



Moreover, it amplifies the materiality of evidence withheld from the defendant Mathur until just at the end of trial – specifically, the SEC’s Enforcement and Referral and Action Memorandum, which (three years before the trial) found sufficient evidence of criminality (including possible money laundering) on the part of three government witnesses, David “Duddie” Massad, Pamela Massad and David Mander to recommend investigation for criminal prosecution. The newly discovered evidence, i.e. David Massad’s own words under oath, reveal that Entrust was, indeed, just a means to an unknown end for him and that he was not a victim of the defendant. It calls into question the entire underpinnings of the government’s case against the defendant and a new trial is justified under Brady and/or Giglio and/or Napue v. Illinois.

Rule 33 allows the court, on defendant’s motion, to “vacate any judgment and grant a new trial if the interest of justice so requires.” Rule 33(b)(1) provides that a “motion for a new trial grounded on newly discovered evidence must be filed within 3 years after the verdict or finding of guilty.” This Court has refused to construe “evidence” narrowly as it pertains to Rule 33 motions. United States v. Lipscomb, 539 F.3d 32, 42 (1st Cir. 2008).

The interests of justice require a new trial. The new evidence not only puts Duddie Massad in a different light, but it puts the whole case in a different light. Because the defendant believes that the Court should consider this motion before it sentences Amit Mathur, he respectfully submits it now.

In the interests of efficiency, this motion is supported by an accompanying memorandum, which addresses both sentencing *and* the new trial motion.

Dated: April 1, 2009

Respectfully submitted,

AMIT MATHUR

By his attorneys,

*/s/ Paul J. Andrews*

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