On eve of Masters, “Lefty and the Gambler” a cautionary tale

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This year’s Masters could have an interesting side story, as PGA superstar Phil “Lefty” Mickelson may be called to testify in the insider trading trial of William “Billy” Walters, widely considered the biggest and most successful sports bettor in the country.

Illegal insider trading refers to buying or selling a stock, in breach of a duty of trust and confidence, while in possession of “material, non-public information” about the stock. This can also apply if the person possessing the information (the “tipper”) passes along the information to a “tippee,” who then trades the stock.

Since there’s no statutory definition of illegal insider trading, the law has been developed on a piecemeal basis by the courts, with the definition of illegal activity expanding and contracting.

A significant contraction occurred in 2014, when a federal appeals court reversed the conviction, involving tips passed through a chain of traders, of hedge fund trader Todd Newman. The court raised the hurdle for proving illegality, mandating 1) the tipper had to have received a valuable “personal benefit” for providing the confidential information ***and*** 2) the tippee had to know the tipper was receiving that personal benefit.

In December 2016, the Supreme Court widened the definition by ruling insider trading prosecutions don’t always have to show something valuable changed hands to prove a crime was committed (but didn’t specifically address tip chains). Defendant Bassam Salman admitted he had traded on inside information obtained from his brother, but argued since he didn’t give him anything of value, no crime was committed.

Upholding Salman’s conviction, the court ruled, “Giving a gift of trading information to a trading relative is the same thing as trading by the tipper followed by a gift of the proceeds.”

The SEC filed a complaint last May naming Thomas Davis (former chairman of Dean Foods—“Dean”) and Walters as Defendants and three-time Masters champion Phil Mickelson as a Relief Defendant.

According to the SEC’s complaint (https://assets.documentcloud.org/documents/2839956/Insider-Case-Against-Gambler-and-Ex-Chairman.pdf), Davis was a director of Dean who tipped Walters with confidential information from 2008 through 2012. Walters, in turn, allegedly tipped Mickelson.

The SEC calculated Walters’ trades in Dean stock reaped illicit profits of ***at least $40 million***. Davis pleaded guilty in a related criminal case and is the prosecution’s key witness in Walters’ trial, which is underway.

According to the SEC, Davis and Walters had been golfing friends for more than 20 years. Davis owed gambling debts to Walters and had borrowed almost $1 million from him. These were only partially repaid, which constituted the valuable personal benefit.

Mickelson also allegedly owed gambling debts to Walters. The SEC said Walters tipped Mickelson on a Friday. The following Monday and Tuesday, Mickelson bought $2.4 million of Dean’s stock. When Dean publicly announced the news days later, the stock popped 40%. “Lefty” sold, reaping a profit of $931,000 and using some of the proceeds to repay his debt to Walters. Mickelson was not accused of wrongdoing, but the SEC argued he was “unjustly enriched” and must disgorge “Ill-gotten gains,” which he readily agreed.

In 2011, Walters was the subject of a prescient 60 Minutes feature https://www.youtube.com/watch?v=d6FAUQ6SFKM, which revealed the “secret” of his uncanny sports betting success was his information “edge.” Did Walters have an illegal “edge” on Dean? Stay tuned.
