

## 2 Prediction Market Cases Will Test Insider Trading Theory

By **John Siffert** (June 29, 2026)

In two recent cases, the U.S. Attorney's Office for the Southern District of New York filed separate charges against two defendants who used confidential information gathered from each employer to place bets on a prediction market.

In both cases, the government included a count that has been characterized as insider trading, based on conduct that allegedly constituted wire fraud. Both charges assert that each defendant obtained "money and property" by fraudulent means.



John Siffert

Although the charged crime is the same for both, each prosecution must overcome different legal hurdles established by the U.S. Supreme Court and the U.S. Court of Appeals for the Second Circuit, because one defendant worked for the government and the other for a private corporation.

This article describes those hurdles and sets forth possible challenges to the charges, while also noting how the government could prevail.

### **Alleged Fraud Against the Government**

Gannon Ken Van Dyke — in his role as master sergeant in the U.S. Army Special Forces — received classified information as to the fact and timing of an upcoming operation to capture Nicolás Maduro and Cilia Flores, and allegedly used that information to execute Polymarket trades, yielding over \$400,000 in profits.[1]

Charged on April 23, the crux of the alleged fraud is that the defendant obtained the classified information after signing contracts acknowledging that all operational information "is now and will remain the property of the United States Government." [2] The government's first hurdle will be to establish that the breach of that contract — and the parallel breach of fiduciary duty that inheres in the employment relationship — is sufficient to form the basis of wire fraud.

Supreme Court and Second Circuit cases suggest that it may be difficult for the government to prove that the U.S. Army was the victim of fraud.[3] The court will have to determine whether the government was unfairly disadvantaged when Van Dyke placed his Polymarket bets.

Arguably, the true victims of Van Dyke's use of confidential, classified information were his competing bettors in the prediction market. To the extent that the indictment alleges that Van Dyke had an unfair advantage over other bettors, the allegation is akin to the fraud on the market that the Supreme Court eschewed in its 1980 decision in *Chiarella v. U.S.*[4]

Equally to the point, if the U.S. is not the victim, the wire fraud count would be on even thinner ice, because the Supreme Court has held that the property loss must belong to the victim.[5]

Pointedly, the indictment is careful to charge that the U.S. Army was the victim. But that allegation does not end the inquiry. The remaining hurdle will be for the government to

prove beyond a reasonable doubt that it was the victim of loss of "property."

The indictment addresses this challenge by alleging that Van Dyke schemed to obtain government information that "has pecuniary value." [6] But the indictment does not explain how that is so. The U.S. Army's interest in that information is valuable only to its national security agenda — unmoored from what has traditionally been defined as "property."

The Second Circuit's 2022 ruling in *U.S. v. Blaszcak* illustrates this point. There, a divided panel vacated a wire fraud conviction against employees of a federal agency who obtained confidential information about upcoming changes in Medicare reimbursement rates. [7]

The majority concluded that the agency's decision to administer medical services had value only as part of the regulatory process. Indeed, after an intervening Supreme Court remand, the U.S. Department of Justice itself urged dismissal of the property fraud count, confessing that confidential information "typically must have economic value in the hands of the relevant government entity to constitute 'property' for purposes of 18 U.S.C. §§ 1343 and 1348." [8]

The Van Dyke indictment is difficult to square with the government's own position in *Blaszcak*. As alleged, the U.S. Army does not sell, trade or otherwise monetize preoperational information, nor does the information affect how the Army is funded.

Like the *Blaszcak* defendant seeking to obtain predecisional Medicare information, Van Dyke sought the preoperational information only because it previewed the upcoming raid in Venezuela. In other words, Van Dyke did not defraud the U.S. Army of property.

He allegedly took information that he was forbidden from taking and used it for personal gain. Those crimes are covered by the other counts in the indictment that allege violations under Title 7 of the U.S. Code.

This article does not suggest that governments cannot own property rights. Courts have affirmed property-based fraud when a defendant schemes to obtain government employees' time and labor, [9] or uncollected tax revenue. [10] But wire fraud does not reach every employee who misappropriates the government's right to exclude the public from accessing its classified information.

Without alleging property as an object of the fraud, the government's charge is constrained to the theory that Van Dyke deprived the Army and the public of the intangible right of his honest services. That too fails. [11] Van Dyke did not engage in bribery or kickbacks, and therefore falls outside of Section 1346 of the U.S. Code's proscription. [12]

### **Alleged Fraud Against Google**

One month after indicting Van Dyke, the same U.S. Attorney's Office charged Michele Spagnuolo by complaint, alleging on May 26 that he, in his role as a staff software engineer at Google, gleaned access to an upcoming annual report compiling 2025's most popular online searches — the Year in Search list — and similarly used that prepublication information to execute trades on Polymarket that yielded \$1.2 million in profits. [13]

The Spagnuolo complaint appears to be carefully drafted to invoke the language and logic of other private frauds.

Even though Google does not sell its Year in Search reports, nor does it charge its clients to

maintain the confidentiality of such information, the complaint alleges that the reports (1) are "commercially significant" because it affects Google's main advertising revenue; and (2) have commercial impact, based "on the element of surprise" and "its confidentiality." [14]

This mirrors the Second Circuit's teachings in its July 2025 decision in *U.S. v. Chastain*, concluding that confidential business "[i]nformation cannot qualify as a traditional property interest" protectable by Title 18 of the U.S. Code, Section 1343, "if its holder has no economic interest in its exclusive use or in otherwise keeping the information confidential." [15]

Chastain relied on classic cases involving a tipper deceptively obtaining and then prematurely disclosing information. Newspapers, for example, have a right to decide when to distribute and sell their own news to the public. [16]

Even though the Spagnuolo complaint adopted the reasoning of the successful prosecutions against news employees, the fact that each case concerns private frauds does not necessarily compel the same outcome.

Spagnuolo allegedly acted directly contrary to the news tippers who prematurely disclosed the valuable information to an outside tippee.

Not only did Spagnuolo allegedly maintain the secrecy of "Year in Search" reports, but he actually shared the same interest as Google in maintaining its confidence until after publication.

Indeed, if the Google confidential information had become public, more informed traders would have likely thought to purchase contracts, and Spagnuolo would have lost the opportunity to profit from the corresponding market probability change.

The different interests that Spagnuolo had in keeping secret the nature of the information that he allegedly misappropriated create another level of complexity and, therefore, another hurdle for the government to overcome in order to establish that his conduct constituted mail fraud.

## **Conclusion**

Importing legal theories into criminal prosecutions from enforcement actions, such as insider trading, needs to be reviewed against the rigors of federal criminal law. That is what happened in 1968 when the government prosecuted Vincent Chiarella on the U.S. Securities and Exchange Commission's theory in *SEC v. Texas Gulf Sulphur Co.*, that someone in possession of material nonpublic information must either disclose or abstain. The courts required the further analysis of whether a duty to disclose existed and whether the duty was breached.

As this article suggests, similar rigor is required when deploying alleged unlawful use of government information, as in *Van Dyke's* case, and commodities fraud as in *Spagnuolo's*.

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*John S. Siffert is a founding partner at Lankler Siffert & Wohl LLP.*

*Lankler Siffert associate Megan Q. Liu contributed to this article.*

**Disclosure: Siffert represented the government in U.S. v. Chiarella.**

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[1] See Indictment ¶¶ 1–17, *United States v. Van Dyke*, 26 Cr. 156 (S.D.N.Y. Apr. 23, 2026), ECF No. 2 ("Van Dyke Indictment").

[2] *Van Dyke Indictment* ¶¶ 3–4.

[3] See *Skilling v. United States*, 561 U.S. 358, 409–10 (2010) (concluding "undisclosed self-dealing by a public official" is not scheme to defraud an intangible right of honest services (citation omitted)); *Carpenter v. United States*, 484 U.S. 19, 25 (1987) (rejecting employer's contractual right to its employee's honest and faithful service as "too ethereal" to constitute property); *United States v. Miller*, 997 F.2d 1010, 1019 (2d Cir. 1993) (noting employee "breach [of] a duty to his or her employer and to fail to inform the employer of his or her breach" is not sufficient for property-fraud conviction (citation omitted)).

[4] See *Chiarella*, 445 U.S. at 233 (declining to recognize "general duty between all participants in market transactions to forgo actions based on material, nonpublic information").

[5] See *Cleveland v. United States*, 531 U.S. 12, 15 (2000) (concluding property-fraud conviction requires government to establish that "the thing obtained [is] property in the hands of the victim"); see also *McNally v. United States*, 483 U.S. 350, 358–60 (1987) (adopting common law understanding that proscribed "scheme or artifice to defraud" is "limited in scope to the protection of property rights," or in other words, that fraud required "the deprivation of something of value" (citation omitted)).

[6] *Van Dyke Indictment* ¶ 24.

[7] *United States v. Blaszcak*, 56 F.4th 230, 244–45 (2d Cir. 2022).

[8] *Id.* at 236 (quoting Gov't Br. on Remand at 6–8, *United States v. Blaszcak*, No. 18-2811 (2d Cir. Apr. 2, 2021), ECF No. 453). The government in *Blaszcak* did not even attempt to allege monetary value of pre-decisional information. For example, when asked to explain how information about the proposed regulation affects the agency, the government cited the agency's "right to use and control its own property," "in carrying out its regulatory responsibilities," "the agency's regulatory deliberative process" and "healthcare policy." Gov't Opp. Post-Trial at 27–28, *United States v. Blaszcak*, 17 Cr. 357 (S.D.N.Y. July 13, 2018), ECF No. 356.

[9] For example, a mayor's "deception to get 'on-the-clock city workers' to renovate his daughter's new home" would "qualify as an economic loss to a city, sufficient to meet the federal fraud statutes' property requirement." *Kelly v. United States*, 590 U.S. 391, 401–02 (2020) (quoting *United States v. Pabey*, 664 F.3d 1084, 1089 (7th Cir. 2011)).

[10] For example, a scheme "aimed at depriving Canada of [tax] money to which it was entitled by law" is a fraud to take "property" in Canada's hands. *Pasquantino v. United States*, 544 U.S. 349, 356–57 (2005) ("Canada could hardly have a more 'economic' interest than in the receipt of tax revenue.").

[11] See *supra* n.3.

[12] See *Skilling*, 561 U.S. 358, 368 (2010).

[13] Complaint ¶¶ 4–9, *United States v. Michele Spagnuolo*, 26 Mag. 2020 (S.D.N.Y. May 26, 2026), ECF No. 1 ("Spagnuolo Complaint").

[14] *Id.* ¶¶ 5(a)–(b).

[15] *Chastain*, 145 F.4th at 294.

[16] See, e.g., *id.* at 292–93 (explaining news was "therefore comparable to the property rights of another business in its goods or trade secrets"); *Carpenter*, 484 U.S. at 26–27 (explaining news, while "intangible," was "information acquired or compiled ... in the course and conduct of [newspaper's] business," "generated from the business," and therefore, "the business had a right to decide how to use it prior to disclosing it to the public" (citation omitted)); *Int'l News Serv. v. Associated Press*, 248 U.S. 215, 236 (1918) (concluding news is "stock in trade" to "be distributed and sold to those who will pay money for it, as for any other merchandise").