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All-Star Briefing

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This Week

- 1. Former New York Governor Mario Cuomo (Willkie Farr & Gallagher LLP) assesses the impact of the Sarbanes-Oxley Act and the state of lawyer ethics**
- 2. Former New York Governor Mario Cuomo (Willkie Farr & Gallagher LLP) looks for a better campaign finance system, even after the laudable effort represented by McCain-Feingold**

Coming up next week: Thomas H. Watkins (Brown McCarroll LLP); Alan M. Koral (Vedder Price Kaufman & Kammholz)

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1. Mario Cuomo: Sarbanes-Oxley was necessary but imperfect; still, there will always be unethical people

PLI: You have spoken about Corporate Responsibility. Now that Sarbanes-Oxley is almost two years old, do you think that it was necessary or were the ethical lapses of the later 1990s the natural outcome of an economic bubble?

MARIO CUOMO: You know, I'd be reluctant to say that ethical lapses are ever natural... I mean, the truth is that we have an economy that generates more and more wealth all the time—or at least the number of dollars goes up, in part because of inexorable inflation, but in part, too, because the economy gets bigger. And so the law firms are bigger, the corporations are much bigger, the deals are much bigger, and I guess when there's a lot more wealth there's a lot more opportunity for greed to manifest itself.

But the instinct for greed, that's always been with us. It's just that the opportunity to practice it gets bigger, and that's what happened. And the bubble made it all worse, because the bubble added an almost surreal quality to it. There was so much money, and it was so easy to pick the fruit, that you gorged yourself. And so that did happen.

Sarbanes-Oxley—some law was needed, some chastisement, some disciplining was needed. Sarbanes-Oxley was the result, but Sarbanes-Oxley was not thought through the way it should be, and if you look at the record you'll see that Sarbanes-Oxley at one point had something like forty-two votes in the Senate, and then all of a sudden it got ninety-seven votes in the

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Senate. Well, how did that happen? It wasn't a result of hearings; it was a result of the news and the pictures of corporate executives getting locked up, etc. So Sarbanes-Oxley was not as good a law, in terms of being well made and having thought through the problems, as it will be eventually because it'll be amended.

So if your [question] is, did we need Sarbanes-Oxley? We needed something like it. If your question is, is it the best law we could have? No. If your question is, is it working? Yeah. I can tell you from my own experience—and we do a lot of accounting irregularities and independent directors, I represent independent directors at Cablevision, we do a lot of that work—it's had a very powerful effect on directors. Is it slowing down the business? Not from my reading of *FORTUNE* and *Barron's* and *The Wall Street Journal* and the stock market pages. Not really. It's making lawyers richer—no question about that, because it's providing all sorts of new opportunities for lawyers.

[But] I would say that human nature hasn't changed and so ethical lapses, greed, laziness that produced ineptitude, cynicism—the extent of those vices is no greater now than it was probably in the beginning of recorded history. What changes is how many of these people there are, how dense a part of the population they are, etc. I don't think—certainly in my lifetime—I don't think things have changed really. There were crooked lawyers then, there are crooked lawyers now, there were crooked doctors then, there are crooked doctors now. There were religious people who corrupted their mission by their own blatant sinfulness then, and there are now.

I don't think those things have changed. I really don't. As I said before, though, there

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are always greedy business people and, I guess, greedy lawyers, but when you multiply by many times the amount of money involved and the opportunities, then it becomes more manifest.

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FORTUNE Magazine calls [The Sarbanes-Oxley Deskbook](#) "the bible for securities lawyers." Get the ultimate, clause-by-clause guide to the law that has reshaped corporate America, written by the coordinator of the securities law division of Sullivan & Cromwell, John T. Bostelman.

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2. Mario Cuomo: We need a new approach to using public campaign funds

PLI: Both the Bush and Kerry campaigns are spending record amounts of money. This year's presidential election will be the most expensive ever. Do you feel McCain-Feingold has had any impact? In your view, does the average voter really care about campaign spending limits? Do you feel campaign spending is beyond control?

MARIO CUOMO: Yes, it's ridiculous. It's absurd, unintelligent. Why should money be relevant when you're picking between you and me? Why does the fact that I have more money than you—why should that put you at a disadvantage? If you're smarter than I, if you're wiser than I, if you have more experience than I, if you have a better agenda as far as the voters are concerned, then you should be preferred to me. But to what extent is money relevant? Why should it be relevant? Doesn't it distort? Of course, it distorts. Because money doesn't represent any value. If you could say well, the fact that I have the money shows that I am better because... — that's all baloney. You could have the

money because you're Steve Forbes or because you're Mike Bloomberg or because your mother is Mike Bloomberg's mother. And so, it's irrelevant, and we should therefore, as much as possible, minimize its impact. Well, how can you do that?

As long as you have *Buckley v. Valeo*, it's very hard. *Buckley v. Valeo* is the constitutional precedent that says that nobody can prevent you from spending your own money. So as long as that's true, you have a big problem and the First Amendment generally has a big problem in reducing the amount of money. I think there's one avenue that we're not exploring, and the states are doing a better job at this than the federal government.

The federal government gives large amounts of money to the presidential candidates, and that's constitutional and we like that system—we like the idea that, to a large extent, taxpayers' money pays for the prime candidates. Why not condition the use of that money on things that would make for more intelligent debates?

Let's get back to the documentary. I'd rather see a battle of documentaries than a battle of 28-second commercials, and so when I give you money to be a candidate, why don't we limit it? Say you can't use it on 28-second commercials, you have to use this percentage of it on debates, and you have to use this percentage of it on printed position papers in local newspapers giving your opponent equal time to spend his government money to answer you. In other words, you could make the debate more intelligent by fashioning limitations on the use of the money you give them, which would be purely constitutional. Why not? I mean, if we have the right as taxpayers to raise a fund of billions of dollars, we have

the right to condition how you spend it. And we want to spend it in ways that fight some of these distortions that now exist.

I think the average voter would agree, if the average voter were given the question clearly, do you think the availability of large amounts of money for a candidate should be—do you think money should be relevant in picking candidates? I think they'd say of course not. So they would agree with me that it's essentially corrupting to have any kind of dependence on money. There would also be impractical people [who would say], "Well, I guess you have to have some money and so it's going to play some role." But they would all agree if they were given a chance to understand what you're talking about.

The way it is now, they don't pay attention because nobody understands the campaign finance laws. Nobody! You go to this firm with all the sharp lawyers here [and say], "Describe the campaign finance laws to me. What's legal? What's not? How much?" Nobody knows. Even candidates don't know.

I never knew, never even tried to know. I always had experts do that for me. You know, "You guys take care of the money." I never knew how much money you could raise from people, etc. In twelve years [as governor], I never made a single phone call for money. Not one. That has to be a record. But yeah, Feingold...they tried hard, McCain is good, Feingold's good, they're both good people, they both tried to do the right thing. It didn't mean anything. Both sides have thought up ways around it. They have slop funds of all kinds now. Soros can spend all he wants... No, there's no effective limitation of it, that's why we ought to try seizing the opportunities we do have, like, for example, taking the

government money and conditioning it on a more intelligent process for exchanging arguments.

McCain-Feingold is just the tip of the iceberg. Find out the rest at [Corporate Political Activities 2004: Complying with Campaign Finance, Lobbying & Ethics Laws](#), to be held in Washington, D. C., September 9-10.

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Mario Cuomo Interview Conducted by Brian Scott Mednick

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