

Securities and Exchange Commission Historical Society
Oral History Project
Interview with Michael Oxley
Conducted on March 9, 2012 by James Stocker

JS: This is an interview with former Congressman Mike Oxley for the SEC Historical Society's virtual museum and archive of the history of financial regulation. I am James Stocker. Today is March 9th, 2012. We're talking at the Congressman's office at Baker Hostetler in Washington, D.C. Congressman, it's great to talk to you today.

MO: Thank you, James.

JS: To start off, tell me a little bit about the years before you came to Congress. Did you have much experience dealing with finance or securities?

MO: No, I didn't. I graduated from law school at Ohio State in '69, and then I was recruited by the FBI and I went in the Bureau. Though I did have some experience – I was on the bank robbery squad, so I investigated unauthorized withdrawals from banking institutions. That was quite interesting.

Then when I retired from the Bureau, I went back to my hometown of Findlay, Ohio, and joined my dad's law practice. But I never had that much experience in the overall financial world until I came to Congress.

JS: At the FBI, did any of your training deal with finance or securities, or did you ever talk about insider trading or anything like that?

MO: Not really. Back in those days, it was pretty much stolen cars, bank robberies, bread-and-butter kind of things – kidnapping – you know, federal laws. Not really much in the way of financial matters. The world has changed dramatically. That was 1969 through '71, so it was a whole different world.

JS: While you were serving in the General Assembly in Ohio, did you deal with issues like finance?

MO: I was on the judiciary committee. We had some issues before us involving state bonding, but not specific to that jurisdiction.

JS: Tell me a little bit about how you came to join the House Committee on Energy and Commerce.

MO: I came in during a special election in 1981. I was number 435 out of 435, so obviously I didn't have much of a choice on my committee. I was put on the Government Operations Committee, which is now called the Government Reform Committee. It was a very indolent committee. I was very frustrated with the committee. As luck would have it, by my second term – there were two senior Republicans on the Energy and Commerce Committee. One was Sam Devine. He had gotten defeated back in the 1980 election, the

only Republican nationwide that lost his seat that year. Then Bud Brown, the remaining Republican on the Energy and Commerce Committee, ran for governor in '82, which opened up what we considered an Ohio seat. I was, at that point, the logical choice to be on the Energy and Commerce Committee.

JS: You were placed right away on the Subcommittee on Telecommunications, Consumer Protection and Finance.

MO: Right. Which was a great subcommittee, probably the best subcommittee in the entire Congress, House or Senate. It was dealing with telecommunications issues, which were exploding back then – because you had the Modified Final Judgment dealing with the breakup of AT&T and Ma Bell. All of those along with securities issues as well. It was an exciting time.

JS: I find that subcommittee's title interesting. So the same subcommittee that is charged with overseeing the nation's phone network is also in charge of financial regulation. Do you think that suggests that there was somewhat less attention being paid to financial regulation at this time?

MO: I think, to some extent. What happened was John Dingell was chairman of the committee, a very acquisitive committee chairman who sought – and got – massive jurisdiction over many areas using the Commerce Clause. That's how that subcommittee came together with the rather disparate jurisdictions.

JS: Now when you joined the committee, did you know much about the Securities and Exchange Commission?

MO: Not really. I knew who they were. I knew something about it, obviously, from law school. But I didn't know a whole lot about the inner workings of the SEC by any means.

JS: Did you do anything particular to sort of brief yourself on financial issues?

MO: That just kind of evolved. We had numerous hearings. We had various chairmen who were interested in those kind of issues. So I think during the first couple of years on the subcommittee there was a learning curve for me. It was a practical learning experience.

JS: At this time, many different people were concerned about different issues having to do with finance. One of the big issues was takeover tactics, and I think the committee held hearings on the issue.

MO: Yes, and it was interesting because in late '81 after I'd been elected, Mobil announced their hostile takeover of Marathon Oil Company, which is in my hometown, and was the largest employer in Findlay. That was a real baptism by fire, because Mobil presented a serious threat of taking Marathon over and moving all of their offices to New York City from Findlay, which would have had a devastating effect on my hometown and my

district. Here I was in Congress about three months and this whole thing comes out. I learned a lot. We had hearings.

JS: Was this something that you heard about from constituents?

MO: Yes, of course. I mean there were World War III headlines in the *Findlay Courier*, the local newspaper, for a long time. We had one of these “man bites dog” stories where we actually had a rally in support of an oil company. It was a big deal. We were able to fend them off long enough that U.S. Steel came in as a white knight and bought Marathon. Ironically, many years later – they were part of U.S. Steel, then they became a tracking stock, then they went out on their own independently. Now they’re a separate entity traded on the New York Stock Exchange. So all’s well that ends well. But those were some trying times, particularly for a new member trying to avoid total catastrophe in his hometown.

JS: Now Congress had also begun to take steps towards working on issues like insider trading at this time. In ’85 and ’86, there were the cases involving Drexel Burnham, and Boesky, Levine, Michael Milken begin to appear. How did these issues look from the perspective of Congress?

MO: This was an affront to everything that we thought was normal. We had a number of hearings. We took a very aggressive stance, not only in the subcommittee but also in the oversight subcommittee that Dingell took a real interest in. That was a front-and-center

issue for the committee for quite some time. I took several trips to New York, and had briefings. I was immersed in those issues, and learned again an awful lot and helped kind of set the stage for some changes in the laws and certainly in the regulatory structure.

JS: There were several laws passed during this period. The first one was in 1984, the Insider Trading Act. Do you recall working on that at all?

MO: I do. I think at the time, Tim Wirth (D-Colorado) was the chairman of the subcommittee. I think Tim did a pretty decent job on handling some of the tricky issues. And I think the changes we made have stood the test of time.

JS: Then in 1988, there was also the Insider Trading and Sanctions Fraud Enforcement Act that was passed. I'm not sure if Tim Wirth was there during '84 or '88. I'll have to look that one up.

MO: I'm sure he was there in '84. He went to the Senate then later, but I can't remember the timing of it. It might have been Ed Markey by the time it was '88.

JS: In terms of drafting these different pieces of legislation, was this something that was mostly done at the staff level, or were you involved in drafting the language of it, too?

MO: No, most of it was done by the staff level. I think we were trying to take a look at the issue from 30,000 feet because a lot of people, myself included, were naïve or unaware

that insider trading was going on at such a high level. It did strip bare all this that was happening up there. There were a lot of people in New York who were crying foul, but the evidence was pretty clear that there were some serious violations going on, and that it had damaged the real fabric of our system.

Ultimately, I think there's a common thread that runs through all of these scandals – that somehow the game is rigged against the average investor. The perception of the average investor is that there's a game being played at a higher level that they're not involved in. What we found out in the hearings and subsequent scandals, whether it was Enron or the Great Recession, confirmed a lot of people's suspicions about how the game was played.

JS: You mentioned that you heard a lot from constituents about the takeover tactics when it concerned people in your hometown of Findlay. Did you hear as much from constituents when these insider trading scandals were going on, or when there was the S&L crash in 1987? Was that something that was affecting people in your hometown?

MO: The S&L thing was. We had a significant number of S&Ls in my district. And at the same time, Ohio had its own kind of mini-problem with the S&Ls.

JS: What was the mini-problem with the S&Ls?

MO: It became a political issue because there were some state officials that were involved in a mini-S&L scandal in Ohio that basically cost the Republicans the governor's race and the

legislature – almost presaging the later, larger one nationwide. At the same time, the FDIC chairman was a classmate of mine in college and law school, Bill Isaac. Bill was dealing with these issues at the FDIC along with FSLC and the others, so it was really quite an interesting time.

My point is the constituents had – on the insider trading – more of a skepticism about whether they were being treated fairly as investors. The idea of investor confidence permeates through this whole series of scandals.

JS: You mentioned John Dingell’s name a little bit earlier. He was committee chairman through most of these years. Did you have a good relationship with him?

MO: I did. As a matter of fact, I probably voted with Dingell more than some of his Democrats because we had similar districts – auto-related, energy-related, and Dingell was above all a protector of the auto industry and would fight against too many clean air restrictions and that kind of thing. At that time, I probably was part of that group of Republicans who voted more with Dingell than some of his liberal Democrats like Waxman and Markey and Tim Wirth and Al Gore, Barbara Mikulski from Maryland.

JS: Did you get to know any of the SEC Commissioners during this period, like John Shad?

MO: Of course. I knew John, and had frequent contacts with him. Breeden, Shad, David Ruder. All of those and more.

JS: Was much of your contact with them when you would have hearings and things like that, or did you also meet privately to discuss issues?

MO: Several times we were invited over to the SEC for breakfast and a briefing. They had a very good, I thought, outreach program, educational briefings for the members and staff.

JS: Did you have any contact with Richard Breeden while he was working with the vice president?

MO: Yes. I had dinner with him a few times. I still consider him a good friend.

JS: In 1996, the subcommittee was split into two: a telecommunications committee and finance subcommittee. What was the rationale behind that?

MO: That was the year after we took the majority. Jack Fields had been chairman of telecommunications and finance. Then Jack retired and Billy Tauzin, who was a Democrat on the committee, switched parties sometime in that period. They needed to take care of me and Tauzin, so they split the subcommittee. That's basically what happened.

JS: You ended up taking finance. Were you more interested in finance, or is that just how it happened?

MO: It's just how it happened, which is one of those serendipity things that is hard to explain.

JS: I think that's the way things work sometimes in Washington.

MO: I ended up with finance and hazardous materials – cash and trash. I had Wall Street, SEC, and all that stuff. Then I had the Superfund, toxic waste, and all this kind of stuff. I mean, it couldn't have been more different.

JS: I understand that you were an early supporter of the move to require stock exchanges to post their prices in decimals. What was your reasoning behind that?

MO: When I first became chairman of the subcommittee, I brought in one of my staffers. I said, "What do you think? Any ideas about our agenda?" The first word out of his mouth was "decimals." I said, "Tell me more." He said, "Frankly, the rest of the world trades in dollars and cents and lists stocks in dollars and cents. Why don't we?" So I did some study on it and found out that the U.S. system basically goes back to the Spanish doubloon. In 1792 when the New York Stock Exchange started, the coin of the realm was the Spanish doubloon, in pieces of eight. So stocks were listed in pieces of eight, basically. I thought that was rather odd given the fact the rest of the world had moved on.

JS: But the stock exchanges seemed to like it that way.

MO: They loved it, and the traders loved it, because their spread was an eighth. So it was pretty attractive. I introduced this bill. I talked to Arthur Levitt.

JS: He mentions this in his memoirs.

MO: It would be interesting to see what he says because Arthur didn't want to make Wall Street mad, but he also wanted to see me do it, so he basically gave me his blessing sub rosa. There was one Commissioner on the SEC at the time whose major goal was to have decimalization. Steve Wallman. He was the guy that Arthur referred me to. I think he was a Republican. So I introduced this bill. Predictably, New York Stock Exchange was upset. I went up to see Dick Grasso, and Grasso made it very clear that they would oppose it right down the line. He had to protect his traders. Interestingly enough, though, NASDAQ was very supportive. NASDAQ got it. Their business model was different. The decimalization fit well with the NASDAQ model of an all-electronic market.

JS: They were quite progressive at the time, moving towards an electric market.

MO: Right. They were very supportive. But Grasso was not. So we had a hearing, and one of the guys that supported it was named of Matt Andreesen. Matt was active in what we called ECN back then, an electronic trading network. They testified, and they had a huge penny, and they showed the share that the trader would get under the old system and then the new system. It was quite graphic, quite interesting.

Anyway, so we invited Grasso to testify when I was up in New York with him. He said, "I'll come down and testify." Well, the day of the hearing shows up, and he sends his number two guy down. I knew we had him. We actually passed the bill out of subcommittee, I think unanimously. At that point, the SEC saw the writing on the wall, so they then moved to go to decimals. Then the implementation turned out to be a little tougher than we thought.

JS: It took a number of years, didn't it?

MO: No, actually, it didn't. It took a matter of months, not years. Ironically, NASDAQ had more difficulty adjusting than New York for some reason. We finally got it worked out. Now everybody kind of takes it for granted. But we saved investors billions and billions of dollars over the years by narrowing that spread.

JS: All those pennies add up, don't they?

MO: Now, and even back then, there were a lot of the traders that were lobbying for a minimum nickel tick. There's still that going around. It's amazing. These people that are so adamantly free market – let the price fall where it is – want to set the game. It's just really quite incredible that that happened. Even today, after 10, 11, 12 years, there's still that thought out there that somehow we need a minimum tick for lightly-traded stock.

JS: Another big issue that began to arise during the 1990s, even before 1996 when the committee was split up, was financial accounting in a variety of different forms. One of the issues was stock options. Do you recall the Congress being very involved in that? On accounting for options and whether they should be included. Was that something you heard a lot about?

MO: I did. Not from the average constituent, but yes.

JS: It seemed to be a bigger issue in districts that had the larger tech sectors.

MO: Right. It was a FASB issue, right?

JS: Right.

MO: Yes, I heard from all the usual sources on that.

JS: Did you have much contact with the FASB during that time?

MO: Yes. There were two chairmen I dealt with. As a matter of fact, before I came over to finance, the banking committee and I think Richard Baker had a number of hearings with FASB, trying to keep the FASB from doing that. That went on for quite some time. And

the guy at FASB, his name was Ed Jenkins, he used to regularly come in and get the hell beat out of him by the banking committee.

JS: Congress was quite critical of the FASB during this period. Did you feel that some of these accounting issues, like stock options and derivatives and other things, were arcane issues that should be left to the accountants, or did you think that Congress had a role to play?

MO: Well, the FASB has its role. But at the end of the day, Congress has to make the rules. Nobody ever elected FASB to anything. So I think there's a natural give and take, a natural tension between FASB and the Congress. I had no particular problem with that. Some of the things FASB did I approved of; some I didn't. But that's how the system tends to work.

JS: From the mid-1990s onward, there were different attempts to pass a sweeping financial reform bill. But it wasn't until 1999, the Gramm-Leach-Bliley Act actually passed, the Financial Services Modernization Act. Why do you think it took so many years to get it done?

MO: It took like eighty years. First of all, it's a lot harder to pass a bill than kill a bill. We passed one in the House the year before by one or two votes, and it was John Boehner – now the Speaker – who was assigned the role of kind of ram-rod on this thing or being the quarterback on it. At the time, I was subcommittee chairman. We did get the bill

passed, but it never went anywhere in the Senate. But it set the stage for what became Gramm-Leach-Bliley.

Part of the problem was the split jurisdiction. That's why Leach and Bliley are both on the bill, because Bliley was chairman of the Commerce Committee and Leach was chairman of the Banking Committee. For years, you had this incredible tension and fight over jurisdiction. Nothing slows or kills things in Congress more than jurisdictional fights. It was all inside baseball. The proponents of change really couldn't do anything. Ultimately, that's why, at the end of the day, I ended up as chairman of the Financial Services Committee, taking the jurisdiction over to the Banking Committee. It made perfectly good sense from a structural standpoint, particularly after Gramm-Leach-Bliley passed. That's really what happened there.

JS: A key moment in that legislation was in 1998 when John Dingell agreed to support the bill. It seemed to have had mostly Republican support beforehand. What do you think changed his mind?

MO: I have no idea. For example, he was always for regulation of natural gas at the wellhead. He said, "We're going to deregulate natural gas at the wellhead over my dead body." We eventually did, and he was still alive. But I have no idea what changed his mind.

JS: Let's talk a little bit about the creation of the Financial Services Committee. You just mentioned a little bit about that but what was the main incentive for creating that committee?

MO: There were two issues. One was substantive, and one was political. By that time, Tauzin was chairman of the Commerce Committee. Speaker Hastert agreed that after Gramm-Leach-Bliley, we needed to graft insurance and securities jurisdiction with the old banking committee. From a substantive standpoint, that made perfectly good sense. It was also true that Jim Leach was the term-limited chairman of the Banking Committee. Jim's last year was 2000. It made sense at that point for me to move across the hall to the Banking Committee, and create a new Financial Services Committee. At the time, there were no obvious candidates to take over for Leach. It made a lot of sense politically to give me a chairmanship, and give Tauzin a chairmanship. That's how it evolved.

JS: Now the committee was rather large, I understand.

MO: It was the second-largest committee in the House. I think we had seventy-one members.

JS: Why was it such a large committee?

MO: Partly because, for me bringing that jurisdiction with me, there were several members of the Commerce Committee that wanted to be basically on both committees. The Speaker granted them significant number of waivers, at least a half a dozen. But the Banking

Committee had been fairly large anyway to start with. With the added jurisdiction, that brought that change. I think that was the main reason. I was surprised we had seventy-one members, but that's the way it worked.

JS: Now I understand this committee was approved mostly along party lines. I think there was one Democrat that voted for the change in the committee. Do you think the objections on the other side were substantive, or was it more just a partisan vote?

MO: Which vote?

JS: To create this new committee on financial services.

MO: That was when we were sworn in that year, when the usual housekeeping resolutions passed. That was all about Dingell and losing jurisdiction. But Dingell was no longer the chairman and the Republicans were in control.

JS: That's how it works.

MO: Yes

JS: In terms of finance, the biggest event during 2000 was the Enron bankruptcy, the Enron collapse. How did that issue look from the perspective of Congress?

MO: It was a huge issue, followed closely by WorldCom. A lot of people forget that WorldCom was four times larger than Enron. And Enron was the seventh-largest company in the country.

JS: Do you recall when you first heard about Enron?

MO: Yes, absolutely. One thing that did surprise me was – at least at the time – how incendiary that issue became in the media. But looking back on it, it had everything: fraud, deceit, greed – one guy committed suicide.

JS: A juicy story, right?

MO: And this is really before the cable 24-hour news cycle. It was just Armageddon kind of stuff. It just captured the public's imagination. Guys doing the perp walk, all the bad guys, Ken Lay and Jeff Skilling and Andy Fastow.

JS: Your committee called Kenneth Lay to testify several times, right?

MO: I don't think so. Our committee had the first hearing on Enron, and that was in December of '01. We had the CEO of Arthur Andersen, who didn't know it at the time, but he had one foot in the grave and one on a banana peel. About three weeks later, he was cashiered. We had an Enron analyst. We were the first to have a hearing. And then shortly after that hearing, Enron appointed the Special Committee to study what went

wrong, led by Dean William Powers, who is the dean of the University of Texas Law School, who is now head of all of the Texas University system, and Bill McLucas, who had been the enforcement division chief at the SEC.

There was no question that the Powers Report – and they had testified to our committee exclusively – was the paradigm for the legislation. We introduced the bill because they did a super job in determining what went wrong with Enron. The takeaway from their testimony was that in every case, the so-called gatekeepers at Enron had failed – the accountants, the attorneys, the analysts, the board, the credit rating agencies – in every case. So the bill we introduced in early 2002 then was called CARTA, Corporate and Auditing Accountability, Responsibility and Transparency Act.

JS: This was before the Senate bill was introduced.

MO: Yes. Long before. As a matter of fact, I'm not sure there ever was a Senate bill introduced. The Senate didn't really get active in this thing until WorldCom broke. And we had pretty much finished our work by the time WorldCom hit.

JS: Do you recall the moment when you realized there needed to be a legislative response to this problem?

MO: It was probably that first hearing. Then certainly after the Powers Report. Powers, he and Bill came in to see me before they testified, a couple days before they testified, and

went through granularly the whole process. It was shocking, what they found.

Heretofore, I had been somewhat skeptical of the whole thing.

JS: You mean the need for legislation?

MO: Yes. I had been one to believe that corporate law to be determined by states. Of course, the Delaware court agreed with me. But I changed my mind seeing what had occurred at Enron. Here you had people who had worked at Enron who'd not only lost their job, but lost their life savings, because most of these people had 401(k)s with virtually all Enron stock. You see these interviews that are heartbreaking. Boom, all the sudden, everything they owned is gone. They see their bosses going to jail, and it's just a horrible experience. Plus, the public outrage was something I had never seen.

JS: So you were hearing a lot from constituents.

MO: I was hearing a lot from constituents. I was hearing a lot from my colleagues. Honest to God, almost every time I would go down to the floor during a series of votes, I would have members seek me out and tell me a horror story about an investor back in their district in Michigan or Illinois. It went on and on. I felt like I had to put on a disguise almost because I heard these stories. This was a phenomenon that was driven by the public. It was obviously exacerbated by the media coverage, but I had never seen anything quite like it.

I would go home to my conservative Republican pro-business district, and the talk about CEOs was pretty much, “Let’s give ‘em a fair trial and then hang ‘em.” It was palpable. These were people that I have known for years that were conservative investors – pro-business, pro-market – that just had it up to here with what they were seeing and hearing.

JS: So they knew that you were in the process of proposing sweeping legislation, and they still were supportive.

MO: It wasn’t just me. All my colleagues were hearing the same thing, not just the committee members or myself as chairman. All over the country you had this total lack of investor confidence. Just outrage about what was happening to them. If you think about it, we had become a nation of investors in those fifteen years that I was in Congress. During the first fifteen years or twenty years, we became a nation of investors. Fifty-four percent of American households owned stock. 401(k)s were introduced, IRAs, online trading.

It was a big American success story. I would venture to say that virtually everybody in the country owned stock in Enron and WorldCom. If you were a financial advisor and you didn’t advise your client to have Enron or WorldCom in your portfolio, you could probably get sued for malpractice. That’s how pervasive that was. So you could see why you would have that kind of reaction.

JS: It's perfectly understandable. Now my understanding is that there was a House bill and a Senate bill, and in the final weeks before it passed, there was some sort of process of reconciliation.

MO: We had a conference committee.

JS: Do you recall the major issues that were under discussion?

MO: Yes. Let me say first of all, the House bill passed 423 to 3. Now there's a lot of revisionist history out there that that bill was controversial. Really? Three negative votes? I don't think so. Matter of fact, there was a lot of pressure from the White House to get that bill passed. President Bush came out with his Ten Points about the time we were dealing with the bill in committee. I think we satisfied about nine and a half of those when we passed the House bill.

The Senate was very deliberate. That's another thing people forget. The leadership of the Senate changed in that period. Jim Jeffords was no longer a Republican, so Phil Gramm would have been chairman of the committee of jurisdiction – Banking – was replaced by Paul Sarbanes. This was a big philosophical change. Then you had WorldCom. Just when you thought you'd had enough of Enron, WorldCom comes along – Bernie Ebbers. We had a hearing on WorldCom. Bernie Ebbers and Scott Sullivan both took the Fifth Amendment before my committee, the only time that ever happened to me in six years as chairman.

JS: What was your reaction to that?

MO: Not surprised, particularly in retrospect. Yes, this became a huge deal. We're having these hearings, and every living former SEC chairman was there. But Paul did a really good job of plodding through this thing. I had never even met Sarbanes. They finally passed their bill. Again, it was "controversial" – ninety-eight to nothing. Phil Gramm voted for it, Barbara Boxer voted for it, Ted Kennedy voted for it, Richard Shelby voted for it. You get the drift.

Now, the day after the Senate passed their bill, the Business Roundtable, representing the Fortune 500 companies, requested that the Senate bill go to the President directly and we not have a conference committee. You can look that up. I was stunned and furious.

What had happened was Hank Paulson, who at the time was chairman of Goldman Sachs, gave what was described as a *mea culpa* speech here at the National Press Club, basically apologizing for Enron and WorldCom, and calling for strong legislation from the Congress. The business community was absolutely petrified of sticking their head up on this issue, because they were going to get it chopped off, the public outrage was so great. So they figured, stop the pain, get it over with, send a bill.

The House bill was significantly different from the Senate. We were accused of having a weak bill. The press always wrote that Oxley's bill was weak. Well then, of course,

WorldCom came along and the Senate bill did move far to the left including some of the stronger provisions. 404(b) was probably the biggest example of that.

JS: Tell me a little about that.

MO: That, obviously, has been the most contentious part of the legislation, and the most expensive, and the most criticized. I make it a point to say we didn't have that in the House bill; it was a Senate bill.

JS: Was there much thought given to how much it was going to cost at the time?

MO: No. Senate did a windshield job on the cost, and it was not even close. But even worse than that, the business community totally capitulated. Witness what the Business Roundtable suggested. The Chamber of Commerce was nowhere to be found. The *Wall Street Journal*, by the way, was nowhere to be found. In that context, and the fact that it passed virtually unanimously in both houses and that the Business Roundtable it wanted to go directly, I finally went to the Speaker and said, "I don't want to hear about this. We're going to get regular order."

We actually had a conference, and I was chairman of the conference committee. We made some changes in the conference that were beneficial and made it a better bill, including the Fair Fund to compensate victims that would take the money paid in fines

and disgorgement and pay back shareholders, which is what we did at Enron – several billion dollars. It was a very beneficial change in the law.

Another one: Joe Biden had an amendment in the Senate floor that would require the non-executive chairman of the board to sign the financials along with the CEO and the CFO. It passed unanimously after about ten minutes of debate. The only push-back I got when I was chairman of the conference committee was from some CEOs, including some well-known CEOs, who called in opposition to that. Sarbanes agreed with me and we took the amendment out, which I thought was courageous on Sarbanes' part because he had a fellow chairman – Biden was chairman of the Foreign Affairs Committee – but he took it out. Believe me, every senator who ever thought about running for president, or ever thought about running for reelection, had to have an amendment. The amendments were flying over the transom right and left on the Senate floor, and a lot of them were not very good policy. We were able to clean some of that up in the conference.

JS: In the conference committee or during the drafting of the legislation, was there much controversy over this idea of creating a new body called the Public Company Accounting Oversight Board?

MO: No. I think that was agreed by both houses. Heretofore, the accounting industry had been self-policed. The abject failure of Arthur Andersen in those circumstances called for a paradigm change. I think there was virtually no opposition to creation of the PCAOB.

JS: Discussing Andersen, did you expect that they would eventually go out of business after all this happened?

MO: No. People asked me what the biggest mistake was. The biggest mistake was the death penalty for Arthur Andersen. That came right from the White House.

JS: That came from the White House.

MO: Absolutely. A big mistake.

JS: It reduced competition in the accounting field?

MO: Absolutely. That is part of the reason why you had this cost issue, when you think about it. When I came to Congress in '81, there were the Big Eight accounting firms. Then you had the Big Five with consolidation. All of the sudden, you have the Big Four. So it's just a matter of economics, supply and demand. All these companies that had Arthur Andersen had to go out and find a new accountant, pretty fast. It cost them a lot of money. People forget that. People forget that PCAOB was under enormous pressure. We made them out of whole cloth. These were newbies. These guys come in. They've got to make some timely decisions on regulation, on 404 and the like.

JS: Not all of them were accountants, either.

MO: No. But even if they had been, the pressure was so intense for them to be seen as punitive towards business. That's how 404(b) came into play – or at least the implementation of 404(b) – which again also had major implications on the cost. Most of the complaints about SOX are about 404(b). I think to a large extent, some folks at PCOB, looking back, would probably agree with me.

JS: If you go back and rewrite this legislation, what aspects would you change?

MO: I would not have passed 404(b).

JS: Would you have passed it in some revised form for larger corporations and then just exempted the smaller ones?

MO: I think 404(b) could have been handled differently. For example, you don't have to have the total attestation take place every year. For companies that are well-managed, you only have to do it every two or three years – it seems to me – which could save them a lot of money. You still have 404(a) internalized. Some of the reforms worked exceptionally well. On the audit committee made up of independent board members, hiring the outside auditor eliminates that potential conflict of interest or back rubbing on both sides with the CEO and the accountant. I think a lot of those things have been made more transparent. At the end of the day, SOX was about transparency and accountability.

The test really is whether you had a recurrence. We've had nothing even close to an Enron or a WorldCom. People forget, we lost \$8 trillion in market cap as a result of the Enron, WorldCom and others – \$8 trillion. \$8 trillion. Every investor, whether he was invested in Enron or WorldCom or not, lost money in that period. Go back and look. I just looked at my own personal 401(k). In 2002, it went down like 26 percent. Twenty-six percent. Virtually everybody can say the same thing. So when the CEOs complain about SOX, I ask them, "What was your market cap on July 30th, 2002" – which is the day the President signed it – "and what is it now?"

Restoring investor confidence to get these people back in the market takes a long time. Now you've had, basically within the last ten years, two major scandals that go directly at the heart of investor confidence. It's a miracle that the markets have come back as much as they have, given what the average investor has had to put up with over the last ten years.

JS: I want to ask you about the Public Company Accounting Oversight Board just a little bit more. The early years of this board's history were a little bit difficult. There was a conflict over who to appoint as the head of the agency for some time. Do you recall how that played out in Congress, if there's a conflict over whether to appoint John Biggs or not?

MO: No, that was mostly at the executive level.

JS: I wanted to ask you about a couple different issues over the course of the early 2000s that you might have had to deal with. One of those was deposit insurance reform. In 2006, the president finally signed the bill that instituted deposit reform, but this had been the subject of discussion for a number of years. Why did it take so long to get it passed?

MO: I don't know. There's always somebody invested in the status quo, right? Frankly, we were going to increase the amount of the insurance. The White House was against it so we punted on it. Of course, when it hit the fan, by that time, Barney Frank was the chairman. Barney passed his bill and guess what? It raised it to exactly what we had wanted to raise before but we couldn't get any traction on it.

JS: Another issue the committee worked on during these years was mutual fund costs – the fees that mutual fund investors would pay. In 2003, your committee held some hearings on the issue and you invited John Bogle to speak. Was this an issue that was important to you?

MO: It wasn't to begin with, but it became one. Bogle hit a lot of raw nerves.

JS: What do you mean by that?

MO: I mean in terms of the ICI. Jack, I mean the guy basically invented the mutual fund. So for him to speak of what was going on inside the tent put a lot of noses out of joint. Frankly, I thought he was a crank to begin with. But the more you looked into it, the

more you found out that he knew what he was talking about. The industry really did need some major revision.

JS: The committee came up with a proposal for a bill, the Mutual Funds Integrity and Fee Transparency Act. Did that end up passing?

MO: A version of it did later, when you had some major scandals within the mutual fund industry. When it became obvious that there were some real flaws in late trading, after-hours trading, they were weakened politically to the point where we could get legislation passed. At the end of the day it was with their blessing, because they were having a P.R. nightmare. People were getting out of mutual funds. It is another example of how insiders were getting a better benefit than the average investor.

JS: During these years, the early 2000s, was there much thought given to the possibility of increasing supervision over the government-sponsored enterprises, Fannie Mae and Freddie Mac?

MO: Yes. I could do a whole hour on that.

JS: Tell me a little about that.

MO: Richard Baker from Louisiana was the lead dog on the effort to try to reign in Fannie and Freddie because they had become, essentially, monstrosities. But Baker, when he was

over at Banking, could never really get to first base. He was kind of a one-trick pony, but he was really dedicated. Fannie and Freddie were so strong that it was not until I took over as chairman of financial services and I appointed Baker subcommittee chairman having jurisdiction over capital market and GSEs. I told Richard, "Look, I'm not going to tilt a windmill here, but at some point, if you can put together a coalition, if we can get enough votes, we can all go forward on GSE reform."

JS: What, specifically, did you consider to be reform? What elements would that have entailed?

MO: Transparency. Basically, creating a world-class regulator that had the ability to limit their portfolio and limit their debt. They were dealing with OFHAO, which was in the basement of HUD. It didn't really have any clout to speak of. We wanted a real honest-to-God regulator who had some power, and that was respected and feared by Fannie and Freddie.

Then Fannie got into some serious difficulty with the SEC. The SEC said that their smoothing out their earnings was an absolute violation of the law and the regulations. The Warren Rudman Committee was appointed to look into this. Rudman testified before our committee, and they did a hell of a job. Boy, they laid out Fannie like something I've never seen before. Fannie went from being ten feet tall to being a midget. That was the time to strike. Baker did a great job. He had a hearing and had some

subsequent hearings, and we lined it up and we got a bill passed in '05 that passed three-to-one in committee and three-to-one on the house floor, like ninety votes against it.

Most of those against it were in the Congressional Black Caucus, which was totally in the tank for Fannie and Freddie. We also included reforms for the Federal Home Loan Bank as well. The bill had enormous support, it passed three-to-one in the House, 300-something to 90. Ironically – or just inexplicably – Greenspan was against it, some people in the White House were against it, and I couldn't for the life of me understand. For the first time ever, we had Fannie and Freddie on the run. We really did. These guys, essentially, wanted a perfect bill. They wanted a bill that by law ratcheted down their portfolio. To put it in the law! I kept saying, "Look, that's the point. You need a world class regulator." We, or the Congress, are giving that regulator unprecedented power and authority to do this.

JS: You don't need to specify the numbers in the bill.

MO: Besides that, I couldn't pass it. I didn't have the votes to pass it. Politics are the art of the possible. So we pass this bill. Shelby over in the Senate did a half-hearted attempt at a markup. It failed on a partisan vote, and that was the end of it. The White House was glad because the White House is out there urging these guys to buy mortgages, and at the same time saying that they want to get rid of them. It just didn't add up. Greenspan was on record as saying that my bill – as a matter of fact, he called me the morning of the

markup and said, "This bill is worse than no bill at all." I just could not get my head around it. It was a sad, sad case.

So what happens? Fannie and Freddie explode, and three years later, Barney Frank passes, essentially, the same bill that I passed. We had three years. I think that that legislation, had it been enacted and had we had a world-class regulator, would have mitigated the damage that the economy went through in '08. I really do. And it is unreported. You won't read about it in the *Wall Street Journal*, you won't hear anything about it from Greenspan. You certainly won't hear anything about it from the Bush White House. It is really sad.

Somebody ought to do an in-depth analysis on that because that was just beyond the pale. If there's one disappointment I had in my six years as chairman, it's the fact that we couldn't deal with that problem, when everybody knew what the problem was, everybody knew what we needed to do to solve it and what we politically could do to solve it. Not write a perfect bill in heaven, but to actually write a bill that could get enough votes to pass the Congress and signed by the president. It drives me crazy.

JS: Too bad it sometimes takes a crisis, right?

MO: Oh, God. Then we lost another 8 or \$9 trillion in market cap.

JS: Another thing that Congress is sometimes credited with during this period is helping to push banking regulators to agree to the Basel II capital requirements. Do you recall playing a role in that at all?

MO: We had a number of hearings on that. I think on a bipartisan basis, both Barney and I agreed that some of the proposals out there were going to disadvantage American banks. We made it pretty clear. There was a big split among the U.S. regulators about the efficacy of the proposals coming in from Basel. That was one of those cases where you had a distinct difference between the Fed and the FDIC, for example. I think we played a very positive role in trying to get that so it wasn't as one-sided as some people thought it was.

JS: Congressman, you served on the Hill for almost three decades, and you spent a lot of time working with the SEC. How much difference do you think that the personalities at the Commission make in relation to the Congress?

MO: At the SEC?

JS: Yes.

MO: I think it all comes down to the chairman at the end of the day. Obviously, they all have their own plusses and minuses, and different personalities. I found every one of them to be intelligent and resourceful, full of integrity, transparent – even when I disagreed with

them. I think I've had a good working relationship with the SEC chairmen, and some individual commissioners as well.

JS: I also wanted to ask you about cooperation on a bipartisan basis within these committees that work on financial services. Obviously, you've worked on a lot of them over the course of your career. Was it always easy to reach out to colleagues in the other party? Or did you find that finance and financial issues were very divisive in partisan terms?

MO: I don't think, generally speaking, most financial issues we took up in the committee were particularly partisan issues, maybe with the exception of the GSEs. I think the GSEs were more of an R vs. D kind of thing. But with everything else, I prided myself in getting bipartisan consensus. Virtually every major bill that I passed out of committee passed on large bipartisan majorities. If you can look back, it was quite extraordinary, particularly the last four years when Barney Frank was the ranking member.

JS: Did you have a good relationship?

MO: I had a good relationship with Barney. He's very professional. He's an institutional kind of guy. He wants to get things done, doesn't suffer fools gladly, and always keeps his word. We did a lot of positive things, I think. One of the things that people tend to forget about is we did the Check 21 Act which allowed for the imaging of checks at its inception. It saved the government – I didn't realize this until after 9/11. After 9/11,

there were four days where no airplanes flew. But the Fed had the obligation to fly cancelled checks from one federal bank to another.

I didn't even know that. You can imagine Alan Greenspan in a biplane with his scarf flying? That's basically what it was. For four days, all these checks piled up. NCR in Dayton had developed this technology that could image checks, so you wouldn't have to fly these cancelled checks around. We introduced the bill and we passed it in about six months or something.

It has saved banks and their customers millions and millions of dollars because of a lot more efficient system. It's true that you can't kite checks as effectively as you had to, but hey, it's against the law anyway. It worked very well, and it passed on a large bipartisan majority. We had some innovative things, like decimals, that made the system more efficient and cost-effective, and we did it on a bipartisan basis. That gave me a lot of pride.

JS: Do you think that things have gotten more partisan over the last few years?

MO: Clearly they have. I just feel for Spencer Bachus because it's just a wholly different atmosphere now. That's a shame, I think, because the committee did turn the corner when I was there. I'm proud of the fact that I took the old Banking Committee that some described as kind of a sleepy committee, and with that jurisdiction and with bipartisan cooperation, made it into a powerhouse committee that is now an exclusive committee,

one of only four exclusive committees in the House. We leave a great legacy. It's unfortunate, I think, that Spencer has to deal with that partisanship, which was basically not the case when I was chairman.

JS: Since 2007, you've been working as a senior advisor at NASDAQ in your capacity here at Baker Hostetler. Would you mind telling me a little bit about what you have been up to the last couple years?

MO: Baker Hostetler is a fine Cleveland, Ohio firm. It started in Cleveland. Our main office is still in Cleveland. I've known several of the attorneys here over the years and felt it was a good place. Guy Vander Jagt who had been on the Ways and Means Committee in the House and chairman of the Republican Campaign Committee for years, when he retired from Congress, he came here. I had a lot of respect for Guy, so it just seemed a natural fit.

I'm of counsel here, so I do everything from Foreign Corrupt Practices Act, white collar things, to banking issues and Fed issues. We help companies deal with SOX requirements. Then with NASDAQ, I'm a senior advisor to the board, which is a broad responsibility. I do some speaking for NASDAQ, and I occasionally do a little lobbying for them. That's pretty much what I do. For the first two years, I gave a lot of speeches all over the world. Sarbanes and I together gave speeches or presentations in Hong Kong, Mumbai, Orlando, Chicago, Moscow – all over the world. It was fascinating.

Now that's kind of receded. It's old news now, but I still do occasional speeches. I went to Kazakhstan last year and gave a speech.

JS: I think there's a few people around the world who are still interested in talking about Sarbanes-Oxley.

MO: Maybe.

JS: Congressman, did you have any final thoughts or stories that you'd like to share with us?

MO: Paul Sarbanes and I had a chance to speak on a number of occasions together all over the globe, and we kind of developed a little bit of a Martin and Lewis kind of a shtick. We would tell stories about the bill and how it developed and so forth. One of my stories was that I always tell people that I got a new first name. Sarbanes would say he would go back to Maryland and they couldn't understand how his last name became hyphenated. My secretary called one time and she said, "Senator Sarbanes is on line two." I pick it up and there's a voice on the end that says, "This is your first name."

I went to Davos to the World Economic Forum in the winter of 2002. I was on a couple of panels. We had a reception one night that was put on by one of the accounting firms. We were having a drink before the dinner, and I had my nametag on. I was talking to a couple of people, and this guy was kind of hanging around. He came up to me finally. He was staring at my nametag. He was a little short guy, I think from Singapore.

He said, “I want to shake hands with Sarbanes Oxley.” I said, “Well, I can do that. How come you want to shake hands with Sarbanes Oxley?” He said, “I never got a chance to shake hands with Glass Steagall.” Honest to God.

Sarbanes tells the story about how he had this hearing on accounting principles in the committee – three panels on accounting principles. Dry as dust. He says that about the third panel, it had pretty well winnowed out and there were only a couple members around. The witnesses are droning on. One of the senators didn’t realize his microphone was live. He leans back and says, “This is the most boring hearing I’ve ever been involved with.” Mike Enzi – a freshman senator and the only CPA in the Senate – hears this and he turns his mike on. He says, “I beg your pardon. This is the most exciting time I’ve had since I’ve been in the U.S. Senate.” So it depends on where you’re coming from. We had all kinds of stories to tell, but that was a lot of time.

JS: Congressman, we really appreciate you being with us today and taking some time to talk with us.

MO: My pleasure, James.

[End of Interview]