president and trustee of the SEC Historical Society. On behalf of my fellow trustees, I would like to welcome all of you that are present here, including former colleagues on the SEC staff, former SEC Commissioner Irving Pollack, and some of the SEC staff also here. I'd also like to welcome those of you who are listening in online on www.sechistorical.org. The Society is honored to partner with the Franklin and Eleanor Roosevelt Institute with today's program on *The SEC: A New Era*. The Society was founded as a non-profit organization in 1999 to preserve and share the history and historic records of the U.S. Securities & Exchange Commission, and of the securities industry. We do so through our virtual museum as I had said before, www.sechistorical.org. Today's program will be archived and transcribed after broadcast and will be added to the museum's collection. We currently have more than 500 papers, photos, oral histories and online programs in the museum. More than 750 persons each month visit the museum and use our collections. While the Society is independent of and separate from the

SEC, we are taking the lead this year in commemorating the 70th Anniversary of the founding of the SEC in 1934. Today's program is part of these commemorative activities. Our thanks again to the Franklin and Eleanor Roosevelt Institute for giving the Securities & Exchange Commission Historical Society the opportunity to present today's program on *The SEC: A New Era* online at, and I repeat again, www.sechistorical.org and sharing it through our museum.

CHRISTOPHER BREISETH: Can I invite Dr. Cook, who's coming up in 60 seconds, to repeat her www also? To, Cynthia Cook and I have the constant challenge of differentiating our two organizations, which work in intimate partnership in Hyde Park and around the country. She is the director of the FDR Presidential Library, represents the National Archives in that very important assignment. I'm the president of the Franklin and Eleanor Roosevelt Institute, which among other things in its mission, is committed to perpetuating the legacy of FDR and Eleanor Roosevelt, and to inspire the application of the spirit of optimism and innovation to the solution of current problems. So not only are we interested in commemorating an event like this one, but we're also looking for how we learn from that to apply those lessons to our present time. Dr. Cook is presiding over a tremendous amount of development of the FDR Presidential Library, including a new building that is named for Henry Wallace, the Visitor's Center. If you've not been to Hyde Park for a long time, I really urge you to come up and join us and to see what is happening there to interpret this legacy that is so important to the country. It is now my great pleasure to invite Dr. Cynthia Cook to bring her welcome. [applause]

DR. CYNTHIA COOK: Thank you, thank you, Chris. And I just appreciate very much the opportunity to speak to all of you as part of the ongoing effort to help people understand the Roosevelt legacy and its persistence as an important part of our daily lives every day. We at the Roosevelt Library operate a museum that serves 100,000 visitors every year, school children as well as families, adults, senior citizens. We also have an effectively used research room among the Presidential Library with about 750 researchers coming to use our 17 million pages of archival documents, so I welcome all of you to come and do what Roosevelt wanted all of us to do when he built this first Presidential Library, and in dedicating it in 1941, he said a nation must believe in three things. It must believe in the past, it must believe in the present, but most of all, it must believe in the capacity of its people so to learn from the past in the creation of their future. That's our mission at the Roosevelt Library, and it's a mission that reaches out to all of you everywhere and we invite you to come, whether it's by our web site www.fdrlibrary.marist.edu or in person, which we must prefer. And before I, before I leave, I have to always when I address a group, I can't help but turn to some of the Roosevelt archives to have just a word that brings the President's words to us today, and I looked back into his speeches and found a Fireside Chat from 1934. At the conclusion of the round of legislation that created not only the SEC, but also the early reforms that fed our financial status back on the road to health and at the conclusion of that Fireside Chat, he said these words. 'I am not for a return to that definition of liberty under which for so many years a free people will be gradually regimented into the service of the privileged few. I prefer, and I am sure you prefer, that a broader definition of liberty under which we are moving forward to greater freedom, to greater security for the average man than he has ever known before in the history of America.' And for those words and in that spirit, I congratulate the SEC on its 70th Anniversary. Thank you. [applause]

CHRISTOPHER BREISETH: And now to introduce our honored guest today, the, if not the last of the New Dealers of the Senate, certainly one of the most dominant New Dealers in our present U.S. Senate, I turn to Judge Stanley Sporkin, a colleague of Senator Sarbanes, a partner at the Washington offices of Weil, Gotshal and Manges, graduate of the Yale Law School, Judge Sporkin has spent 20 years at the SEC serving during his last 7 years as the Director of the Division of Enforcement. He then served 5 years as general counsel to the CIA before former President Reagan appointed him to the federal bench where he served as United States District Judge for the District of Columbia for 14 years. He's been the recipient of

numerous awards, but I would cite two. The President's Award for Distinguished Federal Civilian Service in 1979, the highest honor that can be granted to a member of the federal civil career service, and in 1994, the William O. Douglas Award for Lifetime Achievement by the Association of the Securities & Exchange Commission Alumni. Ladies and gentleman, Judge Stanley Sporkin. [applause]

JUDGE STANLEY SPORKIN: Thank you. It's a great privilege, and before I begin. We're talking about the SEC today and I see in the audience some of the SEC's real legends and greats. Former Commissioner Pollack, and Milton Kroll. These are people that [applause], these are the people that were instrumental in getting the SEC the reputation that it now has and that it deserves. But it's a real privilege to have the opportunity to introduce Senator Paul Sarbanes, an outstanding American and great legislator. What is more, he's my senator. The Senator has now spent almost 40 years in the public arena, serving his country and his state. He has been in the United States Senate since 1976, having been elected to the Senate on five occasions, the longest serving senator in the history of Maryland. Before that, he served three terms in the House of Representatives. He's the son of Greek immigrants who owned and operated the Mayflower Restaurant in Salisbury, Maryland. Senator Sarbanes made the most of the educational opportunities that had been provided to him by his hard-working parents, and his outstanding academic and athletic achievements. What an academic record it is. He graduated from Princeton University in 1954. He was a Rhodes scholar and when he returned from England, enrolled in Harvard Law School, where he received his law degree in 1960. He then clerked for United States District Court Judge Morris Soper and after a short time in private practice, began his long career in public service. The good Senator has been married to his wife of 47 years, the former Christine Dunbar, a teacher of Latin and classical Greek, who he met during his Rhodes scholarship days in London. Senator Sarbanes and Christine are the parents of three children, and he's the grandparent to 5 children.

As we celebrate the 70th Anniversary of the SEC, an agency that history has already found to be one of the crowning achievements of the Franklin Delano Roosevelt era, it is indeed fitting that Paul Sarbanes has been asked to make this commemorative address. All of us who have been in the service of the Securities & Exchange Commission are well aware of the landmark legislation of that era, the Securities and Exchange Act of 1934 with its crowning achievement of creating the Securities & Exchange Commission. Once an instrumentality of government has reached its maturity, it oftentimes loses its enthusiasm and indeed, on occasion, becomes the captive of those it regulates. I am pleased to report, as I am sure many in the business world would agree, the SEC is as robust today when it was created and operated under the leadership of Joseph Kennedy, its first Chairman.

The times we live in often dictate colossal changes that ultimately result in historic movements. New legislation or amendments to existing laws are usually the driving force that brings about needed changes. The financial excesses of the 1920's and 1930's were the impetus for the Exchange Act and the establishment of the Securities & Exchange Commission. The original act with only modest amendments over these past 70 years has clearly stood the test of time. However, the catastrophic events in our financial markets over the past several years demonstrated some glaring weaknesses in the statutes' original architecture. In stepped Senator Sarbanes, at the time Chairman of the Senate Banking, Housing & Urban Affairs Committee. Before he and his outstanding staff put pen to paper, his committee held a series of meetings. These were not the explosive type of the Ferdinand Pecora era, where the purpose was to hold up to public ridicule those who contributed to the collapse of the financial markets of the day. Instead, the hearings were without flamboyance. Senator Sarbanes convened a number of panels comprised of leaders of the various groups that had intricate knowledge of the way our financial markets worked. Based upon this testimony, the committee's outstanding staff began to write new legislation that would specifically directed at fixing the problems that were being exposed on a daily basis. The legislation that emanated from this careful and thoughtful

process which later was merged with Congressman Oxley's House legislation ranks with the finest legislation that has been produced by the Congress in this past century. Clearly, Sarbanes-Oxley is the most important securities legislation since the creation of the SEC 70 years ago. The legislation is so comprehensive and far-reaching that it is difficult to describe it in a few brief paragraphs. The one recurring theme seems to be the establishment of a variety of gatekeepers. The Act takes in account that there are a number of persons in the process of running and overseeing the operations of our public corporations who must be held accountable for the public corporations' compliance with law. Accordingly, a major part of the legislation requires corporate management and corporate directors to assure that the corporations conduct themselves in compliance with law. It also holds accountable those persons that provide services to public corporations; thus the legal and accounting professions are also held to account when they do not operate in the shareholders' best interest. Indeed, I believe in time the Act will eventually become known as the Lawyers and Accountants Emancipation Act. This is because under the statute, a lawyer now clearly knows who he or she is a lawyer for, which is the corporation, and not beholden to the CEO or other member of management. Similarly, accountants now are retained by the corporation's audit committee, and must meet the standards set by the new Accounting Oversight Board. They must act in the best interests of the corporation and not on behalf of the management that may have interests different from those of the shareholders. In my view, with continued vigilance on the part of the SEC, and with the corporate community getting it, Sarbanes-Oxley will have performed an important and necessary service for investors and the nation's financial stability.

I'm therefore very pleased to introduce the chief architect of the legislation and we should all be proud to be served by a senator of such absolute brilliance, wisdom and integrity, an individual who has always dedicated himself to the service of the citizens of this nation. I now, with great pride, give you Senator Sarbanes. [applause]

SENATOR PAUL SARBANES: Well, Stanley, thank you for an extraordinarily generous introduction. I deeply appreciate it. Stanley Sporkin, of course, was a legend in his own time at the SEC as we all well now, as the head of the Division of Enforcement, and in fact as it was mentioned in the introduction of him, received the Distinguished, the President's Award for Distinguished Federal Civilian Service. That's the highest honor that can be granted to any member of the federal career service, and it was certainly well justified and well warranted. I appreciate Stanley's making reference to my immigrant parents who ran a restaurant. I worked in that restaurant all through my youth, so I urge you to go on eating your lunch. I'm used to working while people are eating, [laughter] part of my upbringing. And he also made reference, and I have to divert all this for a moment, that I'm now the longest serving Senator in Maryland's history, now in my fifth term. It's a little bit like Cal Ripken. Every day you go to work, you set a new record, you see. It's always one day longer than the day before. I'm very pleased to be here. Today's discussion, of course, is a collaborative effort on the part of the SEC Historical Society and the Franklin and Eleanor Roosevelt Institute. Though different in focus, these two institutions have much in common. Both are major repositories of significant primary source material in their respected fields. Their reach extends far beyond scholars to practitioners, and indeed, through a variety of programs to the general public, and I think they're guided by the fundamental proposition that knowledge and understanding of the past is essential to confronting the problems of the present and to enlightened planning for the future. In fact, the head of the Roosevelt Library made that very point just a few minutes ago here at the podium.

Now in the interest of full and timely disclosure, although Chris Breiseth already took care of this, let me say at the outset that I serve on the Board of Governors on the Franklin and Eleanor Roosevelt Institute and since disclosure was so much a part of our legislation, I think it's very important to lay it out here. Most of the functions of the Franklin and Eleanor Roosevelt Institute heretofore have taken place at Hyde Park in New York City and indeed at the Roosevelt Study Center in the Netherlands. So it's a special pleasure to welcome the Institute to

Washington and we hope this will set a pattern for the future. The events of the several weeks have made clear just how significant the Roosevelt legacy is and how deeply embedded it is in our national life, and I'll come back to talk about the SEC Anniversary, though I'm thinking of other major events.

First, the death of former President Ronald Reagan brings to mind his respect for the Roosevelt legacy, which he always reflected in his comments, and his optimistic outlook for America which of course paralleled Roosevelt's boundless faith and optimism in his fellow Americans. President Roosevelt rallied the courage of the American people in a time of crisis of a magnitude of without parallel in our lifetime. And the Roosevelt legacy is also with us as we mark the 60th Anniversary of D-Day, and the dedication of the World War II Memorial. President Roosevelt is remembered as a great war president, but he was also deeply committed, not only to winning the war, but to establishing the international institutions to keep the peace thereafter. Barely two months after the Normandy invasion, a full year before the war finally ended, the Allied powers met here in Washington under U.S. leadership to set out broad principles for international cooperation, and to lay the foundation for the United Nations. There was no imperative for the United States to do this. We were incontestably at the time the world's only superpower, the only country that would emerge from the war with its economic, industrial, and social infrastructure intact. Yet in those post-war years, the United States very deliberately did not pursue its interests abroad through the unilateral exercise of its overwhelming military and economic advantages. Instead, we set out on a very different policy path, seeking to advance our national interests wherever possible through a broad international consensus. It was President Roosevelt who put us on that path.

The Securities & Exchange Commission is yet another legacy of the Roosevelt era, in its own sphere, very far-reaching. It represented the government's determination to guarantee to investors the integrity of the capital markets, which had been so egregiously violated and with such catastrophic losses to investors. It changed fundamentally the operation of those markets. The creation of the Commission was in fact the second step toward that goal, the first being the comprehensive disclosure requirements. In his first famous inaugural address, President Roosevelt set out what he called the lines of attack needed to end the crisis. Prominent among them was strict supervision of all banking and credit and investments, and within a month, he recommended to the Congress legislation for the federal supervision of traffic and investment securities and interstate commerce. The proposal was carefully designed to protect the public with the least possible interference to honest business. His message to the Congress of March 29th 1933 read in part, 'This proposal adds to the ancient rule of caveat emptor, the further doctrine let the seller also beware. It puts the burden of telling the whole truth on the seller. It should give impetus to honest dealing in securities, and thereby bring back public confidence.'

The 1933 Securities Act, also known as Truth-In-Securities, was signed into law on May 27th. Barely a year later, on June 6th 1934, literally within two days, 70 years ago, the President signed the Securities Exchange Act into law, thereby establishing the SEC. The Acts were drafted by some of the best legal minds in the country - the unlikely trio of Jim Landis, Ben Cohen, and Tommy Corcoran, all former students of Felix Frankfurter's at the Harvard Law School. They were chosen by Frankfurter and proceeded with their work under his guidance. At the time, critics were warning legislation would have a negative impact on the working of our economic system, but as Arthur Schlesinger has noted, in fact the legislation had a very positive effect on the markets, and I quote Arthur Schlesinger when he says, "Far from destroying the securities business, the laws were offering it a new lease on life." It was not only that they gave disillusioned investors new reasons for confidence, even more they removed the whole process of capital investment from the realm of guess and gamble, and rested it through the detailed and continuous disclosure required by the SEC on the basis of reliable fact. In certain ways, the situation we have confronted in recent years is comparable to the crisis of 70 years ago. As the *Wall Street Journal* put it, "The scope and scale of the corporate transgressions of the late

1990's now coming to light exceed anything the U.S. has witnessed since the years preceding the Great Depression." Think back just three years ago. In June of 2001, I became Chairman of the Senate Banking, Housing and Urban Affairs Committee. All hail to Vermont, and a thank you to Jim Jeffords, if I may be permitted to say so. At the time I became the Chairman, Enron was the nation's seventh largest company. For the first quarter of 2001, Enron had reported a 20% increase in profits over the previous quarter. For the second quarter, they reported a further 40% increase over the first quarter. By the fall, near the end of the year, Enron was in bankruptcy, the largest bankruptcy in the nation's history until WorldCom some six months later. Enron was in fact the canary in the mineshaft. A number of major, highly regarded public companies, along with their auditors were relying on convoluted and often fraudulent accounting devices to inflate earnings, hide losses and drive up stock prices. News stories and headlines announced new disclosures almost on a daily basis. 'If you can't believe the auditors, who can you believe?' *Business Week*. 'System failure, corporate America has lost it's way,' *Fortune* magazine. And *Fortune* went on to say 'Phony earnings, inflated revenues, conflicted Wall Street analysts, directors asleep at the switch – this isn't just a few bad apples we're talking about here. This, my friends, is a systemic breakdown.' *Money* magazine subsequently reached the same conclusion. 'The failure to recognize the warning signals indicated,' the magazine said, 'a total failure by everyone, a complete breakdown in the system, in all the checks and balances.' Over a period of months, market values fell by some trillions of dollars, thousands of jobs were lost, retirement savings dried up. What we faced in the capital markets was not a ripple, but a tidal wave, and with it a crisis in investor confidence.

We had to determine how to proceed in the committee, and as Stanley Sporkin indicated, we undertook to hold a very intense set of hearings. In a sense to do it the old fashioned way in a very substantive examination of what the problems were and what the problems ought to be, so over close to a two month period early in 2002, we set out to identify the problems and particularly to examine where there was systemic and structural flaws in the framework in which the markets were operating that needed to be corrected. There were some, of course at the time, who said well, just punish the bad apples, and that alone will be sufficient to bring the situation under control. I thought one extreme example of that was the Secretary of the Treasury at the time, they asked him well what do you think should be done. He said well these malefactors ought to be taken out and hung from the nearest tree. I thought that was a little short and weak on due process, but, so we undertook to do these hearings to see, you know, really what was the problem, what we ought to do. We received testimony from close to forty witnesses and in ten hearings, all deeply knowledgeable about the markets, many with long and distinguished experience in both the public and the private sector. In fact, we started off with a panel of the five former Chairmen of the SEC at the table, appointed by both Democratic and Republican presidents. They gave terrific testimony and we moved on through. Some of the hearings were enormously technical and complicated. In fact, we had one hearing with three former Chief Accountants of the SEC at the table, and at one point in the hearing, one of my colleagues, not realizing his microphone was on, says 'Phew, this is really boring.' With all due respect to the Chief Accountants of the SEC, past, present, and future, I have to say he was right. It was heavy going, but at that point, my colleague, Republican Senator Mike Enzi of Wyoming, who is the only CPA in the United States Senate of 100 members. So when this colleague made this comment about how boring this was, Enzi, which is not like him, sort of leaped into the discussion, and he said, 'It may be boring to you, but I haven't had this much fun since I came to the United States Senate.' [laughter]

The hearings actually produced a remarkable consensus on the nature of the problem - inadequate oversight of accountants, the lack of auditor independence, weak corporate governance procedures, a stock analyst conflicts of interest - they were telling their clients to buy a stock and sending emails to one another what a dog the stock was – inadequate disclosure provisions – Ken Lay was telling the employees of Enron in the fall of 2001 to buy the

company stock because it was a good investment, and at the very same time, he was selling his stock – a grossly inadequate funding of the Securities & Exchange Commission, an issue which had worried a number of us for quite a substantial period of time. This is, very briefly, what the legislation sought to do. To establish effective oversight, industry self-regulation had failed to meet the criteria of independence stipulated in the securities acts and spelled out by the Supreme Court in the Arthur Young decision, where the court said and I quote them, “By certifying the public reports that collectively depict the corporations’ financial status, the independent auditor assumes a public responsibility transcending any employment relationship with the client. This public watchdog function demands that the accountant maintain total independence from the client at all times, and requires complete fidelity to the public trust.”

The legislation creates a new body, the Public Company Accounting Oversight Board, to exercise regulatory responsibility. All accounting firms that audit public companies must register with the Board, which has the authority to set auditing standards, to investigate, and where necessary, to impose penalties. Both the Public Company Accounting Oversight Board and the pre-existing Financial Accounting Standards Board, which sets the accounting standards, are now to be funded by mandatory fees on public companies, so that their budget will in effect be guaranteed. The FASB was going around seeking voluntary contributions from the very interests with respect to whom they were about to promulgate standards, and were often told well, if you go in that direction, you’re not going to get any contributions from us. The legislation requires auditor independence. If you’re the auditor of a public company, there’s certain consulting services you can’t engage in. That was in part a recognition of a shift of the revenues away from core auditing and accounting to management consulting.

In 1977, 70% of the revenues were from core auditing and accounting. By 1998, it had fallen to about a third and management advisory, which had been at 12%, rose to over 50%. So you had the auditors getting these management contracts from the management of the companies, which of course led to serious questions about how hard-hitting they would be on their audits. It set standards for corporate governance. Public companies must have audit committees independent of management. Auditors are hired and fired and report to the audit committees. CEOs and CFOs are required to vouch directly for the accuracy of the company’s financial statements. It requires numerous disclosures, including prompt disclosure of trades in company stock by insiders, disclosure material off balance sheet transactions. It seeks to address analyst conflict of interest by requiring the SEC and the Exchanges to adopt rules and sustain the independence of the analysts. And of course we went ahead and authorized SEC funding at a level that will enable the Commission to hire additional accountants and attorneys and improve its technology infrastructure. These resources were urgently needed. They were long overdue. The market activity expanded much faster than the Commission’s capacity to conduct effective oversight. The staff was underpaid, overworked. The annual turnover rate was 1 in 3, and over the last four year period, we have succeeded in just about doubling the SEC budget, and to the administration’s credit, they have submitted those requests to the Congress to see that increase in the resources of the SEC.

Very quickly, since the law became effective two years, what’s been accomplished. Well, I think we have a newly invigorated SEC under the steady and determined leadership of Chairman Donaldson and his fellow Commissioners. The Commission had taken a hit to its internal morale and external stature. I think the Chairman has closed that chapter and opened a new one. Morale is improving. Enforcement is strong. Rulemaking is rigorous. The Commission is now getting a budget that they can really work with, enable them to meet their responsibilities. The Public Company Accounting Oversight Board is up and going. This is a major accomplishment on the part of the SEC, which was responsible for setting it up from scratch, and Chairman Donaldson was able to get Bill McDonough, the former head of the New York Federal Reserve to assume the chairmanship, and he and his four fellow members of the Board, extremely able people, now have opened offices in Washington, New York, San

Francisco and Dallas. They're hiring auditors at high levels of experience. It has its inspection procedures in place, and in fact, inspections will be fully phased in this month.

The SEC is also moving ahead to implement other aspects of the legislation, accelerated disclosure requirements for insiders, promulgated rules on attorney conduct. It's approved SRO-enacted rules to raise listing standards, prevent analyst conflict of interest. It cooperated with the New York Attorney General and other State Attorney Generals in the global settlement. All of this builds on the legislation of 70 and 71 years ago. These Acts remain the bedrock. As the economists have said about them, the creation of a cop on the corner of Wall Street in the shape of the Securities and Exchange Commission proved to be a masterstroke. The SROs have undertaken profound changes in their own governance procedures. When the New York Stock Exchange was required to address governance practices of its listed companies, it had to assess its own practices, and of course, we're seeing very extensive changes taking place at the Stock Exchange. The Conference Board Commission on Public Trust in Private Enterprise, co-chaired by Pete Peterson, former Secretary of Commerce, and John Snow before he became the Treasury Secretary, has set out first-rate best practices principles. We held an oversight hearing back in the fall, in which Pete Peterson testified, 'Already I sense a sea-change in attitude toward corporate governance practices to implement better governance. I've never seen Board of Directors and CEOs as diligent and as practically involved as they are today on achieving governance improvements.'

Nevertheless, the SEC will continue to confront for some time the deep seeded problems of accounting, auditing and corporate governance that have taken such a heavy toll on our markets in recent years. Those issues are by no means fully behind us. The mutual fund industry remains a matter of concern. The industry went largely unscrutinized as the Congress moved toward reform legislation to address abuses in accounting, auditing, and corporate governance. In fact, as recently as March of 2003, the Chairman of the Investment Company Institute said in testimony to a House Committee, and I quote, "The comprehensive regulatory scheme under which mutual funds operate has served the interest of fund investors well, and kept the industry free of the types of problems that have surfaced in other businesses in the recent past. Since then, a litany, regrettably, a litany of abuses has come to light, all of them at the expense of investors. While many proposed rules are pending now in the SEC to address not only the mutual funds, but corporate governance, hedge funds, the *New York Times* reports that the Commission has come under an intense pressure to water down proposed rule changes in the way corporate boards are elected, mutual funds are governed, and hedge funds are regulated. The proposals have provoked intense lobbying on several fronts. Yet just two days ago, in an issue devoted to "Money 2004: The Moral Quandaries," the Sunday *New York Times* magazine featured a series of articles on questions arising in the experience of recent years, on corporate fraud, the utility of tough criminal sanctions on investors' greed. Among these sorry accounts, and we need to constantly bear this in mind, there was one entitled "Frauds Fallout" on the human cost. It profiled in stark terms several of the 17,000 WorldCom employees who lost their jobs at the time of the company's collapse.

We cannot leave the job half-done. The experience of the past several years makes clear that our capital markets will not function effectively unless the investors are fully confident of the market's integrity and transparency. Furthermore, we need to keep in mind the fact that the reputation of the American capital markets for integrity, honesty, transparency, has always been an important economic asset of this country. Our capital markets are a major economic asset for the nation in terms of its economic strength. The challenge is not just to clean up recent scandals, but to create a solid framework for the future. In carrying out its responsibilities, the SEC is fortunate to have men and women of uncommon dedication and competence who have built its standing as the crown jewel among regulatory agencies. We're privileged that some of them are here with us today: Stanley Sporkin, Irving Pollack, Milton Kroll, and others who have served the Commission so brilliantly in the past. As for the future, I have confidence

that this tradition will continue in part because the Commission had the good sense to hire away one of our young staffers from the Banking Committee who has gone over to the Commission. We expect great things from him.

Let me close by noting that our federal securities laws were enacted 70 years ago, so that the experience of the years preceding the Great Depression would never be repeated. They have worked extraordinarily well. As originally drafted, however, they did not reach to recent rapid changes in the markets, conditions that could not have been anticipated at the time. We have acted to adjust the framework to encompass today's requirements. We must restore honest, transparent ethical business practices, and the safety mechanisms to keep them in place. Most people are honest, but the bad actors can tarnish everyone. Bill Donaldson, the Chairman of the SEC, spoke to these points in a speech here at the National Press Club last July 30th on the first anniversary on the enactment of the reform legislation. He rejected suggestions including in the press that the recent crackdown on corporations and executives by criminal and civil authorities, including the Commission, had discouraged honest risk taking. On the contrary, he observed, 'Sarbanes-Oxley and the other steps that have accompanied it will lead to an environment where honest business and honest risk taking will be encouraged and rewarded.' And he went on to say, 'Successful corporate leaders must strive to do the right thing - in disclosure, in governance, and otherwise in their business. And they must instill in their corporations this attitude of doing the right thing. Simply complying with the rules is not enough. They should make this approach part of their company's DNA. It's this approach in the past that has made our markets the envy of the world. In this new era, the Commission will be called upon to reaffirm and again, the same principles that have guided its work from the very beginning 70 years ago.' Thank you. [applause]

CHRISTOPHER BREISETH: We have time for a few questions. We did pass out some cards to write them down. Maybe if we've got one question to begin with? I would say, Senator Sarbanes, that it was characteristic of you that until you quoted at the very end, you never referred to Sarbanes-Oxley legislation, which is the name that will carry in ways that even the SEC legislation does not carry a name, so to that we want to recognize your contribution to this great federal legislative tradition. Now, do we have, do we have a question, or has the Senator solved it all? Okay.

SENATOR PAUL SARBANES: While someone's conjuring up a question, not that this group needs to conjure, let me just say that there's one burden that comes with this naming Sarbanes-Oxley. Oxley in Ohio has people wondering why he changed his first name to Sarbanes. [laughter] And I have people in Maryland who are wondering why I'm wandering around now with this hyphenated last name, you know.

CHRISTOPHER BREISETH: Yes, in the back.

UNIDENTIFIED SPEAKER: [unintelligible]

SENATOR PAUL SARBANES: You mean in this arena, or elsewhere? You know, when I took over the chairmanship, I had a very different agenda that I wanted to work: affordable housing, consumer protection, mass transit, and of course, then we got hit by 9/11. We have to worry on the money laundering issue, then of course Enron, and then that dominated the Committee's work for almost nine months. We think, I think it's very important that the SEC and the Public Company Accounting Oversight Board be given the opportunity to put into place the framework that's contained in the legislation, and to get it up and working, and then that'll give us a chance to see how its application actually gets carried out. There are people coming in all the time, they want to undo various aspects of it. I don't think that's advisable, and so we're trying to get this framework fully into place and fully applicable. We've gotten a lot of pressure from overseas, but that now is diminishing, I think, because they've been able to work out some convergence. There are other areas the Commission is now looking at that of course we've held hearings on. We're watching very closely. The SEC has a major agenda before it now involving the mutual fund industry. Chairman Donaldson in his testimony said in effect, 'Give us a chance

to try to deal with this through the regulatory structure,' and we're watching that very closely because there are obviously things that need to be done, but the Commission has promulgated a number of rules, which are now going through their hearing process. I must say that the SEC in my opinion has a very good process for trying to reach final regulations. People have an opportunity to be heard. They propose regulations. They may re-propose regulations, so they work through a careful process that gives everyone a chance to be heard and to make their comments, and many of these issues are of course highly technical and very complex. So you need the expertise of the Commission staff working at these problems in order to try to work through the solutions. Yes.

UNIDENTIFIED SPEAKER: Do you think it would be beneficial to have more CPAs in the U.S. Congress?

SENATOR PAUL SARBANES: Well, first of all, you know, I think CPAs, I mean Stanley Sporkin is a CPA, I hasten to observe, well, you know, who gets into Congress is determined by what the people say about it. You don't have a criterion in that sense for coming. I do think that just generally speaking, anything we can do to heighten the level of competence and professionalism in any era of our public policy is a desirable thing, and in fact, I sometimes get concerned because I think in some respects there's been a diminution of competence, rather than an enhancement. One of the things I was always struck by with respect to Roosevelt's New Deal, well, of course, you have a nation that's 25% unemployed, so where are people going to go for jobs, which was the extraordinary competence of the people who came in the government and helped to implement many of the New Deal policies. I mean, and I've always regarded public service as a very high calling and I'm not sure we're succeeding nowadays in attracting from our colleges and universities the very best. I think we're getting good people, but I don't sense there's quite this, and I spend time on college campuses talking about this very subject. Yes, Don?

UNIDENTIFIED SPEAKER: This is a very different question if you can respond to it.

SENATOR PAUL SARBANES: Well, that's all right. I can answer that. You know the difference between a generalist and a specialist? I have to share this with you. I just heard it the other day. A generalist learns more and more about less and less, until eventually the generalist knows. No, a generalist learns less, see I get it confused. A generalist learns less and less about more and more, until eventually the generalist knows nothing about everything. The specialist learns more and more about less and less, until eventually the specialist knows everything about nothing. [laughter] What's the question?

UNIDENTIFIED SPEAKER: We live in an era where deregulation is almost the definition of good government. I think Sarbanes-Oxley is perhaps almost unique, but not genuinely unique in terms of new regulatory initiatives over the last several years. I've always felt that the government has a responsibility to regulate and as someone who deals with this kind of activity every day, do you think that the Congress is needing to continue in deregulation for our environment, our economy, to the point where we beg for more regulation?

SENATOR PAUL SARBANES: Quite possibly. I think what's happened is a couple of things. First of all, a small truth that government cannot do everything was transformed into a big falsehood - the government couldn't do anything. That's one of the things that's happened I think in the thinking of the government. So you took a fairly self-evident proposition that the government can't do everything, and then that was transformed into saying that the government couldn't do anything. Secondly, more and more people are getting elected who are highly ideological. They know what they think before they come, and then they don't want to be confused by the facts. Well, this is a real problem. I mean, I was taught that you confront a problem. You obviously have certain values that you bring to the problem, that's what the democratic system is all about, but not to the extent that you have such a rigid position that you're unwilling to take in the facts and subject them to a rigorous analysis in order to come up with workable solutions to the problem. But you know, now a lot of it is shorthand, you have

these kind of rules that you're referred to and if you seem to be running counter to that, then you know, you can't have any discussion or any moving forward. I think the country is very ill served by that kind of attitude. So I don't think we're really coming to grips. And finally, in my own view about the workings of the markets is that if you don't have it within some framework, regulatory framework, the deals with the corner cutters and the sharp operators who are prepared to abuse the workings of the system in order to make short-term gains, you're going to drag people downwards towards the lowest denominator. I've had accountants come to me and thank me for this legislation, and the story they tell is well, you know, they were under a lot of pressure from a client to approve a certain off-balance arrangement, or something of that sort, and they refused to do it, saying, and then the client says well, my competitor down the street is doing it, and his accountant, his auditor has approved it. Of course the implicit message, not so implicit, is if you don't approve it, I may go find myself another auditor. So this, these people feel under tremendous pressure to go to the lowest denominator. One of the tragedies of the demise of Arthur Andersen was that Andersen himself, who founded the firm, and Leon Spacik, who succeeded him, were known for their rectitude. I mean, they took the Supreme Court quote that I gave you about the role of the auditor after all, the law requires public companies to have a certified financial statement. If they don't have it, they can't be listed on an Exchange. So it gives a tremendous authority to the public accountants, and they were known in their day for saying to companies, well, if you're going to engage in that practice, we're not going to sign your financial statement and you're going to end up having to come off the market listing. And they would stick to it. And they were known for that kind of rigor. Well, we've, you know, we've lost a great deal of that. We've even had instances in which the auditors were joining in joint ventures with a company they were auditing. It's a complete departure, and this management style, we had a bank out in Illinois that failed. Their auditors, as management consultants, established the financial systems by which the bank valued its assets. The bank ran into difficulty, the FDIC finally had to move in because the residuals on their real estate holdings were overvalued. The value had been approved by the auditors, but the values had been established by the financial system, which the auditors had put in place as management consultants. Well you can't have this system. I mean, you don't have the checks and balances and the independence of judgment that's important to make the system work in those circumstances. But I think we face a challenge. On this legislation, you know, the damage was so great that we were able to move it through. We brought it out of committee on a 17 to 4 vote and three days later WorldCom went belly up, and of course, that gave a tremendous boost to moving the legislation through the Congress because I knew at the time that the forces that couldn't beat us in the committee were laying in wait to beat us in the conference committee, which often happens in the dead of night and we know that's where a lot of mischief is done, but by the time we got there, there was too much of a momentum behind it.

CHRISTOPHER BREISETH: Thank you, Senator Sarbanes, and I must say for full disclosure in the spirit of this talk, we have another director here, Janet Howard, who I want to recognize as well. Janet.

Senator Sarbanes, thank you, not only for this crystal clear presentation of the initiative that you took, but also for the leadership that you've provided in the direction, I think, that is the spirit of Don Fowler's question and the other judgments made about those directions in the months ahead. Thank you all for coming.