Chapter Fourteen: White Collar Crime

Chapter Overview:

The term “white collar crime” is used to refer to a category of crime that is carried out by professionals, otherwise known as white collar workers. This category includes certain environmental crimes, violations of standards of occupational health and safety, securities fraud, mail and wire fraud, health care fraud, money laundering, antitrust violations, and public corruption.

The category of environmental crime encompasses a great variety of different criminal acts, such as pollution of the air and water and the illegal dumping of waste materials. Such acts are criminalized due to the danger they pose to people who are exposed to their effects. There have been cases, for example, of individuals who reside in communities where hazardous waste is improperly disposed facing serious complications of health. Threats to health and safety are also of concern for employers, who are legally required to maintain certain standards to protect their employees. For the most part such issues are addressed in civil cases whereby employees seek financial compensation for harms incurred at the workplace.

The heading of white collar crime also covers several types of fraud. Securities fraud involves fraudulent activity with relation to stock and the stock market, such as insider trading and misrepresentation of the value of stock. Mail and wire fraud encompasses a variety of criminal acts itself, specifically those which involve an intent to defraud individuals through the use of communication sent through the mail or various forms of wire. Health care fraud is a crime by which individuals fraudulently obtain an advantage from a health care benefit program. An example of such a crime would be a health care professional filing fraudulent insurance claims to receive payment for services never rendered.

When criminals make monetary gains through illegal acts they often wish to conceal the source of that income to protect themselves from prosecution. The way this is done is through the crime of money laundering. To launder money is to conceal the source of income, such as by creating the appearance of employment by a legitimate business.

Individuals or organizations can also commit crimes by violating antitrust laws, which seek to ensure a fair marketplace. Two elements are required for a conviction of this crime. The first is that two or more parties knowingly formed a contract or conspiracy with each other, and the second is that said contract or conspiracy either caused or had the potential to cause a restraint of interstate trade of a degree deemed unacceptable by the law.

The final white collar crime addressed by this chapter is public corruption, otherwise called crimes of official misconduct. These are crimes by which an individual carries out corrupt behaviors in his or her capacity as a public official. The most common form of public corruption is bribery, by which an official accepts some gain in exchange for an official act or decision. In this chapter of the Florida supplement you will learn what Florida statues specifically address the issues of white collar crime, as well as read Virginia case law exhibiting the application of such

statutes.

I. Environmental Crimes

Section Introduction: The seriousness of environmental crimes stems from the fact that they have the potential to put so many people's health and safety in danger. There are a variety of laws that are intended to protect people from such violations. Below are the relevant Virginia statutes.

Virginia Code § 62.1-44.5. Prohibition of waste discharges or other quality alterations of state waters except as authorized by permit; notification required.
A. Except in compliance with a certificate issued by the Board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;

2. Excavate in a wetland;

3. Otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; or

4. On and after October 1, 2001, conduct the following activities in a wetland:
   a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
   b. Filling or dumping;
   c. Permanent flooding or impounding; or
   d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

5. Discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land disturbing activities unless in compliance with a permit issued pursuant to Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1.

B. Any person in violation of the provisions of subsection A who discharges or causes or allows (i) a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters or (ii) a discharge that may reasonably be expected to enter state waters shall, upon learning of the discharge, promptly notify, but in no case later than 24 hours the Board, the Director of the Department of Environmental Quality, or the coordinator of emergency services appointed pursuant to § 44-146.19 for the political subdivision reasonably expected to be affected by the discharge. Written notice to the Director of the Department of Environmental Quality shall follow initial notice within the time frame specified by the federal Clean Water Act.

Virginia Code § 10.1-1309.1. Special orders; penalties.
The Board is authorized to issue special orders in compliance with the Administrative Process Act (§ 2.2-4000 et seq.) requiring that an owner file with the Board a plan to abate, control,

prevent, remove, or contain any substantial and imminent threat to public health or the environment that is reasonably likely to occur if such source ceases operations. Such plan shall also include a demonstration of financial capability to implement the plan. Financial capability may be demonstrated by the establishment of an escrow account, the creation of a trust fund to be maintained within the Department, submission of a bond, corporate guarantee based on audited financial statements, or such other instruments as the Board may deem appropriate. The Board may require that such plan and instruments be updated as appropriate. The Board shall give due consideration to any plan submitted by the owner in accordance with §§ 10.1-1410, 10.1-1428, and 62.1-44.15:1.1, in determining the necessity for and suitability of any plan submitted under this section.

For the purposes of this section, "ceases operation" means to cease conducting the normal operation of a source which is regulated under this chapter under circumstances where it would be reasonable to expect that such operation will not be resumed by the owner at the source. The term shall not include the sale or transfer of a source in the ordinary course of business or a permit transfer in accordance with Board regulations.

Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be liable to the Commonwealth and any political subdivision thereof for the costs incurred in abating, controlling, preventing, removing, or containing such harm or threat.

Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, will be guilty of a Class 4 felony.

Virginia Code § 10.1-603.14. Penalties, injunctions, and other legal actions.
A. Any person who violates any provision of this article, or of any regulations or ordinances adopted hereunder, including those adopted pursuant to the conditions of an MS4 permit or who fails, neglects or refuses to comply with any order of the permit issuing authority, the Department, Board, or court, issued as herein provided, shall be subject to a civil penalty not to exceed $32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense. The Board shall adopt a regulation establishing a schedule of civil penalties to be utilized by the permit issuing authority in enforcing the provisions of this article. The Board, Department, or permit issuing authority for the locality wherein the land lies may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate circuit court. Any civil penalties assessed by a court as a result of a summons issued by a locality shall be paid into the treasury of the locality wherein the land lies, except where the violator is the locality itself, or its agent. When the penalties are assessed by the court as a result of a summons issued by the Board or Department, or where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Management Fund established pursuant to § 10.1-603.4:1. Such civil penalties paid into the

treasury of the locality in which the violation occurred are to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

B. Any person who willfully or negligently violates any provision of this article, any regulation or order of the Board, order of the permit issuing authority or the Department, ordinance of any locality, any condition of a permit, or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months and a fine of not less than $2,500 nor more than $32,500, either or both. Any person who knowingly violates any provision of this article, any regulation or order of the Board, order of the permit issuing authority or the Department, ordinance of any locality, any condition of a permit or any order of a court issued as herein provided, or who knowingly makes any false statement in any form required to be submitted under this article or knowingly renders inaccurate any monitoring device or method required to be maintained under this article, shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not less than $5,000 nor more than $50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine of not less than $10,000. Each day of violation of each requirement shall constitute a separate offense.

C. Any person who knowingly violates any provision of this article, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than 15 years and a fine of not more than $250,000, either or both. A defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not exceeding the greater of $1 million or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person under this subsection.

D. Violation of any provision of this article may also include the following sanctions:

1. The Board, Department, or the permit issuing authority may apply to the circuit court in any jurisdiction wherein the land lies to enjoin a violation or a threatened violation of the provisions of this article or of the local ordinance without the necessity of showing that an adequate remedy at law does not exist.

2. With the consent of any person who has violated or failed, neglected or refused to obey any ordinance, any condition of a permit, any regulation or order of the Board, any order of the permit issuing authority or the Department, or any provision of this article, the Board, Department, or permit issuing authority may provide, in an order issued against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in this section. Such civil charges shall be instead of any appropriate civil penalty that could be imposed under this section. Any civil charges collected shall be paid to the locality or state treasury pursuant to subsection A.

II. Occupational Health and Safety

Section Introduction: Occupational health and safety is protected by the Workers' Compensation Law. Redress for violation of this statute is typically sought in civil court.

Virginia Code § 65.2-806. Criminal penalties.
In addition to the civil penalties assessed pursuant to § 65.2-805, any employer who knowingly and intentionally fails to comply with the provisions of § 65.2-800 or 65.2-804 is guilty of a Class 2 misdemeanor.

Venue for the prosecution hereof when there is an injury shall lie in the county or city wherein the injury occurred.

Virginia Code § 65.2-819. Penalty for violation of certain provisions.
Any person or persons who shall in this Commonwealth (i) act or assume to act as agent for any such insurance carrier whose authority to do business in this Commonwealth has been suspended, while such suspension remains in force, (ii) fail to comply with requirements or standards imposed under §§ 65.2-817 and 65.2-818 or of Chapter 10 (§ 65.2-1000 et seq.) of this title, or (iii) willfully make a false or fraudulent statement of the business or condition of any such insurance carrier, or a false or fraudulent return as therein provided, shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than $100 nor more than $1,000 or by imprisonment for not less than ten nor more than ninety days, or both such fine and imprisonment, in the discretion of the court or jury trying the case.

III. Securities Fraud

Section Introduction: There are multiple types of securities fraud recognized under Virginia law, reflected in multiple state statutes. Some relevant statutes are listed below, along with a Virginia case on securities fraud.

Virginia Code § 13.1-502. Unlawful offers and sales.
It shall be unlawful for any person in the offer or sale of any securities, directly or indirectly,

(1) To employ any device, scheme or artifice to defraud, or

(2) To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) To engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon the purchaser.

Virginia Code § 13.1-503. Unlawful advice.

A. It shall be unlawful for any person who receives directly or indirectly any consideration from another person primarily for advising such other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise,

1. To employ any device, scheme, or artifice to defraud such other person,

2. To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon such other person,

3. Acting as principal for his own account, knowingly to sell any security to or purchase any security from a client, or acting as broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction. The prohibitions of this subdivision shall not apply to any transaction with a customer of a broker-dealer if such broker-dealer is not acting as an investment advisor in relation to such transaction, or

4. To engage in dishonest or unethical practices as the Commission may define by rule.

B. In the solicitation of advisory clients, it shall be unlawful for any person to make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

C. Except as may be permitted by rule or order of the Commission, it shall be unlawful for any investment advisor to enter into, extend, or renew any investment advisory contract unless it provides in writing:

1. That the investment advisor shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

2. That no assignment of the contract may be made by the investment advisor without the consent of the other party to the contract; and

3. That the investment advisor, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

D. Subdivision 1 of subsection C of this section shall not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date.

E. "Assignment" as used in subdivision 2 of subsection C of this section includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. If the investment advisory is a partnership, no assignment of an investment advisory contract is considered to result from the death of withdrawal of a minority of the members of the investment advisor having only a minority interest in the business of the investment advisor, or from the admission to the investment advisor of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in

the business.

F. The Commission may by rule or order adopt exemptions from subdivision 3 of subsection A and subdivisions 1, 2 and 3 of subsection C of this section where such exemptions are consistent with the public interest and within the purposes fairly intended by the policy and provisions of this chapter.

Virginia Code § 13.1-516. Misleading filings.
It shall be unlawful for any person willfully to make or cause to be made, in any document filed with the Commission or in any proceeding under this chapter, any statement which is, at the time and in the light of the circumstances in which it is made, false or misleading in any material respect.

Virginia Code § 13.1-520. Crimes.
A. Any person who shall knowingly and willfully make, or cause to be made, any false statement in any book of account or other paper of any person subject to the provisions of this chapter, or knowingly and willfully exhibit any false paper to the Commission, or who shall knowingly and willfully commit any act declared unlawful by this chapter, with the intent to defraud any purchaser of securities or user of investment advisory services or with intent to deceive the Commission as to any material fact for the purpose of inducing the Commission to take any action or refrain from taking any action pursuant to this chapter, shall be guilty of a Class 4 felony.

B. Any person who shall knowingly make or cause to be made any false statement in any book of account or other paper of any person subject to the provisions of this chapter or exhibit any false paper to the Commission or who shall commit any act declared unlawful by this chapter shall be guilty of a Class 1 misdemeanor.

C. Prosecutions under this section shall be instituted by indictments in the courts of record having jurisdiction of felonies within three years from the date of the offense.

***Shavin v. Commonwealth,* 17 Va.App. 256, 437 S.E.2d 411 (1993)**

Procedural History: Appellant was indicted on February 17, 1987, and subsequently filed various discovery requests and pre-trial motions. Several other employees of CDI and affiliated LaRouche organizations were also indicted. Orally, on June 25, 1987, and in writing, on August 26, 1987, appellant agreed to waive his speedy trial rights under Code § 19.2-243. The parties disagree, however, as to the extent of that waiver. Although the Commonwealth asserts that this was a general waiver, appellant argues that the waiver applied only so long as necessary to resolve his pending pre-trial claims.

It appears from the record that the trial judge thought the defendants' waiver of their right to a speedy trial was a general waiver. In its order of October 31, 1988, it noted the following:

> "Defense counsel moved the Court to continue all other cases generally pending disposal of the *Ascher* and *Billington* cases, which motion was granted, noting that *all defendants have waived their rights to speedy trial."* This appeal followed.

Issue(s): On appeal, appellant contends that the trial court erred (1) in holding that the evidence was sufficient to prove that he was a seller or offeror of the instrument and that the instrument was a security; (2) in finding that the security did not fall within the statutory provision exempting sales to corporations and investment companies; (3) in finding that application of the statute and its exemptions did not require it to make findings of fact concerning "the intent of a person who does not really exist" - the undercover officer.

Facts: In the fall of 1986, Special Agent Larry Burchett was working undercover, using the name Larry Parker, to investigate an organization affiliated with Lyndon LaRouche. In that capacity he had several conversations with Rochelle Ascher, who encouraged him to donate or loan money to the organization to advance its political goals. Although Ascher told Burchett that loans were always paid back on time and offered competitive interest rates, Burchett said he would not consider making such a loan unless he could tour the organization's offices. Ascher then made arrangements for Richard Freeman to take Burchett on a tour of the offices of Caucus Distributors, Inc. (CDI), a LaRouche organization located in Leesburg, Virginia.

Burchett met Freeman on September 18, 1986, for a tour of CDI's offices. During that time, Freeman expounded on many of the same ideals of LaRouche that Ascher had already covered and attempted to get Burchett to purchase several of their publications. Burchett then explained that he did not wish to purchase any more LaRouche literature and "was there at [Rochelle Ascher's] request, to determine whether or not I would consider lending money to their organization after I saw that the organization did, in fact, exist." Freeman then proceeded to explain the loan process, which he said would take the form of a promissory note which "would be filled out and signed by the officers of their corporation and sent to [Burchett] within 2 days." When Burchett told Freeman he did not feel comfortable turning over the check before receiving the note, "Freeman ... stated that he would have a temporary loan agreement typed out stating the conditions of the loan, the amount, and the interest to be paid." Freeman then left the room and returned with a piece of paper entitled "Temporary Loan Agreement," which included the terms of the loan and the signatures of Freeman and David Shavin. Freeman also stated that "they" would rather pay the interest on the note annually, rather than quarterly, to which Burchett agreed. Burchett then presented Freeman with a check for $5,000, drawn on an account in the name of Larry D. Parker, trading as Parker Properties. Burchett had earlier represented to Ascher, Freeman and Haight, another of their associates, that he was a real estate investor and owned a number of companies.

Burchett then received two letters acknowledging his loan. One letter was signed by George Canning, Secretary, with a carbon copy to Richard Freeman. The other letter was signed by David Shavin, for Caucus Distributors, Inc. The letter of indebtedness signed by Canning was one of approximately 5,000 such letters routinely issued by CDI. However, the temporary loan agreement and letter signed by Shavin are believed to be unique. None of these documents were registered with the State Corporation Commission.

Holding: Affirmed.

Opinion: ELDER, Judge.

Appellant contends first that the evidence was insufficient to show that he was a seller or offeror

under Code § 13.1-507. That section makes it unlawful "to offer or sell any security unless the security is registered under this chapter or the security or transaction is exempted by this chapter." Under Code § 13.1-501,

> "Offer" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value [and] "[s]ale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

Appellant argues that the United States Supreme Court interpreted similar language used in the Federal Securities Act in *Pinter v. Dahl,* 486 U.S. 622, 108 S.Ct. 2063, 100 L.Ed.2d 658 (1988), and that this interpretation should be applied to the Virginia Act. Although the provision at issue in *Pinter* dealt with civil rescission as opposed to criminal penalties, we nevertheless find *Pinter* instructive. Contrary to appellant's assertions, however, we believe *Pinter* makes clear that appellant *was* a seller or offeror of securities under Code § 13.1-507 of the Virginia Act.

At issue in *Pinter* was the interpretation of 15 U.S.C. § 77 *l* , which states that "Any person who ... offers or sells a security in violation of section 77e of this title [which prohibits use of U.S. mails to sell or deliver an unregistered security] ... shall be liable to the person purchasing such security who may sue ..." subject to certain limitations. The Federal Securities Act defines the terms "offer" and "sell" in essentially the same fashion as the Virginia Act. *See* 15 U.S.C.A. § 77b(3) (1981). The facts in *Pinter* were very different from those presented here. Petitioner Pinter, a securities dealer, sold unregistered securities to respondent Dahl, who then gratuitously assisted family and friends in making similar purchases. 486 U.S. at 625-26, 108 S.Ct. at 2067. The issue in *Pinter* was whether Dahl was a seller or offeror of the securities under the Federal Act. The Court noted that, "[a]t the very least, ... the language of [the Federal Act] contemplates a buyer-seller relationship not unlike traditional contractual privity ... [such that it] imposes liability on the owner who passed title, or other interest in the security, to the buyer for value." *Id.* at 642, 108 S.Ct. at 2076.

Only because "Dahl ... was not a seller in this conventional sense" did the Court find it necessary to determine whether "liability extends to persons other than the person who passes title." *Id.* As a result, the Court focused the bulk of its discussion on whether one who was not a transferor of title and received no financial gain from the sales could nevertheless be a seller or offeror under the Act. In so doing, it analyzed the process of soliciting the buyer, noting that this was "perhaps the most critical stage of the selling transaction." *Id.* at 646, 108 S.Ct. at 2078. It did not hold, however, that participation in the solicitation was necessary for liability if one was a transferor of title or even partial title. *See id.* at 642, 108 S.Ct. at 2076; *see also Rubin v. United States*, 449 U.S. 424, 430, 101 S.Ct. 698, 701, 66 L.Ed.2d 633 (1981) ("It is not essential under the terms of the Act that full title pass to a transferee for the transaction to be an 'offer' or a 'sale' ").

Clearly, the transfer of full or partial title is a sale under the Act. Although the United States Supreme Court has not considered the issue, we agree with the Second Circuit's conclusion that a contract for the issuance or transfer of a security also may qualify as a sale under the Act. *Yoder v. Orthomolecular Nutrition Inst.,* 751 F.2d 555, 559-60 (2d Cir.1985); *see also Llanos v.*

United States, 206 F.2d 852, 854 (9th Cir.1953), *cert. denied,* 346 U.S. 923, 74 S.Ct. 310, 98 L.Ed. 417 (1954). We hold, therefore, that appellant's execution of the temporary loan agreement constituted the sale as defined in the Virginia Securities Act.

Appellant also contends that the evidence was insufficient to support his conviction because it does not show that the temporary loan agreement was a security. Clearly, the subsequently issued document-a promissory note signed by George Canning-was a security. Indeed, we reached just such a conclusion in *Ascher v. Commonwealth*, 12 Va.App. 1105, 1120-21, 408 S.E.2d 906, 91516 (1991), *cert. denied,* 506 U.S. 865, 113 S.Ct. 190, 121 L.Ed.2d 134 (1992), in which we analyzed the very same note. We also conclude that the temporary loan agreement executed by appellant and George Freeman was a security. As defined under the Virginia Act, " '[s]ecurity' means any note; stock; ... bond; debenture; [or] evidence of indebtedness ... or any ... temporary or interim certificate for ... any of the foregoing." Code § 13.1-501. The temporary loan agreement at issue here falls squarely within two of these categories as both evidence of indebtedness and an interim certificate for a note. *See also Yoder*, 751 F.2d at 559-60 (contract for issuance or transfer of a security may qualify as sale of security under Federal Securities Act); *Lawrence v. S.E.C.*, 398 F.2d 276, 279-80 (1st Cir.1968) (a broker's written commitment to deliver shares of stock when issued was security under the Act). We hold, therefore, that the evidence was sufficient to support the trial court's finding that the temporary loan agreement was a security.

… [A]ppellant argues that the evidence was insufficient to support his conviction because it required that the court make a finding of intent as to a fictitious person, the Larry Parker portrayed by Agent Burchett. After examining the statutes under which appellant was convicted, we disagree. Code § 13.1-507 makes it unlawful "to offer or sell any security unless the security is registered ... or exempt [from registration]." Because we concluded earlier in this opinion both that the temporary loan agreement issued to Burchett was an unregistered security and that appellant was a seller or offeror of that security, the evidence clearly supports his conviction. Although appellant argues that the buyer's intent is relevant to whether the exemption of § 13.1-514(B)(6) applies, that subsection gives no such indication. It exempts from certain registration requirements "[a]ny offer or sale to a corporation [or] investment company...." As stated above, it provides no exception for situations in which appellant may reasonably have believed that the buyer was operating in this context.

In addition, although the buyer's intent may be used as evidence by the seller in an attempt to show that the note is not a security, *see Ascher,* 12 Va.App. at 1123, 408 S.E.2d at 918 (holding that if "seller is raising operational funds for an enterprise and the buyer is interested in profit, the instrument is most likely to be a 'security' "), such evidence is not relevant here because we have determined, as stated above, that the temporary loan agreement at issue is a security. *Id.* at 1120-21, 408 S.E.2d at 915-16. Even if we had not already made such a determination, the absence of evidence as to the buyer's intent would merely reduce the number of avenues under *Reves v. Ernst & Young*, 494 U.S. 56, 66-67, 110 S.Ct. 945, 951-52, 108 L.Ed.2d 47 (1990), by which a defendant may seek to rebut the presumption that the agreement is a security. The absence of such evidence does not invalidate appellant's conviction.

For the reasons set forth above, we affirm appellant's conviction.

Critical Thinking Question(s): How does white-collar crime differ from other forms of theft? What are some of the practical pitfalls/obstacles to securing convictions for white-collar offenses? In the present case, how can someone be held culpable for a criminal act when s/he did not physically engage in the process of committing the crime? How far should the government go in holding "owners" and "managers" responsible for the acts of their agents?

IV. Health Care Fraud

Section Introduction: There are two different types of health care fraud addressed by the statutes below. One is a crime in which an individual defrauds a health care provider to obtain services. The other is a crime by which a health care provider defrauds an insurance provider to obtain compensation for services not actually rendered.

§ 18.2-204. False statement for the purpose of defrauding industrial sick benefit company. Any agent, physician or other person who shall knowingly or willfully make any false or fraudulent statement or representation of any material fact:

(1) In or with reference to any application for insurance in any industrial sick benefit company licensed, or which may be licensed, to do business in this Commonwealth,

(2) As to the death or disability of a policy or certificate holder in any such company,

(3) For the purpose of procuring or attempting to procure the payment of any false or fraudulent claim against any such company, or

(4) For the purpose of obtaining or attempting to obtain any money from or benefit in any such company,

shall be guilty of a Class 3 misdemeanor.

Any such person who shall willfully make a false statement of any material fact or thing in a sworn statement as to the death or disability of a policy or certificate holder in any such company for the purpose of procuring payment of a benefit named in the policy or certificate of such holder, shall be guilty of perjury, and shall be proceeded against and punished as provided by the statutes of this Commonwealth in relation to the crime of perjury.

V. Racketeering

Section Introduction: Virginia provides two statutes regarding racketeering and money laundering. The first, the Virginia Racketeer Influenced and Corrupt Organization (RICO) Act, is frequently used in the prosecution of gang members. The second is the more general prohibition against money laundering.

§ 18.2-512 et seq. Virginia Racketeer Influenced and Corrupt Organization (RICO) Act. Racketeering Offenses.

A. It shall be unlawful for an enterprise, or for any person who occupies a position of organizer, supervisor, or manager of an enterprise, to receive any proceeds known to have been derived directly from racketeering activity and to use or invest an aggregate of $10,000 or more of such proceeds in the acquisition of any title to, or any right, interest, or equity in, real property, or in the establishment or operation of any enterprise.

B. It shall be unlawful for any enterprise, or for any person who occupies a position of organizer, supervisor, or manager of an enterprise, to directly acquire or maintain any interest in or control of any enterprise or real property through racketeering activity.

C. It shall be unlawful for any person employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through racketeering activity.

D. It shall be unlawful for any person to conspire to violate any of the provisions of subsection A, B, or C.

E. Each violation of this section is a separate and distinct felony punishable in accordance with § 18.2-515.

Criminal penalties; forfeiture.
A. Any person or enterprise convicted of engaging in activity in violation of the provisions of § 18.2-514 is guilty of a felony punishable by imprisonment for not less than five years nor more than 40 years and a fine of not more than $1 million. A second or subsequent offense shall be punishable as a Class 2 felony and a fine of not more than $2 million.

B. The court may order any such person or enterprise to be divested of any interest in any enterprise or real property identified in § 18.2-514; order the dissolution or reorganization of such enterprise; and order the suspension or revocation of any license, permit, or prior approval granted to such enterprise or person by any agency of the Commonwealth or political subdivision thereof.

C. All property, real or personal, including money, used in substantial connection with, intended for use in the course of, or traceable to, conduct in violation of any provision of § 18.2-514 is subject to civil forfeiture to the Commonwealth. The forfeiture proceeding shall be conducted pursuant to the provisions of Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2.

Prohibition of illegal money transmitting.
A. Any person who controls, manages, or owns all or part of an enterprise, engaged in money transmission as defined in § 6.1-370, and transmits money, which he knows or should have known was derived from or traceable to racketeering activity, is guilty of a Class 6 felony.

B. All property, real or personal, including money, used in substantial connection with, intended for use in the course of, or traceable to, conduct in violation of any provision of subsection A is subject to civil forfeiture to the Commonwealth. The forfeiture proceeding shall be conducted pursuant to the provisions of Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2.

§ 18.2-246.3. Money laundering; penalties

A. It shall be unlawful for any person knowingly to conduct a financial transaction where the person knows the property involved in the transaction represents the proceeds of an activity which is punishable as a felony under the laws of the Commonwealth, another state or territory of the United States, the District of Columbia, or the United States. A violation of this section is punishable by imprisonment of not more than forty years or a fine of not more than $500,000 or by both imprisonment and a fine.

B. Any person who, for compensation, converts cash into negotiable instruments or electronic funds for another, knowing the cash is the proceeds of some form of activity which is punishable as a felony under the laws of the Commonwealth, another state or territory of the United States, the District of Columbia, or the United States, shall be guilty of a Class 1 misdemeanor. Any second or subsequent violation of this subsection shall be punishable as a Class 6 felony.

VI. Antitrust Violations

Section Introduction: Antitrust violations endanger the freedom and fairness of an open market. For this reason, state and federal statutes have been put in place to protect the fair market by preventing certain kinds of business practices. Below are Virginia statutes which prohibited such unlawful acts within the state.

Virginia Code § 59.1-9.1. Short title.

This chapter may be known and cited as the "Virginia Antitrust Act."

Virginia Code § 59.1-9.2. Purpose of chapter.

The purpose of this chapter is to promote the free market system in the economy of this Commonwealth by prohibiting restraints of trade and monopolistic practices that act or tend to act to decrease competition. This chapter shall be construed in accordance with the legislative purpose to implement fully the Commonwealth's police power to regulate commerce.

Virginia Code § 59.1-9.5. Contracts, etc., in restraint of trade unlawful.

Every contract, combination or conspiracy in restraint of trade or commerce of this Commonwealth is unlawful.

Virginia Code § 59.1-9.6. Monopolies unlawful.

Every conspiracy, combination, or attempt to monopolize, or monopolization of, trade or commerce of this Commonwealth is unlawful.

Virginia Code § 59.1-9.7. Discriminatory practices unlawful; proof; payment or acceptance of certain commissions, etc., unlawful.

(a) It is unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities or services of like grade and quality, where either or any of the purchasers involved in such commerce are in competition, where such commodities or services are

sold for use, consumption or resale within the Commonwealth and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them; provided, that nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the different methods or quantities in which such commodities or services are to such purchasers sold or delivered; and provided further, that nothing herein contained shall prevent persons engaged in selling commodities or services in commerce from selecting their own customers in bona fide transactions and not in restraint of trade; and provided further, that nothing herein contained shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) Upon proof being made, at any suit on a complaint under this section, that there has been discrimination in price or services or facilities furnished or in payment for services or facilities to be rendered, the burden of rebutting the prima facie case thus made by showing justification shall be upon the person charged with a violation of this section; provided, however, that nothing herein contained shall prevent a seller rebutting the prima facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

(c) It is unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for and not exceeding the actual cost of such services rendered in connection with the sale or purchase of goods, wares or merchandise.

(d) It is unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale or offering for sale of any products, commodities or services manufactured, sold or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products, commodities or services.

(e) It is unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale or offering for sale of such commodity so purchased upon terms not accorded

to all purchasers on proportionally equal terms.

(f) It is unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price that is prohibited by this section.

Virginia Code § 59.1-9.8. Forum; restraining orders and injunctions; penalties.
Actions and proceedings for violations of this chapter shall be brought in the circuit courts of this Commonwealth. Those courts may issue temporary restraining orders and injunctions to prevent and restrain violations of this chapter, and may award the damages and impose the civil penalties provided herein. They may also grant mandatory injunctions reasonably necessary to eliminate violations of this chapter.

Virginia Code § 59.1-9.11. Penalty for flagrant violations.
In any action or proceeding brought under § 59.1-9.15 (a) the court may assess for the benefit of the Commonwealth a civil penalty of not more than $100,000 for each willful or flagrant violation of this chapter. No civil penalty shall be imposed in connection with any violation for which any fine or penalty is imposed pursuant to federal law.

VIII. Public Corruption

Section Introduction: Public corruption is a danger at all levels of government. For this reason, there are laws governing the conduct of public officials at both the state and federal level. In this section you will find the relevant portions of the State and Local Government Conflict of Interests Act. The statutes prohibiting bribery of public officials is listed below as well.

Virginia Code § 2.2-3103. Prohibited conduct.
No officer or employee of a state or local governmental or advisory agency shall:

1. Solicit or accept money or other thing of value for services performed within the scope of his official duties, except the compensation, expenses or other remuneration paid by the agency of which he is an officer or employee. This prohibition shall not apply to the acceptance of special benefits that may be authorized by law;

2. Offer or accept any money or other thing of value for or in consideration of obtaining employment, appointment, or promotion of any person with any governmental or advisory agency;

3. Offer or accept any money or other thing of value for or in consideration of the use of his public position to obtain a contract for any person or business with any governmental or advisory agency;

4. Use for his own economic benefit or that of another party confidential information that he has acquired by reason of his public position and which is not available to the public; Accept any money, loan, gift, favor, service, or business or professional opportunity that reasonably tends to influence him in the performance of his official

duties. This subdivision shall not apply to any political contribution actually used for political campaign or constituent service purposes and reported as required by Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2;

5. Accept any business or professional opportunity when he knows that there is a reasonable likelihood that the opportunity is being afforded him to influence him in the performance of his official duties;

6. Accept any honoraria for any appearance, speech, or article in which the officer or employee provides expertise or opinions related to the performance of his official duties. The term "honoraria" shall not include any payment for or reimbursement to such person for his actual travel, lodging, or subsistence expenses incurred in connection with such appearance, speech, or article or in the alternative a payment of money or anything of value not in excess of the per diem deduction allowable under § 162 of the Internal Revenue Code, as amended from time to time. The prohibition in this subdivision shall apply only to the Governor, Lieutenant Governor, Attorney General, Governor's Secretaries, and heads of departments of state government;

7. Accept a gift from a person who has interests that may be substantially affected by the performance of the officer's or employee's official duties under circumstances where the timing and nature of the gift would cause a reasonable person to question the officer's or employee's impartiality in the matter affecting the donor. Violations of this subdivision shall not be subject to criminal law penalties; or

8. Accept gifts from sources on a basis so frequent as to raise an appearance of the use of his public office for private gain. Violations of this subdivision shall not be subject to criminal law penalties.

Virginia Code § 2.2-3120. Knowing violation of chapter a misdemeanor.
Any person who knowingly violates any of the provisions of Articles 2 through 6 (§§ 2.2-3102 through 2.2-3119) of this chapter shall be guilty of a Class 1 misdemeanor, except that any member of a local governing body who knowingly violates § 2.2-3112 A or § 2.2-3115 C or E shall be guilty of a Class 3 misdemeanor. A knowing violation under this section is one in which the person engages in conduct, performs an act or refuses to perform an act when he knows that the conduct is prohibited or required by this chapter.

Virginia Code § 18.2-438. Bribes to officers or candidates for office.
If any person corruptly give, offer or promise to any executive, legislative or judicial officer, sheriff or police officer, or to any candidate for such office, either before or after he shall have taken his seat, any gift or gratuity, with intent to influence his act, vote, opinion, decision or judgment on any matter, question, cause or proceeding, which is or may be then pending, or may by law come or be brought before him in his official capacity, he shall be guilty of a Class 4 felony and shall forfeit to the Commonwealth any such gift or gratuity given. This section shall also apply to a resident of this Commonwealth who, while temporarily absent therefrom for that purpose, shall make such gift, offer or promise.
Virginia Code § 18.2-439. Acceptance of bribe by officer or candidate.

If any executive, legislative or judicial officer, sheriff or police officer, or any candidate for such office, accept in this Commonwealth, or if, being resident in this Commonwealth, such officer or candidate shall go out of this Commonwealth and accept and afterwards return to and reside in this Commonwealth, any gift or gratuity or any promise to make a gift or do any act beneficial to such officer or candidate under an agreement, or with an understanding, that his vote, opinion or judgment shall be given on any particular side of any question, cause or proceeding which is or may be by law brought before him in his official capacity or that in such capacity he shall make any particular nomination or appointment or take or fail to take any particular action or perform any duty required by law, he shall be guilty of a Class 4 felony and shall forfeit his office and be forever incapable of holding any office of honor, profit or trust under the Constitution of Virginia. The word candidate as used in this section and § 18.2-438, shall mean anyone who has filed his candidacy with the appropriate electoral official or who is a candidate as defined in subdivision (2) of § 24.1-1.

Essay Questions:

1. Describe how the term “white-collar crime” is distinguished from common forms of “street crime.” How do the offenders, conditions, and victims differ?

2. List and briefly define the various forms of white-collar crime listed in the text.

3. Discuss why the public, and apparently the State, is more concerned with street crime than white-collar crime? Explain the difficulty with pursuing white-collar offenses.