

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	Criminal No. 09-10166-MLW
)	
	)	<u>VIOLATIONS:</u>
v.	)	18 U.S.C. 371 -- Conspiracy
SALVATORE F. DiMASI,	)	18 U.S.C. 1341 and 1346 --
JOSEPH P. LALLY, Jr.,	)	Honest Services Mail Fraud
RICHARD W. McDONOUGH,	)	18 U.S.C. 1343 and 1346 --
and	)	Honest Services Wire Fraud
RICHARD D. VITALE	)	18 U.S.C. 1951 -- Extortion
	)	Under Color of Official Right
Defendants	)	18 U.S.C. 1957 -- Money
	)	Laundering
	)	18 U.S.C. 2 -- Aiding and
	)	Abetting
	)	18 U.S.C. §§ 981, 982
	)	28 U.S.C. § 2461 --
	)	Forfeiture

SUPERSEDING INDICTMENT

The Grand Jury charges that:

General Allegations

At times relevant to this Indictment:

1. Cognos ULC ("Cognos") was a Canadian software company which owned a subsidiary Delaware corporation, Cognos Corporation, with offices in Burlington, Massachusetts. Among its products, Cognos sold business intelligence and performance management software and related services. Cognos was engaged in interstate commerce.

2. Defendant JOSEPH P. LALLY, Jr. ("LALLY") was an Area Vice-President of Sales for Cognos's State and Local Government Division, which targeted agencies of the Commonwealth of

Massachusetts as potential customers. In February, 2006, LALLY left Cognos and formed his own company, Montvale Solutions, LLC in Charlestown, Massachusetts, which was licensed to resell Cognos software to agencies of the Commonwealth of Massachusetts.

3. Defendant SALVATORE F. DiMASI ("DiMASI") was an elected Member of the Massachusetts House of Representatives and served as Speaker of the House of Representatives from October, 2004 through January, 2009. DiMASI was also an attorney.

4. Defendant RICHARD W. McDONOUGH ("McDONOUGH"), also known as "Dickie," and doing business as Richard McDonough and Associates, was a lobbyist registered with the Secretary of the State of the Commonwealth of Massachusetts. McDONOUGH was hired by LALLY as a lobbyist for Cognos with Massachusetts legislative and executive officials. Cognos paid McDONOUGH \$25,000 a month for his services. McDONOUGH was also a close friend of DiMASI.

5. Defendant RICHARD D. VITALE ("VITALE") was a partner at an accounting firm. VITALE was DiMASI's accountant and financial advisor, as well as his long-time close friend. In January and February, 2006, VITALE and two other named partners, herein identified as "GP-1" and "GP-2," formed Genesis Management Group LLC ("Genesis"), a property management company whose business plan included bidding on and winning contracts to manage state, local and federal buildings. In June, 2006, VITALE also formed WN Advisors LLC ("WN Advisors") as a purported consulting entity, of

which he was the sole owner.

6. "P.A." was a private attorney in Massachusetts with a primary practice in criminal defense and personal injury cases. P.A. and DiMASI shared office space and expenses for the practice of law for several years, and DiMASI regularly referred criminal defense and personal injury cases to P.A. in return for a percentage of the legal fees paid by the client.

Funding for Software Procurements

7. In 2005 and 2006, Cognos wanted to sell software licenses and related services worth \$5.2 million to the Department of Education ("DOE") of the Commonwealth of Massachusetts for an Education Data Warehouse and Reporting System. To fund this purchase by DOE, it was necessary for the Massachusetts legislature to appropriate the money in its Fiscal Year 2007 budget.

8. In 2006 and 2007, Cognos wanted to sell software licenses and related services worth \$15 million to the Department of Administration and Finance ("A&F") and its Information Technology Division ("ITD") of the Commonwealth of Massachusetts for a statewide performance management system. To fund this purchase by A&F, it was necessary for the Massachusetts legislature to enact legislation authorizing the Commonwealth to issue general obligation bonds.

The Duty of Honest Services

9. As an elected member of the Massachusetts House of

Representatives and as Speaker of the House, DiMASI owed a duty of honest services to the Commonwealth of Massachusetts and its citizens to perform his job and official duties free from deceit, fraud, dishonesty, concealment, conflict of interest, self-enrichment and the secret personal enrichment of his friends and associates. Such official duties included his informal and behind-the-scenes influence on legislation and other governmental action.

10. In addition to his general fiduciary duty to the Commonwealth of Massachusetts and its citizens, DiMASI was also obligated under the laws of Massachusetts to refrain from participating in a particular matter in which to his knowledge he has a financial interest [G.L. c. 268A §6] and from using or attempting to use his official position to secure for himself or others unwarranted privileges and exemptions which are of substantial value and which are not properly available to similarly situated individuals [G.L. c. 268A §23(b)(2)]. DiMASI was further obligated under the laws of Massachusetts to disclose potential conflicts of interest to the state ethics commission and/or the public in the following circumstances:

a. any instance where he was participating in a particular matter in which to his knowledge he, his immediate family or partner has a financial interest; [G.L. c. 268A, §6];

b. any instance where he was to take an action in the discharge of his official duties which would substantially affect

his financial interests, unless the effect on him was no greater than the effect on the general public [G.L. c.268A §6A];

c. any instance where he was acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties [G.L. c. 268A, §23(b)(3)].

COUNT ONE: 18 U.S.C. § 371 - (Conspiracy)

The Grand Jury further charges that:

11. The allegations contained in paragraphs 1-10 of this Indictment are realleged as though fully set forth herein.

12. From no later than December, 2004 and continuing until at least in or around February, 2008, at Boston, Burlington, and elsewhere within the District of Massachusetts, and in Naples, Florida and elsewhere, the defendants

SALVATORE F. DiMASI,
JOSEPH P. LALLY, Jr.,
RICHARD W. McDONOUGH,
and
RICHARD D. VITALE,

together with others both known and unknown to the Grand Jury, did knowingly, willfully, and unlawfully combine, conspire, and agree with each other to

- a. devise and intend to devise a scheme and artifice to defraud and deprive the Commonwealth of Massachusetts and its citizens of their intangible right to the honest services of SALVATORE F. DiMASI as a member and Speaker of the Massachusetts House of Representatives, and for the purpose of executing that scheme and artifice, to cause items to be delivered by the United States Postal Service, or by a private or commercial interstate carrier, according to directions thereon, in violation of Title 18, United States Code, Sections 1341 and 1346; and

b. devise and intend to devise a scheme and artifice to defraud and deprive the Commonwealth of Massachusetts and its citizens of their intangible right to the honest services of SALVATORE F. DiMASI as a member and Speaker of the Massachusetts House of Representatives, and for the purpose of executing that scheme and artifice, to transmit and cause to be transmitted in interstate and foreign commerce by means of wire communication, certain writing, signs, and signals, that is, by e-mails and facsimile transmission, in violation of Title 18, United States Code, Sections 1343 and 1346.

c. unlawfully obtain property, that is payments of money to SALVATORE F. DiMASI and to others not due him or his office, from JOSEPH P. LALLY, Jr. and Cognos by means of extortion, that is with JOSEPH P. LALLY, Jr. and Cognos's consent and under color of official right, knowing such payments were made in return for performing official acts as a member and Speaker of the Massachusetts House of Representatives, and thereby obstruct, delay, and affect interstate commerce and the movement of any article in interstate commerce, in violation of Title 18, United States Code, Section 1951.

13. It was the purpose and object of the conspiracy to enrich its members by improperly using the power, authority, and

influence of DiMASI as Speaker of the House to enable Cognos to obtain multi-million dollar software procurements from agencies of the Commonwealth of Massachusetts.

14. It was a further object of the conspiracy for DiMASI to receive, and cause others to receive, money from LALLY and Cognos in return for performing official acts as a member and Speaker of the Massachusetts House of Representatives that would further the interests of LALLY and Cognos in the Commonwealth of Massachusetts.

Means and Methods of the Conspiracy

Among the means and methods by which the coconspirators carried out the conspiracy were the following:

15. From March, 2005, while LALLY was still employed by Cognos, through early 2007, LALLY, McDONOUGH and DiMASI arranged to have regular payments made to DiMASI from Cognos for the purpose of influencing DiMASI to use his authority as Speaker of the House to assist the interests of Cognos for the financial benefit of the coconspirators. These improper payments were accomplished by retaining P.A. as "local counsel" for Cognos upon DiMASI's referral and having Cognos pay him \$5,000 a month, a percentage of which went to DiMASI as a "referral fee." The coconspirators further intended to conceal the true nature of these payments to DiMASI by carrying P.A. on the books at Cognos as a lobbyist, although no legal or lobbying services were ever requested of P.A., and none were ever performed.

16. In 2006, DiMASI caused a budget amendment to be introduced, and facilitated its final passage, appropriating \$5.2 million for DOE to purchase an Education Data Warehouse and Reporting System ("EDW") and requiring not less than \$4.5 million be spent on software. DOE's contract with Cognos for the EDW resulted in payment of \$891,000 to LALLY's Montvale Solutions, which in turn paid McDONOUGH \$100,000 and VITALE's WN Advisors \$100,000 as consulting fees. Although DiMASI knew that Cognos was the vendor to benefit from this legislative action, he and his coconspirators deceived the citizens of Massachusetts by DiMASI deliberately failing to disclose his financial ties to Cognos, as well as the personal enrichment of his friends from his official actions.

17. In 2007, DiMASI, using legislative language provided by LALLY, McDONOUGH and VITALE on behalf of Cognos, caused a provision for \$15 million for the purchase of statewide performance management software by A&F to be included in the Immediate Needs Capital Bond Bill of 2007 ("Emergency Bond Bill" or "EBB"). The coconspirators then used the power and influence of DiMASI to help Cognos secure the contract from A&F. A&F's contract with Cognos resulted in a payment of \$2.8 million to LALLY's Montvale Solutions, which in turn paid McDONOUGH \$200,000 and VITALE's WN Advisors \$500,000 as consulting fees. DiMASI and his coconspirators again deceived the citizens of Massachusetts by DiMASI deliberately

failing to disclose his financial ties to Cognos, as well as the personal enrichment of his friends from his official actions.

Overt Acts

In furtherance of the conspiracy, and to effect its objects, the defendants and other coconspirators committed, and caused to be committed, the following overt acts, among others, in the District of Massachusetts and elsewhere:

Setting Up the Payments to DiMASI from Cognos

18. In or around December, 2004, DiMASI informed P.A. that "Dickie" McDONOUGH would be calling P.A. with a new client.

19. In or around December, 2004, McDONOUGH and LALLY, who was introduced as a Vice-President of Cognos, a Canadian corporation, met with P.A. and offered to engage him as local counsel for a retainer of \$5,000 per month for a six-month term despite the fact that P.A. advised them that he lacked experience in such corporate representation.

20. In or around December 2004, P.A. reported to DiMASI on the meeting with McDONOUGH and LALLY and the substance and terms of the retainer by Cognos. DiMASI endorsed the arrangement commenting, "It's about time we got business like this."

21. In early 2005, LALLY hired P.A. out of Cognos's budget for lobbyists and sent P.A. a consulting agreement, which LALLY described as a standard six-month engagement contract, dated March 31, 2005. After discussing it with DiMASI, P.A. signed and

returned the agreement.

22. On or about April 15, 2005, P.A. received a \$5,000 check from Cognos and informed DiMASI, who told P.A. he wanted \$4,000 for the client referral.

23. On or about April 18, 2005, P.A. wrote a \$4,000 check to DiMASI as requested.

24. On or about May 10, 2005, P.A. received a \$5,000 check from Cognos and wrote DiMASI a \$4,000 check.

25. On or about June 7, 2005, P.A. received a \$5,000 check from Cognos and on June 9, 2005 wrote DiMASI a \$4,000 check.

26. On or about July 11, 2005, P.A. received a \$5,000 check from Cognos and on July 15, 2005 wrote DiMASI a \$4,000 check.

27. On or about September 21, 2005, P.A. received a \$5,000 check from Cognos and on September 23, 2005 wrote DiMASI a \$4,000 check.

28. In or around September, 2005, when P.A.'s six-month consulting agreement was set to expire, DiMASI told P.A. to speak to McDONOUGH about renewing it, which P.A. did.

29. In or around November, 2005, LALLY authorized a second six-month consulting agreement for P.A., which was retroactive to September 15, 2005.

30. On or about November 15, 2005, P.A. received a \$5,000 check from Cognos and wrote DiMASI a \$4,000 check.

31. On or about November 21, 2005 and December 1, 2005, P.A.

received \$5,000 checks from Cognos and on December 1, 2005 wrote DiMASI a \$8,000 check.

DOE Pilot Project for an Education Data Warehouse

32. In or around April, 2005, Cognos, along with other software vendors, submitted a proposal to DOE for a pilot project for the EDW. LALLY and Cognos also proposed to DOE a \$4.5 million pricing option for a second-stage statewide software license for an EDW.

33. On or about October 16, 2005, DiMASI was informed by the Commissioner of Education that DOE was close to awarding the pilot project to Cognos and his support for funding the second stage was solicited.

34. On October 27, 2005, Cognos signed a contract with DOE to do the pilot project for \$925,000, which was later amended to \$1,350,000.

35. In or around October, 2005, LALLY reported to other Cognos managers that he would be working with "Sal" to get the legislative funding for the \$4.5 million EDW procurement.

LALLY Forms Montvale Solutions

36. On or about February 28, 2006, after several months of planning, LALLY resigned from Cognos and joined Montvale Solutions, LLC, a reseller of Cognos software.

37. LALLY negotiated with Cognos for Montvale to be the reseller on six prospective deals with state and local

government agencies in Massachusetts on which LALLY had been working, most of which required legislative funding, including the DOE and the ITD of the Commonwealth of Massachusetts. The letters of understanding for these deals provided that Montvale would be paid a 20% commission based on the gross revenue to Cognos on each deal.

38. Before he left Cognos, LALLY told his replacement at Cognos in the State and Local Division, Cognos Executive "A", never to cancel a lobbyist named P.A., who was a friend to "Sal."

DiMASI Ensures \$4.5 million Legislative Earmark for EDW

39. In and around April, 2006, one of DiMASI's senior staff herein identified as "SS-1," contacted State Representative Robert Coughlin of Dedham and asked him if he would be the sponsor for two educational budget amendments relating to technology in education, which he agreed to do.

40. On April 12, 2006, SS-1 sent two emails to McDONOUGH, who forwarded them to LALLY, attaching the two amendments to be sponsored by Rep. Coughlin in the House budget: (a) Item 7061-9300 appropriating \$5.2 million for an EDW and providing an earmark that not less than \$4.5 million shall be expended on statewide software license; and (b) amending Item 7061-9200 to increase funding for supporting the education technology program from \$768,866 to \$2.5 million to enable DOE to have the operational funding to support the statewide software license.

41. On or about April 24, 2006, the two amendments were introduced in Rep. Coughlin's name and Item 7061-9300 was subsequently adopted by the House.

42. On or about April 28, 2006, LALLY emailed a Cognos employee, stating, "The House adopted the amendment last night just spoke with Dick a minute ago. Great news!! We need to get this thru Senate and we will have a 4.5 m deal in July. It's coming together perfectly."

43. In or around June, 2006, after the Senate had not adopted either amendment and the EDW was going to be considered by the Conference Committee, the Commissioner of Education asked DiMASI to remove the \$4.5 million earmark for software licenses within the \$5.2 million EDW budget item to enable DOE more flexibility to negotiate with Cognos and implement the EDW. DiMASI rejected the request to remove the \$4.5 million earmark, which was eventually passed by the legislature on June 30, 2006.

44. On or about June 30, 2006, McDONOUGH sent an email to LALLY attaching the EDW budget amendment, noting "Mission Accomplished."

P.A.'s Second and Third Renewals

45. After his second six-month contract expired in March, 2006, at DiMASI's instruction, P.A. contacted McDONOUGH about renewing it. Per McDONOUGH's instructions, P.A. faxed a new six-month contract to Cognos on June 20, 2006.

46. On June 20, 2006, LALLY emailed Cognos Executive A, stating, "I am getting a call on the renewal for [P.A.] can we talk about this? It is important that we talk before you act." Cognos Executive A replied, "Joe, I am getting questions as to who he is and what he has done for us. Considering the nature of this relationship, I can't answer those questions." LALLY then responded, "Do I need to talk someone? I would not cancel this it could affect MASSDOE"

47. In or around September, 2006, P.A. signed both a six-month consulting agreement backdated to March, 2006 and a new agreement going forward from September, 2006, which enabled the \$5,000 monthly payments to recommence.

VITALE, Genesis and WN Advisors

a. DiMASI's Hidden Future Interest in Genesis

48. On or about January 7, 2006, GP-1 sent an email to VITALE asking him to call, "since I have an idea about an arrangement which will benefit you, me, GP-2 and Sal."

49. On or about January 19, 2006, Genesis was formed as a limited liability company under the laws of Delaware.

50. On or about January 20, 2006, VITALE met with DiMASI and they discussed how DiMASI could help Genesis get business.

51. On or about February 15, 2006, VITALE had materials relating to Genesis delivered by courier to DiMASI at his office in the State House.

52. On or about February 21, 2006, VITALE and GP-2 met with DiMASI and SS-1, and DiMASI assigned SS-1 to help Genesis in its effort to acquire building management contracts for state, local and federal government buildings.

53. On or about February 25, 2006, VITALE and GP-1 discussed in emails how the Genesis ownership should be structured. GP-1 proposed that "[t]he company always retains 25% of the profits. And the Partners are you, your friend [referring to DiMASI], GP-2 and Me, evenly."

54. On or about May 4, 2006, VITALE and GP-1 exchanged emails about funding for Genesis.

VITALE: Is it \$30,000 that I need to put in?

GP-1: Yes. 30k covering you and your friend. I put in 15 and GP-2 put in 15. Is that ok.

VITALE: no, my vision is its 1/3 each and I am responsible for him [referring to DiMASI]. Once we get going and there is out performance because of him we can adjust it. I don't envision that happening. In the mean time I can put in 30k. . . .

GP-1: I put in \$30,000 for me and GP-2 and thought you would do the same for you and your friend but I do not care what happens.

55. On or about May 11, 2006, GP-2 sent an email to VITALE asking him to send "30k for genesis when you get a chance." VITALE replied, "30k is on its way . . . I want to be clear that my friend [referring to DiMASI] is part of my 1/3 and its not 25% each so my capital call is now 15k ahead. . . ."

b. Vitale Forms WN Advisors

56. On or about May 17, 2006, VITALE met with LALLY and McDONOUGH.

57. On or about June 15, 2006, VITALE formed WN Advisors purportedly to provide legislative consulting services.

58. On or about June 22, 2006, VITALE, through an entity called Washington North Realty Corp., extended to DiMASI a \$250,000 line of credit secured by a third mortgage on DiMASI's residence.

59. In or around the summer of 2006, LALLY told his business partner at Montvale that VITALE, because of his friendship with DiMASI, would help them close the Cognos deals and would be paid \$100,000 if and when the DOE deal closed.

60. On July 31, 2006, the DOE signed a contract with Cognos for \$4.5 million for the EDW.

61. On or about August 7, 2006, VITALE sent an email to McDONOUGH, asking "Can you have [attorney name] do an agreement between Montvale and WN Advisors? You could explain best the services."

62. On or about August 24, 2006, Cognos paid Montvale its commission of \$891,000 for the DOE deal.

63. On or about August 31, 2006, Montvale paid McDONOUGH \$100,000.

64. On September 14, 2006, Montvale paid WN Advisors \$100,000, and on the same day a consulting agreement between

Montvale and WN Advisors was signed to "paper" the arrangement.

Securing Legislative Funding of \$15 million for Performance Management Software Procurement

65. In or around July, 2006, LALLY and Cognos executives launched a project to sell the ITD of Massachusetts a statewide enterprise license ("ELA") for performance management or business intelligence software for \$15 million, which would be the largest deal in Cognos' history.

66. On or about July 26, 2006, DiMASI met with the Deputy Chief Information Officer ("CIO") of ITD, and expressed his interest in adding language to a pending ITD bond bill requiring business intelligence or performance management in ITD projects.

67. Although initial efforts to secure legislative funding for the \$15 million ELA were unsuccessful in July, 2006 when an ITD bond bill failed to pass, LALLY sent an email to Cognos executives on August 1, 2006, stating that "the good news [is] we can craft legislative language that will guarantee us our statewide deal. . . . I have been told that the legislature will take this up in a 'special session' the date will be announced in a couple of weeks."

68. On or about October 11, 2006, LALLY sent an email to Cognos Executive A, stating "I just got off the phone with the Speaker. I was prepping him for the [Cognos CEO] meeting and he informed me that he was going to tell [Cognos CEO] that the legislature was most likely going to come back and do the IT Bond bill in the next two weeks. He also spoke with the Secretary of

A&F [] and the secretary has agreed to the Performance Management Concept and they will jointly work on the language. They like the Cognos language to a point but they need to turn it into legislative speak."

69. On or about October 12, 2006, LALLY, MCDONOUGH and DiMASI played golf with the CEO of Cognos at the Ipswich Country Club.

70. On or about October 17, 2006, LALLY caused an email to be sent to McDONOUGH containing legislative language for a performance management system.

71. On or about November 16, 2006, a lobbyist who worked with McDONOUGH sent an email to LALLY and McDONOUGH, attaching the legislative language for a performance management system as a line item for the ITD, and asking, "Is there any other specific parameters of this system that are unique to Montvale's product that we can include in this?"

72. On or about November 21, 2006, DiMASI met with LALLY and VITALE at VITALE's office and discussed ITD Bond performance management language.

73. On or about November 22, 2006, LALLY had his Montvale partner, "M.P.", send an email to VITALE containing, among other items, the following language:

Re: Yesterday's meeting

1. With regard to the IT Bond performance management language, the Speaker was going to talk to his legal advisors and ensure that the language

relating to Performance Management cannot be interpreted as anything but a Mandate that cannot be possibly overturned. We will check with our legislative writers to see if we can offer some input as well.

74. On or about November 22, 2006, VITALE replied in an email, "I will be with sal on golf trip and will work on all the issues all next week with him."

75. On or about November 24, 2006, VITALE sent an email to LALLY, stating "On future emails let [M.P.] know not to use you know who's name or title, use WN Advisors."

76. On or about January 10, 2007, upon LALLY's instructions, M.P. sent an email attaching the latest version of performance management system legislative language to VITALE's administrative assistant "to be printed and delivered."

77. On or about January 10, 2007, VITALE had the language delivered by courier to DiMASI at the State House.

DiMASI Receives \$25,000 Payment from P.A.'s Cognos Contract

78. In the latter months of 2006, P.A. had not received monthly \$5,000 checks from Cognos, and DiMASI instructed P.A. to check with McDONOUGH to find out what was wrong, which P.A. did.

79. On or about December 12, 2006, LALLY sent an email to Cognos Executive A, stating "I just got off the phone with Dickey he says we need to look into the [P.A.] issue fast. Can you escalate this please? We don't want to piss anyone off this late in the game."

80. On or about December 13, 2006, after finding a bookkeeping error, Cognos sent a \$25,000 check to P.A. for the missed payments.

81. On or about December 20, 2006, P.A. deposited the \$25,000 check from Cognos and informed DiMASI that a \$25,000 check from Cognos had arrived. DiMASI told P.A. that he wanted all of it. P.A. wrote and mailed a \$25,000 check made out to DiMASI.

82. On or about December 28, 2006, DiMASI instructed P.A. to replace the \$25,000 check with four backdated checks in the amounts of \$8,000, \$4,000, \$6,000 and \$7,000 to further disguise the payments as typical referral fees. P.A. wrote the four checks to DiMASI.

**Inserting \$15 Million Performance Management Provision in
Emergency Bond Bill (EBB)**

83. On or about January 26, 2007, LALLY reported to Cognos executives in an email on the status of the ELA deal, informing them that there had been a meeting that day between the CIO of ITD, the Secretary of A&F, and DiMASI during which performance management was discussed.

84. On or about February 2, 2007, P.A. received a \$5,000 check from Cognos and wrote DiMASI a \$4,000 check.

85. On or about February 5, 2007, LALLY caused a Cognos corporate counsel to send a draft ELA to the CIO of ITD, who responded, "As you know, we are still waiting on the funding source."

86. In or around late February or early March, 2007, LALLY told Cognos officials that it would be necessary to hire WN Advisors as an additional government affairs resource to get the ELA deal in Massachusetts.

87. In or around February or early March, 2007, at a legislative leadership meeting, DiMASI made it known to executive officials that he wanted a provision for "business intelligence" software in the EBB.

88. On or about March 1, 2007, P.A. received a \$5,000 check from Cognos and wrote DiMASI a \$4,000 check.

89. On or about March 5, 2007, as a result of speaking with LALLY, the ITD CIO sent an email to officials in A&F asking if the \$15 million for performance management would be in the bond bill and then stating, "I know that Speaker DiMASI really really wants the performance management project in the emergency bond bill and will add it if we don't include it."

90. In or around early March, 2007, DiMASI, through his chief of staff, pressed executive officials to include in the EBB the \$15 million provision for performance management software, resulting in its inclusion and the following email on March 12, 2007 between officials in the Governor's Office:

I just spoke with [Speaker's Chief of Staff]. I told her that we were including the Speaker's request in the bill. She was very appreciative, She stated she will call the clerk's office and make sure the bill is immediately referred to Ways & Means instead of Long term debt. This is an important step in ensuring quick action.

91. On or about March 13, 2007, after exchanging several drafts with VITALE, LALLY sent to Cognos officials a proposed consulting agreement for Cognos to pay WN Advisors \$750,000 within 15 days of Cognos receiving payment from the Commonwealth of Massachusetts for the statewide ELA. Cognos officials rejected LALLY's proposal.

92. On or about March 15, 2007, LALLY received an attached renewal of P.A.'s consulting agreement from Cognos Executive A and forwarded it to VITALE and McDONOUGH stating, "Guys can we talk about this?"

Influencing the Procurement Process

On or about March 23, 2007, the Massachusetts legislature passed into law the EBB with a provision authorizing \$15 million for procurement of performance management software. Although the EBB authorized the funding for the \$15 million procurement of performance management software, the decision to conduct a procurement, as well as its scope and timing, remained with the Secretary of A&F. As such, the following additional overt acts were committed in furtherance of the conspiracy:

93. In or around April or May 2007, DiMASI contacted the Secretary of A&F and inquired how the procurement for business intelligence was going.

94. In or around May, 2007, McDONOUGH, saying that he was representing LALLY and Cognos, communicated to a high level

Massachusetts executive official known to the grand jury that the performance management procurement was important to the Speaker and wanted to make sure it went to the right vendor.

95. On or about May 9, 2007, LALLY sent an email to VITALE stating, "I'm worried about the big deal. Does he [referring to DiMASI] not want to make the call?"

96. On or about May 9, 2007, LALLY sent an email to Cognos officials advising that he was meeting with "WN and the Coach [DiMASI] tomorrow and will have an update later in the day."

97. On or about May 16, 2007, LALLY sent an email to Cognos officials, stating, in part: "I just got off the phone with Coach and Dickey. . . . He also communicated that he will call[] secretary of A/F tomorrow and put the heat on to get this deal done ASAP."

98. On or about May 18, 2007, DiMASI telephoned the Acting CIO of ITD, and after learning that Cognos was recommended by ITD to A&F as the winning vendor, inquired about the next steps.

99. On or about May 18, 2007, a Cognos executive sent an email to the Chief Operating Office of Cognos reporting as follows:

State of Mass has moved forward. The CIO met with the undersecretary and recommended Cognos. The speaker is meeting with the Sec of A&F on Tuesday to discuss Performance Management.

100. On or about May 21, 2007, LALLY forwarded to VITALE a document entitled Performance Management Memorandum, prepared by Cognos officials as talking points. The memorandum stated, in

part:

A&F may want to structure the enterprise license in a manner that allows for gradual incorporation and purchase of the performance management software over several years.

The memorandum went on to justify why a statewide enterprise license agreement with an initial up-front payment in full was the best course to follow for the Commonwealth.

101. On or about May 21, 2007, LALLY called VITALE's assistant to say that the Performance Management Memorandum needed to be delivered to "Sal" that day, and it was hand-delivered by courier that day to DiMASI's office at the State House.

102. On or about May 22, 2007, at a function they both were attending, DiMASI told the Secretary of A&F that he wanted to call or meet with her about performance management.

103. On or about June 22, 2007, Cognos Executive A sent an email to LALLY about the status of the deal, stating, in part: "Let's go in and have a sales call to determine what the issue is and how to play it. My gut on this is that she [Secretary of A&F] is not a fan of how the overall deal is structured or has developed and is holding out either her support and/or multi-year budget project as a result." LALLY responded in an email:

Sal, Dick and I discussed this last night at the democratic fund raiser. Sal said when he wants something done within his domain he is ultimately going to get what he wants. As he put it 'in the end it is my domain and I am held accountable for all decisions that come out of his office.' He also said it may take some time for a

staff person or subordinate legislator to understand what he wants and what time frame he wants it. That is the situation we are in [sic] currently involved in right now. We have a rogue Secretary that has some issues on how PM should be purchased and implemented. We are dealing with her boss and he is coaching us on how to handle the situation. Our consensus is to ride it out with her management for now and trust that they will come through. An analogy he used was a baseball theme: He said the score in the game may end up being 18 to 13 but we'll be 18. Let me know if you disagree.

104. On or about August 24, 2007, the Secretary of A&F and Cognos signed an Order Agreement for \$13 million for a statewide enterprise license with \$12 million to be paid to Cognos on August 31, 2007 and \$1 million on October 15, 2007.

105. On or about August 31, 2007, Cognos paid Montvale \$2.8 million by an electronic funds transfer as its share of the ELA deal.

106. On or about August 31, 2007, LALLY had his partner write a check from Montvale's account to WN Advisors for \$500,000.

107. On or about August 31, 2007, LALLY had his partner write a check from Montvale's account to McDONOUGH for \$200,000.

108. On or about September 6, 2007, a Cognos official sent an email to LALLY, stating, in part, "Please be sure to thank Dick and Sal for getting the contract closed."

All in violation of Title 18, United States Code, Section 371.

COUNTS TWO THROUGH FOUR: 18 U.S.C. §§ 1341, 1346 and 2 - (Honest Services Mail Fraud; Aiding and Abetting)

The Grand Jury further charges:

The Mail Fraud Scheme

109. The allegations contained in paragraphs 1 through 10 and 13 through 108 of this Indictment are realleged as though fully set forth herein.

110. From no later than December, 2004 and continuing until at least in or around February, 2008, at Boston, Burlington, and elsewhere within the District of Massachusetts, and in Naples, Florida and elsewhere, the defendants,

SALVATORE F. DiMASI,
JOSEPH P. LALLY, Jr.,
RICHARD W. McDONOUGH,
and
RICHARD D. VITALE,

knowingly and willfully devised and executed, and intended to devise and execute, a scheme and artifice to defraud and deprive the Commonwealth of Massachusetts and its citizens of their intangible right to the honest services of SALVATORE F. DiMASI, as a member and Speaker of the Massachusetts House of Representatives, free from deceit, fraud, dishonesty, concealment, conflict of interest, self-enrichment and the personal enrichment of his friends and associates.

Means and Methods of the Scheme

111. The means and methods of the scheme include the same means and methods employed by the defendants in the conspiracy

charged in Count One. As such, paragraphs 13 through 17 of this Indictment are realleged as though fully set forth herein.

Executions of the Mail Fraud Scheme

112. On or about the dates listed below, in the District of Massachusetts, the defendants,

SALVATORE F. DiMASI,
 JOSEPH P. LALLY, Jr.,
 RICHARD W. McDONOUGH,
 and
 RICHARD D. VITALE,

having devised and intending to devise a scheme and artifice to defraud, for the purpose of executing that scheme and artifice, did knowingly cause to be placed in the post office or authorized depository for mail matter, and did knowingly cause to be delivered by United States Postal Service mail or by private or commercial carriers according to the directions thereon:

COUNT	Date	Mailed/ Delivered From	Mailed/ Delivered To	Means	Item
2	9/20 2006	Cognos Corp. Burlington, MA	Law Offices P.A. Boston, MA	U.S. Mail	Consulting Agreement
3	12/14 2006	Cognos Corp. Burlington, MA	Law Offices P.A. Boston, MA	U.S. Mail	\$25,000 check
4	1/10 2007	Vitale Caturano & Co. Charlestown, MA	DiMASI's Office State House Boston, MA	City Express	Printed email and document: Performance management language

All in violation of Title 18, United States Code, Sections
1341, 1346 and 2.

COUNTS FIVE THROUGH EIGHT: 18 U.S.C. §§ 1343, 1346 and 2 -
(Honest Services Wire Fraud; Aiding and Abetting)

The Grand Jury further charges:

The Wire Fraud Scheme

113. The allegations contained in paragraphs 1 through 10 and 13 through 108 of this Indictment are realleged as though fully set forth herein.

114. From no later than December, 2004 and continuing until at least in or around February, 2008, at Boston, Burlington, and elsewhere within the District of Massachusetts, and in Naples, Florida and elsewhere, the defendants,

SALVATORE F. DiMASI,
JOSEPH P. LALLY, Jr.,
RICHARD W. McDONOUGH,
and
RICHARD D. VITALE,

knowingly and willfully devised and executed, and intended to devise and execute, a scheme and artifice to defraud and deprive the Commonwealth of Massachusetts and its citizens of their intangible right to the honest services of SALVATORE F. DiMASI, as a member and Speaker of the Massachusetts House of Representatives, free from deceit, fraud, dishonesty, concealment, conflict of interest, self-enrichment and the personal enrichment of his friends and associates.

Means and Methods of the Scheme

115. The means and methods of the scheme include the same means and methods employed by the defendants in the conspiracy

charged in Count One. As such, paragraphs 13 through 17 of this Indictment are realleged as though fully set forth herein.

Executions of the Wire Fraud Scheme

116. On or about the dates listed below, in the District of Massachusetts, the defendants,

SALVATORE F. DiMASI,
 JOSEPH P. LALLY, Jr.,
 RICHARD W. McDONOUGH,
 and
 RICHARD D. VITALE,

having devised and intending to devise a scheme and artifice to defraud, for the purpose of executing that scheme and artifice, did knowingly transmit and cause to be transmitted in interstate and foreign commerce by means of wire communication, certain writing, signs, and signals, that is, by e-mail transmission:

Count	Date	From	To	Item
5	6/20/2006	Joseph.Lally @ Montvalesolutions .com	Cognos Executive A @ Cognos.com	Email not to cancel P.A., "could affect MASSDOE"
6	6/30/2006	RmcDAssoc@aol.com	Joseph.Lally @ Montvale Solutions.com	Email with EDW budget amendment: "Mission Accomplished"

7	12/12 2006	Joseph.Lally @ Montvalesolutions .com	Cognos Executive A @ Cognos.com	Email: "Just got off the phone with Dickey he says we need to look into the P.A. issue fast . . .We don't want to piss anyone off this late in the game."
8	8/31 2007	Bank of America New York	Danversbank Danvers, MA	EFT of \$2.8 million to account of Montvale Solutions

All in violation of Title 18, United States Code, Sections
1343, 1346 and 2.

COUNT NINE: 18 U.S.C. § 1951 - (Extortion under Color of Official Right)

The Grand Jury further charges:

117. The allegations contained in paragraphs 1 through 10 and 13 through 108 of this Indictment are realleged as though fully set forth herein.

118. Between in or about March, 2005 and in or about August 31, 2007, at Boston, Burlington, and elsewhere within the District of Massachusetts, the defendant

SALVATORE F. DiMASI

did knowingly, willfully, and unlawfully obtain property, that is, payments of money to SALVATORE F. DiMASI and others not due him or his office, from JOSEPH P. LALLY, Jr. and Cognos by means of extortion, that is with JOSEPH P. LALLY, Jr. and Cognos's consent and under color of official right, knowing such payments were made in return for performing official acts as a member and Speaker of the Massachusetts House of Representatives that would further the interests of LALLY and Cognos in the Commonwealth of Massachusetts and thereby did obstruct, delay, and affect interstate commerce and the movement of any article in interstate commerce.

All in violation of Title 18, United States Code, Section 1951.

COUNT TEN: 18 U.S.C. § 1957 - (Money Laundering)

The Grand Jury further charges:

119. On or about August 4, 2008, in the District of Massachusetts and elsewhere, the defendant,

JOSEPH P. LALLY, Jr.,

did knowingly engage and attempt to engage in a monetary transaction in criminally derived property of a value greater than \$10,000 that was derived from specified unlawful activity, namely, mail and wire fraud in violation of 18 U.S.C. §§ 1341 and 1343, to wit, the transfer of \$432,416.33 from Bank of America Certificate of Deposit, account number XXX XXX XXXX 7338 to Bank of America Money Market Deposit Account number XXXX XXXX 6354.

All in violation of Title 18, United States Code, Sections 1957 and 2.

FORFEITURE ALLEGATIONS

(18 U.S.C. §§ 981(a)(1)(C), 981(a)(1) & 28 U.S.C. § 2461(c))

The Grand Jury further charges:

1. Upon conviction of any offense in violation of 18 U.S.C. §§ 371, 1341, 1343, and 1951 alleged herein, the defendants,

SALVATORE F. DiMASI,
JOSEPH P. LALLY, Jr.,
RICHARD W. McDONOUGH,
and
RICHARD D. VITALE,

jointly and severally, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), any property, real or personal, that constitutes, or is derived from, proceeds traceable to the commission of the offenses. The property to be forfeited by the defendants includes, but is not limited to, the following:

- a. the real property, with all rights appertaining thereto, known as 220 Commercial Street, Apt. 5B, Boston, Massachusetts, having a Residential Condominium Unit Deed recorded at the Suffolk County Registry District of the Land Court as Document No. 638614;
- b. the real property, with all rights appertaining thereto, known as 4 Oliver Swain Road, North Reading, Massachusetts, having a Massachusetts Quitclaim Deed recorded at the Middlesex (Southern District) Registry of Deeds in Book 38867, Page 426; and

- c. one 2006 Boston Whaler 32 Outrage, bearing hull identification number BWCE2821B606.

2. Upon conviction of any offense in violation of 18 U.S.C. § 1957 alleged herein, the defendant,

JOSEPH P. LALLY, Jr.,

shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(1), any property, real or personal, involved in such offense, or any property traceable to such property. The property to be forfeited includes, without limitation:

- a. all funds on deposit at Bank of America Money Market Deposit Account number xxxx xxxx 6354, held in the names of Joseph P. and Susan M. Lally, up to the amount of \$84,416.33;
- b. all funds on deposit at Bank of America checking account number xxxx xxxx 5535, held in the names of Joseph P. and Susan M. Lally, up to the amount of \$299,000.00;
- c. all funds on deposit at Bank of America checking account number xxxx xxxx 6756, held in the names of Joseph P. and Susan M. Lally, up to the amount of \$11,000; and
- D. all funds on deposit at Bank of America checking account number xxxx xxxx 4726, held in the name of Montvale Systems, LLC, up to the amount of \$38,000.00.

3. If any of the property described in paragraphs 1 and 2 hereof as being forfeitable, as a result of any act or omission of the defendants --

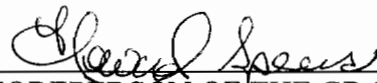
- a. cannot be located upon the exercise of due diligence;

- b. has been transferred to, sold to, or deposited with a third party;
- c. has been placed beyond the jurisdiction of this Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

it is the intention of the United States, pursuant to 18 U.S.C. § 982(b) and 28 U.S.C. § 2461(c), incorporating 21 U.S.C. § 853(p), to seek forfeiture of all other property of the defendants up to the value of the property described in subparagraphs a through e of this paragraph.

All pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and 982(a)(1), Title 28, United States Code, Section 2461(c) and Rule 32.2 of the Federal Rules of Criminal Procedure.


A TRUE BILL


FOREPERSON OF THE GRAND JURY


ASSISTANT U.S. ATTORNEYS

DISTRICT OF MASSACHUSETTS; October 13, 2009.

Returned into the District Court by the Grand Jurors and filed.


DEPUTY CLERK
2:50pm