

Prediction Market Case Tests Novel Insider Trading Theory

By **Alex Blanchard** (October 5, 2026)

For decades, the federal government has prosecuted insider trading under the wire fraud statute by treating misappropriated information as the property at stake. The U.S. Department of Justice is now testing an alternative: What if the property is just the money the trader wins?

On April 23, prosecutors from the U.S. Attorney's Office for the Southern District of New York unsealed the first insider trading case involving prediction markets. The indictment charges U.S. Army Master Sergeant Gannon Ken Van Dyke with using classified information about the military operation that captured Venezuelan President Nicolás Maduro to place profitable trades on Polymarket.



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Since then, the case has garnered attention among legal observers, primarily regarding two questions: whether the event contracts that Van Dyke purportedly purchased are swaps under the Commodity Exchange Act, and whether classified information about the Maduro operation is property under the wire fraud statute.

A June Law360 guest article noted the possibility that Van Dyke's fellow bettors, rather than the Army, were the real victims of his trading. The government has now embraced a version of that notion. In its Aug. 19 opposition to Van Dyke's motion to dismiss the indictment, the government argues that even if the classified information is not property, the money Van Dyke won from his trading counterparties is.

This alternative theory is new and difficult to reconcile with how insider trading wire fraud has been prosecuted since the U.S. Supreme Court's seminal 1987 decision in *Carpenter v. U.S.*^[1] If accepted, it would represent a sea change: In any case where misappropriated information is traded for profit, the property inquiry that has driven recent U.S. Court of Appeals for the Second Circuit decisions would become largely beside the point.

How the Theory Emerged

The wire fraud statute — Title 18 of the U.S. Code, Section 1343 — reaches "any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises."^[2] Notwithstanding the disjunctive formulation, the Supreme Court reads the two clauses together, such that in its May 2025 decision in *Kousisis v. U.S.*, it held that the money-or-property requirement "operates as a limitation on the former."^[3]

In other words, a defendant commits wire fraud "only if he both engaged in deception and had money or property as an object of his fraud," according to the Kousisis court.^[4] Significantly, the Supreme Court held in 2023 in *Ciminelli v. U.S.* that the statute is limited in scope, protecting "only traditional property interests."^[5]

The indictment's wire fraud count charges that Van Dyke, "knowing that he had obtained material nonpublic information subject to a duty of confidentiality, and which information has pecuniary value, and was in fact used for [his] pecuniary gain," used that information "to execute and cause others to execute commodities transactions to obtain money in

breach of his duties."[6]

The indictment's factual allegations describe the breach as one running to the government: Van Dyke "breached his duty of trust and confidence to the source of the information, and violated specific commitments [he] had made to the United States regarding the use of the information."[7]

In his motion to dismiss the indictment, Van Dyke attacked the wire fraud count primarily by arguing that the classified information at issue does not constitute "property" as that term has been construed in the context of the federal fraud statutes.

In its opposition, the government articulated an alternative path premised on the phrase "to obtain money." It argues that Van Dyke used his informational advantage to induce Polymarket counterparties — "unaware they were trading against classified operational plans" — to take the losing side of wagers he knew he would win.[8] And, the government adds, "the wire fraud statute has never required that the party deceived be the party whose money is obtained."[9]

Van Dyke's Aug. 26 reply labels this a "new, uncharged theory." It points out that he received his winnings from Polymarket, and that "no one alleges Polymarket was lied to."[10]

Why the Theory Matters

The government's advancement of this backup theory is unsurprising given that two recent Second Circuit decisions have narrowed when information qualifies as property for wire fraud purposes.

In 2022, the Second Circuit held in *U.S. v. Blaszczyk* that confidential agency information about forthcoming Medicare reimbursement changes was not property because the Centers for Medicare & Medicaid Services "is not a commercial entity; it does not sell, or offer for sale, a service or a product." [11] In July 2025, the Second Circuit's *U.S. v. Chastain* decision held that "confidential information does not qualify as a traditional property interest unless it has commercial value to the company that holds it." [12]

The government's counterparty-money theory sidesteps those holdings: Trading profits are money, and money is indisputably a traditional property interest. But Van Dyke's reply identifies the consequence of this move. If trading profits alone could carry the money-or-property element, "the 'property' analyses in *Carpenter*, *Blaszczyk*, *Chastain*, and all related 'insider trading' cases since *Carpenter* was decided in 1987 would have been entirely unnecessary." [13]

The government addresses this point by noting that the wire fraud counts in *Blaszczyk* charged only a scheme to defraud the agency of confidential information, so the question of whether trading profits can be the money obtained was never presented.

That is true as far as it goes, but it underscores the novelty of the theory rather than diminishing it.

In each of the aforementioned cases — the column trades in *Carpenter*, the hedge fund short sales in *Blaszczyk* and the nonfungible token flips in *Chastain* — the defendants plainly sought trading profits. Yet for nearly 40 years, the government framed the object of these schemes as the information, and courts analyzed them that way. The government's

consistent choice to charge the information, even when trading profits were obvious, suggests it understood that counterparty money could not serve as the statutory object.

The Counterparties Were Never the Object

The government's principal doctrinal support is *U.S. v. Greenberg*, a 2016 Second Circuit decision holding that "wire fraud does not require convergence between the parties intended to be deceived and those whose property is sought in a fraudulent scheme."^[14]

But *Greenberg* answered a different question. There, customers had their credit cards charged without authorization, and the misrepresentations were directed at banks and others involved in processing the charges.^[15] The out-of-circuit decisions *Greenberg* joined followed the same pattern: In each, the party that lost money was the target of a scheme to take that money by fraud, even though the lies were told to someone else.^[16]

Van Dyke's counterparties are differently situated. They entered market-priced contracts on an open platform where, as the indictment explains, the share price reflects "the market's real-time assessment of the probability that an event will occur."^[17] The indictment alleges no lie to them, no omission of information obligated to be disclosed and no unauthorized taking.

The government's characterization — that the counterparties were unaware of what Van Dyke knew^[18] — describes an informational disadvantage, not a deception. *Greenberg* allows the deceived party and the injured party to differ; it does not address whether a party that was never the object of any fraud can supply the money-or-property element.

Misappropriation Framework Points the Other Way

The counterparty-money theory is also at odds with the architecture of misappropriation law.

In *U.S. v. O'Hagan*, which adopted the misappropriation theory of insider trading, the Supreme Court explained in 1997 that the essential deception "involves feigning fidelity to the source of information,"^[19] and that in a misappropriation case, "the person or entity defrauded is not the other party to the trade, but is, instead, the source of the nonpublic information."^[20]

The court noted that Chief Justice Warren Burger, dissenting in *Chiarella v. U.S.* in 1980, had envisioned a disclosure obligation running to those with whom the misappropriator trades.^[21] It then observed: "The Government does not propose that we adopt a misappropriation theory of that breadth."^[22] Yet the counterparty-money theory depends on something close to that premise.

O'Hagan also held that if the fiduciary discloses to the source that he plans to trade, "there is no 'deceptive device' and thus no ... violation."^[23] Applied here, the point is striking: Had Van Dyke told the Army of his plans and traded anyway, his counterparties would have stood in exactly the same position, trading against the same edge, yet there would be no wire fraud because no one would have been deceived. The counterparties' losses are legally irrelevant to whether the conduct was fraudulent.

Blaszczak reflects the same structure. The majority acknowledged that, under the relevant securities statutes, "the actual and intended victims of the alleged frauds would have been investors in the market."^[24] But it held that the defendants "could not properly be

convicted of violating § 1343 ... unless the objective of their schemes and conduct was money or property of CMS."[25]

Kousisis Has Limits

In its brief, the government invokes Kousisis, the Supreme Court's 2025 fraudulent-inducement decision, for the proposition that Van Dyke "had money in mind." [26] But in that case, the money came from the Pennsylvania Department of Transportation — i.e., the party to which the defendants lied. The court described the theory it endorsed as criminalizing "intentionally lying to induce a victim into a transaction that will cost her money or property." [27]

Thus, Kousisis did not consider a scheme in which the defendant never lied to the party whose money he obtained.

Put differently, Kousisis holds that fraud is complete when the defendant "has induced the deprivation of money or property under materially false pretenses." [28] That formulation carries an implicit requirement: The false pretense must be what induced the person who paid.

Here, the false pretense — namely, Van Dyke's feigned loyalty to the Army — got him the classified information; however, it did not get him the counterparties' money, which changed hands through voluntary trades settled by smart contract. The counterparties were not induced by anything Van Dyke did or did not do; they simply took the other side of a bet on an open platform. [29]

To connect the deception of the Army to the counterparties' money, the government argues that Section 1343's "by means of" requirement is satisfied when the acquisition of money "naturally flow[s]" from the fraud without "an attenuating, independent transaction." [30] But that causal formulation has no obvious limiting principle once convergence is removed.

Indeed, almost any misuse of an employer's confidential information that leads to a profitable transaction with a third party could be recast as a scheme to obtain the third party's money. Consider, for example, a job candidate who uses knowledge of her current employer's confidential product road map to negotiate a signing bonus from a rival.

In *Kelly v. U.S.*, the Supreme Court stated in 2020 that the "victim's loss must be an objective of the [deceitful] scheme rather than a byproduct of it." [31] The counterparty-money theory treats a stranger's loss as the objective of a scheme that, as charged, deceived only the government.

What Comes Next

The myriad issues teed up by Van Dyke's pending motion to dismiss are set to be argued on Oct. 7 at what figures to be an illuminating hearing.

The U.S. District Court for the Southern District of New York may never need to resolve the viability of the counterparty-money theory. If the court holds that the classified information is property, the alternative becomes superfluous.

But if it holds that the information is not property and rejects the alternative, the wire fraud count falls. [32] For Van Dyke, that would be significant even if the Commodity Exchange Act charges survive, because wire fraud carries a 20-year maximum sentence — double the

10-year maximum for the other counts. Moreover, if the wire fraud count collapses, so too must a money laundering count for which it serves as the exclusive predicate.

Regardless of how it fares in this case, the theory is unlikely to disappear. Prosecutions involving information that may lack commercial value to the employer — including the government's case against Michele Spagnuolo, a Google engineer, that also relates to prediction market trades and is being tried in the Southern District of New York — face the same Chastain hurdle.

A theory that locates the money-or-property element in the counterparties' losses rather than in the source's information would change the shape of those cases. Whether Greenberg's no-convergence rule can bear that weight, given O'Hagan's account of who is defrauded in a misappropriation scheme, is a question the Second Circuit has not yet confronted but may soon be forced to answer.

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[1] *Carpenter v. United States*, 484 U.S. 19 (1987).

[2] 18 U.S.C. § 1343.

[3] *Kousisis v. United States*, 605 U.S. 114, 121 (2025).

[4] *Id.* (cleaned up).

[5] *Ciminelli v. United States*, 598 U.S. 306, 316 (2023).

[6] Indictment, *United States v. Gannon Ken Van Dyke*, No. 1:26-cr-156 (S.D.N.Y. Apr. 23, 2026), ECF No. 2 at 12.

[7] *Id.* at 7.

[8] Opp. to Def.'s Mot. to Dismiss, *United States v. Gannon Ken Van Dyke*, No. 1:26-cr-156 (S.D.N.Y. Aug. 19, 2026), ECF No. 25 at 35.

[9] *Id.* at 28.

[10] Reply. in Support of Def.'s Mot. to Dismiss, *United States v. Gannon Ken Van Dyke*, No. 1:26-cr-156 (S.D.N.Y. Aug. 26, 2026), ECF No. 31 at 18.

[11] *United States v. Blaszcak*, 56 F.4th 230, 243 (2d Cir. 2022).

[12] *United States v. Chastain*, 145 F.4th 282, 295 (2d Cir. 2025).

[13] Reply at 20.

[14] *United States v. Greenberg*, 835 F.3d 295, 306 (2d Cir. 2016).

[15] *Id.* at 298–300, 307.

[16] *Id.* at 306 n.16.

[17] Indictment at 3.

[18] Opp. at 35.

[19] *United States v. O'Hagan*, 521 U.S. 642, 655 (1997).

[20] *Id.* at 656.

[21] *O'Hagan*, 521 U.S. at 655 n.6.

[22] *Id.*

[23] *Id.* at 655.

[24] 56 F.4th at 243.

[25] *Id.*

[26] Opp. at 38 (quoting *Kousisis*, 605 U.S. at 133).

[27] *Kousisis*, 605 U.S. at 135.

[28] *Id.* at 127 n.5.

[29] The government's own prior argument underscores the point. In *O'Hagan*, the government maintained that someone who embezzles cash and then buys securities commits a fraud that is "complete as soon as the money was obtained," 521 U.S. at 656, and that the later trade was too detached to count. The same reasoning cuts against it here: the fraud on the Army was a fraud on the source, complete when Van Dyke obtained the classified information, and the trades with counterparties are precisely the kind of later transaction that reasoning treats as separate.

[30] Opp. at 38.

[31] *Kelly v. United States*, 590 U.S. 391, 402 n.2 (2020) (second alteration in original) (quoting *United States v. Walters*, 997 F.2d 1219, 1224 (7th Cir. 1993)).

[32] If the district court holds that the information from which Van Dyke profited is not property but deems the counterparty-money theory viable, the court will have to contend with another question raised by Van Dyke: what, exactly, did the grand jury charge and what was it told? The wire fraud count uses the word "money," but it identifies no counterparty victims and alleges no representations to them. Van Dyke has asked for disclosure, or at least in camera review, of the grand jury transcript if the theory goes forward.