

Government insider trading: prediction markets and the prospects of the ‘Eddie Murphy Rule’

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The topic of the day amongst white collar practitioners and non-lawyers alike is the ease with which government insiders may profit from nonpublic information when trading on prediction markets relating to political and geopolitical events. The criminal (<https://bit.ly/49dDoFK>) and civil (<https://bit.ly/4wlq722>) cases against Gannon Ken Van Dyke, a U.S. Army Special Forces member, allege textbook insider trading in prediction markets relating to the ouster of Venezuelan president Nicolás Maduro.

Two recent 2nd U.S. Circuit Court of Appeals decisions, however — *United States v. Blaszcak*, 56 F.4th 230 (2d Cir. 2022) and *United States v. Chastain*, 145 F.4th 282 (2d Cir. 2025) — may limit the government’s ability to prosecute such conduct as wire fraud, which is the prosecutor’s most effective charge for insider trading involving prediction markets.

As a result, prosecutors may increasingly rely on rarely used provisions of the Commodity Exchange Act (CEA), most notably the so-called “Eddie Murphy Rule,” which prohibits the theft of government information for use in trading derivatives, to pursue insider trading in prediction markets based on government information. But theories that rely on the CEA carry their own risks for prosecutors, potentially making it more difficult than it might first appear for the government to bring cases in this space.

The Van Dyke cases: The first test of insider trading in prediction markets

According to the Commodity Futures Trading Commission (CFTC) and federal prosecutors in the Southern District of New York (SDNY), Van Dyke obtained classified, nonpublic information about a U.S. military operation — referred to as “Operation Absolute Resolve” — to capture Nicolás Maduro. Using that information, Van Dyke allegedly bought over \$30,000 in event contracts relating to Maduro’s removal from power, which generated more than \$400,000 in profits when the contracts resolved in his favor. Van Dyke has pleaded not guilty.

The CFTC and SDNY charged Van Dyke under multiple theories. Both agencies brought charges under CEA section 6(c)(1), which prohibits manipulative and deceptive schemes, including insider trading, in connection with swaps;

section 4c(a)(3), which prohibits government employees from using government information to trade swaps; and section 4c(a)(4)(C), which prohibits any person from using misappropriated government information to trade swaps.

Whereas the wire fraud statute requires the misappropriation of “money or property,” the relevant provisions of the [Commodity Exchange Act] focus on the misuse of “information.”

This last provision is sometimes called the “Eddie Murphy Rule,” based on the plot of the movie “Trading Places,” which involved a scheme to steal a confidential government report on orange crop forecasts for the purpose of trading frozen concentrated orange juice futures. In addition to the CEA charges, SDNY also charged the conduct as wire fraud.

Blaszcak and Chastain: Limits on information as ‘property’

The federal wire fraud statute (18 U.S.C. § 1343) prohibits schemes to obtain “money or property” by means of false or fraudulent pretenses, representations, or promises. For decades, prosecutors relied on expansive readings of “property” to bring cases premised on a defendant’s effort to obtain a wide range of intangible property interests, such as confidential information. In the 2nd Circuit, however, *Blaszcak* and *Chastain* may present obstacles for the government in pursuing insider trading as wire fraud.

In *Blaszcak*, the government prosecuted a scheme involving the misappropriation of confidential information from the Centers for Medicare & Medicaid Services (CMS), a government agency that sets healthcare reimbursement rates. The defendants obtained nonpublic information regarding the substance and timing of CMS rule changes that would

modify reimbursement rates and impact healthcare company earnings, and then used the confidential government information to place profitable securities trades ahead of public announcements.

On remand following the Supreme Court's decision in *Kelly v. United States*, (590 U.S. 306 (2023)) the 2nd Circuit concluded that the CMS information did not constitute "property" under the wire fraud statute because it lacked economic value to CMS. The court emphasized that while confidential information may constitute property of a commercial entity, government agencies typically are not commercial actors and do not sell or otherwise exploit their information in the marketplace. As a result, regulatory or policy information — even if highly valuable to investors — does not qualify as "property" when held by the government. The *Blaszczak* decision sent minor shock waves through the white collar bar.

As prediction markets increasingly focus on geopolitical, policy-driven, and non-financial events, material nonpublic information relating to these markets may fall within the noncommercial categories identified in Blaszczak and Chastain.

Three years later, the 2nd Circuit extended that reasoning in *Chastain*. There, an employee of an NFT marketplace used advance knowledge of which NFTs would be featured on the platform's homepage to trade ahead of the public announcements of the information. Siding with the defendant, the court held that while confidential business information may qualify as property, it does so only when it has economic value to the owner — for example, as a trade secret or other commercially valuable asset. The *Chastain* court reversed the trial verdict based on faulty instructions given to the jury.

Taken together, *Blaszczak* and *Chastain* significantly narrow the circumstances in which information can be treated as "property" under the wire fraud statute. Government information will rarely qualify, because the government usually does not have a commercial interest in its confidentiality. Private information may qualify, but only if the owner can demonstrate that maintaining its confidentiality has economic value.

Applying *Blaszczak* and *Chastain* to *Van Dyke*

The *Van Dyke* case brings these issues into focus. The government's wire fraud theory rests on the premise that Van Dyke misappropriated confidential government information and used it to make profitable trades. Under *Blaszczak* and *Chastain*, that premise may be insufficient.

The information at issue — classified details of a military operation — may lack commercial value to the government, as the government's interest in maintaining confidentiality is grounded in national security considerations, not economic gain. Thus, while the facts alleged in *Van Dyke* may appear to fit within a traditional insider trading framework, the limits imposed by *Blaszczak* and *Chastain* may constrain the government's ability to pursue those facts under a wire fraud theory.

The Commodity Exchange Act as a broader enforcement tool

The Commodity Exchange Act, in contrast, may offer a more flexible framework for addressing insider trading in prediction markets. The key distinction lies in the statutory language.

Whereas the wire fraud statute requires the misappropriation of "money or property," the relevant provisions of the CEA focus on the misuse of "information." Section 4c(a)(3) prohibits government employees from using nonpublic information to trade in swaps, while section 4c(a)(4)(C) prohibits the misappropriation of government information for such trading.

Similarly, section 6(c)(1) and CFTC Rule 180.1 — modeled on SEC Rule 10b-5 — prohibit manipulative and deceptive conduct in connection with swaps. Under Rule 180.1, as with Rule 10b-5, the government may establish insider trading based on the misappropriation of material nonpublic information in breach of a duty.

None of these provisions require that the information qualify as "property," nor do they impose a commercial-value requirement on misappropriated information. As such, prosecuting insider trading under the CEA may be easier for the government than proceeding under a wire fraud theory — at least in the 2nd Circuit — given the limitations imposed by *Blaszczak* and *Chastain*.

Implications for prediction market regulation

The divergence between the wire fraud statute and the Commodity Exchange Act has important implications for the regulation of prediction markets. As prediction markets increasingly focus on geopolitical, policy-driven, and non-financial events, material nonpublic information relating to these markets may fall within the noncommercial categories identified in *Blaszczak* and *Chastain*.

As a result, the CEA — including the Eddie Murphy Rule that specifically addresses misappropriation of government information — may become the primary vehicle in the 2nd Circuit for enforcing insider trading in these markets, particularly where government information is involved. The validity of *Blaszczak's* and *Chastain's* holdings in other circuits is unsettled, however, which raises the prospect of divergent approaches to insider trading prosecutions across circuits.

It should be noted, however, that the government also faces risks in seeking to prosecute insider trading in prediction markets under the CEA. For the CEA to apply to insider trading

in a prediction market, the event contract at issue must meet the CEA's definition of a "swap." This requires a fact-specific analysis of whether the underlying event is associated with a potential economic, financial, or commercial consequence.

The application of the swap definition to event contracts is currently being litigated in dozens of cases across the country, and courts have reached different conclusions. If a circuit split emerges, that could create additional variation in prediction market insider trading prosecutions.

These legal issues may see their first tests in *Van Dyke*, but the issues will likely be litigated for years to come. Prosecutors and the CFTC have identified insider trading in prediction markets as a priority, and more cases will likely be filed. Given the numerous unique legal issues presented by prediction markets, the chance of a circuit split on one or more issues is high. If the legal landscape becomes fragmented, prosecutors may be incentivized to file insider trading cases in jurisdictions where the law is more favorable than the 2nd Circuit.

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