

**Prepared Remarks for U.S. Attorney Neil H. MacBride  
for the  
FINRA / Standard Conference on Fraud Prevention  
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Thanks for inviting me to join you at this important conference on the state and future of financial fraud.

Twenty years ago, journalist Michael Lewis wrote the New York Times' bestseller "Liar's Poker", which chronicled the Wall Street meltdown of the late 80s, and the rise and fall of "junk bond" king Michael Milken. Last year, Lewis wrote another bestseller, "The Big Short", which told how the rise and fall of mortgage backed securities fueled the Wall Street financial crisis of 2008. Lewis admits he never would have imagined when he wrote his first book that he would be telling a new tale of financial scandal 20 years later.

FINRA and Stanford are to be commended for shining a spotlight on fraud – why does it happen, how do we stop it, what are the trend lines? As Michael Lewis shows, history repeats itself and the challenge is not to fight the last war, or combat the last financial crisis. Investors need to be educated about, and protected from, the next financial fraud.

My job as a federal prosecutor is not only to detect and disrupt ongoing frauds – thus preventing even more investor victims and even greater losses – but to also deter future schemes through the aggressive prosecution of financial crimes and stiff sentences upon conviction.

My office is very busy these days. The Eastern District of Virginia (or EDVA as its known) is prosecuting terrorists and spies, corrupt Congressmen and state legislators, Somali pirates and Mexican drug cartels, motorcycle gangs and MS-13, and sex traffickers and child predators.

And in the last few years, EDVA has prosecuted some of the biggest financial fraudsters pursued by the Justice Department – including a \$3 billion bank and securities fraud case, a \$670 million insurance bond fraud, and a \$100 million hedge fund fraud, to name a few. While greed may not "be good," as Gordon Gekko famously claimed, it is still rampant on Wall Street and Main Street. Thus, combating financial fraud is a top priority for the Justice Department and for EDVA.

This morning I'd like to talk about the detection, disruption and deterrence of fraud.

**EDVA's Strategic Shift**

Let me start by explaining how EDVA has shifted its strategic fraud mission in the last few years. That is, what are we doing differently now than in years past to combat financial crimes.

As some of you know, EDVA has long played a leading role in protecting national security. EDVA's national security expertise involves three overlapping factors:

- (1) Our unique geography as home to the nation's leading national security agencies;
- 2) Long-term, complex investigations requiring close coordination across multiple agencies; and
- 3) Targeting criminal conduct that was difficult to detect thus needing covert investigative techniques.

EDVA has now applied this 3-pronged playbook to tackle some of the biggest frauds out there.

First, EDVA provides several unique venue options for the Department to charge fraud cases of national impact in our district. These include:

- 1) venue over the securities frauds of any publicly traded company who files its reports through the SEC's Electronic Data Gathering, Analysis and Retrieval System (known as the "EDGAR" system) in Alexandria, VA;
- 2) venue over the wire frauds of any bank whose funds transit through the Richmond Federal Reserve Bank;
- 3) venue over any company which applied for funds from the Troubled Asset Relief Program ("TARP") through the FDIC in Arlington, VA; and
- 4) venue over state and municipal bonds regulated by the Municipal Securities Rulemaking Board ("MSRB"), located in Alexandria, VA.
- 5) Victim venue – venue over any company or person who engages in a fraud scheme that affects or defrauds victims in the Eastern District, even if the company or person is located elsewhere.

These options gave us the legal authority to bring criminal cases against national impact financial frauds that may occur far from our district's borders but which affect the citizens of EDVA. For example, we recently prosecuted a Houston-based hedge fund (**A&O**) for defrauding elderly investors in dozens of states, including Virginia.

EDVA's increasing use of our unique options reflects a sea change for EDVA: our focus has shifted from where bad guys live to focus on where the effects of the crimes occur. In the words of columnist Tom Friedman, "The World Is Flat", and both commerce and white collar crime have become global.

(Indeed, earlier this year the FBI arrested a suspected Costa Rican fraudster aboard an international flight at JFK Airport headed to London, where we allege he was carrying out an international fraud involving \$670 million in reinsurance bonds being sold to hedge funds in North America and around the globe. Although Minor Vargas, the President of **Provident Capital Indemnity Ltd.**, lived and operated his alleged international fraud from a non-extradition country, EDVA pursued this case tirelessly and ensured his arrest in our first extraterritorial fraud prosecution.)

Second, last year we created the **Virginia Financial and Securities Fraud Task Force**, which is an unprecedented partnership between criminal investigators and civil regulators. The Task Force combines criminal agents from the **FBI, Postal Inspection Service**, and the **IRS** with civil regulators from the **US Securities and Exchange Commission**, the **Commodity Futures Trading Commission**, the **Virginia Attorney General's Office**, and the **Virginia State Corporation Commission**.

Our Task Force adds value in several ways:

- Each agency has different tools to conduct both joint and parallel investigations of large, complex cases. For example, the FBI can obtain a wiretap, while the SEC can obtain a company's trading records. The CFTC can bring critical expertise in certain markets, while a state corporation commission can permanently enjoin a company from transacting securities in the Commonwealth;
- Civil and industry regulators often serve as the "canary in the coal mine", sharing early intelligence with prosecutors which allow criminal cases to be developed earlier and increases the chances of stopping a large fraud from becoming a truly massive one; and
- These agencies have "skin in the game" by dedicating resources to building national impact fraud cases, a key commitment to make at a time of dwindling government resources.

Finally, EDVA has made structural changes to combating financial crimes. My office includes both criminal AUSAs and civil AUSAs who focus on frauds against the government. In many USAOs, there's a "wall" between criminal and civil fraud attorneys based on grand jury secrecy rules. In the past, if the FBI or an Inspector General referred a fraud target to EDVA, the criminal AUSA would have immediately fired off a grand jury investigation, effectively staying any civil investigation into the same target for years, until the criminal case was concluded.

This led to two problems: 1) some frauds are better resolved through civil enforcement, say under the False Claims Act – with its treble damages and lower standard of proof -- rather than a criminal prosecution. And 2) if the criminal case was declined after a lengthy investigation, the loss of time and inability to share evidence would jeopardize our chances of being able to bring civil action, thus losing out on significant monetary recoveries.

To maximize both the incarceration and economic penalties on those who defraud the government, my office developed a new “parallel proceedings” policy to allow criminal and civil attorneys to investigate fraud targets simultaneously to determine whether a criminal tool or a civil tool is the best approach in a particular case.

### **EDVA’s Tactical Shift**

Having discussed the macro strategic shift, let me outline changes we’ve made to our tactical and operational game plan in an effort to detect frauds earlier.

First, we are aggressively using covert investigative techniques in white collar cases, including court-authorized wiretaps and consensually recorded phone calls. While Congress initially created the wiretap statute to attack organized crime, it is a powerful tool against any conspirators who communicate with one another to game out the crime.

EDVA has used covert techniques for several years in a number of cases:

- In the recent prosecution of **Lee Farkas** for the \$3 billion fraud resulting in the collapse of Colonial Bank, we had cooperating witnesses make consensual phone recordings with the defendant;
- In a recent pump-and-dump securities fraud case (against **Phil Ofill**) we used wiretaps;
- In a ponzi scheme case a few years ago we used bugs and video cameras (against **Brown Investment Services**) to capture evidence of fraud occurring in the defendant’s office; and

We are continuing to use these covert investigative techniques in a number of ongoing criminal cases to disrupt the fraud as early as possible.

Second, let me mention two EDVA cases where we brought charges while the fraud was ongoing, undoubtedly disrupting the scheme and preventing further losses.

- **Brown Investment Services**. The CFTC referred an investment scam involving trading in the foreign currency market to EDVA after retail investors reported suspiciously large returns. The defendant had become so successful that he had recently raised the minimum investment from \$5,000 to \$50,000 to give the fraud the aura of exclusivity. Because of the synergy between the CFTC and our law enforcement partners, the fraud was dismantled at an early stage, when the losses had only hit \$10 million. The defendant pled guilty and was sentenced to 12.5 years.
- **Golden Summit**. In another case, the SEC began investigating an investment house that was selling unregistered securities, then brought in EDVA when they realized it was a ponzi scheme that had fleeced investors to the tune of \$20 million. EDVA quickly

executed search warrants, shut it down, and had a receiver appointed to preserve assets -- and again put the brakes on what would have been an escalating fraud. The defendant pled guilty and was sentenced to over 5 years in prison.

Finally, let me talk briefly about a final tactical shift EDVA has made – a focus on prosecuting the “gatekeepers” of fraud – that is, the lawyers or senior managers who facilitate the fraud. We have recognized an increase in the bad guys using outside counsel to facilitate the frauds by giving the businesses an air of legitimacy that they otherwise wouldn't have.

Last year, for example, EDVA prosecuted **Phil Offill**. Offill had been an enforcement attorney at the SEC for 15 years and during the fraud scheme was the head of the securities practice at a Dallas law firm. Offill was convicted of a pump-and-dump scheme that involved more than \$10 million in losses. It was a case referred to EDVA by FINRA and involved one of the first significant gatekeeper prosecutions by DOJ. Offill used his background to teach others how to commit the fraud in a way he thought would make it very difficult to uncover or figure out. Offill was sentenced to 8 years in prison.

EDVA has also charged in-house counsel in significant frauds. In the recent **A&O** case – a \$100 million fraud by a Texas hedge fund – we convicted the general counsel for his role in the fraud. We also convicted the general counsel in the **Okun** case several years ago – a \$132 million fraud scheme involving a qualified intermediary.

### EDVA's Deterrence

Finally, let me conclude by briefly discussing the role EDVA is playing in deterring future financial crimes.

Unlike many of types of criminal behavior, financial fraud is not reactive. You'll never hear defense counsel arguing a “heat of passion “or duress defenses. Financial fraudsters make calculated, rational decisions that the rewards of the fraud – million dollar mansions, airplanes, luxury sports cars, art collections, 15 carat rings — outweigh the risks of getting caught. Fraudsters who rob the life savings of their victims should spend the rest of their lives – or at least a big chunk of it – behind bars.

EDVA's recent white collar cases have resulted in some of the toughest sentences handed down by federal judges in the country. The days of white collar crooks getting a slap on the wrist -- at least those who were not house-hold names like Ivan Boesky or Michael Milken -- are long over in EDVA:

- **Edward Okun** – sentenced to 100 years for a \$132 million fraud;
- **Adley Abdulwahab** and **Christian Almendinger** – were sentenced to 60 years and 45 years, respectively, for their roles in the \$100 million **A&O** fraud scheme;
- **Lee Farkas** – sentenced to 30 years for the \$3.5 billion fraud scheme that brought down Colonial Bank and the largest privately held mortgage company;

- **Troy Titus** – sentenced to 30 years for a \$12 million ponzi scheme;
- **Howard Welsh** and **Hope Thasher** were sentenced to 20 years and 15 years, respectively, for their role in a \$35 million ponzi scheme;
- **Justin French** – sentenced to 16 years for a \$20 million tax credit fraud scam;
- **James Brown** – was sentenced to 12.5 years in prison for a \$10 million ponzi scheme;
- **Gregory Cronin** – was sentenced to 12 years for a \$7 million stock fraud scam; and
- **Phil Offill** – received 8 years for a \$10 million pump and dump investor scam.

Indeed, in sentencing Lee Farkas to 30 years in prison, Judge Brinkema summed up her thinking this way:

*“White collar crime is done with premeditation, with time to think. This crime went on for seven years. And that’s the type of criminal behavior that can be affected by a rational calculus. And so, it is in these types of crimes, different from crimes of violence or crimes of passion ... [that] the impact of a high sentence has the potential for real social benefit in terms of deterring others who might think about playing fast and loose with accounting principles, fast and loose with the regulators. They’d think twice knowing that if caught the price to be paid is extremely severe.”*

Judge Brinkema is right –the threat of spending 100 years, or 60 years, or 45 years in federal prison can begin to change corporate culture and behavior.

### **Challenges**

I’ve taken the last 20 minutes to summarize the last 20 months of EDVA’s efforts to broaden our strategic focus, to shift our tactical plans, and to pursue tough sentences of incarceration, all in pursuit of detecting, disrupting and deterring financial fraud.

While I have shared some of our successes, I hope I’ve not made it sounds too easy. Financial fraud enforcement can be tough. There are challenges in white collar cases which don’t arise in regulatory or civil enforcement, and indeed don’t even always arise in other types of criminal prosecutions:

- Fraud investigations can take months or years before a decision to charge – or even to decline to prosecute – can be made;
- Determining when a crime occurred is not always as easy it as you might think. Proving beyond a reasonable doubt that a corporate executive had willful, criminal intent – rather than just being greedy, reckless or stupid – is a very high burden (and should be);
- Targets of white collar investigations sometimes raise advice of counsel defenses, or disclosure to auditor defenses, which can make proving criminal intent even tougher;
- Grand jury secrecy rules prevent the Justice Department from explaining to the public why it decided not to charge a corporation or a defendant in an alleged fraud. If the evidence doesn’t support a criminal prosecution (as opposed to civil enforcement or

regulatory action) we have an ethical obligation as officers of the court to not go forward.

While the cases we bring get all the attention, an important part of a prosecutor's job is not bringing the case where a crime didn't occur or where the evidence simply doesn't support a crime which may have occurred. Just because there is smoke doesn't always mean there is fire.

### **Conclusion**

Let me conclude where I started, courtesy of Michael Lewis. After chronicling the junk bond crisis of the 1980s in "Liar's Poker," Lewis wrote last year:

*"I never imagined that the future reader might look back on any [that] and say 'how quaint'. How innocent. Not for a moment did I suspect that the financial 1980s would last for two full decades longer, or that the difference in degree between Wall Street and ordinary economic life would swell to a difference in kind."*

I wonder whether Michael Lewis will be writing about a new financial fraud 20 years from now?

The very title of this conference – "the future of financial fraud" – is not some pedantic academic exercise. This new research center can play a vital role in helping look around the corner, educating investors and injecting truth into the financial markets. It is a vitally important mission and I applaud the center for taking it on.

Thanks again for inviting me to share the view from EDVA.