



Is Virginia Real?

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U.S. Attorney Neil MacBride of the Eastern District of Virginia has been in the news of late. Last week, he announced plans to pursue prosecutions of high-profile securities-fraud cases in his district. For years, securities-fraud cases have been, with rare exception, primarily handled by the Southern District of New York. MacBride takes comfort in a December 2007 Fourth Circuit case that held that the Eastern District of Virginia has jurisdiction over such cases due to the location of the SEC's EDGAR database in Alexandria, Virginia. See *United States v. Johnson*, 510 F.3d 521 (4th Cir. 2007).

If the Fourth Circuit decision laid the groundwork for this shift, the economic meltdown and public rage at Wall Street are helping to fuel it. Not only is the Eastern District of Virginia known as the "rocket docket" for its speedy disposition of cases, it also metes out harsher punishment for white-collar crimes. A brief analysis of 2009 U.S. Sentencing Commission ("USSC") statistics bears this out.

According to USSC data for fiscal year 2009, 9.4% of all defendants nationwide were sentenced for fraud-related crimes. Corresponding percentages in the S.D.N.Y and E.D. Va. were higher at 17.0% and 10.7%, respectively — a gap that is certain to close within the next several years.

As between the two jurisdictions, defendants in the E.D. Va. are likely to fare significantly worse. For example, of all defendants convicted of fraud-related crimes, a greater percentage of defendants in the E.D. Va. (73.7%) were sentenced to prison as compared to the S.D.N.Y. (68.6%). A lesser percentage of E.D. Va. defendants (12.9%) received probation as compared to defendants in the S.D.N.Y. (15.0%).

Incarceration rates were also greater in the E.D. Va. Of fraud defendants who were eligible for a non-prison sentence, 42.6% were incarcerated in the E.D. Va. By contrast, only 20.0% were incarcerated in the S.D.N.Y.

Additionally, fraud defendants in the E.D. Va. were more likely to receive sentences within or above the recommended Guidelines range: 58.6% were sentenced within and 2.4% were sentenced above the Guidelines range; only 39.2% were sentenced below. Defendants in the S.D.N.Y. received more lenient sentences: 40.1% were sentenced within and 0.4% were



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sentenced above the Guidelines range; over half (59.6%) were sentenced below the applicable range.

It thus appears that fraud defendants investigated and prosecuted under MacBride's new program are likely to face harsher punishment than if prosecuted in the S.D.N.Y. To counter and hopefully overcome this disadvantage, defendants in the E.D. Va. will need counsel experienced in securities-fraud litigation and willing to advocate aggressively on their behalf.

Crime in the Suites is authored by the [Ifrah Law Firm](#), a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.

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