

Administrative Judge Raises S.E.C’s Burden to Convict Insider Trader By Matt Kempf, J.D. Candidate 2017 | October 3, 2015

In a pivotal 1983 [ruling](#), the Supreme Court held that to find a breach of duty to stockholders resulting in “insider trading,” a party must prove that a personal gain, either material or immaterial, resulted from confidential information provided by a trading relative or “friend.” The Court, however, left ambiguous the term, “friend” for over three decades, causing much confusion. Did the Court intend to mean a *close* friend? A friend with whom you occasionally converse? A Facebook friend?

Recently, Judge Patil provided some context, although controversial, to this central term in a S.E.C. administrative [decision](#), by dismissing insider trading charges against Joseph Ruggieri, a former securities trader at Wells Fargo. At issue in the case was the question of how close a non-familial relationship must be to qualify as “meaningfully close.” Ruggieri mentored Gregory Bolan, a Wells Fargo analyst, and allegedly profited approximately \$117,000 from tips received from Bolan. In order to have succeeded, the Department of Justice needed to prove that benefits Bolan received from the mentorship and feedback was substantial enough to qualify their relationship as meaningfully close. The Department of Justice argued that *mere friendship* was enough to establish the benefit. In his decision, however, judge Patil disagreed, holding that the benefit received by the mentorship was insufficient.

It is clear that there was valuable information exchanged between Bolan and Ruggieri, and equally clear that Ruggieri substantially benefitted from Bolan’s information. While mentorship and professional feedback, on its face, may not seem substantial, it is difficult to know exactly how meaningful or valuable a relationship is to a person based on such subjective criteria. Judge Patil may not feel that the benefits gained from a mentor’s advice is significant enough, but a young analyst like Bolan may value that mentorship greatly, believing that it will advance his career and help ensure his financial future.

The S.E.C. believes that Patil’s decision, and the 2nd Circuit case upon which it was based, [United States v. Newman](#), do not follow the precedent set forth in *Dirks*, and weakens its position, making it much more difficult to prove the requisite benefit. It is on those grounds that the Justice Department filed a petition for Supreme Court review, in hopes of clarifying the standard and lowering the bar for prosecuting inside traders.

If the Supreme Court grants the petition, there still may be hope that in the future, those like Ruggieri and Bolan will not get away with hooking up their buddies with valuable inside information when it is not clear that there is a substantial benefit to the tipper.