



**UNITED STATES POSTAL SERVICE  
OFFICE OF INSPECTOR GENERAL**

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SUITE 10000  
ARLINGTON, VA 22209-2020

**CASE #:** 11UIHQ0051CF03SI

**CROSS REFERENCE #:**

**TITLE:** KESSLER, ALAN C., MEMBER,  
POSTAL SERVICE BOARD OF GOVERNORS,  
WASHINGTON, DC

**CASE AGENT (if different from prepared by):**

**REPORT OF INVESTIGATION**

**PERIOD COVERED:** FROM January 18, 2011 TO June 8, 2011

**STATUS OF CASE:** Referred to the Chairman,  
U.S. Postal Service Board of Governors

**JOINT AGENCIES:**  
None.

**DISTRIBUTION:**

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<b>PREPARED BY:</b> (b)(7)(C)	Special Agent	<b>DATE:</b> June 14, 2011
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## I. PREDICATION

On December 27, 2010, the U.S. Postal Service Office of Inspector General (OIG), Special Inquiries Division, received information from Helen Grant, Associate General Counsel and Chief Ethics Officer, United States Postal Service, that Alan Kessler, member, Postal Service Board of Governors, may have engaged in inappropriate activity, possibly interfering with ongoing Postal Service litigation (Exhibit 1).

## II. SYNOPSIS

The Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. § 2635.702) "Use of Public Office for Private Gain" generally provides that:

An employee shall not use his public office for his own private gain...or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

Paragraph (d) further specifies:

To ensure that the performance of his official duties does not give rise to an appearance of use of public office for private gain or of giving preferential treatment, an employee whose duties would affect the financial interests of a friend, relative or person with whom he is affiliated in a nongovernmental capacity shall comply with any applicable requirements of § 2635.502.

In applying this standard, the Office of Government Ethics sent a memorandum on September 12, 1988, to Designated Agency Ethics Officials, General Counsels, Inspectors General, and Other Interested Persons. In the memorandum, OGE stated,

The standard against using public office for private gain includes the private gain of others, not simply the personal gain of the employee. Assisting a friend is not in and of itself prohibited by the Executive Order. But, assisting a friend in a manner which misuses official position for the friend's private benefit, which gives that friend preferential treatment not properly afforded, which causes a Government decision to be made outside official channels, which affects the public's confidence in the integrity of its Government, or which leads an informed and reasonable person to believe that any of these things have occurred, is what this section (5 C.F.R. § 2635.702-Use of public office for private gain) was in part intended to prohibit.

The OIG was notified by Postal Service ethics officials after they became concerned about Governor Kessler's personal involvement in a property dispute which created a potential appearance problem. General Counsel Mary Anne Gibbons informed Governor Kessler of the potential appearance issue and advised him to end his personal involvement.

The OIG investigated the allegation and gathered substantial evidence that Governor Kessler's personal involvement - which continued after he was warned by the General Counsel - created an appearance that he used his public office for private gain.

This report is being forwarded for a determination of whether Governor Kessler's actions violated 5 C.F.R. § 2635.702.

From September 2009 through December 2010, Governor Kessler used his position as a member of the U.S. Postal Service Board of Governors (BOG) to involve himself in a contractual property dispute between the Postal Service and an investment company. The dispute started when the Postal Service sought to exercise its lease option to purchase a property in Sarasota, FL, which contained both a Post Office and a Vehicle Maintenance Facility, for the pre-established amount of \$825,000. The property was originally purchased by the investment company in 1988 for \$575,000 and was valued at approximately \$12 million in 2008.

Governor Kessler involved himself in the dispute after being requested to look into the matter by Douglas Band. Band's family members are partial owners of the investment company which owns the Sarasota property and Band has a personal financial interest in negotiating a favorable settlement with the Postal Service. Postal Service officials told investigators that Governor Kessler described Band as a former client or friend. Governor Kessler told investigators that he knew Band from his political affiliation with former U.S. President William Clinton. Band, through his attorney, characterized his relationship with Kessler as "a friend for many years." Governor Kessler also has a financial relationship with the William J. Clinton Foundation, a non-profit group that is headed by Band. The Clinton Foundation's website stated that Kessler contributed between \$1,001 and \$5,000 to the Clinton foundation, prior to 2010.

Over this 14-month period, Governor Kessler received numerous documents from the property owners and the Postal Service which described their formal opposing positions and explained their legal arguments regarding the property dispute. The OIG identified a large number of contacts between Governor Kessler, Postal Service officials, and the property owners regarding the property dispute (Exhibits 2 through 4). Of those contacts, this investigation focuses on 10 teleconferences, briefings, or meetings with key individuals from both sides who were responsible for crafting the legal arguments,

political strategy, or managing the negotiation process. Some of those discussions occurred as a result of a direct request by Governor Kessler. One Postal Service (b)(7)(C) Counsel described his conversation with Kessler as adversarial, stating "Kessler was testing our position" with facts and arguments that mirrored the property owners' position.

Through his involvement, Governor Kessler exerted pressure on Postal Service officials to consider settlement proposals from the property owner, instead of exercising their contractual option to purchase the property. The vice president of Facilities believed Governor Kessler's actions wasted Postal Service time and resources, and potentially weakened DOJ's litigation position. In an e-mail, former Postmaster General John Potter directed Postal Service officials to continue to pursue purchasing the property, stating "the Postal Service is not a charity."

Governor Kessler had a fiduciary duty to the Postal Service. Nonetheless, he did not provide the Postal Service with draft legal documents he received from Band regarding their strategy to prevent the Postal Service from purchasing the Sarasota property. Governor Kessler also spoke with the property owners' attorney to discuss their legal and political strategy in dealing with the Postal Service. On multiple occasions, he urged Postal Service officials to settle the dispute, a result favored only by the property owners.

In July 2010, General Counsel (GC) Mary Anne Gibbons, who is also Counsel to the Board of Governors, advised Governor Kessler to end his personal involvement in the property dispute. Her advice was based on the Postal Service Ethics Official's opinion that his personal involvement created a potential appearance issue and may have violated the Standards of Ethical Conduct for Employees of the Executive Branch, Section 5 CFR 2635.702 (Personal and Business Relationships). Investigators collected substantial evidence that Gibbons provided this advice to Governor Kessler, including contemporaneous e-mails or notes from Gibbons, her Deputy and the Postal Service (b)(7) Counsel (b)(7)(C) in one of those e-mails, Gibbons informed the (b)(7) Counsel (b)(7)(C) that "I have had a discussion w/Governor Kessler. From our discussion, it appears that he understands the potential appearance issue and, therefore, he has agreed not to have further personal involvement in the matter." Gibbons also sent her Deputy an e-mail stating that she told Governor Kessler that, in order to keep from crossing "the ethics line," he was to "have the Sarasota owners contact me (Gibbons) if they have complaints" about Postal officials. The Deputy General Counsel wrote in his contemporaneous notes that Governor Kessler contacted him and advised that he (Governor Kessler) was instructed by Gibbons to remain out of the property dispute.

When Gibbons was interviewed by agents, she stated she did not remember whether or not she provided this advice to Governor Kessler. However, Gibbons advised the OIG that her contemporaneous e-mail must be accurate, despite her vague recollection. Gibbons did not recall giving Governor Kessler ethics advice until she reviewed her e-mails during the OIG interview. In a subsequent interview, Gibbons opined to investigators that it would have been acceptable for Governor Kessler to stay in contact with the property owners.

In interviews with the OIG, Governor Kessler stated he was not knowledgeable about the facts of the property dispute, asserting he only recalled that the disagreement between the property owners and the Postal Service was about a "valuation of property" in Sarasota, FL. He indicated that he treated this matter the same way he treated any other request he received from an outside party. He also denied that Gibbons informed him of an ethics issue or advised him to remove himself from personal involvement in the process. Governor Kessler stated that Gibbons told him to continue playing a role between the property owners and Postal Service officials.

Governor Kessler's statements are inconsistent with the documentary evidence obtained during the investigation. Agents identified separate e-mails from Gibbons to both the (b)(7) Counsel (b)(7)(C) and a Deputy General Counsel that clearly showed she advised Governor Kessler to end his personal involvement in the property dispute. Furthermore, the Deputy General Counsel's contemporaneous notes documented a conversation with Governor Kessler where he (Governor Kessler) acknowledged receiving Gibbons' advice.

#### Additional Finding:

Gibbons served as the General Counsel, the counsel to the BOG, and the Designated Agency Ethics Official (DAEO). As the DAEO, Gibbons was responsible for administering the Postal Service's ethics program. Evidence showed that she advised Governor Kessler to end his personal involvement in the property dispute because of a potential ethics violation. However, subsequent to her specific advice, she was aware that he continued to act as an intermediary between his friend or political associates and the Postal Service. Despite this knowledge, she took no further action to counsel Governor Kessler and did not refer Governor Kessler's misconduct as a potential violation of EL-860-2009-3 or the Standards of Ethical Conduct to the OIG.

### III. BACKGROUND/SUBJECT IDENTIFICATION

Alan Kessler is a presidentially appointed member of the U.S. Postal Service Board of Governors (BOG). Governor Kessler was appointed in November 2000 for a term that

expired in December 2007. Governor Kessler continued to serve as a Governor for one year after the expiration of his seven year term. [Agent's note: Pursuant to 39 U.S.C., Section 202(b), BOG members with expired terms can serve up to one year beyond the expiration of their term or until a successor is appointed.] On December 4, 2009, President Obama appointed him to a second term that expires in December 2015. Governor Kessler formerly served as Chairman of the BOG (January 2008 to January 2009) and Vice Chairman (January 2005 to December 2007). Governor Kessler serves as Finance Chair of the Pennsylvania Democratic Party. He currently serves as Chairman of the Governance and Strategic Planning Committee and stated that as a member of the BOG, he is responsible for selecting the Postmaster General and overseeing the Postal Service's operations. Governor Kessler also works as an attorney and is partner in the firm of Duane Morris LLP, in Philadelphia, PA. Governor Kessler practices in the area of commercial litigation with a focus on class actions and other complex litigation, government relations, and general counseling.

Governor Kessler's biography on his law firm's (Duane Morris) website, indicates that he represented real estate developers and real estate management companies, including representing a manufacturer in a nationwide class action suit brought on behalf of all building owners who lease or sublease their properties to federal agencies. Governor Kessler served as a member of the Clinton/Gore Presidential Transition Team in 1991-1992 and as a presidentially appointed vice chair of the Presidential/Congressional Commission on Risk Assessment and Risk Management (1994-1998). He has also served as finance vice chair of the Democratic National Committee (DNC), as a national finance vice chair of Gore 2000, Vice President Gore's presidential campaign, and as a national finance chair of Hillary for President in 2008.

Post Office Associates (POA), an investment company, is the owner of the Sarasota, FL, property that the Postal Service leases to house the Sarasota Post Office and Vehicle Maintenance Facility. POA is a limited liability limited partnership, whose partners include The Olivieri Family Partnership, Ltd. and Band Family Partnership, Ltd.

Doug Band is currently Counselor to former President William Clinton and served in the Clinton White House from 1995 to 2000. While working in the White House, he held the positions of intern, Counselor to the President, Special Assistant to the President, and President's Aide. Band is a legal representative for, and maintains a personal financial interest in, POA.

Greg Band is an attorney working for the Band Law Group and has a financial interest in the Sarasota, FL, property.



The Band Law Group is a law firm specializing in family law and is located in Sarasota, FL. David Band and Greg Band are founding members of the law firm. David Band is the father of Greg and Doug Band.

Stephen Hurlbut is an attorney and the office managing shareholder for the Tyson's Corner, VA, office of Akerman Senterfit, LLP. He is currently the attorney of record representing POA in the Sarasota property deal. Hurlbut is a former Postal Service attorney.

Helen Grant is a Postal Career Executive Service (PCES) associate general counsel and Designated Agency Ethics Official (DAEO). Grant referred the allegations of misconduct to the OIG. Grant was formally named the DAEO on October 23, 2010.

(b)(7)(C)		counsel	(b)(7)(C)
(b)(7)(C)	for the Postal Service.	(b)(7)(C)	responsible for (b)(7)(C)
(b)(7)(C)			

(b)(7)(C)		counsel	(b)(7)(C)
(b)(7)(C)			
(b)(7)(C)	is responsible for	(b)(7)(C)	
(b)(7)(C)			

Mary Anne Gibbons is the PCES general counsel, a Senior Vice President, and Counsel to the Board of Governors. Gibbons previously held the position of DAEO until Grant assumed the position on October 23, 2010.

Charles Kappler is the PCES deputy general counsel responsible for all legal support to the field.

(b)(7)(C)		counsel for	(b)(7)(C)
(b)(7)(C)			

Tom Samra is the PCES vice president of Facilities. Samra is responsible for the decision to purchase all buildings and land. He also has the authority to settle real property disputes with land owners that contract with the Postal Service.

Julie Moore is the Secretary to the BOG. She is responsible for the BOG office operation.

The Lease Amendment Program (LAP) was implemented through a policy (Handbook RE-7) issued by the Postal Service on June 15, 1980. LAP was intended to provide

landlords with relief from financial difficulties resulting from the rampant inflation of the 1970s. RE-7, Section I indicates the following:

The impact of inflation on long-term fixed-rent postal leases has caused hardships for many lessors. In some cases, this has resulted in decreasing levels of maintenance, mortgage foreclosures, and attempts to force eviction or reformation of the contract..."

Under the LAP, the Postal Service agreed to assume responsibility for maintenance, utilities, and/or taxes in exchange for a reduction in rent and the landlord's correction of existing maintenance problems. Rent adjustments were based on a strict formula set forth in Appendix A of the RE-7, rather than independent negotiations. If the Postal Service agreed to become responsible for maintenance, for example, values were simply plugged into the formula based on the net interior square footage of the building, an inflation factor (dependent upon when the lease was signed), the type of structure (i.e., metal frame, wood frame, etc.), and the location of the property.

When LAP was initiated, the Postal Service recognized that the rent reduction may not be sufficient to cover the additional expenses the Postal Service was taking on. Therefore, as a way of potentially increasing the value of the amendments to the Postal Service, they added a boilerplate purchase option that allowed the Postal Service to buy the property at fair market value (FMV) at any time within the remaining term of the lease. As a requirement of the LAP program, all landlords were required to accept the purchase option unless they received a specific waiver (RE-7, Section III, F and H).

The LAP lease amendment specifically stated that: "*This option is in addition to any other purchase option available under the lease of this property.*" Numerous leases throughout the country have similar provisions, including both original fixed price and LAP FMV purchase options. The original Sarasota, FL, property lease was entered in 1965 and contained a purchase option, at paragraph 16, that allowed the USPS to purchase the property at specified times for specified amounts (including December 31, 2009, for \$825,000.00). In 1981, pursuant to the LAP, that lease was amended to include a second purchase option that allowed the USPS to purchase at any time for fair market value as established by an appraisal ("LAP option") (paragraph 6) (Exhibit 5).

The Parol Evidence Rule prevents a party to a written contract from presenting extrinsic evidence that contradicts or adds to the written terms of the contract that appears to be whole. The supporting rationale is that since the contracting parties have reduced their agreement to a single and final writing, the extrinsic evidence of past agreements or terms should not be considered when interpreting that writing, as the parties had decided to ultimately leave them out of the contract.

#### IV. DETAILS

##### Allegation:

Governor Kessler inappropriately used his position as a member of the Board of Governors (BOG) in an attempt to influence the Postal Service to negotiate a settlement deal for a property dispute with Post Office Associates, at the request of his political friend and former colleague, Douglas Band.

##### Allegation Findings:

Title 5, Code of Federal Regulations, Standards of Ethical Conduct for Employees of the Executive Branch, Subpart G-Misuse of Position, Section 2635.702 Use of Public Office for Private Gain

An employee shall not use his public office for his own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations (Exhibit 6).

Part (d) of this section further states:

(d) Performance of official duties affecting a private interest. To ensure that the performance of his official duties does not give rise to an appearance of use of public office for private gain or of giving preferential treatment, an employee whose duties would affect the financial interests of a friend, relative or person with whom he is affiliated in a nongovernmental capacity shall comply with any applicable requirements of Sec. 2635.502.

Office of Government Ethics Memorandum, dated September 12, 1988

On September 12, 1988, the Office of Government Ethics sent a memorandum to Designated Agency Ethics Officials, General Counsels, Inspectors General, and Other Interested Persons. The memorandum contained information concerning "Guidance on Ethics Program Issues Raised in a Report of the Independent Counsel dated July 5, 1988" about former Attorney General Edwin Meese's conduct (Exhibit 7). In the memorandum, OGE stated,

The most troublesome aspect of the information in the Independent Counsel's report is the extent to which Mr. Meese or Mr. Meese's official position was used for the benefit of Mr. Wallach. The standard against using public office for private gain includes the private gain of others, not simply the personal gain of the employee. Assisting a friend is not in and of itself prohibited by the Executive Order. But, assisting a friend in a manner which misuses official position for the friend's private benefit, which gives that friend preferential treatment not properly afforded, which causes a Government decision to be made outside official channels, which affects the public's confidence in the integrity of its Government, or which leads an informed and reasonable person to believe that any of these things have occurred, is what this section (5 C.F.R. § 2635.702-Use of public office for private gain) was in part intended to prohibit (OGE Memorandum, Pages 10 and 11).

Title 39, Code of Federal Regulations (CFR), Chapter 1 (Postal Service), Part 10 – Rules of Conduct for the Postal Service Board of Governors

39 CFR Section 10.1- Applicability (Exhibit 8).

This part contains rules of conduct for the members of the Board of Governors of the United States Postal Service. As special government employees within the meaning of 18 U.S.C. 202(a), the members of the Board are also subject to the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, and Postal Service regulations supplemental thereto, 5 CFR part 7001.

39 CFR Section 10.2 - Advisory service.

(a) The General Counsel is the Ethical Conduct Officer of the Postal Service and the Designated Agency Ethics Official for purposes of the Ethics in Government Act, as amended, and the implementing regulations of the Office of Government Ethics, including 5 CFR part 2638.

(b) A Governor may obtain advice and guidance on questions of conflicts of interest, and may request any ruling provided for by either the Standards of Ethical Conduct for Employees of the Executive Branch, or the Postal Service regulations supplemental thereto, from the General Counsel or a designated assistant.

(c) If the General Counsel determines that a Governor is engaged in activity which involves a violation of federal statute or regulation, including the ethical conduct regulations contained in 5 CFR parts 2635 and 7001, or conduct which

creates the appearance of such a violation, he or she shall bring this to the attention of the Governor or shall notify the Chairman of the Board of Governors, or the Vice Chairman, as appropriate.

United States v. Fagan, 821 F.2d 1002, 1009 n.3 (5<sup>th</sup> Cir. 1987)

A review of U.S. v. Fagan showed that fiduciaries, such as Governor Kessler in his position as Governor, are generally required "to do no act which ha[s] a tendency to injure the employer's business or financial interest" (Exhibit 9).

Review of Post Office Associates' Background Information

A review of documents submitted to the Postal Service from POA showed that POA is an investment company that owns the Sarasota, FL, property the Postal Service leases to house the Sarasota Post Office and Vehicle Maintenance Facility (Exhibit 10). POA is a limited liability limited partnership whose partners include The Olivieri Family Partnership, Ltd. and Band Family Partnership, Ltd. According to a settlement proposal submitted to the Postal Service by POA, the company describes itself in the following way:

"[POA] is comprised of well known business, legal and philanthropic leaders in the Sarasota community who have the knowledge and experience to maximize the value of the [Sarasota] Post Office property.....The principles of [POA] together have extensive real estate development experience and have been involved with many significant real estate developments in Sarasota and Manatee Counties including: Sarasota Main Plaza, a 260,000 square foot commercial and office development; the redevelopment of the 300 unit Hyatt Hotel in Sarasota; Bahia Vista Professional Center, a 120,000 square foot medical complex in Sarasota which involved the redevelopment of the former Doctors Hospital[;] Nokomis Village Shopping Center, which is a retail shopping center consisting of some 148,000 square feet in Nokomis, Florida; Pen West Office Building, an office complex in Sarasota containing over 108,000 square feet; SunTrust building, an 88,000 square foot office building located in downtown Bradenton, Florida; Kane Plaza a ten story office building in Sarasota containing 76,000 square feet; Orange Blossom retirement center located in Sarasota, which was an 11-story building that was converted from a hotel to a retirement center; Towles Court Development, a leading nationwide art community development consisting of approximately 27 homes and 45 business in downtown Sarasota; Jacaranda Villas, a 212 unit condominium complex located in Venice, Florida; Crestwood Villas, a 137 unit condominium project

located in Sarasota; and Red Hawk Reserve, 153-lot single-family residential subdivision consisting of approximately 103 acres.”

In addition to the above, the ownership group has owned, managed, and/or renovated over 75 office, retail, residential, and/or industrial buildings in Southwest Florida.

The ownership group also includes two well respected tax attorneys, the owner of a real estate management company, and the owner of a commercial mortgage brokerage business who has extensive experience financing, developing, and selling real estate.

“NJ Olivieri has been one of the leading commercial mortgage bankers and commercial realtors in Florida for over 30 years. For the last twenty years, Mr. Olivieri’s company has closed over \$350,000,000 annually in commercial mortgage transactions and over \$175,000,000 annually in commercial real estate sales. Mr. Olivieri has arranged financing for many of the most prominent buildings in Sarasota including the Ritz Carlton Hotel and Condominium, the Hollywood Twenty Movie Theater and Office Complex, RBC Bank Building, Holiday Inn Hotels, and numerous Publix grocery stores.”

Helen Grant, Associate General Counsel, Law Department

During multiple interviews with the OIG, including one on December 29, 2010, (Exhibit 11), Grant reported (b)(7)(C)

(b)(7)(C) Governor Kessler inappropriately contacting Postal Service employees about an ongoing property dispute. (b)(7)(C) the Assistant U.S. Attorney representing the Postal Service in litigation with POA was irritated with Governor Kessler because he was interfering with their case. (b)(7)(C)

(b)(7)(C) Governor Kessler participated in a teleconference with Samra, (b)(7)(C) and Gibbons regarding the property dispute with POA.

[Agent’s Note: The Department of Justice’s Federal Programs Branch (FPB) in Washington, DC, is responsible for the Postal Service’s litigation concerning the POA deal. The United States Attorney’s Office for the Middle District of Florida referred the matter to FPB, because of the dollar amount of the deal. Therefore, a DOJ Attorney and not an AUSA is litigating the Postal Service’s breach of contract lawsuit involving POA.]

(b)(7)(C) asking her if she would talk with Governor Kessler about the concerns of the Assistant U. S. Attorney handling the POA litigation for the Postal Service. Grant said her new role as the Designated Agency Ethics Officer (DAEO) is in part to keep the governors out of ethical trouble and she felt she could raise the subject with Governor Kessler during his

required annual ethics training. Therefore, during Governor Kessler's December 22, 2010, ethics training, she told Governor Kessler she had heard "chatter" that he had irritated the Assistant U. S. Attorney handling the POA property dispute. Grant said she told Governor Kessler it was advisable to be conscious that questions or comments by governors could be perceived as interfering and could lead to an OIG inquiry. Governor Kessler advised Grant that he received a call from a personal contact that provided him negative information regarding the Postal Service's position in the POA dispute. Governor Kessler said based on a Freedom of Information Act (FOIA) request, it appeared the case against POA was not as strong as the Postal Service thought it was. Governor Kessler did not provide Grant with his source's name, but he told her the information came from the current or former chief of staff to former President Bill Clinton. Governor Kessler said as a member of the BOG, he had a fiduciary obligation to look out for the best interest of the Postal Service and inquire about the POA dispute with the Postal Service.

Governor Kessler was displeased with Grant's advice and discussed it during a teleconference with Postal Service Inspector General Dave Williams. During the teleconference, Governor Kessler expressed concern that if he accepted Grant's advice, he could not provide information of value to the Postal Service because it originated from a personal acquaintance. Governor Kessler explained the circumstances of his involvement in the POA deal and said the only person he contacted within the Postal Service was Gibbons. Grant later contacted the OIG to provide additional information that Governor Kessler had, in fact, made multiple contacts with Postal Service employees, including a teleconference (b)(7)(C)

(b)(7)(C) Counsel, (b)(7)(C)

During multiple interviews with the OIG, including one on January 3, 2011, (Exhibit 12), (b)(7)(C) stated she became aware of Governor Kessler's involvement in an ongoing property dispute in Sarasota when she received a January 13, 2010, e-mail from Gibbons stating the following:

*"Sarasota postal facility--an acquaintance of Gov. Kessler's contacted him complaining about a legal position USPS has taken as to our exercise of a purchase option in a lease on a facility in Sarasota, FLA. The acquaintance thinks our position is unfair and our staff has responded that it is legally justified. Gov. Kessler has indicated that he would like to be assured that there is a sound legal and factual basis for our position and he would like to know how many other postal leases include the provisions that are at issue in the Sarasota matter. We have agreed to provide the factual info and a legal analysis of our position."*

Subsequent to the above e-mail, sometime in May or June 2010, (b)(7)(C) (b)(7)(C) that Governor Kessler was interceding on behalf of the owners in the Sarasota property dispute. (b)(7)(C) told (b)(7)(C) Governor Kessler was interested in the issue and had made numerous inquiries about the dispute, because the lessor is a friend or acquaintance of Governor Kessler. (b)(7)(C) that Governor Kessler complained that the property owner had not been treated fairly. (b)(7)(C)

(b)(7)(C)

(b)(7)(C) uncomfortable with Governor Kessler's involvement in the Sarasota property dispute because of his personal connection to the property owners. Therefore, in July 2010, (b)(7)(C) advised Gibbons that Governor Kessler's interference with the Sarasota real estate dispute may be ethically inappropriate, because he is precluded from using his position to benefit his personal associates. Gibbons asked (b)(7)(C) (b)(7)(C) citation of the regulations related to the ethical misconduct. (b)(7)(C) (b)(7)(C) provided in, the below e-mail:

*"[U]nder the "Misuse of Position" regulations, here is what I am concerned about with respect to Governor Kessler's participation in the Sarasota matter:*

*(d) Performance of official duties affecting a private interest. To ensure that the performance of his official duties does not give rise to an appearance of use of public office for private gain or of giving preferential treatment, an employee whose duties would affect the financial interests of a friend, relative or person with whom he is affiliated in a nongovernmental capacity shall comply with any applicable requirements of 2635.502.*

*You'll recall that 2635.502 is where the Impartiality in Performing Official Duties regulations are found, and they would require the employee to inform the agency ethics designee of the appearance problem and wait for a determination from the designee about whether to proceed with participating in the matter.*

*I believe that Governor Kessler should not participate in this matter further so as to avoid running afoul of these regulations."*

In a subsequent e-mail, (b)(7)(C) noted that Misuse of Position is, in fact, contained in 5 CFR 2635.702(d).



On July 21, 2010, Gibbons advised (b)(7)(C) by e-mail that she talked to Governor Kessler about the appearance issue, and that Governor Kessler agreed not to have any more personal involvement in the Sarasota property dispute. (b)(7)(C) the following e-mail response from Gibbons on July 21, 2010:

*"I have had a discussion w/Governor Kessler. From our discussion, it appears that he understands the potential appearance issue and, [ ] therefore, he has agreed not to have further personal involvement in the matter. He will inform the individual who contacted him that any further concerns about professionalism and the like should be raised with me."*

(b)(7)(C) that Gibbons thought Governor Kessler's involvement in the property dispute created a potential appearance issue. However, (b)(7)(C) at the time of (b)(7)(C) discussion with Gibbons, she (Gibbons) was the Designated Agency Ethics Official (DAEO) and it was Gibbons' responsibility to determine whether Governor Kessler's conduct warranted a formal investigation.

(b)(7)(C) Counsel, (b)(7)(C) Law Department

During multiple interviews with the OIG, including one on December 28, 2010, (Exhibit 13 and 14), (b)(7)(C) from September 2009 through January 3, 2011, (b)(7)(C) staff attorneys provided Facilities with legal support to exercise a purchase option in a Sarasota, FL, lease. The property, which housed the Sarasota Post Office and Vehicle Maintenance Facility, was originally leased in 1965 from Joseph Penner. The lease included an option to purchase the property for a fixed price of \$850,000 at the end of the basic lease term or at the end of every 5 year renewal term. However, the purchase price declined \$5,000 at the end of each additional 5 year renewal term, making the purchase price \$825,000 in 2009. In 1981, Penner requested and received a lease amendment under the Postal Service's Lease Amendment Program (LAP). LAP transferred Penner's maintenance and tax responsibility from himself to the Postal Service, in exchange for reduced rent and a clause in the lease that afforded the Postal Service the right to purchase the property at fair market value, at anytime during the lease term.

Penner sold the property to POA in 1988 for \$575,000. At the time of the sale, the property was worth significantly more (approximately \$3 million), leading (b)(7)(C) to believe that POA recognized the property they were purchasing from Penner included a lease agreement with a purchase option that, if exercised by the Postal Service, would only yield a maximum of \$850,000 for POA. (b)(7)(C) if the Postal Service failed to exercise the option to purchase the property, they would lose millions of dollars

on the deal and, at the end of the lease term, the Postal Service would be required to negotiate a new lease with less favorable terms.

On November 28, 2008, Facilities sent POA a one-year advance notice of their election to purchase the Sarasota property for \$825,000 in January 2010 as required in the lease. However, POA failed to appear at the scheduled closing in 2010, sending an attorney who indicated POA was not selling the property. In numerous documents sent to the Postal Service, POA contended the Postal Service and Penner made a mutual mistake signing and certifying the 1981 lease amendment documents, asserting that the "fair market value" purchase option was supposed to supersede the original lease's fixed price purchase option. POA advised the Postal Service that Penner swore in a statement that he agreed to participate in the LAP in exchange for the insertion of an FMV option and removal of the original purchase option in the 1965 lease.

(b)(7)(C) on September 2, 2009, Governor Kessler contacted Gibbons by e-mail, forwarding her a letter from POA representative Gregory Band explaining their position. (b)(7)(C) In that e-mail, Governor Kessler had added the following note:

*"I am attaching a copy of a memorandum regarding an apparent dispute with the owner of the Sarasota Post Office in a position taken by USPS. This matter, of which I am assuming you may be aware, involves an original lease executed in 1965 and an amendment negotiated in 1981 in which the rental paid by USPS was significantly decreased (by approximately 28%). At the same time, the owner contends that the previous fixed price purchase option had to have changed in favor of a fair market value/appraisal purchase option. Thus, the owner states "for the USPS to have received a dramatically below market rent for 28 years and to now contend that the purchase option in the original lease is still valid allowing them to purchase the property at a price that was below market in 1981 when the lease amendment was signed is unjust, unfair and unreasonable." Mary Anne, as you know, I do not involve myself in the day-to-day operations of the Postal Service, although I have not hesitated to pass on matters of serious concern, when appropriate, to those who do pass on such matters. I am concerned that this matter appears to be headed to significant and possibly difficult litigation unless reasonable heads prevail. Could you please carefully review this matter and reach out to Gregory S. Band, Esquire."*

In response to the aforementioned e-mail, (b)(7)(C) staff prepared multiple documents for Gibbons explaining the Postal Service's position. On September 16, 2009, the Law Department sent a formal letter detailing the Postal Service's position, including the legal argument, to POA. Subsequent to the issuance of the letter, (b)(7)(C)

Governor Kessler made numerous inquiries with Gibbons "pushing the concept of shouldn't you be trying to resolve this" and "constantly challenging whether we (Postal Service) should be fighting this out," which led to uncharacteristic involvement of Samra and Gibbons in POA's property dispute negotiations.

In March 2010, (b)(7)(C) at the direction of Gibbons, participated in a teleconference with Samra, Gibbons, and Governors Kessler and Thurgood Marshall to discuss the Postal Service's legal argument. (b)(7)(C) the teleconference as an "argument" mostly between (b)(7)(C) and Governor Kessler. Governor Kessler expressed doubt about the Postal Service position. (b)(7)(C) Governor Kessler argued strongly, stating "this isn't the slam-dunk you folks think.....I think you're gonna [sic] have a problem with the judge."

Governor Kessler espoused the opposite position (b)(7)(C) describing the Postal Service's position as "risky" if the dispute went to litigation. (b)(7)(C) said Governor Kessler thought there was real reason for concern in terms of the Postal Service's position. (b)(7)(C) the communication with Governor Kessler "like moot court" stating "[Governor] Kessler was testing our position" (b)(7)(C) the impression Governor Kessler thought the Postal Service might be wrong in this case. When asked by investigators if he (b)(7)(C) was fighting with opposing counsel on the teleconference, (b)(7)(C) responded affirmatively.

(b)(7)(C) Governor Kessler requested the teleconference to influence the Postal Service to negotiate a settlement instead of litigate the dispute in court. However, Governor Kessler never gave anyone direction on the telephone call. (b)(7)(C) (b)(7)(C) Governor Kessler only displayed doubt about the Postal Service's legal argument. (b)(7)(C) the legal position Governor Kessler espoused in the teleconference was based on information he received from the opposing party. (b)(7)(C) (b)(7) Governor Kessler's arguments mirrored arguments provided by POA's representatives in the past.

On more than one occasion, subsequent to the teleconference, Governor Kessler contacted Gibbons and communicated that POA was upset or complained that Samra was rude to them. (b)(7)(C) Gibbons told him she advised Governor Kessler that "he needed to step back from personal involvement because there was a potential appearance issue" with his direct involvement in the POA dispute. She also advised Governor Kessler to trust that she would make sure the Postal Service acted professionally.

In an attempt to appease Governor Kessler and make a good faith effort to negotiate with POA, the Postal Service entertained several settlement offers. However, POA's

offers were unacceptable and were summarily rejected by the Postal Service. The dispute was referred to the Department of Justice (DOJ) to force performance of the contract.

(b)(7)(C) that in the past, other lessors unhappy with the Postal Service's decision to buy their property have challenged them in court using an argument similar to POA and have lost. Most recently, in the 9<sup>th</sup> Circuit, the Postal Service prevailed over a lessor that refused to sell their property while asserting a similar argument. The court narrowly looked at the contract for ambiguity, found none, ruled in the Postal Service's favor, and enforced the sale of the land. (b)(5)

(b)(5)

(b)(5) Therefore, in July 2010, pursuant to a Postal Service request for assistance, the DOJ Federal Programs Branch filed suit against POA.

(b)(7)(C) at the request of Governor Kessler, the Postal Service handled POA property owners with great care and sensitivity, entertaining face to face meetings to discuss settlement proposals they were not planning on accepting. (b)(7)(C)

(b) had to convince DOJ to participate in a face to face meeting to reject one of POA's settlement proposals instead of following their (DOJ's) standard protocol of sending the opposing party a letter in the mail. (b)(7)(C) asked Federal Programs Branch Director (b)(7)(C) to participate in a face to face meeting with POA to reject their settlement offer, because Gibbons feared that angering POA could have political implications for the Postal Service. (b)(7)(C) declined, saying, "I don't do politics, I do lawsuits." (b)(7)(C) countered by telling him to take his request to upper management and find someone in his office that does politics. (b)(7)(C) received an e-mail the following day agreeing to the face to face meeting with representatives from POA. (b)(7)(C) Gibbons wanted it to appear to POA and Governor Kessler that the Postal Service took their proposal seriously.

Subsequent to her receipt of an amended settlement proposal from POA, Gibbons again advised (b)(7)(C) to conduct another face to face meeting to reject their proposal, but wanted it to appear the Postal Service was taking it seriously and handling them with the utmost respect. However, DOJ rejected the Postal Service's request for an additional face-to-face meeting and expressed their displeasure that the Postal Service (through Governor Kessler) continued to interfere in their legal proceedings.

Mickey Barnett, Member, U.S. Postal Service Board of Governors

During an interview with the OIG on February 1, 2011, (Exhibit 15), Governor Barnett recalled that he participated in a BOG Governance and Strategic Planning Committee meeting that included a briefing from Gibbons concerning the Sarasota property dispute. Governor Kessler advised him that Band contacted him regarding the Sarasota property dispute. Governor Kessler stated the Postal Service was treating Band unfairly in the Sarasota property deal. Governor Kessler also told him Band was a long-time client or friend of his. Governor Barnett said, "Alan was pretty agitated about it (the Sarasota dispute)." Governor Barnett also said, "[Governor] Kessler wanted Postal to settle not litigate." Governor Barnett also recalled that he and Governor Kessler discussed legal aspects surrounding the Sarasota dispute.

#### Thurgood Marshall, Member, U.S. Postal Service Board of Governors

During an interview with the OIG on January 19, 2011, (Exhibit 16), Governor Marshall said that sometime during 2009, either Governor Kessler or Gibbons informed him of the Postal Service's plans to purchase a property in Sarasota, FL, that had a connection to Doug Band. He recalled that Governor Kessler was disturbed about the way "Band's group" was being handled by the Postal Service Facilities staff. Shortly thereafter, on an unknown date in fall 2009, Governor Marshall received a call from Band advising him that he (Band) was embroiled in a property dispute with the Postal Service. Band advised him that Governor Kessler was looking into the property deal with Postal Service management for him. Band did not provide Governor Marshall with a lot of specifics about the property deal or ask him to personally intercede on his (Band's) behalf. However, Band indicated that anything he (Governor Marshall) could do to be helpful would be appreciated. Governor Marshall described Band's call as advisory, but he explained to Band that he would have to treat his call like any other call about a customer relations or employee relations issue, passing the information on to appropriate officials. At the time of the call, Governor Marshall understood that the Postal Service and POA were negotiating, but did not know it could lead to a lawsuit. Governor Marshall said he's familiar with people shopping around for answers they want, but he did not think Band was trying to get him to have the Postal Service do something different.

Subsequent to Band's telephone call, Governor Marshall said that he had a few discussions with Gibbons and Governor Kessler about the POA property deal. Governor Marshall was concerned that the issues surrounding the POA dispute might be a systemic problem affecting other property owners that leased land/buildings to the Postal Service. Governor Marshall wanted to ensure the POA deal was handled fairly and consistent with past practice. He also wanted to ensure the practice of exercising purchase options in long term leases, such as POA's, did not harm the Postal Service. Therefore, Governor Marshall participated in a few teleconferences to learn more about

the property dispute. He reiterated that the purpose of his interest was to ensure fairness and consistency related to similar property deals and he was not interested in seeing a particular outcome for POA.

Governor Marshall recalled participating in a BOG Governance and Strategic Planning Committee (GSPC) conference call with former Postmaster General (PMG) John Potter, Governor James Miller, and Governor Bilbray about the POA property dispute. Governor Marshall also participated in a telephone briefing arranged by Gibbons to discuss the facts surrounding the POA dispute. Governor Marshall said Governor Kessler, Samra, (b)(7)(C) and other Facilities staff explained the LAP and issues surrounding the POA property dispute. Governor Marshall said he was not experienced enough to micromanage facilities issues, but expressed his view to Samra that when they are negotiating with a property owner, they should get the best deal for the Postal Service. Governor Marshall explained to Samra that he should "drive a hard bargain," but not treat the other party unfairly. Governor Marshall recalled the briefing was not helpful because it did not provide him with enough detail to understand the complexities of the dispute.

Governor Marshall recalled participating in a subsequent briefing to discuss a disagreement about what party (POA or Postal Service) was responsible for the maintenance and upkeep of the Sarasota property and how it was ultimately valued by the Postal Service. Gibbons addressed the valuation issue, providing her assurance that the Postal Service handled the valuation of Sarasota's maintenance and upkeep expenses consistently compared to other similarly situated property leases.

Governor Marshall described the relationship between Governor Kessler, Band, and himself as a "band," stating they have all worked together on political campaigns, most recently Hillary Clinton's presidential campaign. He also said that at one time, he, Governor Kessler, and Band were "on the same payroll." Governor Marshall said he has a longtime relationship with Governor Kessler, predating his relationship with Band, but did not characterize either of the relationships as friends.

#### James Bilbray, Member, U.S. Postal Service Board of Governors

During an interview with the OIG on March 1, 2011, (Exhibit 17), Governor Bilbray stated he participated in a BOG Governance and Strategic Planning Committee meeting and confirmed the Sarasota issue was briefed at the meeting. He also discussed that Governor Kessler was frustrated with how the Postal Service was handling the dispute (i.e. not playing nice, negotiating, etc). He did not confirm any undue influence by Governor Kessler and was unable to recall any specifics regarding the dispute.

Tom Samra, Vice President, Facilities

During multiple interviews with the OIG, including one on January 3, 2011, (Exhibits 18 and 19), Samra said he was responsible for authorizing his staff to exercise the purchase option contained within the POA lease in 2008. Samra acknowledged the purchase of the Sarasota property was a good deal for the Postal Service because they would spend approximately \$800,000 for a property valued between \$8 million - \$10 million. However, the owners were unhappy with his decision to buy the property and refused to sell. Under Samra's leadership, Facilities has exercised three similar purchase options in the last year. Two were challenged in court. A third purchase option is still in negotiations.

On an unknown date in 2010, Gibbons advised Samra that Governor Kessler had concerns about the Sarasota property dispute. Specifically, she told him that Governor Kessler had concerns about the deal and questioned whether the Postal Service was doing its job correctly. Gibbons advised Samra that he needed to explain his position to Governor Kessler in a meeting, which she arranged. Gibbons, Governor Kessler, and Samra met privately in the BOG office and Samra explained to Governor Kessler the Postal Service's position and the reasoning behind his decision to exercise the purchase option. He recalled during the meeting that Governor Kessler questioned whether the Postal Service was being fair to POA and the effect the POA dispute could have on other property deals.

In March 2010, Samra participated in a conference call with Gibbons, (b)(7)(C) Governor Kessler, and Governor Marshall to discuss the POA property deal. During the call, Samra again explained to Governor Kessler that they needed to purchase the building, because it was a good deal for the Postal Service. (b)(7)(C) provided Governor Kessler with the legal position on why the Law Department thought the Postal Service should continue with litigation to force POA's compliance with the property sale. Samra recalled that (b)(7)(C) Governor Kessler engaged in a heated discussion during the teleconference. Samra said (b)(7)(C) is passionate about the Sarasota case because (b) wants to win it and because the "deal is on (b) watch." Governor Kessler instructed them to keep talking to POA and "give them a good chance to talk and discuss." Samra said he did not feel Governor Kessler influenced him to change his position or do anything different on the POA property deal. However, Samra acknowledged he was personally more hands-on than usual in this issue because of the dollar value of the property deal. Samra acknowledged that Governor Kessler's involvement led to a lot of his (Samra's) time being wasted on the POA property deal. Samra recalled that Gibbons also told Samra on multiple occasions that he (Samra) was to go the extra mile talking to POA, analyze the POA offers, and personally explain why the Postal Service could not accept the offers.

The teleconference was Samra's last contact with Governor Kessler about the POA property deal. All follow-up communication concerning Governor Kessler's involvement or updates came from Gibbons, who communicated with Governor Kessler extensively. Samra recalled Gibbons asked him to meet with POA, at the request of Governor Kessler, to discuss a settlement proposal.

Samra said that he heard that one of the partners in the POA deal had a relationship with the White House and that Governor Kessler had a relationship with the POA owners. However, he (Samra) was not sure if they were clients or friends.

Samra advised that the property dispute is currently in litigation with the Department of Justice, which is representing the Postal Service. Samra said that if the Postal Service failed to prevail in court for the property purchase, they could be forced to pay the property owners increased rent if allowed to stay or it could cost approximately \$15 million to relocate the Sarasota Post Office and Vehicle Maintenance Facility to another location.

#### Review of e-mails of Alan Kessler, Member, U.S. Postal Service Board of Governors

A review of e-mails from Governor Kessler's work (Duane Morris) e-mail account showed that on August 24, 2009, Doug Band and Greg Band were in contact with Kessler regarding the POA's legal position on the Sarasota property dispute (Exhibit 20). Governor Kessler acknowledged receipt to Doug and Greg Band by forwarding the document to Gibbons for review and appropriate action. In Governor Kessler's forwarded e-mail to Gibbons, he briefly summarized POA's argument and commented that he was "concerned that this matter appears to be headed to significant and possibly difficult litigation unless reasonable heads prevail."

The review showed that Gibbons responded to all three (Governor Kessler, Greg and Doug Band), indicating that she would review and respond accordingly. On September 16, 2009, the Law Department sent Gregory Band a response letter stating that the Postal Service was standing by their decision to purchase the property at the fixed price established in the lease. Greg Band e-mailed a copy of the letter to Governor Kessler, requested that he participate in a discussion with POA attorneys, and suggested that they move forward. On November 30, 2009, at the request of Doug Band, Governor Kessler agreed to participate in a conference call with Greg Band, POA attorney Steve Hurlbut, and their team on December 2, 2009. A December 2, 2009, e-mail from Greg Band to Governor Kessler showed that Governor Kessler assisted POA in crafting their opposing strategy. [Agent's note: Records provided to the OIG by Gibbons, showed that



the Postal Service received the above letter from POA on December 4, 2009 (Exhibit 21).]

Governor Kessler reviewed a letter he recommended POA prepare as a rebuttal to the Postal Service letter. The letter ultimately contained POA's legal argument and a threat to seek U.S. Congressional intervention against the purchase of the Sarasota property.

A May 24, 2010, e-mail from Doug Band shows that Governor Kessler received a copy of a letter that DOJ sent to POA. In the letter, DOJ indicated that they (DOJ) were intervening and planned to file suit against POA for failing to sell the Sarasota property. Governor Kessler advised that he would discuss with Gibbons.

Review of Deputy General Counsel Charles Kappler's Dictated Notes of an August 13, 2010, Telephone call with Governor Kessler

The OIG reviewed Kappler's contemporaneous notes to file concerning a telephone call he received from Governor Kessler on August 13, 2010, while he (Kappler) was acting for Gibbons. In those notes, Kappler stated the following (Exhibit 22):

He [Governor Kessler] had been directed by MAG [Mary Anne Gibbons] to keep out, make her point for contacts. He was told by owners that they tried to get MAG [Mary Anne Gibbons] and I responded. They wanted to know from Alan [Governor Kessler] if it was worth calling me. Alan wanted to know if I was familiar with it enough to entertain call, said I'd be happy to. Alan didn't want any details just wanted to be sure it was ok for them to call or should they wait for MAG. I said if they wanted clarification or raise issues I could handle.

Mary Anne Gibbons, General Counsel, Law Department

During multiple interviews with the OIG, Gibbons provided information about her recollections about the property dispute (Exhibit 23). Gibbons said that Governor Kessler contacted her sometime in September 2009 regarding a property dispute between the Postal Service and the property owner for the Sarasota PO and VMF. The property owners were unhappy with the Postal Service's decision to exercise an option in the lease to purchase their property and refused to sell. Gibbons said that the property owners, represented by Doug Band, contacted Governor Kessler and alerted him to the property dispute. The property owners claimed the decision to purchase was unfair and Governor Kessler wanted information to ensure that the Postal Service had a strong legal position. Gibbons reviewed the property owner's complaint and instructed her legal team, which included (b)(7)(C) and (b)(7)(C) to formally respond to the property owners' concerns. Gibbons shared the Postal Service's position with Governor Kessler,

assuring him that the Postal Service's decision to exercise the purchase option was legally sound.

Gibbons recalled that Governor Kessler received the property dispute information from Band, someone Governor Kessler knew through his political connections. Gibbons said that Governor Kessler told her that he knew Band from a political campaign, possibly former Vice-President Al Gore's presidential campaign. She recalled that Governor Kessler told her Band had political connections with the White House and implied the Band family "could run up to Capitol Hill, and thwart the Postal Service." Gibbons said she was concerned that Band could influence legislation that could stop the Postal Service from exercising similar purchase options in the future. Gibbons said that she did not believe that Governor Kessler told her about these political connections to influence her to do something special for Band, but because he wanted to make sure the Postal Service was on "solid ground" in dealing with the property dispute.

Gibbons reviewed the below January 13, 2010, e-mail (b)(7)(C)

*"Sarasota postal facility--an acquaintance of Gov. Kessler's contacted him complaining about a legal position USPS has taken as to our exercise of a purchase option in a lease on a facility in Sarasota, FLA. The acquaintance thinks our position is unfair and our staff has responded that it is legally justified. Gov. Kessler has indicated that he would like to be assured that there is a sound legal and factual basis for our position and he would like to know how many other postal leases include the provisions that are at issue in the Sarasota matter. We have agreed to provide the factual info and a legal analysis of our position."*

Based on this initial contact from Governor Kessler, Gibbons provided him with general ethics advice about this issue and four months later forwarded the above e-mail to (b)(7)(C) Gibbons said she usually advised (b)(7)(C) when she provided any governor, such as Governor Kessler, "general ethics advice." However, Gibbons could not recall the specific words she used during Governor Kessler's counseling. Gibbons did not recall "making a conflict of interest determination" or if she analyzed Governor Kessler's relationship with the property owners/attorneys, but confirmed that she did give Governor Kessler ethics advice. She said it is likely she "told him you've got to stay out of the specifics of this." Gibbons could not recall, but said that her statement may have mentioned, "[Y]ou can't get involved... You can give me (Gibbons) general information, [but] can't go beyond that." She said that she sent (b)(7)(C) the above e-mail because Governor Kessler was a governor and she wanted to ensure he understood general ethical concerns related to his involvement in the property dispute. Gibbons' opinion was that Governor Kessler could "pass complaints along" from the

property owners to the Postal Service, but not direct them (the Postal Service) to do anything.

Governor Kessler did not describe to Gibbons the extent of his communications with Band. Gibbons did not recall receiving any documents from Governor Kessler, outside of the initial referral letter. Gibbons did not recall Governor Kessler telling her he communicated with any representatives of POA, including their outside legal counsel, other than Doug Band. Governor Kessler did not advise Gibbons about the specifics of the property owners' legal strategy.

Gibbons commented that Governor Kessler's appropriate role was to pass on information that he received from POA to the Postal Service. Gibbons' could not answer the question about whether it would be appropriate for Governor Kessler to continue to be involved in the property dispute after he was advised about the potential appearance issue. However, she said it would not be appropriate for Governor Kessler to advise them on their opposing legal strategy. It would also not be appropriate for Governor Kessler to meet with the POA legal team about the Postal Service's confidential strategy, views, or position, other than to tell the property owners they do not have a strong legal position and the Postal Service does. Gibbons said that Governor Kessler's loyalty should be to the Postal Service.

Gibbons said that after Governor Kessler received the Postal Service's legal analysis about the property dispute, it would have been acceptable for him to continue to communicate with the property owners to explain that the Postal Service was on "strong legal ground." She hoped his communications would help to counter the property owners' efforts to involve external political influences, such as the US Congress. She also indicated that Governor Kessler could not control the persons who contacted him about the property dispute.

Gibbons said that Governor Kessler inquired about the number of leases that underwent adjustment through the Postal Service's lease amendment program, such as Sarasota. She said that Governor Kessler expressed concern about a class action lawsuit, specifically if there were many other leases that could be subject to challenge in court, as well as the liability if the Postal Service failed in their defense. Gibbons said that by law, Governor Kessler's fiduciary responsibility is to represent the public interest. He is responsible for making sure that the Postal Service is acting in its best interests in making decisions. If the Postal Service is taking an improper legal position, he could say they could not pursue it. If the Postal Service's position led to a class action suit they could not defend and lose, the Postal Service would pay out a lot of money. Therefore, Gibbons said Governor Kessler should be concerned about these possibilities, to include the Sarasota property dispute.

Gibbons reviewed the below e-mail exchange between herself and (b)(7)(C) from July 2010:

(b)(7)(C) to Gibbons

*"[U]nder the "Misuse of Position" regulations, here is what I am concerned about with respect to Governor Kessler's participation in the Sarasota matter:*

*"(d) Performance of official duties affecting a private interest. To ensure that the performance of his official duties does not give rise to an appearance of use of public office for private gain or of giving preferential treatment, an employee whose duties would affect the financial interests of a friend, relative or person with whom he is affiliated in a nongovernmental capacity shall comply with any applicable requirements of 2635.502."*

*You'll recall that 2635.502 is where the Impartiality in Performing Official Duties regulations are found, and they would require the employee to inform the agency ethics designee of the appearance problem and wait for a determination from the designee about whether to proceed with participating in the matter.*

*I believe that Governor Kessler should not participate in this matter further so as to avoid running afoul of these regulations."*

**Gibbons' Response to** (b)(7)(C)

*"I have had a discussion w/Governor Kessler. From our discussion, it appears that he understands the potential appearance issue and, [ ] therefore, he has agreed not to have further personal involvement in the matter. He will inform the individual who contacted him that any further concerns about professionalism and the like should be raised with me."*

Gibbons could not recall the conversation referred to in the above e-mail. However, after reviewing the e-mail, Gibbons said she would not lie to (b)(7)(C) therefore she must have provided Governor Kessler with the advice as written. However, she could only assume that she explained the specifics of Title 5 Section 2635.702 (Standards of Ethical Conduct for Employees of the Executive Branch, Subpart G-Misuse of Position, Use of Public Office for Private Gain) and could not be certain. Gibbons said she did not recall contacting Governor Kessler to tell him not to have any personal involvement with the property dispute, nor did she ask Governor Kessler to recuse himself. She confirmed that she continued to provide him with updates and information. Gibbons confirmed that she briefed the BOG Governance and Strategic Planning Committee

(GSPC) on the Sarasota property dispute on two occasions, as part of overall litigation briefings to inform the governors on important cases involving the Postal Service.

Gibbons explained she provided Governor Kessler with information, subsequent to the July 2010 e-mail, in case someone called him again complaining or requesting an update. (b)(5)

(b)(5)

Gibbons advised she had numerous discussions with Governor Kessler about the treatment of the property owners. Specifically, Governor Kessler wanted to ensure that they were being treated professionally, courteously, fairly, and respectfully by the Postal Service. However, at some point, Governor Kessler received a complaint from the property owners that they thought Samra was rude in his delivery or demeanor. She recalled advising Governor Kessler to have the property owners contact her directly and remove himself as the middle-man for their complaints. To respond to the property owners' complaint about Samra, she instructed (b)(7)(C) to talk to Samra and personally review communications for tone.

Gibbons confirmed that she, Samra, and their subordinate staffs participated in a March 2010 teleconference with Governor Kessler. She was unsure, but said that she might have suggested to Governor Kessler that she get the experts on the telephone to answer his questions. She thought the meeting might have been a direct response to questions he had after reviewing their (the Postal Service Law Department's) analysis on the property dispute. Gibbons said it is not odd to call on (b)(7)(C) and the others, because they are the experts.

Gibbons prepared and provided a timeline of all the events related to this dispute based on her recollections to the OIG (Exhibit 24).

#### Alan Kessler, Member, U.S. Postal Service Board of Governors

During interviews with the OIG on February 9, 2011, and April 5, 2011, Governor Kessler described his involvement in the Sarasota, FL, property dispute. He stated that in August or September 2009, he received a call about a legal issue from Doug Band, a staffer for former President William Clinton (Exhibits 25 and 26). Band asked Governor Kessler to look into the "valuation" of property owned by Band's family and others in Sarasota, FL. Specifically, Band wanted to renegotiate the value of property they were renting to the Postal Service. Governor Kessler stated that Band did not ask for help, but contacted him because he wanted a careful review of a dispute with the Postal Service involving the valuation of the property.

Governor Kessler stated that he and Band have no business, social, or financial relationship. His interactions with Band consist of past instances when Governor Kessler was in the company of former President Clinton and Band was with him (former President Clinton). Kessler said that Band is an employee of former President Clinton and usually a part of his "entourage."

[Agent's note: Doug Band's attorney provided the OIG with a letter stating "Band has known Governor Kessler as a friend for many years" (Exhibit 27).]

Governor Kessler passed Band's concerns about the valuation of the Sarasota property on to Gibbons and Julie Moore, Secretary to the BOG, for appropriate action. Governor Kessler could not recall all of Band's concerns or specifics about the Sarasota property deal, but recalled that he told Gibbons that the Sarasota property owners claimed they received reduced rent from the Postal Service, in order to recoup more money "on the back end." Governor Kessler was unable to provide clarification about what he meant by more money "on the back end." Governor Kessler stated he was unsure why there was a disagreement about the "valuation" of the property. He denied any knowledge about the Postal Service's desire to purchase the Sarasota property, stating he did not involve himself in the details; he was merely interested in "process." However, he was unable to describe the process issues that he had concerns about. Governor Kessler did not recall any Postal Service employee advising or informing him that the Postal Service was trying to purchase the Sarasota property from POA and denied that he had knowledge that the dispute was about a property purchase. Governor Kessler said that he flies at "20,000 feet" and did not take the time to involve himself in the details of the dispute, but wanted to ensure that the two parties were talking to each other in an attempt to resolve their issues.

Governor Kessler said the "last place you (Postal Service) want to be is before a judge" arguing the merits of a property dispute. Therefore, he wanted the parties to sit-down and talk to take the risk out of the situation and to exchange information. Governor Kessler said he did not instruct the Postal Service to change their position or take action in favor of Band. He suggested that the Postal Service and the property owners negotiate and try to reach settlement on the "valuation" of the Sarasota, FL, property. He recalled that his actions and contacts with Band, Gibbons, and Deputy General Counsel Charles Kappler were consistent with bringing the parties together to discuss their positions to settle the dispute amicably without a judge's intervention.

Governor Kessler said he knew that the Postal Service referred the property dispute to the Department of Justice (DOJ) for legal action. However, he admitted that after the matter was referred to DOJ, he made contact with the parties in an effort to get them to

continue to negotiate, consider the Band's settlement proposal, and also to get things resolved.

Governor Kessler said he involved himself in the Sarasota property deal because he was concerned with the Postal Service's legal position. At the time of his interview, Governor Kessler could not describe the Postal Service's position. He did recall that the Law Department relied heavily on a court case in California that had a similar set of circumstances as Sarasota property deal. Governor Kessler said that in the California case, a property owner challenged the Postal Service, the Postal Service lost in court, and the judgment was upheld on appeal. Governor Kessler could not recall the arguments or set of circumstances in the court case, but remembered the property owner litigated the court appeal without a lawyer (pro se'). Governor Kessler was concerned that the Postal Service would look like the big bad government taking advantage of a small land owner if the Sarasota property deal made its way to a court room. He said the Postal Service could lose and it could lead to other court challenges by other lessors.

Governor Kessler recalled that Band informed him that he was in possession of information made available from a Postal Service Freedom of Information Act (FOIA) request that was detrimental to the Postal Service's position on the Sarasota case. Governor Kessler was not knowledgeable about the specifics of the FOIA. He also stated that if the case went to court, Band could produce witnesses that would counter the Postal Service's position, making it harder to succeed in a court challenge. Governor Kessler was also concerned that the Sarasota property owners were in contact with members of the U.S. Congress, which could lead to Congressional intervention. He said Band served in the White House and "knows people" in the U.S. Congress.

Governor Kessler stated that although he did not know the complete facts of the Sarasota property deal, he believed that it was a "large case" for the Postal Service. He said that other property owners could assert positions similar to the Sarasota property owners and the Postal Service may have to defend against a class action law-suit.

Governor Kessler said because of the Sarasota property deal's importance, Gibbons briefed the BOG's Governance and Strategic Planning Committee about the facts surrounding the litigation on one or two occasions within the last year. However, he could not recall the substance of the briefings, although he recalled that Gibbons discussed the case during her on-going litigation segment, where she briefs the committee on the important litigation involving the Postal Service. In the committee's litigation segment, Gibbons routinely provides the committee with an update on current litigation that has significant importance to the Postal Service. Governor Kessler said

that he could not remember requesting a briefing on the Sarasota litigation and was unaware that Gibbons planned to brief the committee about the Sarasota matter. However, Gibbons' litigation reports to the committee on the Sarasota property deal were appropriate because he and the board have a fiduciary duty to ensure the Postal Service is operating appropriately. [Agent's note: An e-mail provided to the OIG confirmed that Governor Kessler requested a BOG briefing on Sarasota from Gibbons (Exhibit 28).]

Governor Kessler denied contact with Samra or any other Postal Service employees regarding the Sarasota property deal, insisting that he only spoke with Gibbons, Kappler, and Moore. He also did not recall participating in a teleconference with employees from Facilities and the Law Department to discuss the facts of the Sarasota property deal or the Lease Amendment Program (LAP). Governor Kessler said that after his initial contacts with Gibbons, he went "back up to 20,000 feet and just [kept] the parties talking."

Governor Kessler denied he had a conversation with Gibbons in July 2010 about not involving himself further in property dispute. He said that Gibbons was supportive of him communicating with representatives of POA (Band) and never raised any concerns with him that his involvement may pose a conflict of interest or an appearance issue. Governor Kessler said the only conversation he had with Gibbons about his personal involvement in the dispute was regarding the treatment of the property owners by Samra. He complained to Gibbons regarding an insensitive e-mail that Samra sent to the property owners, and Gibbons advised that she would handle Samra and ensure that Governor Kessler's concerns were properly addressed. Governor Kessler said that Gibbons asked him to allow her to handle future complaints from the property owners directly.

Governor Kessler said that subsequent to his discussion with Gibbons, he received a call from Band about scheduling a meeting with the Postal Service to discuss the property dispute. Band told Governor Kessler that he attempted to contact Gibbons to discuss the property dispute, but Gibbons was out of the office. Band also said that Deputy General Counsel Charles Kappler contacted him and advised that he (Kappler) was handling Gibbons' contacts while she was away from the office and Band could discuss his concerns regarding the property dispute with him. He said that Band was unsure of Kappler's role and called him (Governor Kessler) to ensure he was the appropriate surrogate. Governor Kessler said he (Governor Kessler) contacted Kappler one or two times to help arrange a future meeting with the property owners and the Postal Service. However, Governor Kessler insisted he was never advised by Gibbons to stop his personal involvement with the property dispute matter.



Governor Kessler acknowledged that on multiple occasions, he participated in private teleconferences with representatives from POA and their legal counsel regarding the property dispute. In one instance, he said that he advised them to prepare a response to a Postal Service letter addressing POA's legal argument and refusal to sell the Sarasota property as required within the lease. Governor Kessler also confirmed that he routinely received documents from representatives of POA regarding the dispute and that he did not forward the documents to any Postal Service executives, including Gibbons. He acknowledged that the documents which contained POA's strategic arguments could have helped the Postal Service, but said that he advised Doug Band to send copies of everything directly to the Postal Service.

Governor Kessler stated he often receives external requests for assistance with Postal Service related matters. He said that all the requests he receives are treated the same, specifically requiring the requestor to put their complaints and/or concerns in writing. Governor Kessler then stated he passes the information on to Gibbons and Moore for referral to the appropriate Postal Service manager for action. He said that information he received with a legal nexus were routed to Gibbons. Governor Kessler said that he declines to intercede on anything in which he has a financial nexus.

[Agent's note: Neither the Secretary to the Board of Governors nor the General Counsel maintains a formal system of records to track any Governors' referrals.]

#### Review of E-mail Exchanges Between Governor Kessler and General Counsel Employees

A review of e-mail exchanges between Governor Kessler, Gibbons, and Kappler showed that Governor Kessler was briefed on December 11, 2009, about the property owners' objection to the Postal Service's decision to exercise a purchase option for the Sarasota property (Exhibit 29). Governor Kessler was also advised about the Postal Service's formal position to purchase the property, in spite of POA's objection. In the e-mail, Governor Kessler expressed doubt about the Postal Service's legal argument and suggested a negotiated compromise.

Kappler sent the below update to Gibbons:

*"This is to update you on the Sarasota Post office purchase option issue that was brought to our attention by Governor Kessler. Governor Kessler was concerned that this issue be handled appropriately and as a result we contacted the attorney representing the owners of the building who are opposing the Postal Service's exercise of its purchase option. We sent the attorney, Greg Band, a letter (copy attached) outlining our position. In response, Mr. Band*

*called us and I again explained our position and told him that we felt it was strong enough that we would have no basis for requesting our clients not to exercise their rights under the lease. I told him that we don't always prefer to litigate matters, but in this case, a decision not to exercise our rights would be appropriately questioned at several levels, particularly given our current financial picture.*

*He did have some detailed questions about the lease program, in general, to which I was reluctant to respond based on my lack of any detailed knowledge of the program. Therefore, I told him that I would make (b)(7)(C) Counsel (b)(7)(C) available to discuss the matter as well. Despite several attempts on our part, Mr. Band failed to find a time to continue our discussion. The next development in this matter was a letter (copy attached) from an attorney, Steve Hurlbut, responding to my letter to Mr. Band. In short, Mr. Hurlbut disputed our legal position. Of particular note is that, notwithstanding Mr. Hurlbut's assertion that his client is in a strong legal position, he also informed us that his client will be bringing its case to the attention of "appropriate congressional and governmental representatives."*

*(b)(7)(C) one of the attorneys representing us in this matter, responded to Mr. Hurlbut's letter. (A copy of her response is attached.) The United States Attorney's office in Florida has been contacted concerning this matter and we anticipate that an action will be filed in January. Please let me know if you have any questions regarding this."*

Gibbons forwarded Governor Kessler the aforementioned message and included the following:

*"Kappler has provided an update on the Sarasota Post Office matter brought to your attention by Mr. Band. Although Mr. Hurlbut, an attorney retained by Mr. Band on this matter, states in his attached letter that postal management has paid fair market value versus the much lower purchase price authorized by the lease in circumstances similar to the Sarasota facts, postal policy would not allow for that and my staff is unaware of that as a matter of practice. Nevertheless, my staff is checking further to see if there is any truth to Mr. Hurlbut's assertions.*

*Please let me know if you would like any additional information at this point. Going forward, I will keep you posted as this progresses."*

Governor Kessler responded to the aforementioned message from Gibbons with the following:

*"Thanks very much for the recent update on the Sarasota Post Office matter brought to my attention by Mr. Band. I must say that I am still troubled somewhat by the argument regarding the 1981 amendment. Thus, I guess I am not sure what the purpose of the fair market value option would have been, if it were not to have been exercised and how the assumption of maintenance, utilities and taxes compared to the reduction in the rental.*

*Is there no compromise available that would allow us to avoid expensive and possibly time consuming litigation?"*

The e-mail exchange also included a letter from Postal Service Attorney (b)(7)(C) detailing the Postal Service's formal position and a letter from the property owners detailing their legal argument against the Postal Service's decision to exercise the option to purchase the Sarasota property.

Review of E-mail Exchanges Between the Office of President Clinton, Mary Ann Gibbons, General Counsel and Charles Kappler, Deputy General Counsel

A review of e-mail exchanges between (b)(7)(C) from the Office of President Clinton, Gibbons, and Kappler showed that Gibbons was concerned with Governor Kessler's continued involvement in the Sarasota property dispute (Exhibit 30).

(b)(7) sent Gibbons the below message:

*"My name is (b)(7)(C) and I work for President Clinton. His Counselor, Doug Band, asked that I set up a call with you in the coming days. Please let me know of your availability."*

Gibbons forwarded the above message to Kappler on August 12, 2010 and wrote the following:

*"Please handle"*

Kappler responded to Gibbons with the following message:

*"Handle setting up the meeting or handle the meeting itself? This looks like Sarasota from another angle."*

Gibbons responded with the following message:

*"Handle the call--tell him I'm out of town. So that the Gov would not cross the ethics line, I told him to have the Sarasota owners contact me if they have complaints on Tom. This is likely in that category. So, tell him you are the Deputy GC, acting for me.*

Kappler responded to Gibbons with the following message:

*"Will do. They are really pulling out all the stops on this."*

E-mail records showed that Kappler ultimately responded to (b)(7) and a meeting date was set for Kappler and Band to discuss the Sarasota property dispute.

#### Review of William J. Clinton Foundation Website

On April 28, 2011, the OIG conducted a review of the William J. Clinton Foundation's official website ([www.clintonfoundation.org](http://www.clintonfoundation.org)) donors page and learned that Governor Kessler had a financial relationship with the organization (Exhibit 31). The website indicated that Governor Kessler contributed between \$1,001 and \$5,000 to the organization before year 2010.

#### Review of a Letter from Attorney Scott Corrigan

On May 4, 2011, Scott Corrigan, a partner with Wiggins and Dana, provided the OIG a formal letter responding to an official request to interview William J. Clinton Foundation employees Doug Band and (b)(7)(C) (Exhibit 27). In the letter, Corrigan spoke on behalf of Band and (b)(7) and declined to participate in an official interview as witnesses in the Governor Kessler investigation. He wrote that their participation would conflict with the ongoing litigation between the Department of Justice (Federal Programs Branch), the Postal Service, and Post Office Associates (Sarasota property owners), because Band has a personal financial interest in the Sarasota property. Corrigan stated that Band has "known Governor Kessler as a friend for many years."

#### Corrigan's letter stated the following:

*...Messrs. Band and (b)(7) decline your request to interview them. Given the current litigation between the USPS and Post Office Associates, it would be inappropriate for the OIG to interview Messrs. Band and (b)(7) –outside of the normal discovery process governing civil litigation – in an investigation related to that litigation. That is especially true since Mr. Band's interests and the*

*USPS' interests are adverse in the pending litigation.....Please note that Messrs Band and (b)(7) both work for President Clinton, and that their email addresses note their affiliation with the former president. However, while the email from Mr. (b)(7) was sent from his presidentclinton.com email address, (b)(7)(C) did not reach out the USPS on behalf of President Clinton.*

*President Clinton has no involvement in this matter, which involves a dispute between the USPS and an entity in which Mr. Band has a personal financial interest. (b)(7)(C) email to the USPS was sent at the direction of Mr. Band, who is (b)(7)(C) supervisor. Mr. Band directed (b)(7)(C) to try to arrange a telephone call with the general counsel of the USPS to discuss an offer by Mr. Band on behalf of Post Office Associates to the USPS to settle the matter and develop the disputed project together.....Mr. Band has known Governor Kessler as a friend for many years.*

#### **IV. EXHIBITS**

1. Case Initiation, dated December 29, 2010
2. E-mail Exchanges Between General Counsel Mary Anne Gibbons and others
3. Memorandum of Activity, Review of Governor Alan Kessler's Significant Contacts, dated June 8, 2011
4. Memorandum of Activity, E-mail Exchanges Between Governor Alan Kessler and others dated June 8, 2011
5. General Counsel Memorandum to Alan Kessler, February 19, 2010
6. Memorandum of Activity, Standards of Conduct, Section 2635.702, dated February 16, 2011
7. Office of Government Ethics Memorandum, dated September 12, 1988
8. Memorandum of Activity, Title 39, Rules of Conduct for the Postal Service Board of Governors, dated April 1, 2011
9. Memorandum of Activity, United States v. Fagan, dated April 1, 2011
10. Memorandum of Activity, Post Office Associates Proposal, dated April 15, 2011

11. Memorandum of Interview, Helen Grant, Associate General Counsel, dated December 29, 2010
12. Memorandum of Interview, (b)(7)(C) Counsel, (b)(7)(C) (b)(7)(C) dated January 3, 2011
13. Memorandum of Interview, (b)(7)(C) Counsel, dated December 28, 2010
14. Memorandum of Interview, (b)(7)(C) Counsel, dated January 4, 2011
15. Memorandum of Interview, Mickey Barnett, Member, U.S. Postal Service Board of Governors, dated February 1, 2011
16. Memorandum of Interview, Thurgood Marshall, Member, U.S. Postal Service Board of Governors, dated January 19, 2011
17. Memorandum of Interview, James Bilbray, Member, U.S. Postal Service Board of Governors, dated March 1, 2011
18. Memorandum of Interview, Tom Samra, Vice President, dated December 29, 2010
19. Memorandum of Interview, Tom Samra, Vice President, dated January 3, 2011
20. Memorandum of Activity, Review of E-mail Exchanges Between Alan Kessler and Doug Band
21. Letter from Attorney for Post Office Associates, dated December 4, 2009
22. Deputy General Counsel Charles Kappler's Dictated Notes of an August 13, 2010, Conversation with BOG Member Alan Kessler
23. Memorandum of Interview, Mary Ann Gibbons, General Counsel, April 4, 2011
24. Mary Ann Gibbons, General Counsel, Timeline, April 4, 2011
25. Memorandum of Interview, Alan Kessler, Member, U.S. Postal Service Board of Governors, dated February 9, 2011

26. Memorandum of Interview, Alan Kessler, Member, U.S. Postal Service Board of Governors, dated April 5, 2011
27. Review of a Letter from Doug Band's Attorney Scott Corrigan, dated May 4, 2011
28. E-mail, BOG Presentation of Sarasota Property Dispute, December 11, 2009
29. E-mail, Exchanges Between Governor Kessler and General Counsel Employees, December 11, 2009
30. E-mail, Exchange Between Charles Kappler, Mary Anne Gibbons and Clinton Foundation Employee, August 12, 2010
31. William J. Clinton Foundation Website "Contributors" Screenshot, dated May 4, 2011