



For Immediate Release

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## WLF Paper Examines Sarbanes-Oxley's Impact on Free Enterprise

In a publication released today by the Washington Legal Foundation (WLF), two leading scholars examine how the Sarbanes-Oxley Act of 2002, and the resulting further criminalization of business conduct, has impacted entrepreneurial risk-taking in America.

This publication is the latest installment of WLF's CONVERSATIONS WITH series. Participating in the conversation were George Mason University School of Law **Professor Craig Lerner** and **Professor Moin A. Yahya** of the Faculty of Law at the University of Alberta. The questions were presented by **Dick Thornburgh**, who has moderated each publication in the series. He is Chairman of WLF's Legal Policy Advisory Board and Of Counsel to the law firm Kirkpatrick & Lockhart Preston Gates Ellis LLP. Mr. Thornburgh is a former two-term Governor of the Commonwealth of Pennsylvania and former Attorney General of the United States.

Professors Lerner and Yahya recently published a scholarly article in the American Criminal Law Review, *Left Behind After Sarbanes-Oxley*. In it, they argue that the extensive risks the law created, in addition to the increased criminal liability companies face, will deter honest, risk-taking entrepreneurs from participating in the U.S. economy. In their place, they posit that risk-averse "beancounters" or "swashbucklers" unconcerned with ethical behavior, will step forward and take up executive positions in companies. Governor Thornburgh carefully takes the professors through their theory, allowing them to elaborate on how a law meant to decrease corporate fraud could ultimately inspire more.

The participants also comment on troubling trends in the criminal enforcement of federal laws against U.S. businesses, including the erosion of the attorney-client privilege; the rise of strict liability offenses where prosecutors don't need to prove criminal intent; and the growth in the amount of criminal fines, which enforcers can use as a club to force settlements.

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Copies of this educational paper can be obtained by forwarding a request to: Publications Department, Washington Legal Foundation, 2009 Massachusetts Avenue, NW, Washington, D.C. 20036.

*Washington Legal Foundation is a national, non-profit public interest law and policy center. By utilizing a unique approach in forwarding its mission — publishing timely legal studies, engaging in innovative litigation, and communicating directly to the public — WLF has become the nation's most effective advocate of free enterprise.*