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111TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REVIEW NO.
09–9075

OFFICE OF CONGRESSIONAL ETHICS UNITED STATES HOUSE OF REPRESENTATIVES

Report and Findings

Transmitted to the
Committee on Standards of Official Conduct
on December 2, 2009
and released publicly pursuant to H. Res. 895 of the
110th Congress as amended

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OFFICE OF

CONGRESSIONAL ETHICS

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REPORT

Review No. 09–9075

The Board of the Office of Congressional Ethics (hereafter the "Board"), by a vote of no less than four members, on November 20, 2009, adopted the following report and ordered it to be transmitted to the Committee on Standards of Official Conduct of the United States House of Representatives (hereafter the "Committee").

SUBJECT: Representative Jim Moran

NATURE OF THE ALLEGED VIOLATION: In Fiscal Year 2009, Representative Jim Moran authored several earmarks for clients of PMA Group, Inc. (hereafter "PMA"). During campaign cycles 2008 and 2010, Representative Moran received contributions to his campaign committee and "Leadership PAC" from PMA's PAC, PMA employees, the PACs of PMA clients for whom he authored earmarks, and the employees of those clients.

If Representative Moran solicited or accepted contributions or other items of value in exchange for or because of an official act, or solicited or accepted contributions or other items of value in a manner which gave the appearance that the contributions were linked to an official act, then Representative Moran may have violated 18 U.S.C. § 201(b) (Bribery), 18 U.S.C. § 201(c) (Illegal Gratuities), 5 U.S.C. § 7353 (Gifts to Federal Employees), and House Rules and Standards of Conduct.

RECOMMENDATION: The Board of the Office of Congressional Ethics recommends that the Committee on Standards of Official Conduct dismiss the above allegations.

VOTES IN THE AFFIRMATIVE: 6

VOTES IN THE NEGATIVE: 0

MEMBER OF THE BOARD OR STAFF DESIGNATED TO PRESENT THIS REPORT TO THE COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT: Leo Wise, Staff Director & Chief Counsel.

TABLE OF CONTENTS

I. INTRODUCTION 3
A. Summary of Allegations 3
B. Jurisdiction Statement 3
C. Procedural History 3
D. Summary of Investigative Activity 4
II. THE OCE UNCOVERED NO EVIDENCE THAT REPRESENTATIVE MORAN REQUESTED EARMARKS FOR PMA CLIENTS IN CONNECTION WITH CAMPAIGN CONTRIBUTIONS THAT HE RECEIVED 6
A. Relevant Law, Regulation, Rules, and Standards of Conduct 6
B. Earmark Process 9
C. Campaign Fundraising 10
D. Relationship with PMA 10
E. Perception of Corporate Donors 11
F. Contributions Linked to Official Acts by Outside Entities 12
III. CONCLUSION 13
IV. INFORMATION THE OCE WAS UNABLE TO OBTAIN AND RECOMMENDATIONS FOR THE ISSUANCE OF SUBPOENAS 13

FINDINGS OF FACT AND CITATIONS TO LAW

Review No. 09–9075

On November 20, 2009, the Board of the Office of Congressional Ethics (hereafter the "Board") adopted the following findings of fact and accompanying citations to law, regulations, rules and standards of conduct (in italic). The Board notes that these findings do not constitute a determination of whether or not a violation actually occurred.

I. INTRODUCTION

A. SUMMARY OF ALLEGATIONS

1. There is not substantial reason to believe that Representative Jim Moran solicited or accepted contributions or other items of value in exchange for or because of an official act, or solicited or accepted contributions or other items of value in a manner which gave the appearance that the contributions were linked to an official act.

B. JURISDICTION STATEMENT

2. The allegations that were the subject of this review concern Representative Jim Moran, a Member of the United States House of Representatives from the 8th District of Virginia. The Resolution the United States House of Representatives adopted creating the Office of Congressional Ethics (hereafter the "OCE") directs that, "[n]o review shall be undertaken . . . by the board of any alleged violation that occurred before the date of adoption of this resolution."[1] The House adopted this Resolution on March 11, 2008. Because the conduct under review occurred after March 11, 2008, review by the Board is in accordance with the Resolution.

C. PROCEDURAL HISTORY

3. The OCE received a written request for preliminary review in this matter signed by at least two members of the Board on July 6, 2009. The preliminary review commended on that date.[2] The preliminary review was scheduled to end on August 5, 2009.

4. At least three members of the Board voted to initiate a second-phase review in this matter on August 5, 2009. The second-

[1] H. Res 895, 110th Cong. § 1(e) (2008) (as amended).

[2] A preliminary review is "requested" in writing by members of the Board of the OCE. The request for a preliminary review is received by the OCE on a date certain. According to H. Res. 895 of the 110th Congress (hereafter "the Resolution"), the timeframe for conducting a preliminary review is 30 days from the date of receipt of the Board's request.

phase review commenced on August 6, 2009.[3] The second-phase review was scheduled to end on September 20, 2009.[4]

5. The Board voted to extend the 45-day second-phase review by an additional 14 days on September 17, 2009, as provided for under the Resolution. Following the extension, the second-phase review was scheduled to end on October 5, 2009.[5]

6. The Board voted to refer the matter to the Committee on Standards of Official Conduct for dismissal and adopted these findings on November 20, 2009.

7. The report and its findings in this matter were transmitted to the Committee on Standards for Official Conduct on December 2, 2009.

D. SUMMARY OF INVESTIGATIVE ACTIVITY

8. Due to the nature of the allegations in this review, the OCE's investigation required the collection of information from a number of sources.

9. The OCE reviewed publically available records of campaign contributions to the campaign committees of Members of the House Appropriations Subcommittee on Defense (hereafter "Defense Subcommittee") from recipients of earmarks during the 2008 and 2010 campaign cycles. The review included campaign contributions to the leadership political action committees (hereafter "PACs"), if any, of these Members.

10. Specifically, the OCE reviewed campaign contributions to these Members from donors that were affiliated with the lobbying firm of Paul Magliocchetti and Associates Group, Inc. (hereafter "PMA"), *i.e.*, contributions from the PMA PAC, PMA employees, the PACs of corporate clients of PMA (hereafter "PMA clients") and employees of PMA clients.

11. The OCE also reviewed campaign contributions to Members of the Defense Subcommittee from PACs of non-PMA clients, and employees of non-PMA clients.

12. Beyond Members of the Defense Subcommittee, the investigation included a review of campaign contributions from PMA clients and non-PMA clients to Representatives who are not on the Defense Subcommittee, but authored defense earmarks for PMA clients and non-PMA clients.

13. The OCE requested information from forty PMA clients that received earmarks from Members of the Defense Subcommittee for fiscal years 2008 to 2010.

14. All of the PMA clients that the OCE contacted cooperated with the investigation, except for two.

15. Aeroflex and Kimball and Associates are the only PMA client that refused to cooperate with the investigation.

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[3] According to the Resolution, the Board must vote (as opposed to make a written authorization) on whether to conduct a second-phase review in a matter before the expiration of the 30-day preliminary review. If the Board votes for a second-phase, the second-phase commences the day after the preliminary review ends.

[4] According to the Resolution, the Board must vote on whether to conduct a second-phase review in a matter before the expiration of the 30-day preliminary review. If the Board votes for a second-phase, the second-phase begins when the preliminary review ends. The second-phase review does not begin on the date of the Board vote.

[5] The 14-day extension expires after the 45-day second-phase review ends. The 14-day extension does not begin on the date of the Board vote.

16. Thirty-eight PMA clients and Representatives' offices produced documents totaling approximately 200,000 pages. These PMA clients also made witnesses available for interviews upon request of the OCE.

17. Based on the information discovered during the review of the produced documents, the OCE interviewed twenty-six individual PMA client witnesses.

18. In addition, the OCE interviewed six witnesses who were formerly employed as lobbyists with PMA during the 2008 and 2010 campaign cycles.

19. In sum, the OCE requested and received documentary, and in some cases testimonial, information from the following sources:

(1) 21st Century Systems, Inc.;
(2) AAR Composites;
(3) Advanced Acoustic Concepts;
(4) Advanced Concepts & Technologies Intl.;
(5) Aircraft Interior Products;
(6) Applied Global Technologies;
(7) Argon ST;
(8) Boeing Corporation;
(9) Carnegie Mellon University;
(10) Coda Octopus Group;
(11) Concurrent Technologies Corporation;
(12) Conemaugh Health Systems;
(13) Cryptek;
(14) DDL OMNI Engineering;
(15) DRS Technologies;
(16) EM Solutions;
(17) General Atomics;
(18) General Dynamics;
(19) Goodrich Corporation;
(20) Innovative Concepts, Inc.;
(21) ITT Corporation;
(22) Lockheed Martin Corporation;
(23) MobilVox;
(24) NuVant Systems, Inc.;
(25) Optimal Solutions & Technologies;
(26) Parametric Technology Corporation;
(27) Planning Systems Inc.;
(28) Profile Systems;
(29) Prologic, Inc.;
(30) QTL Biosystems;
(31) RaySat Antenna Systems;
(32) Rockwell Collins;
(33) Samueli Institute;
(34) Sierra Nevada Corporation;
(35) Teledyne Continental Motors, Inc.;
(36) Teledyne Controls;
(37) Windber Research Institute;
(38) Xunlight Corporation;
(39) Vice President, 21st Century Systems, Inc.;
(40) Chief Administrative Officer, 21st Century Systems, Inc.;

(41) Vice President for Communications, 21st Century Systems, Inc.;
(42) PAC Treasurer, 21st Century Systems, Inc.;
(43) General Manager, AAR Composites;
(44) Chief Operating Officer, AAR Composites;
(45) Chief Executive Officer, Applied Global Technologies;
(46) Vice President, Applied Global Technologies;
(47) PAC Treasurer, DRS Technologies;
(48) President, DRS Technologies;
(49) Chief Operating Officers, Optimal Solutions & Technologies;
(50) Chief Executive Officer, Optimal Solutions & Technologies;
(51) Director, Optimal Solutions & Technologies;
(52) CEO, Samueli Institute;
(53) Vice President, Sierra Nevada Corporation;
(54) Congressional Affairs Director, Sierra Nevada Corporation;
(55) Assistant to Business Development Director, Teledyne Continental Motors, Inc.;
(56) Business Development Director, Teledyne Continental Motors, Inc.;
(57) PAC Treasurer, Teledyne Controls;
(58) General Manager, Teledyne Controls;
(59) Vice President, Teledyne Controls;
(60) Director of Contracts, Teledyne Controls;
(61) Contract Administrator, Teledyne Controls;
(62) Legislative Affairs Director, Teledyne Controls;
(63) Associate General Counsel, Teledyne Controls;
(64) President, Teledyne Controls;
(65) PMA Lobbyist 1;
(66) PMA Lobbyist 2;
(67) PMA Lobbyist 3;
(68) PMA Lobbyist 4;
(69) PMA Lobbyist 5;
(70) PMA Lobbyist 6;
(71) Representative Jim Moran;
(72) Representative Moran's Former Military Legislative Analyst;
(73) Finance Director for Moran for Congress and Representative Moran's Virginia Leadership PAC.

II. THE OCE UNCOVERED NO EVIDENCE THAT REPRESENTATIVE MORAN REQUESTED EARMARKS FOR PMA CLIENTS IN CONNECTION WITH CAMPAIGN CONTRIBUTIONS THAT HE RECEIVED

A. RELEVANT LAW, REGULATION, RULES, AND STANDARDS OF CONDUCT

20. *18 U.S.C. § 201(b)—Bribery of public officials and witnesses*
"(b) Whoever—
(2) being a public official or person selected to be a public official, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for:

(A) being influenced in the performance of any official act. . . ."

21. *18 U.S.C. § 201(c)—Illegal Gratuities*

"(c) Whoever—

(1) otherwise than as provided by law for the proper discharge of official duty—

(B) being a public official, former public official, or person selected to be a public official, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of any official act performed or to be performed by such official or person. . . ."

22. *"An illegal gratuity . . . may constitute merely a reward for some future act that the public official will take (and may have already determined to take), or for a past act that he has already taken."*[6]

23. *House Rules and Standards of Conduct*

"[T]he scope of the House standards of conduct in this area is broader than that of the criminal bribery statute . . . the House standards of conduct generally preclude any link between the solicitation or receipt of a contribution and a specific official action."[7]

"Put another way, there are fundraising activities that do not violate any criminal statute but well may violate House standards of conduct."[8]

"[T]here are certain proffered campaign contributions that must be declined, and certain fundraising opportunities that must be forgone, solely because they create an appearance of improper conduct."[9]

"[N]o solicitation of a campaign or political contribution may be linked to an action taken or to be taken by a Member or employee in his or her official capacity."[10] *In addition, a Member may not accept any contribution that is linked with any specific official action taken or to be taken by that Member."*[11]

"It is probably not wrong for the campaign managers of a legislator . . . to request contributions from those for whom the legislator has done appreciable favors, but this should never be presented as a payment for the services rendered. Moreover, the possibility of such a contribution should never be suggested by the legislator or his staff as the time the favor is done. Furthermore, a decent interval of time should be allowed to lapse so that neither party will feel that there is a close connection between the two acts. The Standards Committee has long advised Members and staff that they should always exercise caution to

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[6] House Ethics Manual (2008) at 79. *See also* United States v. Sun-Diamond Growers, 526 U.S. 398, 404 (1999).

[7] Memorandum of the Chairman and Ranking Minority Member, Recommendations for disposition of the complaint filed against Representative DeLay. Accessed online on June 24, 2009 at http://ethics.house.gov/Investigations/Default.aspx?Section=18.

[8] *Id.*

[9] *Id.*

[10] House Ethics Manual (2008) at 147.

[11] Memorandum of the Chairman and Ranking Minority Member, Recommendations for disposition of the complaint filed against Representative DeLay. Accessed online on June 24, 2009 at http://ethics.house.gov/Investigations/Default.aspx?Section=18.

avoid even the appearance that solicitations of campaign contributions are connected in any way with an action taken or to be taken in their official capacity."[12]

"[A] Member should not sponsor or participate in any solicitation that offers donors any special access to the Member in the Member's official capacity."[13]

"[G]overnment officials should 'never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not.'"[14]

"'[P]ublic office is a public trust,' and the public has a right to expect House Members and staff to exercise impartial judgment in performing their duties."[15]

24. *5 U.S.C. § 7353—Gifts to Federal Employees*

"(a) Except as permitted by subsection (b), no Member of Congress . . . shall solicit or accept anything of value from a person—

(1) seeking official action from, doing business with . . . the individual's employing entity; or

(2) whose interests may be substantially affected by the performance or nonperformance of the individual's official duties.

(b)(1) Each supervising ethics office is authorized to issue rules or regulations implementing the provisions of this section and providing reasonable exceptions as may be appropriate.

(2)(A) Subject to subparagraph (B), a Member, officer, or employee may accept a gift pursuant to rules and regulations established by such individual's supervising ethics office pursuant to paragraph (1)

(B) No gift may be accepted pursuant to subparagraph (A) in return for being influenced in the performance of an official act."

25. *House Ethics Manual—Soliciting Campaign and Political Contributions*

While the federal gift statute (5 U.S.C. § 7353) broadly restricts the ability of House Members and staff to solicit things of value from virtually anyone, even when no personal benefit to the solicitor is involved, legislative materials concerning the statute state that it does not apply to the solicitation of political contributions. Consistent with those materials, the Standards Committee has long taken the position that the restrictions on solicitation set forth in that statute do not apply to political solicitations. However, in soliciting campaign or political contributions, Members and staff are subject to a number of other restrictions, as follows.

A Contribution linked to an Official Action May Not Be Accepted

. . . no solicitation of a campaign or political contribution may be linked to any action taken or to be taken by a Member or employee in his or her official capacity.

In a similar vein, a Member or employee may not accept any contribution that the donor links to any official action that the

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[12] *Id.*
[13] *Id.*
[14] *Id.* at 151 (citing Code of Ethics for Government Service, ¶ 5).
[15] *Id.* at 151 (citing Code of Ethics for Government Service, ¶10).

Member or employee has taken, or is being asked to take. In this respect, a campaign or political contribution is treated like any other gift, and acceptance of a contribution in these circumstances may implicate a provision of the federal gift statute (5 U.S.C. § 7353) or the criminal statutes on bribery and illegal gratuities.

26. Based on the facts collected by the OCE, the Board concludes there is not substantial reason to believe the allegations that are the subject of this review.[16]

B. EARMARK PROCESS

27. Representative Jim Moran represents the 8th Congressional District of Virginia.

28. Representative Moran is a Member of the House Committee on Appropriations, Subcommittee on Defense.

29. The process for handling Representative Moran's requests for earmarks for the Subcommittee on Defense is initially managed by his Congressional office staff.[17] Representative Moran's former Military Legislative Assistant reviewed all earmark requests prior to his departure in July of 2009.[18] However, Representative Moran made the ultimate decision as to which funding requests were submitted to the Subcommittee.[19]

30. Because the Pentagon in located in Representative Moran's district, his office received a significant number of funding requests.[20] Representative Moran informed the OCE staff that he reviewed roughly 300–500 requests and only 60 or so of that number ultimately received funding.[21]

31. Representative Moran's former Military Legislative Analyst met with the companies' representatives and lobbyists to discuss potential funding requests.[22] Based on the information presented in the meetings, Representative Moran's former Military Legislative Analyst would assess whether each request met Representative Moran's criteria for funding which included: the success of any past projects; whether the Department of Defense was interested in the project; and how many jobs the project would bring to the Congressman's district.[23] He would then create a list of potential funding requests for Representative Moran's review.[24]

32. Representative Moran would review the list of potential earmark requests, making changes to both the order of the requests and, at times, the requested dollar amounts.[25] The list was then submitted to the Subcommittee.[26]

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[16] Rule 9 of the OFFICE OF CONGRESSIONAL ETHICS, RULES FOR THE CONDUCT OF INVESTIGATIONS 11 (2009) provides that "[t]he Board shall refer a matter to the Standards Committee for further review if it determines there is a substantial reason to believe the allegation based on all the information then known to the Board."

[17] Memorandum of Interview of Representative James Moran, October 5, 2009, ("Moran MOI") (Exhinit 1 at ¶ 8).

[18] Memorandum of Interview of Representative Moran's former Military Legislative Assistant, October 5, 2009, ("Former MLA MOI") (Exhibit 2 at ¶ 25).

[19] Moran MOI (Exhinit 1 at ¶ 4).

[20] *Id.* at ¶ 2.

[21] *Id.* at ¶ 8.

[22] Former MLA MOI, (Exhibit 2 at ¶ 9).

[23] *Id.* at ¶ 25.

[24] *Id.* at ¶ 26.

[25] *Id.*

[26] *Id.*

C. CAMPAIGN FUNDRAISING

33. During the time period of the 2008 and 2010 campaign cycles, Representative Moran accepted approximately $180,200 in campaign contributions from PMA's PAC and employees and from the PAC and employees of PMA clients.[27]

34. Representative Moran's fundraising is handled by the Finance Director for the Congressman's campaign committees, Moran for Congress and Virginia Leadership PAC. The Finance Director has held that position with both entities for the past twelve years.[28]

35. The Finance Director develops a yearly budget for the campaign committee and PAC and arranges the campaign's fundraising schedule which includes receptions, breakfasts and a theater night.[29] In addition, various individuals host fundraising dinners in their homes or other events such as wine tastings or athletic events.[30]

36. Fundraising correspondence is sent out to donor lists the campaign has received from the Democratic Congressional Campaign Committee, donor lists purchased from the "Washington Rep book", and to lists of individuals who have previously attended events or made contributions to the campaign in the past.[31]

37. Representative Moran also spends two to three afternoons per week making phone calls to individuals who have previously contributed to his campaign.[32]

38. Representative Moran fundraises for his campaign throughout the year in order to raise approximately $600,000 to $1,000,000 in a given cycle.[33]

39. Representative Moran told the OCE that he did not know who made donations or what amounts were made to his campaign and that he did not want to know.[34] He further stated that he did not believe that having such information was appropriate.[35] He explained that he did not want to abstain from a vote because he was notified of a contribution.[36] He stated that after 19 years, his votes are reasonably predictable and that contributions make no difference in his voting decisions.[37]

D. RELATIONSHIP WITH PMA

40. During the time period of the 2008 and 2010 campaign cycles, 13 corporate clients of PMA were awarded earmarks requested by Representative Moran.

41. The PMA clients that received earmarks during this period are:

(a) Argon ST Inc., (Requested, $6,200,000)

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[27] Contribution amounts are derived from reports filed with the Federal Election Commission by Moran for Congress and Virginia Leadership PAC.

[28] Memorandum of Representative Moran's Finance Director, October 5, 2009, ("Finance Director MOI") (Exhibit 3 at ¶ 2).

[29] *Id.* at ¶ 3.

[30] *Id.* at ¶ 6.

[31] *Id.* at ¶ 9.

[32] Moran MOI (Exhibit 1 at ¶ 13).

[33] *Id.*

[34] Moran MOI (Exhibit 1 at ¶ 17).

[35] *Id.*

[36] *Id.*

[37] *Id.*

(b) Planning Systems, Inc., (Requested, $4,700,000)
(c) MobilVox, (Requested, $4,200,000)
(d) General Dynamics, (Requested, $4,000,000)
(e) ITT Corp., (Requested, $3,200,000)
(f) Samueli Institute, (Requested, $3,000,000)
(g) DDL OMNI Engineering, LLC, (Requested, $2,000,000)
(h) EM Solutions, (Requested, $2,000,000)
(i) Artis, LLC, (Requested, $1,600,000)
(j) Innovative Concepts, Inc., (Requested, $1,600,000)
(k) Prologic, Inc., (Requested, $1,600,000)
(l) RaySat Antenna Systems, (Requested, $800,000)
(m) Rockwell Collins, (Requested, $400,000)[38]

42. Representative Moran informed the OCE staff that he knew Mr. Paul Magliocchetti and several of the people that worked for PMA.[39] However, he did not have frequent contact with Mr. Magliocchetti or PMA.[40] He further stated that he saw Mr. Magliocchetti at fundraisers but said that he did not know him socially.[41] He dealt with Mark Magliocchetti on occasion but most interaction with PMA employees occurred through his staff.[42]

43. Representative Moran stated that PMA knew the appropriations process, and that they knew what the military was looking for and the benefit that could be derived from certain projects.[43]

44. Representative Moran's former Military Legislative Analyst informed the OCE staff that he dealt most frequently with John Veltri or Julie Giardino at PMA.[44] He stated that he met with eight to twelve PMA clients in a given cycle and that less than three-quarters but more than one-half of those clients received funding.[45] He further explained that PMA's clients' project proposals were good in that they had support from the Pentagon, they were easy to understand, and had identifiable military benefit.[46]

E. PERCEPTION OF CORPORATE DONORS

45. There is evidence that some of the commercial entities seeking earmarks from Representative Moran believe that a political donation to him has an impact on his decision to author an earmark for that donor.[47]

46. However, Representative Moran credibly articulated a process that separates his legislative activities from campaign fundraising activities. Representative Moran achieves this separation by eliminating his and his legislative staff's exposure to information from the campaign's fundraising operation.[48] Similarly, since Representative Moran retains a professional fundraiser, his professional fundraiser is isolated from the Member's legislative activi-

[38] H.R. 3222, Pub. L. 110–116 (2008); H.R. 2638, Pub. L. 110–329 (2009); and H.R. 3326, 111 Cong. (2009).
[39] *Id.* at ¶ 10.
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.* at ¶ 12.
[44] Former MLA MOI, (Exhibit 2 at ¶ 17).
[45] *Id.* at ¶ 17, 18.
[46] *Id.* at ¶ 22.
[47] Century Systems, Inc. Proposed CY 2008 Congressional Campaign Contributions (Exhibit 4).
[48] Moran MOI (Exhibit 1 at ¶ 15).

ties.[49] As result, neither the campaign nor Representative Moran's legislative staff is aware of what the other is doing.

47. Representative Moran explained to the OCE that he operates his campaign and Congressional office in this manner to prevent even the appearance that his legislative acts are influenced by contributions to their campaign or PAC.[50] One risk associated with this is the possibility of an appearance of a conflict of interest if, out of ignorance, the Member's campaign accepts a contribution near in time to a legislative act that has an impact on the individual or entity making the contribution. This potential for an appearance of a conflict may explain why companies requesting an earmark appear to think that a contribution to the respective campaign or PAC affects the ultimate receipt of an earmark. The House Ethics Manual is unclear as to what obligations, if any, are placed on a Member to discourage or disabuse an entity of that impression.

F. CONTRIBUTIONS LINKED TO OFFICIAL ACTS BY OUTSIDE ENTITIES

48. In several instances, the OCE uncovered evidence that commercial entities seeking earmarks from Members of Congress appear to have linked contributions to Members' campaigns and/or PACs to specific legislative acts.[51] These documents were internal to the companies and there is no evidence they were shared with Members.

49. The federal gift statute, 5 U.S.C. § 7353, prohibits the solicitation or acceptance of anything of value from a person seeking official action from or doing business with the House, or from someone whose interests may be substantially affected by the performance or nonperformance of a Member's, officer's or staff member's official duties. The statute also provides that the Committee on Standards of Official Conduct may enact reasonable exceptions to the prohibition. According to the Ethics Manual, the Standards Committee has long taken the position that the restrictions on solicitation set forth in the statute do not apply to political solicitations. However, Members and staff are subject to a number of other restrictions regarding the solicitation of campaign or political contributions under the rules of the House.

50. Under House rules, a Member or employee may not accept any contribution that the donor links to any official action that the Member or employee has taken, or is being asked to take. If a donor's contribution is linked to any official action, it is treated like any other gift and may be subject as such to the federal gift statute and the criminal statutes on bribery and illegal gratuities.

51. The Board notes that the examples provided in the Ethics Manual of instances where a Member may be in violation of the House's rule against accepting a contribution linked to an official action are all instances in which the Member has some degree of knowledge of the link. As a result, it stands to reason that it is unlikely a violation of the rule could occur unless and until a Member is aware of the link and does nothing to remedy the situation.

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[49] Finance Director MOI (Exhibit 3 at ¶15).

[50] Moran MOI (Exhibit 1 at ¶ 17).

[51] Century Systems, Inc. Proposed CY 2008 Congressional Campaign Contributions (Exhibit 4).

52. The Board finds nothing in the factual record to indicate the Member was aware that the donor linked the contribution to an official act. As such, the Board concludes there is not a substantial reason to believe that a violation of either 5 U.S.C. § 7353 or the applicable House rules occurred. However once the Member becomes aware of the link, if the matter is not remedied by either by the Member or by formal advice from the Standards Committee declaring the contribution acceptable, then a violation may occur.

III. CONCLUSION

53. For these reasons, the Board recommends that the Standards Committee dismiss the above described allegations concerning Representative Moran.

IV. INFORMATION THE OCE WAS UNABLE TO OBTAIN AND RECOMMENDATIONS FOR THE ISSUANCE OF SUBPOENAS

54. In every instance, the OCE asked the recipient of an OCE request for information to identify any information they withheld and the reason for doing so. However, absent the authority to subpoena the evidence in possession of the witness, it is impossible for the OCE to verify if information was withheld, but not documented.

55. In some instances, documents were redacted or specific information was not provided. For instance, DRS Technologies provided evidence responsive to the OCE's Request for Information but indicated they would not provide any information regarding their "Legislative Strategy."

56. In at least one instance, the OCE had reason to believe a witness withheld information requested, but did not comply with the OCE's request that they identify what was being withheld. Specifically, Boeing Corporation represented that they had fully cooperated. However, the Boeing Corporation indicated that they had no electronic mail responsive to the OCE's Request for Information. The OCE then received, from another source, electronic mail to and from PMA Client 8 that were in fact responsive to OCE's request.

57. The Board also notes that while the OCE was able to interview six former employees of PMA that provided general information on PMA and its business practices, many remaining former employees refused to consent to interviews. In addition, the OCE was unable to obtain any evidence within PMA's possession.

58. The Board makes the recommendation contained in this referral based on the factual record before it. Given its recommendation to dismiss, the Board does not recommend the issuance of subpoenas, but recognizes that the Committee on Standards of Official Conduct may determine otherwise.

EXHIBIT 1

CONFIDENTIAL
Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

MEMORANDUM OF INTERVIEW

IN RE:	Representative James Moran
REVIEW #:	09-9075
DATE:	October 5, 2009
LOCATION:	2339 Rayburn HOB Washington, DC 20515
TIME:	11 p.m. to 12 p.m. (approximate)
PARTICIPANTS:	Elizabeth Horton Omar Ashmawy Leslie J. Kerman (with the Waverly Group, Inc.)

SUMMARY: Representative James Moran is the Representative from the 8th District of Virginia. The OCE requested an interview with Representative Moran on July 10, 2009, and he consented to an interview. Representative Moran made the following statements in response to our questioning:

1. Representative Moran was given an 18 U.S.C. § 1001 warning and consented to an interview. Representative Moran signed a written acknowledgement of the warning, which will be placed in the case file in this review.

2. Because the Pentagon is in his District, it is typical for defense companies to locate there. As a result, he receives thousands of earmark requests each year. The office cannot possibly respond to all the requests they get.

3. Those requests go to his staff. Anyone who makes a request is provided a form and asked to fill it out. The office then reviews these requests very thoroughly. The office vets the requests with the Department of Defense (hereafter "DOD") – typically with the relevant DOD program manager.

4. He is not interested in earmarking funds that won't help his district. He makes the ultimate decision on earmarks. He stated that earmarks are given every year to someone who has not contributed to his campaign.

5. The Appropriations Sub-committee on Defense also has its own form and conducts its own review.

6. Often the companies requesting the earmark have gone to the Pentagon and spoken to a program manager who indicated their interest in the proposed project. The

Congressman's office checks with the program managers. If the program manager says they are not interested in the project or they do not like the company or any other problem, then Representative Moran's office will decline the request.

7. Furthermore, when the office decides to include an earmark in the appropriations bill, it is a fraction of what the requestor wanted. The sub-committee also winnows down their requests. The office may ask for twice as much as they get.

8. Representative Moran does not normally see the earmark requests until his staff narrows them down based on DOD's needs. He will see approximately three hundred to five hundred earmark requests; maybe 60 of which are approved and forwarded to the Subcommittee.

9. The Congressman doesn't typically include earmarks for national programs or initiatives. He understands that other Members of Congress have fewer requests, but for higher dollar amounts – $20-30 million for only two, three, or four contractors. The Congressman makes more requests, but only for $1-2 million each.

10. Regarding his relationship to Paul Magliocchetti and Paul Magliocchetti and Associates (hereafter "PMA"), the Member explained that he knew Mr. Magliocchetti and several of the people who worked with him. However, he said that there was not much interaction between himself and PMA. He dealt with Mark Magliocchetti on occasion but most interaction with PMA employees occurred through his staff. He further stated that he saw Mr. Magliocchetti at fundraisers but that he did not know him socially.

11. Early on, Mr. Magliocchetti would come to the Congressman and say, "You only gave $1 million…my client needs $10 million." The Congressman would reply, "Hey! There are only so many…I represent a lot of contractors…" Over time, Mr. Magliocchetti realized that there was only so much the member could do and realized the Member was being fair.

12. Mr. Magliocchetti was a good advocate for his clients, especially if he really believed in them. He knew how to run the traps, he knew what the military was looking for and the benefit the project would derive if funded.

13. When asked if there were "seasons" to fundraisers, the Congressman replied that it's really all year. His elections cost approximately between $600,000 and $1 million. He also spends a lot of money on DCCC dues – approximately $250,000. In addition, he is expected to contribute to "Frontline" democratic candidates who are in contested races. He stated that he spends two to three afternoons per week making phone calls to individuals on behalf of his campaign.

14. He typically holds a theater night fundraiser each year and he will spend 2-3 afternoons making calls to individuals that have contributed to him in the past. He also a couple of breakfasts, a baseball game, and wine tasting.

15. Representative Moran understood the need to keep his fundraising and Congressional office separate. He thought there were Congressional ethics or even laws that required it, but he knew his office had to keep the two separate and so they keep it separate.

16. He has heard stories from friends of people sitting down with Members of Congress to talk about an earmark and then getting a call the next day for a contribution. That does not happen in his office.

17. His office does not have a process to check potential conflict created by the timing of a contribution. Representative Moran stated that he does not want to know who contributes to his campaign and when or how much they contribute because he does not want to be placed in a position to not vote for something he believes in. He further stated that he did not believe that having such information was appropriate. The Congressman also said that he would not consider whether someone contributed before casting a vote. After 19 years in Congress, the Member said that his votes are pretty predictable.

18. Generally, Representative Moran is only aware of how much someone contributes when it is in response to his personal requests. Otherwise, he only sees a list of attendees for his fundraising events. He would not be able to distinguish the amounts contributed. He may also see campaign contributions at the end of the quarter, but only sometimes. He does not always review them. Regardless, he said that it is hard to keep these things in your mind when you vote.

This memorandum was prepared on November 16, 2009, based on the notes that the OCE staff prepared during the interview with Representative Moran on October 5, 2009. I certify that this memorandum contains all pertinent matter discussed with Representative Moran on October 5, 2009.

Omar Ashmawy
Investigative Counsel

EXHIBIT 2

CONFIDENTIAL
Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

MEMORANDUM OF INTERVIEW

IN RE:	Representative Moran's Former Military Legislative Assistant
REVIEW #:	09-9075
DATE:	October 5, 2009
LOCATION:	2339 Rayburn HOB Washington, DC 20515
TIME:	12 p.m. (approximate)
PARTICIPANTS:	Elizabeth Horton Leo Wise Leslie J. Kerman (with the Waverly Group, Inc.)

SUMMARY: Representative Moran's Former Military Legislative Assistant (hereafter the "witness") was interviewed pursuant to Review 09-9075. The OCE requested an interview with the witness on July 10, 2009, and he consented to an interview. The witness made the following statements in response to our questioning:

1. The witness was given an 18 U.S.C. § 1001 warning and consented to an interview. The witness signed a written acknowledgement of the warning, which will be placed in the case file in this review.

2. The witness was initially hired as a Legislative Correspondent for the office in October of 2004. He became the Military Legislative Assistant (hereafter "MLA") in November of 2005.

3. As the MLA, he was responsible for all policy matters related to the Department of Defense (hereafter "DOD"). Specifically, he handled all hearings (approximately 30 per year), all policy requests for bills, researched and evaluated all earmark requests, acted as the contact for all professional committee staff, worked on the defense authorization bills, veterans' affairs issues, and homeland security issues.

4. The company or its lobbyist would contact the office and ask for a meeting to discuss an earmark.

5. Approximately 100 to 125 entities request earmarks during a give cycle.

6. The office uses a specific form for requesting earmarks. Most of the time the company would have filled out the form prior to the meeting and brought it to the meeting. The form would then inform the conversation during the meeting.

7. The office started using its own form in 2006 because the committee form did not require enough information about the company that was requesting an earmark. The committee earmark did not require the company's address and location of offices, previous earmarks received by the company, or any contact at the program level with DOD.

8. Not everyone that requested funding also requested a meeting; however, the people that were serious about funding asked for in-person meetings.

9. He would generally meet with the contractor and their lobbyist if they were represented. Representative Moran would sometimes also participate in the meeting.

10. The purpose of the meeting was to determine the footprint of the company in Northern Virginia and learn what the project was about. He wanted to understand enough about the request so that he could talk intelligently with the Congressman and DOD.

11. He met with close to 75% of the companies that were requesting funding. Some of the companies had multiple requests that would be covered in a single meeting.

12. After meeting with a company, he would contact the program manager at DOD that was in charge of the issue to get information on the merits or demerits of the request. From there he would begin to weigh the merits of the request.

13. The criteria used to weigh each request included whether the project was supported in the past, if it was a university located in Northern Virginia that was doing worthwhile research, how excited DOD was about the project, how many jobs would be created by the project in the district, and whether it added value to the military. However, there was no set standard other than the project had to be in Northern Virginia and was blessed by the program manager at DOD.

14. After the requests were submitted to the Subcommittee, the office would receive notice of how many requests each member would receive or the total dollar limit of the requests. A senior Member may get more than a less senior Member.

15. The office received so many requests that were good so they would sometimes allocate less to each request in order to fund more requests.

16. National requests differ from congressionally directed earmarks in that National requests are part of the President's budget.

17. He worked with Tom Veltri and PMA initially and then with Julie Giardino. PMA represented approximately 8-12 clients in a given cycle. PMA would attend meetings with their client if the office was not familiar with the client. If the office was familiar with a particular client, PMA would just bring the request forms to the office.

18. Less than ¾ but more than ½ of PMA's clients received funding.

19. No other lobbying firm represented as many clients as PMA. The next size firm represented approximately 2-4 clients. Congressional Strategies and former Congressman Charlie Rose represented about 2-4 clients.

20. The success of Congressional Strategies' clients varied each year, approximately 75% of their clients received funding. If they had four clients, 2 to 3 may receive funding. Congressman Rose's clients' success depended on the year.

21. Samueli Institute dropped PMA and still received funding after they released PMA. The company hired a PMA employee as their in-house lobbyist.

22. PMA was unique in that they brought good projects to the table which had support from the Pentagon. The projects were easy to understand, they captured your imagination, you could see the military benefit, they met the criteria the office set forth, and they met the deadlines for submission.

23. Tom Veltri was in the Air Force prior to joining PMA. He did not recall if Mr. Veltri worked for a Member. Ms. Giardino worked for Representative Murtha prior to working for PMA. Most of PMA's employees came from the Pentagon or the Hill. Prior to the news articles they would not have been associated with anyone in particular. However, he knew Paul Magliocchetti had worked for Representative Murtha.

24. Mr. Magliocchetti would come to meetings with new clients if the client was meeting with the office for the first time. He may have shown up 1 out of 4 times.

25. He evaluated all requests and created a list ranking the requests based on whether DoD liked the project, the number of jobs the project created in the district, whether the company had previous projects that turned out well, and whether the project was for a university or non-profit (he preferred a balance between for-profits and non-profits).

26. After the list was created, it was given to Representative Moran. The Congressman would then change the priority and dollar figures, adding or deleting requests. He may reshuffle 25% of the list. The list would then be sent to the subcommittee. The requests that went to the committee were ultimately the Congressman's decision.

27. The committee would also edit the list at times and he would then sit down with the Congressman and ask if the list was still okay. The committee would change about 10%.

28. Each Member received an allocation based on seniority. The leadership determined how many earmarks the office would get and the dollar amount. The office tried to submit what the committee was expecting.

29. The budget resolution sets the ceiling for funding and the office had to be under the ceiling. The Democrats wanted to reduce the number and dollar amount of earmarks.

30. He and the Congressman did not discuss any of the executives at the companies. They would talk about the success of prior projects or the merit of the project for DOD. There was no discussion as to whether anyone at the company supported the campaign.

31. He attended some fundraisers. He attended the Murtha breakfast. Representative Moran gives tickets to his event at the Kennedy Center to staff. He also attended the AEPCO breakfast and the fundraiser at Alpine.

32. He had seen PMA employees at fundraisers but he tried not to talk about work at fundraisers. If anyone tried to talk about official matters, he would tell the person to schedule a meeting because he was attending the event as a guest and not as staff.

33. Other lobbying firms were also present at fundraisers as well as representatives from various companies.

34. He has volunteered for Representative Moran's campaign as well as the Presidential election.

35. He has a Bachelor of Arts in Political Science from Wake Forest and he is currently studying law at Georgetown.

36. Prior to working for Representative Moran, he was a legislative assistant to a delegate in Virginia for two and a half years, and prior to that was a staff assistant for Alliance for Healthcare Reform for six months.

37. He has had no coursework or special training in project evaluation and he has not served in the military.

38. He is currently working at Boeing as the Director of Legislative Affairs. He has been with Boeing since July of 2009.

This memorandum was prepared on November 19, 2009, based on the notes that the OCE staff prepared during the interview with the witness on October 5, 2009. I certify that this memorandum contains all pertinent matter discussed with the witness on October 5, 2009.

Elizabeth Horton
Investigative Counsel

EXHIBIT 3

CONFIDENTIAL
Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

MEMORANDUM OF INTERVIEW

IN RE:	Representative Moran's Finance Director for Fundraising
REVIEW #:	09-9075
DATE:	October 5, 2009
LOCATION:	2339 Rayburn HOB Washington, DC 20515
TIME:	12:00 p.m. (approximate)
PARTICIPANTS:	Elizabeth Horton Leo Wise Leslie J. Kerman (with the Waverly Group, Inc.)

SUMMARY: Representative Moran's Finance Director for Fundraising (hereafter the "witness") was interviewed pursuant to Review 09-9075. The OCE requested an interview with the witness on July 10, 2009, and she consented to an interview. The witness made the following statements in response to our questioning:

1. The witness was given an 18 U.S.C. § 1001 warning and consented to an interview. She signed a written acknowledgement of the warning, which will be placed in the case file in this review.

2. The witness has worked for the Congressman for the past 12 years. She works for Moran for Congress and the Congressman's Virginia Leadership PAC. She took over the position as Finance Director in 2003. Maime Reiley held the position before she stepped in.

3. Her responsibilities include developing the budget each year, putting the fundraising schedule together for receptions, breakfasts, and the theater night.

4. They hold approximately five events per year. She only makes calls in relation to the events.

5. The campaign has had only one letter writing campaign, which was held in 2007.

6. Various individuals also host fundraising dinners or receptions in their homes. Lobbying groups have also held fundraising events. PMA was involved with hosting a wine tasting event in conjunction with Lou Brown. Melissa Koloszar and Mark Magliocchetti both helped with the event. Approximately 25-50 people attended the event. A baseball event was also sponsored by Steve Hartell with EMC.

7. Not all individuals who are invited to events actually attend - approximately 5% may send a representative on their behalf.

8. The Congressman's leadership PAC held events in 2007 and 2008. PMA helped with one of the events in 2008.

9. The campaign is given lists of contributors from the Democratic Congressional Campaign Committee ("DCCC"). The lists are categorized into industries such as labor, realtors, defense, and technology companies. The campaign also compiles lists of former donors and individuals who request to be placed on the mailing list and purchases donor lists from the Washington Rep book. The Congressman sometimes hands her cards of individuals that have asked to be placed on a mailing list or to be included on an invitation list to a certain event.

10. The invitation list to events varies depending on what type of event that is being held. The cost of the event and prior donations are two of the main criteria in determining the list.

11. The campaign compiles a list of attendees at events and quarterly reports. Lists of attendees are given to the Congressman before an event. He is also given copies of the quarterly reports.

12. She will give the Congressman a list of the coming year's event so that they can decide which events he will make solicitations. She lets him go through the list and call who he chooses. She stated that the Congressman does not like to call friends.

13. She could not recall a time when the Congressman asked her to invite anyone to an event.

14. She provides the Representative Moran with information on the campaign's income and expenditures. She state that the Congressman may ask questions about expenditures.

15. She stated that she only contacts Representative Moran's official office for scheduling purposes and that no one from the office calls her.

This memorandum was prepared on November 19, 2009, based on the notes that the OCE staff prepared during the interview with the witness on October 5, 2009. I certify that this memorandum contains all pertinent matter discussed with the witness on October 5, 2009.

Elizabeth Horton
Investigative Counsel

EXHIBIT 4

Proposed CY2008
Congressional Campaign Contributions

State/Member (Re-election Year)	*Contributions Made this Cycle**	*Proposed CY08 Contribution*	*Possible Programs*
[redacted]			
[redacted]			
[redacted]			
[redacted]			
[redacted]			
[redacted]			
[redacted]			
[redacted]			
Moran	2,500	2,500	Webster
	Total	34,600	

09-9075_14

	Unprogrammed	5,000
	Carry Over	5,000
	Grand Total	44,600

* A "cycle" differs between House members and Senators.
- For House members, cycle = 2 years (2007 & 2008)
- For Senators, a cycle = their 6 year term which is staggered. (Recall that 1/3 of the Senate is up for re-election every 2 years.
- Maximum contributions allowed:
  - $4600/cycle for Member/Senator's re-election campaign
  - $5000/calendar year for Member's leadership PAC

** Anticipate single fundraiser event ~$20K