

**Postal Policy and
Public Accountability:
Is The 1970 Bargain
Coming Unglued?**

Joel L. Fleishman

Program on Information Resources Policy

Harvard University

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Joel L. Fleishman
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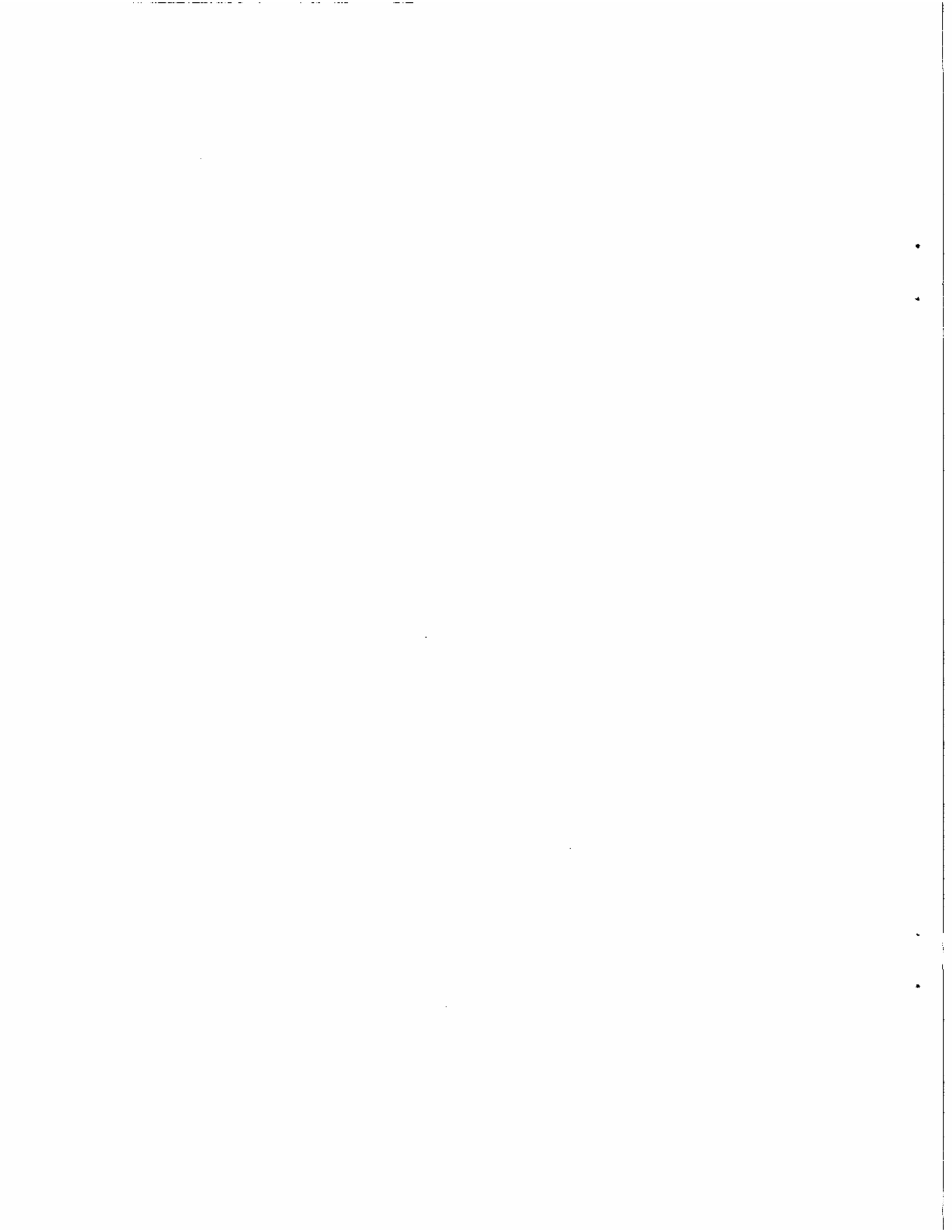
EXECUTIVE SUMMARY

- In 1970, after a spate of wildcat strikes by postal workers, intense bargaining over postal wages, persistent postal deficits, and Congressional near-paralysis over postal rate increases, Congress effected a major change in U.S. postal policy by enacting the Postal Reorganization Act.
 - Three groups of actors were indispensable in the 1970 decision to reorganize: Postal employees, postal management and those large volume mailers who were organized in associations intended to effect postal policy ("organized mailers").
 - Since 1970, each of the three "indispensables" has voiced unhappiness with various aspects of the new postal policy structure. The temporary coalescence of their interests in 1976 resulted in the enactment of a number of amendments to the Postal Reorganization Act.
 - Since the enactment of the 1976 amendments postal unions and the organized mailers have continued their quest for expanded taxpayer subsidies of postal operations. Postal management has resisted the passage of subsidy legislation and any other legislation for fear that any such legislation would encroach upon the autonomy granted postal management in 1970.
 - The fears of postal management are well founded. Many members of Congress, a wide variety of mailers, postal unions and firms currently or potentially competing with the Postal Service have asserted that postal management has acted in an arbitrary and arrogant manner. These groups have sought institutional changes which would ensure greater "public accountability" or "political responsiveness" by postal management.
 - A number of options exist for curtailing the present independence of postal management. These include:
 - Increasing the power of the President over USPS,
 - Increasing the power of Congress,
 - Expanding the independence and powers of the present Board of Governors, and,
 - Increasing the power of the Postal Rate Commission.
- Exercising any of these options entails new problems and risks.
- Another approach to controlling postal management would be modification or abolition of the traditional postal monopoly. Such an approach presumably would increase postal management's responsiveness to mailers, but it does not ensure accountability to a wider public.

- Since 1970 the Postal Service has faced increased competition for physical delivery services. During the same period there has been wide-spread speculation that developments in telecommunications will effect the demand for traditional postal services. Postal Service management and employees have tried to guarantee a role for USPS in future telecommunications services through offerings such as E-COM and Intelpost. These efforts have involved a whole new host of players in postal policy disputes.
- The emergence of new policy actors and continued developments in telecommunications and computing increases the likelihood of fundamental changes in the existing postal policy structure.

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Postal Policy and Public Accountability: Is the
1970 Bargain Coming Unglued?¹

I. INTRODUCTION

A. The Postal Function

Postal service is very much like the weather. Everyone complains about it, but no one appears to be able to do anything about it.²

In 1970, after a spate of wildcat strikes by postal workers, intense postal wage bargaining sessions between Congressmen and union leaders, persistent postal budget deficits, and Congressional near-paralysis over postal rate increases, Congress finally gave up, and decided to do something about it. In keeping with the time-honored administrative proverb -- when in doubt about how to correct a program that isn't working, reorganize the agency that administers it -- Congress effected a reorganization of postal services delivery.

The 1970 Postal Reorganization Act,³ however, was considerably more than simply another reshuffling of bureaucratic boxes within the same structure of authority. The basic structure itself was changed. After nearly 200 years of being housed in one among many departments of the Executive Branch headed by a presidentially appointed cabinet member, in this case the Postmaster General, the postal function was invested in a specially created independent agency within the Executive Branch, the United States Postal Service. Convinced that postal services are more akin to business than to government⁴ because most of the postal revenues are provided by those who use the mails, Congress fashioned the structure to resemble a business. It established a presidentially appointed board of directors, called the Board of Governors, and it is that board, not the President, which selects the Postmaster General. Once selected, the Postmaster General, like the chief executive officers of most other corporations, becomes a member of the Board of Governors and participates fully in all management decisions. Because he is in fact not a Governor he cannot vote on accepting or rejecting decisions of the Postal Rate Commission. Nor does he vote on the terms of his own service, the compensation of the Deputy Postmaster General, the election of the chairman of the Board of Governors, or the approval of the budget of the Postal Rate Commission.

To that businesslike USPS, Congress gave all the power necessary to make most major decisions, subject to statutory guidelines enacted by Congress. With undisguised relief,⁵ Congress took from itself and vested in the USPS the power to establish postal rates, subject to

prior recommendation by a Postal Rate Commission that was created to stand in Congress's place as guardian of the public interest in the lowest postal rates economically feasible. Similarly, and with even greater relief, it delegated to the Postal Service the power Congress itself had long exercised to establish postal wage rates, albeit reluctantly permitting it to bargain collectively with the postal labor unions.

Perhaps most important, it directed the USPS to behave like a business. It was to break even financially as soon as possible, although Congressional subsidies would continue for the time being, but on an annually declining percentage basis during the intervening period.⁶

To appreciate fully the significance of such a change, one must keep in mind the special role the postal function plays in the life of any nation, especially one as geographically extensive as the United States. It is common to describe the Postal Service as affecting more citizens on a daily basis than any other function of government. Approximately one-quarter to one-half of the entire population comes in daily contact with the postal operation, although in fact most mail is delivered to businesses or to empty homes. However, for most citizens who are home, or in fact wherever they are when they receive the mail, the arrival of the mail is one of the high points of every day. For some, especially that small proportion who live in remote places, it is the high point of the day, the point at which their lives are touched by the outside world as a whole, and especially that part of the outside world which matters most to them--those who love and are loved by them.

For many the post is the means of their livelihood, while for others it permits easy commerce in goods, services, ideas, and money. To many rural citizens, their post office is their community center, the place they ritually gather to meet socially and to chat about their news, large and small. For others, it is no exaggeration to call it their identity, the place that defines where they live. For everyone, it is the communication of last resort, an always available, even if sometimes unreliable, means of reaching and being reached by potentially the whole world. To those who think about such matters, that is a comforting thought indeed!

To fulfill such an enormous mission, pervading literally every nook and cranny of the country, requires a veritable army of postal workers. Until the Second World War, the Post Office was the largest department of the federal government. Even in 1970, the 742,000 postal workers constituted one quarter of all federal civilian employees, and slightly less than 1% of the entire labor force of the United States.

B. The Postal Policy Actors

It was no small thing, therefore, for Congress to rearrange the postal function. In fact, it was quite a radical move. To obtain the agreement of all the parties affected by a reorganization of so many employees who daily touch the lives of so many Americans was a huge feat in itself. Think for a moment about the number of different groups affected, both actually or potentially, by such a change. We have already touched on the general public, but it is largely unorganized, perhaps even disorganized where postal matters are concerned. Also, other than in elections, it speaks only through its elected representatives in Congress who usually mirror,

at least on matters of postal policy, the disorganized state of mind of the electorate itself. While Congress, representing the public, had to make the ultimate decision on postal reorganization, the principal actors in the postal policymaking arena were some highly organized groups and businesses. Of greatest importance, defined by the extent to which they wielded effective power in 1970 over postal policy decisions, were three groups of actors.

With greatest power at the time of reorganization were those who accept, process and deliver the mail--the postal labor unions,⁷ as well as the non-unionized groups of postal employees such as the postmasters and postal supervisors.⁸ As we have seen, they had not only the weight of numbers, but also widespread influence over each and every Congressman arising from their dispersal throughout every Congressional district in the country. The postmasters, especially, had Congressional influence as virtually all of them had been hand-picked by members of Congress.

Less numerous, but with a large economic stake in postal rates and services, were the businesses and organizations which send quantities of goods, advertisements, and publications through the mails--the organized mailers. They are the large and small magazine⁹ and newspaper publishers,¹⁰ the book publishers,¹¹ the advertisers and the firms in their employ such as the direct mail marketers,¹² the parcel shippers,¹³ and the non-profit organizations.¹⁴ For most of such firms as well as for non-profit organizations, the level of postal rates is a matter of great concern, perhaps even of life-and-death concern, because postage is a large component of their costs. By organizing themselves, some of them had succeeded in winning from Congress preferential postal rates that were lower than the regular

rates for sending their products or messages through the mails. And they were not particularly interested in losing their hard-won gains.

Least numerous of all, as well as least powerful at the time of postal reorganization, were the postal managers--the Postmaster General and the senior staff of the department. They bore the brunt of an impossible burden. They had to fight hard to prevent Congress from being too generous with postal wage increases, they had to get Congressional approval of all postal rate hikes, and, whether they succeeded or not in either of those tasks, they had to take the blame for everything that went wrong.

Those three groups of actors were the primary ones; indeed, their agreement was indispensable to the 1970 decision to reorganize. The Postmaster General, as it happened, was one of the proponents of reorganization, but had he opposed it, he could have pressed the President to veto it. In fact, had he opposed it, it would never have been introduced in the first place.

The postal workers clearly could have prevented the Postal Reorganization Act from emerging from Congress. The organized mailers were essential, too, not so much because of any power in Congress as because of their leverage with the President. While it is not clear that they could have prevented reform, their support of reorganization stamped it as indeed a desirable reform. After skirmishing for several years, however, they all three struck a bargain, which has endured substantially unchanged up to the present moment.

The essential bargain was this. The postal workers exchanged their political power to lobby Congress for higher wages in order to obtain the power to bargain collectively. The organized mailers traded their political power to lobby Congress for the preservation

of their preferential postage rates in exchange for the promise of the reasonable rates and better service a well-run, businesslike Postal Service might be expected to offer them, double-checked by an independent Postal Rate Commission. The postal managers, however, gave up nothing, except perhaps their advantage of being able to hide behind Congress or the President when things went wrong, no small gain in an area where things seem frequently to be going wrong. In return, they won a managerial independence that is exceptional in the public sector, and unique in a public organization of the size of the Postal Service.¹⁵

To describe the postal workers, the managers, and the mailers as the indispensable parties to the 1970 bargain is not to suggest that they were the only actors. To the contrary, there was also a group of secondary postal actors, composed of both players and ratifiers. The players were mainly the competitors of the post office--principally the United Parcel Service--while the ratifiers were those whose role is usually to reflect the views of the indispensable actors and formally to ratify bargains that are privately struck. In the latter category were the Congressional committees with jurisdiction over postal matters, the President and his Office of Management and Budget (OMB), the federal courts, and, after reorganization, the Postal Rate Commission. Classifying these postal competitors and ratifiers as secondary actors is not in any way to suggest that they did not play a major role in the basic 1970 decisions about postal reorganization. They did indeed, but the roles they played, with the exception of that of the United Parcel Service, were less influential than those of the indispensable actors. Without doubt, what distinguishes the indispensable actors

from all the others is that they have a much greater stake in the decisions than the others. The greater the stakes, the more knowledgeable they are about how their interests are affected, and the more intensely they care about protecting them. As we shall see, however, the intervening decade has substantially altered the power relations among all of the actors, indispensable as well as secondary, and indeed has so increased the number of competitors of the Postal Service that they have clearly now moved from the ranks of players to the status of indispensable actor.

While the basic shape of postal reform remains substantially unchanged, there have been over the past decade occasional signs that the underlying bargain among the indispensables is threatening to come unstuck. Criticism of the Postal Service has often been voiced, not only by a growing number of secondary postal policy actors, but also by two of the three indispensable postal policy actors--the organized mailers and the postal workers.¹⁶ For its part, the third indispensable actor--the postal managers--has also joined the fray by questioning the continued viability of the present postal scheme, suggesting that the abolition of the Postal Rate Commission might well be in the public interest.¹⁷

The strident criticism of some of those actors--both primary and secondary--is worrisome for postal reorganization. While there is much praise for the current Postmaster General, William F. Bolger, one will search almost in vain the records of 1970s congressional hearings for a kind word from either witness or Congressman about the record of the Postal Service since reorganization. Twice since 1977, for example, the House of Representatives, historically more interested in postal matters than the Senate, and, some would say,

irresistibly irresponsible, has passed by more than three-to-one margins bills that would take from the Board of Governors, and give back to the President, the power to select the Postmaster General.¹⁸ While the most recent general Congressional hearings--those in December, 1981--do not contain any of the stridency which characterized those in 1977 and 1979, that appears to be the result of careful selection of those invited to appear. Indeed, Part I of those hearings suggests a carefully designed effort to build a record that is highly favorable to the Postal Service. Even in such a record, however--one that contained an obviously solicited encomium from an individual Representative¹⁹--the sense of being snubbed, which dominated the earlier hearings, continues to surface from time to time, manifesting, in the words of Committee Chairman William D. Ford (D. Mich.), "an isolation that continues to grow between you and your people and the members of Congress."²⁰ To understand why this sense of isolation has occurred, and why other principal and secondary postal policy actors are unhappy, let us examine how they have fared under reorganization.

C. Winners and Losers from Postal Reform: The Indispensables

While none of the postal policy actors expected postal reform to be painless, none, save perhaps the postal managers, thought that it would be as wrenching as it has been in fact. All of them presumably expected to gain from reorganization, or at least to lose less from reorganization than they would have lost from non-reorganization, or else no bargain could have been struck among the indispensable parties in the first place. A decade of experience with the businesslike management of the Postal Service, however, has had quite different effects on each of them, as well as on many of the

secondary actors and the public as a whole. There are, in other words, some clear winners and losers, and some who appear on balance to have broken about even.

The Big Winners

The big winner has been postal management. The insulation from both Congressional and Presidential control has given the managers great discretion in the formulation of policy and in running the Postal Service from day to day. While they are subject to the normal constraints which surround any business enterprise--assuring the cooperativeness of their employees, at least minimally satisfying their customers, managing their physical facilities--they are no longer subject to the caprices of Congressional politics for the all important postal rate decisions which largely determine the income of the Postal Service, or to either the Congress or O.M.B. for decisions about what the Postal Service actually spends. Even if most of the managers would prefer not to have the Postal Rate Commission second-guessing their judgments on rates, the truth is that, until about 1979, the Commission was not much of an effective check on their decisions, usually giving them the rate increases their figures suggested the Service needed in order to break even, though not necessarily as much as they asked.

In fact, the Postal Service doesn't have to break even, because it has authority to borrow through the U.S. Treasury up to a total cumulative debt of 10 billion dollars, with no more than 1.5 billion dollars in any single year. Other than Congress itself, no outside authority has any supervisory authority over the Postal Service budget, which leaves the managers free not only to accrue debt but

also to shift expenditures in ways which differ substantially from the budgets they present to the Postal Rate Commission as justification for rate requests.

This is not to suggest that the Postal Rate Commission has been without effect. To the contrary, the requirement that its approval be obtained on rate and other matters did originally constrain the speed with which postal managers could implement their decisions, but that has not been the case since Congress, in 1976, required that PRC decisions be made within ten months of the rate filings. Even prior to that change, the postal managers had been able to put temporary rate increases into effect if the Postal Rate Commission failed to act within 90 days of filing, which substantially diminishes the force of the argument by postal managers that their early seventies financial troubles were primarily the fault of the Postal Rate Commission. Moreover, it has always been in the sole discretion of the postal managers as to when a rate proposal would be filed. Furthermore, while the Commission has usually not granted the full rate increases requested, the managers have ultimate authority, if they can get a unanimous vote of the Board of Governors, to impose any rates they choose, even if the PRC doesn't go along. And the postal managers, for the first time ever, did just that in 1981, raising first class rates to twenty cents after being thrice rebuffed by the Postal Rate Commission.²¹

Nor are the managers to any degree at the mercy of Congress for their appropriations. They know that strings are always attached to Congressional favors, and that the larger the beneficence the tighter the strings. Unlike those running virtually every other agency, the postal managers have deliberately not sought additional infusions of

appropriated funds, but have actively resisted repeated attempts by Congress, motivated both by the desire to have the greater say that comes with greater support but also by intensive lobbying by subsidized mailers and job-threatened workers, to force larger appropriations on the Postal Service.

As the managers have repeatedly pointed out at Congressional hearings and elsewhere, however, a one cent increase in the first class postage rate yields substantially more revenue--between 600 and 700 million dollars annually--than the several hundred million dollars which various legislative proposals would add to the Postal Service budget. Why, therefore, accept increased congressional oversight to any degree when they have an easier, substantially costless way to enhance their revenues--postal rate increases, especially in the less demand-elastic first class mail classification?

Similarly, on the expenditure side, no one has to give approval to the wage agreements negotiated by the managers with the postal labor unions. Under present arrangements, neither the Congress, nor the President, nor the Postal Rate Commission, has any explicit say over postal wages: only the Postmaster General and the Board of Governors do. So long as the Postmaster General can raise the revenues to carry out his wage settlements, his discretion is absolute.²²

It should be no surprise that the postal managers vigorously oppose any efforts to reorganize the Postal Service. Power always resists a bridle, and the postal managers are no exception to that rule.

Nor should they be blamed in any way for having acquired that widely discretionary power. That was, after all, the whole purpose of postal reorganization--to free the postal function and its

managers from the continuing influences of politics over decisions that need to be made, or so most observers and participants in 1970 deeply believed, exclusively on businesslike grounds.

The Big Losers

From the foregoing discussion, it will be obvious that the big losers have been the organized mailers.

All of them have been stung by rate increases far greater than the rise in the consumer price index in the 12 years since reorganization and many of them are getting service of lesser quality than in 1970.²³ And to protect themselves from even higher rates, they must spend heavily for adequate representation in expensive rate cases before the Postal Rate Commission.

The General Counsel of the Associated Third-Class Mail Users, former Postmaster General J. Edward Day, undoubtedly spoke for users of other classes of mail when he testified before the House Subcommittees in 1979 as follows:

I . . . want to make a couple of remarks about regular bulk rate third-class mail, because you can describe that class of mail as what we don't get. We get practically nothing from the Post Office except delivery.

We have to do practically all of our own sorting. We can't use street collection boxes. We don't get privacy. We don't get²⁴ free forwarding. And we never have gotten phasing.

Mailers are extremely unhappy with the record of postal reorganization, and their unhappiness has been increasingly transformed into greater and greater frustration because postal reform has deprived them of their pre-1970 arena for having something effective done to alleviate their dissatisfaction--the halls of Congress. Until recently, they have not found the postal managers particularly

sympathetic, or the Postal Rate Commission particularly helpful, and, as we shall see, the federal courts have been downright hostile. Only in its most recent rate submission--April, 1980--has the Postal Service begun to give weight to the claims of the mailers.²⁵

The Break-Evens

The organized postal unions have won the short term gains, but fear losing big in the long run. Their settlements have resulted in wages higher than those received by other government workers, as well as those of hourly wage earners in non-supervisory positions in the private, non-farm economy.²⁶ They enjoy a comparatively high entry level wage of about \$16,000. They have won a "no lay-off" clause in their contracts. But collective bargaining was part of the goal of postal reorganization. The labor unions got collective bargaining in exchange for the loss of the influence they had theretofore been able to exert on wage settlements through Congress: There was no reason to have thought that collective bargaining with an independent Postal Service should yield contracts with benefits substantially different from those in unionized private industry.

The non-unionized postal employees--the supervisors and the local postmasters--who are regarded by law and who for the most part regard themselves as part of the postal management, have not fared well under reorganization. They feel strongly that they are neither fish nor fowl. In the private sector, analogous positions are regarded as management, and therefore not subject to collective bargaining. They claim that their wages have not kept pace with inflation, and their increases over the decade have been substantially less than those of the unionized employees. They have therefore increasingly sought to gain Congressional sanction for 3rd

party arbitration of their wage disagreements, in vain as of this writing in 1982.

As the wages and benefits of the bulk of postal workers have gone up, however, their numbers have declined. The reduction in the number of full-time equivalent employees has been small--46,000 work-years--but it has been a reduction, and it has been imposed on an agency which had never known anything but annual employment increases, very much like most other governmental bureaucracies. Moreover, the reduction has taken place at the same time that the volume of mail has been increasing and large numbers of new residences, all requiring delivery, have been built. On the other hand, there has been increasing mechanization of mail sorting, and, because of the loss of much parcel business to U.P.S., a considerable shift from heavier to lighter in the mail mix, both of which diminish the burden on labor. While the unions have suffered a decline in numbers, with the consequent shrinkage in dues and political influence, any effective harm to them has thus far been insubstantial.

The effect of the reductions on the non-unionized supervisors and postmasters, however, seems to them enormous, because they have had fewer people with whom to get an increasingly large workload done. The 1979 House hearings are replete with complaints of inability to do what is required of them with the work force available to them.²⁷

All of the leaders of the postal workers--both union and non-union--feel increasingly that they are in a declining industry. They have repeated nightmares that a combination of ever-increasing postal rates and widespread availability of lower-cost technological

alternatives for handling messages and transactions will inexorably divert business from the Postal Service. They know that if those nightmares become reality, the postal labor force would inevitably shrink far below its current size. Some of the union leaders are convinced that doomsday is already upon them. James J. LaPenta, Jr., for example, laments:

In due course, the U.S. Postal Service's traditional services will become obsolete, and our highly touted 'No Lay-Off' clause won't be worth the paper it is printed on. . . . The real question that must be answered is, what is going to happen to the postal work force? It is, as we've said, the third largest work force in the United States, and it is going to be devastated by our emerging national policy on telecommunications, no matter what that policy may be! . . . We think it vitally important for the hundreds of thousands of postal workers who will be displaced in years ahead to have the security of knowing that they will not be "beached" and left on the sand to dry out and die.²⁸

Such vivid fears have moved the postal workers to ever more bitter criticism of postal management for failing to try to capture a share of the burgeoning telecommunications market for itself, and of the Postal Rate Commission for its slowness in approving such offerings as E-COM. Labor leaders have lobbied both the President and Congress for the broadest possible USPS role in electronics, and have repeatedly criticized the postal managers for their preference for raising revenues through higher postal rates, which tend to drive business away, rather than through larger Congressional appropriations, which do not. And they have lobbied Congress vigorously, but thus far in vain, to achieve the latter end, battles in which they have had the organized mailers as comrades in arms. Understandably, the mailers have always preferred appropriations from general revenues to higher rates for themselves.

D. Winners and Losers from Postal Reform: Secondary Actors

The President

Among the secondary actors in postal policy, only the President and his Office of Management and Budget have been big winners from postal reorganization. He is insulated by a Board of Governors from any blame for postal policy failures, and there has been little credit for him or anyone else to share. Because the President does not appoint the Postmaster General, the four Presidents since postal reorganization have felt under no particular obligation to help the Postmaster General, or even to see him when he wished an appointment.²⁹ Former Postmaster General Bailar tells a poignant anecdote which amply illustrates the point. After a speech he gave, in which he had suggested that eventually the Postal Service might have to terminate Saturday delivery and close some small rural post offices, there was a tremendous outcry among the public as well as in Congress, including talk of repeal of the Postal Reorganization Act. He was clearly taking a beating. He happened to see the President at a meeting, when the President, he says, told him, "As long as I'm President, they're not going to repeal that law." In hopes of getting some help, Bailar jumped at the opening, replying, "I surely could use some support in public, Mr. President." And the President, Bailar says, simply smiled.³⁰

The only time the President has anything to do with the Postal Service is either when members of the Board of Governors or Postal Rate Commission have to be appointed or when a question of new undertakings for the Postal Service has arisen, such as postal involvement in telecommunications. During the Carter administration, there was

almost always at least one vacancy open on the Board of Governors, and at one time three positions were unfilled for a period of two years.³¹ That is some indication of the extent of the President's concern about the Postal Service.

The question of the extent to which the Postal Service entered, or was to be precluded from entering, electronic transmission of messages attracted a great deal of White House attention, chiefly because of the interest of parties other than the Postal Service itself, such as a variety of private corporations in the communications field, the Federal Communications Commission, and labor unions representing postal employees. Even with respect to that question, however, the President has only the power of persuasion. While the White House views on a matter of this kind obviously carry weight, it is the Board of Governors which has the final decision. That fact was vividly illustrated when the Department of Justice had to go to court in January 1982 to try to prevent the Postal Service from offering E-COM.

In other respects, the President has had to spend little time, if any, on postal matters and has been able to shrug off any shortcomings of the Postal Service as outside the realm of his responsibility. Even on budgetary matters, neither he nor OMB has anything to do, because the Postal Service's appropriations are based on formulas legislatively prescribed. Of course, to the extent that the President wishes to subject Postal Service regulations to OMB approval, as President Reagan has done for purposes of testing cost effectiveness, OMB will be involved in postal policy. But that is a trivial aspect.

The Competitors

The competitors of the Postal Service have also been substantial winners from postal reorganization. The United Parcel Service has built an immensely successful enterprise out of what was formerly mainly Post Office business, although its growth would probably have occurred with or without reorganization. UPS has been able to provide what many shippers regard as service of better quality at lower rates than the Postal Service. And, as we shall see, the Postal Service has been prevented from lowering its parcel post rates so as to compete more effectively with UPS by a series of court rulings requiring the computation of the postal rates for each class to reflect maximum attribution of direct and indirect costs to each class of mail.³²

As one might expect, that suit was brought by the National Association of Greeting Card Publishers, which understandably and vigorously opposes higher first class rates. An intervenor was the United Parcel Service, which, understandably, too, is opposed to anything that would permit the Postal Service to cross-subsidize its parcel post rates with revenues from its first class mail.

While many other competitors in delivering tangible parcels have sprung up as well, such as Purolator and Federal Express, the largest group of competitors--the electronic ones--are only now beginning to chip away at Postal Service business. The telecommunications companies have won a substantial victory in preventing the Postal Service from building or leasing its own transmission system. Even where electronic messages are to be embodied in written form and delivered through the mails, the Postal Service must contract with private telecommunications companies for electronic transmission of the messages.

The telephone companies, too, appear to have been benefiting from the higher first class rates that have accompanied postal reorganization.³³ As first class rates go higher, they encourage more and more potential mailers, especially those who wish to relay informational notices, invitations to events, and so on, to substitute the telephone for the Postal Service.³⁴ It has already proved less expensive for some utilities, and other users of first class mail for billing, to have their own employees deliver their bills than to send them at ever increasing first class rates.³⁵ Moreover, more than 12 million magazines a year are delivered by means other than the Postal Service.³⁶ Compared to the total Postal Service magazine volume annually of 8 billion, twelve million is insignificant, but the magazine publishers agree that it is only the beginning. And nearly half--twenty billion pieces--of what heretofore would almost certainly have been third class business for the Postal Service is now distributed annually as free-standing newspaper inserts.³⁷

The Congressional Committees

If one had asked a House member of the 90th Congress whether Congress itself was likely to win or lose from postal reorganization, more than likely the answer would have been "win big." In the short run, that was undoubtedly the case. Over the long run, however, the matter is not so clear.

Without doubt, Congress is much better off not being caught every year or two in the middle of postal pay raise fights and postal rate increase struggles. Those were inherently "no-win" situations.³⁸

But many Congressmen--especially House members, who have always been closer than Senators to knots of local dissatisfaction about anything, especially postal matters in which they formerly had a good

deal of patronage--have begun to question whether they may not have thrown out the baby with the bath.

There is a growing feeling, especially among the members of the two House subcommittees which oversee postal matters--Postal Operations and Services and Postal Personnel and Modernization--that postal reorganization has rendered them virtually powerless in influencing the Postal Service or in holding it accountable in any way other than major legislative change. They are delighted to be rid of the burdens of wage- and rate-setting, to be sure, but their incapacity to satisfy the growing number of complainants about postal policy or service is creating a growing willingness to think about "radical" changes in the postal laws. Congressman William Ford, in a colloquy with Postmaster General Bolger during the 1979 House hearings, appeared to be speaking for his colleagues when he complained as follows:

We've got a monumental agency here, and there is no direct line of responsibility back to the American people and you can't run a democracy on that basis. So we are doomed to failure in the future in terms of having public support, so long as the public feels and is told constantly by elected representatives we don't run the Post Office, it's a private corporation.

Who does? Well, wait until I call my office, get you a list of people on the Board, and if you can catch President Sinclair in the office, and he's not too busy selling oil, he may talk to you.

The chairman is trying one way to find a way to respond to this very deep concern that has gone on since the beginning of this corporation, just as he tried to warn you about the private express statute, the frustration that has been building could result in repeal of the whole thing. I think it would be better for your shop if you came in with constructive alternatives to the suggestions, the chairman is making rather than simply opposing them.³⁹

All of the primary and secondary actors who are dissatisfied with one or another decision of the Postal Service are building up

the pressure on the Congressmen, who, in turn, find themselves completely unable to do anything of consequence. They cannot influence the Postal Service through appropriations, because the Postal Service has resisted, not sought, increases. They can call the Postmaster General before one or another subcommittee, but they have the impression that he doesn't feel he has to listen to them.⁴⁰ At any rate, on the substantive policies about which Congressmen get most pressure--closing local post offices, maintaining six-day delivery, ever-rising postal rates for all classes of mail, for example--the actions taken by the Postmaster General are the stimuli for the pressure in the first place. On other matters--such as the increasing cumulative postal deficit, the allegedly increasing burden on individual post office managers created by insufficient staff, the disparity in wage increases between postal supervisors and craft union members--the senior postal managers essentially sympathize but are constrained by a variety of factors from satisfying either the complainants or the Congressmen to whom complaint has been made.

The upshot is that, at least in the House, there is a continuing sense of being ignored, of being continuously snubbed. While the Senate abolished its subcommittee which focused exclusively on the Postal Service and assigned general oversight first to the Subcommittee on Energy, Nuclear Proliferation and Federal Services, chaired by Senator John Glenn (D-Ohio), and later to the Subcommittee on Civil Services, Post Office, and General Services now chaired by Senator Ted Stevens (R-Alaska), the House retained its full committee and two subcommittees and their hearings have been the forum for intense attack on the Postal Service and on the basic structure of reorganization itself. Virtually all of the principal actors have joined in

the attack, and they in turn have been joined by many members of the subcommittees. When the bills have been reported out--H.R. 7700 in 1977 and H.R. 79 in 1979--they have been adopted overwhelmingly in the House. One of them would have abolished the Board of Governors, and both of them would have transferred the appointment of the Postmaster General to the President.

Whether that part of the Congress which is most concerned about postal matters--the House of Representatives--has in fact been a loser in any real sense as a result of postal reorganization, there is not the slightest doubt that many of its members so regard themselves. What they feel they have lost is their sense of power over the Postal Service, their feeling that what they say about postal policy really matters to the Board of Governors and the postal managers.⁴¹

If there is so much dissatisfaction among the postal policy actors, why has further change not occurred? The short answer to that question is that one of the indispensable parties to postal reform--the postal managers--has been unwilling to join in any new legislative action. To understand the full ramifications of the question, however, requires a more detailed look at the history of postal reform. We may then be able to answer the question of whether the managers will continue indefinitely to be able to veto any further postal reorganization, as well as to examine the possible directions future reform may take.

II. THE POLITICAL DYNAMICS OF REFORM: 1970-1980

A. Introduction

The 1970s began with a consensus of the principal and secondary actors favoring structural reorganization of the postal function, catalyzed by some extraordinary events. That original consensus--that the Postal Service should be maximally insulated from political influences and should operate as free of public supervision as possible--appears now to be under some pressure. It would be an exaggeration to suggest that the end of the 1970s had witnessed the beginnings of a new consensus, a consensus to effect yet another reorganization aimed at restoring some measure of the political accountability lost in the earlier reorganization, or to subject the Postal Service to some other form of accountability. It is nonetheless a fact that the original consensus is not as solid as it was, that both labor and the managers are increasingly on the defensive, that the Postal Rate Commission is critical of the unbridled power of the managers, that the White House is upset with major policies of the Postal Service, that a new category of indispensable actor -- the telecommunications and courier competitors -- has arisen, and that these and other key groups are now seriously pushing for change. To comprehend why these twelve years have turned out as they have, it will be necessary to examine the major milestones in some detail.

B. The Kappel Commission Report

On April 3, 1967, in a speech to the Magazine Publishers Association, Postmaster General Larry O'Brien called for the formation of a non-profit government corporation to replace the Post

Office Department. Five days later, President Lyndon Johnson appointed a commission to propose reorganizational alternatives, and named Frederick R. Kappel, former chairman of American Telephone and Telegraph Company, as chairman. Other members included George Pierce Baker, the Dean of the Harvard Business School, executives of leading corporations, and George Meany of the AFL-CIO.⁴² Their report, Towards Postal Excellence, was announced in June, 1968, and, as expected, urged the creation of a government corporation to run the postal system.

The Commission defined the essential problems as poor quality of service, unresponsiveness to public needs, dysfunctional labor relations, antiquated personnel practices, limited opportunities for career advancement, a growing and unnecessary deficit caused by an irrational rate system and a failure to improve productivity through technological and managerial techniques.⁴³ The major cause of these problems, said the Commission, was the postal managers' lack of authority to run the postal service. Given the reasons which called it into being, and the backgrounds of most of the members, their diagnosis came as no surprise. As Charles Benda, author of the most extensive study of the politics of postal reorganization, has noted, the Kappel Commission "outlined the problems of the postal system from the perspective of the . . . managers and provided a solution based on the needs of the . . . managers."⁴⁴ The principal recommendation, therefore, was that the postal function be placed in an independent agency, insulated from the political and other pressures which had allegedly created all of those problems in the first place. The premises on which the Kappel Commission recommendations rested were summarized as follows by Benda:

The goals of efficiency and effectiveness required that postal management acquire primary control of postal operations, unhampered by the political restrictions of a government department under congressional supervision. Centralizing authority in a managing board would end the decision making fragmentation that existed in the POD. Consequently, postal management could escape the personnel restrictions of government agencies and utilize labor more efficiently in response to changing economic demands. More significantly, they claimed a government corporation would remove the Post Office from "congressional doles" and expose it to the market places of customer and bond-holder demands, insuring the most efficient provision of service. This improved utilization of tax revenues and scarce capital resources would diminish public wastefulness. These changes were possible in the POD, proponents argued, because unlike other government departments, it was potentially self-sustaining⁴⁵ and was not involved in the formation of public policy.

The theoretical underpinning of the Commission's recommendation of a corporation-like postal system was the distinction between "public" and "private goods" and services.⁴⁶ The Commission believed that if the government provided the latter at all, it should do so on a commercially and economically self-sufficient basis.

But the arguments were not only theoretical. The Kappel Commission estimated that "at least 25% of the cost of postal operations could be saved by organizational changes which would give postal managers the authority to bargain with the unions,"⁴⁷ savings which were to be achieved principally through mechanization and productivity increases.

Finally, the Kappel Commission recommended shifting control over rate-making from Congress to the Board of Directors of the proposed independent postal entity.⁴⁸ Rate commissioners appointed by the Board of Directors were to hold hearings and recommend postal rates subject to approval by the Board of Directors. Congress, in turn, would retain the right to veto a rate increase by concurrent

resolution. This recommendation, too, was based on the conviction that impartial hearings officers and a "corporate" Board of Directors could make economically sounder rate decisions than a group of elected politicians.

All of these arguments held great appeal for the large publishers. They, too, were businessmen, and believed in cost-cutting, productivity increasing, and economical pricing.

The postal unions, however, were less interested in economics than in politics. They initially opposed the Kappel Commission reorganization because they feared that severing their bargaining relationship with Congress would substantially diminish their power. Indeed, George Meany, who represented labor on the commission but attended few of the meetings, dissented from the report's recommendation of an independent establishment: "the status of the Post Office as a Cabinet Department has a positive value that should not be discarded lightly."⁴⁹ As a result of the determined opposition of the unions, efforts at postal reform immediately after the Kappel Commission report were unsuccessful.

C. The Postal Reorganization Act of 1970

The recommendations of the Kappel Commission were embodied in a bill introduced by Congressman Morris Udall, which was referred to the House Committee on the Post Office and Civil Service. Hearings were held on the bill, and many of the arguments advanced by the Kappel Commission were echoed by witnesses in behalf of the reorganization proposal. The postal managers, the large national business leaders, and the large publishers all favored it. There was a great deal of opposition, too, however, especially from the smaller publishers, the rural interests, some direct-mail

advertisers (although not the Direct Mail Marketing Association, which supported reform) and, most of all, from the labor unions. The arguments of the opponents were summarized by Charles Benda as follows:

At a general level, reorganization of the Post Office as a government corporation simply "gave away" one of the major powers which the Constitution had vested in the Congress. More specifically, it would transfer a major agency from a position of control by and responsiveness to the public interest, as expressed through Congress, to a new position of control by postal managers who were essentially outside any mechanism of supervision. Consequently, under the corporate proposal, they claimed, there would be no way to insure that the actions of the management would be responsive to the needs of the public. In fact, narrow considerations of economy and efficiency would guide managerial actions. Opponents argued that a postal corporation would lead to high rates and fewer services, particularly in rural areas, and it would abandon any conception of the Post Office as a provider of public services. Furthermore, there was no reason to believe that a corporation would automatically possess the⁵⁸ qualities needed to improve postal operations.

As a result of the sharp lobbying on both sides, the Committee vote split 13 to 13, which killed the proposal for the time being.

Union opposition then intensified because of delay in the legislation granting pay increases to postal employees. After a personal meeting between President Nixon, his assistant Charles Colson, and James Rademacher, President of the National Association of Letter Carriers, the unions agreed to support "a postal authority" in exchange for a pay increase, and Congressman Udall was named to work out the details of the agreement. Angered over the secrecy surrounding that agreement, however, the House Committee rejected it and proceeded to mark up a bill proposed instead by Rep. Dulski, HR 4, which would have created a modernization authority to facilitate capital improvements for the Post Office Department but

would not have altered the basic structure of political control. After "intensive horse-trading," the Nixon Administration supporters on the Committee managed to substitute the Nixon-Rademacher agreement for HR 4 and to get the bill through the Committee under that designation by a 17-6 vote. The unions, however, were still not prepared to give the bill their full backing because they regarded the 5.4% wage increase included in the bill as insufficient.⁵¹ So the matter was again stalled.

A week later, on March 18, 1970, a wildcat strike broke out in Manhattan and the Bronx, which threatened to halt the New York Stock Exchange. On March 23, President Nixon declared a state of emergency and called in the National Guard to help deliver the mail. The next day, a federal court found the striking union in contempt of court for failing to comply with an injunction, and the union voted to end the strike.⁵² That brought the unions to the bargaining table again.

In the negotiations that followed, George Meany, and the leaders of seven of the recognized postal unions, agreed with Postmaster General Blount on a combination pay increase-postal reorganization bill which provided that the Post Office would become an "independent establishment within the Executive Branch."⁵³ The price for union acceptance of that proposition was that collective bargaining would be mandated for wages, hours, work conditions, and grievances, as well as all other matters normally subject to collective bargaining in the private sector. The substance of that bargain survived all other opposition, passed both houses of Congress, and was signed into law by President Nixon on August 12, 1970. It was, as Benda accurately notes, "the somewhat classic

bargain that has often taken place between big capital and big labor in the private sector of the United States: management exchanges large immediate monetary benefits for the ability to mechanize operations and decrease the labor force through natural attrition in the future, unhampered by union opposition."⁵⁴

As we have already noted, the Postal Reorganization Act, however, did not make the Postal Service entirely self-sufficient fiscally. The public service appropriation from Congress was to remain until 1979 at 10% of the fiscal 1971 budget--\$920 million annually--and then decline by \$92 million a year until 1984, where it was to remain fixed at \$460 million annually in perpetuity. Appropriations to cover revenues foregone by lower than actual cost-of-service rates for small circulation and in-county newspapers, books and other educational materials, library mailings and mail for the blind were to be made annually, but most--although not all--were gradually to be phased out, with the for-profit mailers being given 5 years to come up to "full costs," and the non-profit mailers 10 years.⁵⁵

But the postal managers did not get quite as free a hand as they had hoped. Their judgments about rates were subject to review by a newly created, independent Postal Rate Commission, which Benda characterizes as follows:

It is in the area of rate-making that the state managers suffered their greatest setback. They had sought a postal corporation to end the political influence of the special mailers in the congressional process of policy development, thereby gaining greater managerial control over postal revenues and reducing postal deficits. However, rather than providing the managing board of the postal corporation with final rate powers subject only to possible congressional veto as the managers had originally intended, Congress removed itself altogether from the normal rate process while

legislating a rate commission which is much more independent due to increased restrictions on the ability of the managing board to alter the commission's decisions. Thus while the PRA (Postal Reorganization Act) ends the former relationship of special mailers to Congress in the rate-making process, it does not provide postal managers with the autonomy which they sought in this area. Instead, the Postal Rate Commission (PRC) was set up as more of a regulatory than an advisory organization, and this increased independence apparently satisfied Congress's concern over preserving the "public interest" from the "almost unlimited" powers of the managing board.⁵⁶

In summary, the 1970 compromise was made possible by the coalition of postal managers (then including the White House and its Office of Management and Budget), unions, and big organized mailers. The managers proposed, the unions opposed, and, as most often occurs, Congress disposed. The political dynamics of this compromise, however, resulted in the addition of an ingenious, even if thoroughly understandable, fillip not asked for by either labor or management--the Postal Rate Commission--which slightly weakened the basic revenue-raising scheme outlined in the Kappel Commission Report, and laid the basis for at least some of the problems experienced by the Postal Service over the next decade.

D. The Postal Reorganization Act Amendments of 1976

During the first six years of the newly independent Postal Service, the deficit worsened. Rapid inflation and spiraling fuel prices left postal managers with insufficient operating funds. Extremely slow rate determinations by the Postal Rate Commission--the first one took 17 months and the second nearly 2 years--are thought by some to have contributed to the Postal Service's financial distress, but that claim is unconvincing in view of the fact that the Postal Service had the power to impose temporary rates

pending Commission action. In fact; such rates were in effect during most of the periods of Commission delay.

The fiscal problems were exacerbated by negotiated wage increases with automatic cost-of-living adjustments which improved the standard of living of postal workers relative to the overall cost of living. If postal salaries had maintained their 1970 level in comparison with the consumer price index, the Postal Service would have shown a slight surplus by 1975.⁵⁷ Instead, despite a decline in the work force from 721,000 to 702,000, the deficit increased.⁵⁸ In short, in the one category of postal operations over which the managers had complete control, they were no more successful in negotiating wages than Congress had been.⁵⁹ But they did not have the power of Congress, even if it had always been reluctantly exercised, to raise postage rates to cover the wage obligations to which they had committed themselves.

In an effort to make ends meet, the Postal Service, therefore, attempted to close some rural post offices, reduce the number of deliveries to businesses in large cities and to increase rates. The unpopularity of these tactics engendered concern among postal policy actors, including especially Congressional ones, and laid the foundation for yet another legislative coalition. It was that coalition of actors which brought about the passage of the 1976 Amendments. Again, the indispensable actors--the managers, the unions, and the organized mailers--were parties to the agreement.

Senate Bill S. 2844 was introduced in January 1976, and hearings were held for several months in the Senate Committee on the Post Office and Civil Service.⁶⁰ As introduced, the bill would have amended the Postal Reorganization Act in a substantial way. It would

have established the public service appropriation to the Postal Service as 10% of each current year's operating budget, rather than 10% of the fiscal 1971 appropriations, with a subsequent decline to 5% in 1984. As we shall see, that provision did not pass. The bill did, however, propose extending the phase-out of the revenue foregone subsidy from 5 to 8 years for the for-profit mailers, and from 10 to 16 years for the non-profit mailers.

In addition, the bill forbade the suspension of door or curblin delivery of mail without the approval of the appropriate local government authority, and permitted a patron to appeal to the Postal Rate Commission any Postal Service decision to close a post office.

The framers of the bill were intent on correcting a grievous oversight in the original 1970 Act. Because there had been no requirement of Senate confirmation of members of the Postal Rate Commission, there had been no effective competence check on the political forces which are behind virtually every appointment to office, by the President or anyone else. The consequence had been several Postal Rate commissioners with whom no one, it is both fair and an understatement of the greatest magnitude to say, had been happy. The proposed bill, therefore, provided that Postal Rate Commission members were to be appointed by the President and approved by the Senate with no more than three commissioners to be members of the same political party.

In order to accelerate the rate-making process, the bill imposed a ten month limit on rate deliberations by the Postal Rate Commission, with a provision that, if the Commission failed within that time to make a recommended decision on the rates, the Postal

Service could put temporary rates into effect. Moreover, the bill provided that, if the Postal Service disagreed with the Commission's recommended decision, once made, it could institute temporary rates without Commission approval for up to 150 days.

This time, however, the major secondary actor--the President--was on the other side. The Ford administration opposed the appropriation of additional funds to the Postal Service:

Since reorganization . . . progress has been made in many areas.

For a system which has undergone a radical transformation, during a period of economic strength, the Postal Service has accomplished a great deal. . . . What is needed now is not a repudiation of basic goals or further stopgaps, but rather to chart and pursue a course towards an equitable and lasting solution of these problems of increased costs and lagging revenues.

The Ford Administration opposes additional public subsidies for three reasons. First, it provides neither an answer to the underlying problem of rising costs nor an incentive to increase efficiency. Second, it is unfair to the country's taxpayers. Third, it obscures the true costs of postal operation.⁶¹

In his testimony, OMB Director James T. Lynn underscored what he regarded as the essential unfairness of the subsidies: "they require those who use the mail less to pay more than their fair share while those who use the mail more are not required to pay for services from which they directly benefit."⁶² According to Lynn, "the Postal Service's first priority should be to reduce costs."⁶³ His 1976 testimony echoes the same goals of self-sufficiency and businesslike operation which motivated both the Kappel Commission and the 1970 proponents of the Postal Reorganization Act. Their implicit assumptions are that better management can correct the current problems, and that measures to reduce costs, such as post

office closings and higher postal rates, are inevitable and necessary.

Manifesting just how independent of the President the head of Postal Service could be, Postmaster General Bailar, however, disagreed. Testifying in support of the provisions of S. 2844, with but one major exception, he stated, "We need the kind of increased appropriations that would be authorized by S. 2844--and we need them now."⁶⁴ He identified three options to prevent catastrophic insolvency: accelerated cost-cutting, higher postal rates or increased subsidies,⁶⁵ and argued that "by providing a temporary increase in appropriations, the bill would help us overcome our current financial impasse and lessen the immediate pressure to curtail some aspects of service."⁶⁶ Bailar's appeal blamed the increasing deficit on inflation and the slow ratemaking process, and noted that appropriations as a percentage of the budget had already declined from 24 percent during the last year of the Post Office Department to 12 percent in 1976 and under 10 percent in 1977.⁶⁷

The one exception, however, was the temporariness of the increase. In return for his support of the idea of a temporary additional Congressional infusion of one billion dollars, he had persuaded the other postal policy actors to abandon their insistence on a permanent public service appropriation pegged at 10% of each year's Postal Service budget. He wished the original 1970 formula to be retained, and instead proposed that the bill require the establishment of a Commission on the Postal Service, which could deliberate over just what the public service aspects of the Postal Service were, and how much they ought to cost the taxpayers. Once the Commission had studied that problem, he said that he would favor

an annual public service appropriation at whatever percentage of the budget the Commission might recommend.

The postal workers, however, pushed hard for the original provision of S. 2844, which would have computed the public service appropriation at ten percent of each year's total operating budget. Labor's interest in obtaining additional subsidies for the Postal Service is obvious. The more money the postal managers have at their disposal, the more generous the wage settlements can be and the less vigorously cost-cutting efforts, such as reductions in force, need be pushed. Besides, the greater the level of tax subsidization of mail rates, the larger the volume of mail and the more jobs required to process and deliver it.

Representing the National League of Postmasters, Eugene Dalton testified in favor of the bill. While the Postmaster General described the measure as a temporary increase in appropriations, Dalton viewed the bill as a more radical rejection of the principles of the 1970 Act:

We also saw it written into the Postal Reorganization Act that we would reach a breakeven point by 1980. Now, this has already proven to be myth, because in no way can you provide free, rural delivery service, and free city delivery service . . . and reach a breakeven point, because the largest⁶⁸ part of our budget is designated for labor.

His organization, which Dalton described as having "vividly opposed" postal reorganization, therefore, was eager to proclaim its failure as early as 1976.⁶⁹ Reductions in service initiated under the Postal Reorganization Act of 1970, such as the closing of post offices, were no doubt unpopular with almost all postmasters.⁷⁰

Dissatisfaction with the effect of reductions in force on the positions of their members was undoubtedly a major factor in the

unions' support for large annual subsidies. Their spokesmen therefore argued that the postal system is, after all, a public service and that appropriations should pay for postal buildings, facilities, vehicles and operating expenses for those facilities.⁷¹ Although the Postmaster General did not specify the expenses which should be subsidized by Congress, both management and unions did agree on the necessity for a subsidy of some magnitude. As Francis L. Filbey, representing the American Postal Workers Union, noted:

Now, the Postal Service finally has awakened to the fact that they must have a subsidy, and I am very happy to note that even the Postmaster General, after a great deal of urging, not only by you and the other Members of Congress, but by the three unions represented at this table, has finally admitted that there must be some financial relief put forth by the Congress if we are to continue to render any decent postal service to the American public.⁷²

Unlike the National League of Postmasters, however, the unions did not characterize Postal Reorganization as a failure to be abandoned. James J. LaPenta, Jr., of the Mail Handlers Division of the Laborers International Union of North America, stated:

[T]he Postal Reorganization Act can work. Its basic concepts are as valid now, as they were when the act was passed.

These four basic concepts are: number one, capitalization; number two, fair and equitable rates; number three, continuity of management; and number four, modern labor-management provisions.⁷³

LaPenta, of course, omitted from his characterization of the 1970 Act any mention of the break-even concept, which would be suspended, either temporarily or for good, by the 1976 legislation.

The various groups of organized mailers testifying before the Senate Committee also favored the higher subsidies originally included in S. 2844. Disgruntled because of rate increases and the

phasing down of their subsidized rates, they perceived congressional subsidies as a way to curb rising rates. Former Postmaster General J. Edward Day, testifying on behalf of the Associated Third Class Mail Users, favored the increased annual appropriations, and also recommended abolition of the Postal Rate Commission, as well as tying any rate increases to the consumer price index.⁷⁴ Stephen E. Kelly, President of the Magazine Publishers Association, took a similar position, stating that the Postal Service "cannot and should not operate as a break-even business. . . . It is rather a public service institution benefiting all the people."⁷⁵ Similarly, Jerry W. Friedheim, General Manager of the American Newspaper Publishers Association, supported the larger subsidies in his testimony, opining that a self-supporting Postal Service is "wishful thinking."⁷⁶

Even the General Accounting Office weighed in, and supported a continuing direct subsidy to the Postal Service, rather than the existing pattern of borrowing to cover operating expenses. William J. Anderson, Deputy Director, commented in the course of his testimony that self-sufficiency of the Postal Service "may, in fact, be unattainable . . . because it could result in postage rates so high as to inhibit the personal, educational, literary and business correspondence of the people . . . and because it may prove economically impossible because of declining volume and revenue in the face of increasing costs."⁷⁷ He listed the following as reasons for the 1976 deficit of \$1.5 billion:

- Because inflation was unexpectedly severe, the cost of living adjustments to postal workers were greater than anticipated--\$400 million more in 1975.
- The added costs resulting from the fuel crisis were not anticipated.

--Postal rates could not be raised to increase revenue as quickly as needed--the second rate case took 23 months to resolve, a period during which rates were frozen.
 --Mail volume has not⁷⁸ only not increased as expected but has actually fallen.

Only the United Parcel Service opposed the increased subsidy:
 "Private competitors are already disadvantaged by having to pay taxes, and to earn profit for investors."⁷⁹ UPS, in general, approved the provisions of the 1970 Act, insisting that the formula of 10 percent of the 1971 appropriations was the "absolute maximum tolerable."⁸⁰

Noticeably absent from the hearings concerning S. 2844 were large, corporate mailers of primarily first class mail, such as bankers and public utilities, mailers who provide nearly three-quarters of the Postal Service's first class revenue. In the course of his testimony, Postmaster General Bailar noted the irony in the fact that the multiclass mailers had not resisted rate increases as vehemently as commercial mailers such as book, magazine and newspaper publishers:

And so, we find ourselves in a rather incongruous position where the people who are paying for the service are being rather understanding of some of our efforts to save costs. The people who are paying a relatively small amount of the total but getting the service are being quite demanding.⁸¹

Also absent from the hearings were any representatives of private first class mail users or consumer representatives, except for the National Association of Greeting Card Publishers. Although private correspondence comprises approximately one quarter of total first class volume, the subsidies proposed under the original S. 2844 were taxpayers' dollars. Many congressmen and senators purported to speak for their constituents and to voice complaints

about higher rates and service cutbacks, but no organized consumer groups testified.

In summary, the political dynamics surrounding passage of the 1976 Amendments to the Postal Reorganization Act closely resemble those of the 1970 Act. As was the case in 1970, the postal unions, the organized mailers, and the postal managers reached a bargain on the terms of the 1976 Amendments. The seriousness of the Postal Service's fiscal problems had persuaded the Postmaster General to seek a one-time additional financial infusion from Congress. The postal workers, however, perceiving that a continuing, larger subsidy would diminish the pressure for reductions in force which threatened their jobs, attempted to take advantage of the acute financial distress by substantially and permanently increasing the public service appropriation. Virtually all of the organized mailers supported a large, permanent public service appropriation, both out of a conviction that the public should pay the "public service" costs, and because higher subsidies mean lower postage rates for them. The managers, postal workers, and the organized mailers got their subsidy on a one-time basis, earmarked for reduction of the prior two years' deficits,⁸² plus the establishment of a commission to determine the size of the permanent public service subsidy, with the implicit understanding that it would be larger than that provided under the 1970 Act. The managers, however, successfully resisted a permanent increase of the subsidy. The postmasters, and the Congressmen who support them, got a Postal Rate Commission check on the closing of post offices.

Only the Ford Administration claimed that the subsidy was unfair to taxpayers, an argument which failed to convince the

Congressmen, possibly because of the smallness of the proposed increased appropriations. Even President Ford ultimately conceded that he saw a public service element which justified a minor contribution from the Federal Government.⁸³ Taxpayers sensitive to the high cost of stamps would not notice the "transfer" of tax dollars into the Postal Service. The bill therefore sailed through both houses of Congress, passing by votes of 79 to 9 in the Senate⁸⁴ and 276 to 33 in the House,⁸⁵ and the President signed it into law.⁸⁶

E. The Greeting Card Cases

It is not immediately obvious why the postal management would join labor and the organized mailers in supporting the one-time one billion dollar additional appropriation provided by the 1976 Amendments. Given their annually affirmed stand since reorganization, one might have expected the postal managers, the most important of whom had been recruited from private industry because they were committed to running the Postal Service in a businesslike manner, to prefer to rely on their own managerial skills rather than on congressional infusions. Perhaps even more important, one might have thought that, with the growing pressure in Congress for a frank abandonment of the goal of breaking even, the Postmaster General would have worried some about his capacity to control the bill which would emerge. That he did not is eloquent testimony to how much milder congressional feelings were in 1976 than in 1979.

The fact is that Postmaster General Bailar's sudden departure from the managers' usual position of opposition to an increased subsidy appears to have been precipitated by the Greeting Card

Publishers' appeal of the Postal Service Governors' rate decision to the Court of Appeals for the District of Columbia,⁸⁷ which led him for the time being to believe that he could no longer rely on raising first class rates in order to bail the Postal Service out of debt. Both he and his successor subsequently resumed their opposition to any increase in congressional appropriations.

Faced with both the need for additional revenue and the fear that charging higher postal rates might well bring about an overall decline in volume, the Postal Service had decided in its first rate determination after reorganization, in 1971, to employ in its ratesetting what economists call the Inverse Elasticity Rule.⁸⁸ Simply put, this pricing rule enables a monopolist experiencing decreasing average costs to break even by setting prices according to the elasticity of demand for each of its products. For goods and services for which the demand is inelastic--that is, not likely to decline in response to an increase in price--the producer will charge higher prices, seeking to recover from the revenue from those goods and services more of his fixed costs. His assumption is that higher prices will not cause buyers to stop buying his goods. For goods and services for which demand is more elastic, however, the producer will charge lower prices.

A careful reading of the applicable provisions of the Postal Reorganization Act suggests that Congress not only did not prohibit such a pricing strategy, but actually encouraged it. The provisions are as follows:

(b) Upon receiving a request, the Commission shall make a recommended decision on the request for changes in rates or fees in each class or type of service in accordance with the policies and the following factors:

(1) the establishment and maintenance of a fair and equitable schedule; (2) the value of the mail service actually provided each class or type of mail service to both the sender and the recipient, including but not limited to the collection, mode of transportation, and priority of delivery; (3) . . . each class of mail or type of mail service bear(s) the direct and indirect postal costs attributable to that class or type plus that portion of all other costs of the Postal Service reasonably assignable to such class or type; (4) the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail other than letters; (5) the available alternative means of sending and receiving letters and other small matter at reasonable costs; (6) the degree of preparation of mail for delivery into the postal system performed by the mailer and its effect upon reducing costs to the Postal Service; (7) simplicity of structure for the entire schedule and simple, identifiable relationships between the rates or fees charged the various classes of mail for postal services; and (8) such⁸⁹ other factors as the Commission deems appropriate.

Under subsection 3, therefore, and in a perfectly reasonable way, the Postal Service defined "attributable" costs as short run variable costs and then allocated the remaining "institutional" costs among the various classes of mail in inverse proportion to the elasticity of demand. It justified its use of the Inverse Elasticity Rule by the non-cost factors specified among the other seven criteria in the Act, listed above. The result is to assign to first class mail, the least demand-elastic of the postal classes, a larger share of the non-attributable costs of providing postal services than it assigned to those classes of mail which might suffer lower volume as a result of higher rates.

The uncertainty about the economics of the Postal Service makes evaluation of these pricing policies extremely difficult.⁹⁰ There is little persuasive evidence that the Postal Service is in fact

experiencing decreasing average costs, or what is called economies of scale in laymen's language, a prerequisite for economically correct application of the Inverse Elasticity Rule.⁹¹ Inflation has been unexpectedly high, and the regulatory lag, at least in the early seventies, unexpectedly long. Moreover, the degree to which any class of postal service is elastic or inelastic is very uncertain. Nevertheless, both the Postal Service and the Postal Rate Commission were firmly convinced that application of the Rule promised to move the Service closer to a break-even point.

Then the Court of Appeals for the District of Columbia ruled otherwise,⁹² consolidating a direct appeal by the National Association of Greeting Card Publishers from the Board of Governors rate decision, with a procedural challenge to the rate proceedings filed in the District Court by the Associated Third Class Mail Users.⁹³

The reasoning of the Court of Appeals in Greeting Card I is so obscure that it is virtually impossible to understand. If Judge MacKinnon is correct in his concurring opinion, the Per Curiam opinion for the majority simply does not mean what it plainly says. After disagreeing with his two colleagues because of the excessive weight he believes they give to the cost-of-service criterion,⁹⁴ MacKinnon notes that "The Court properly conceives its scope of review as quite limited and therefore expressly declines to 'approv(e) in advance any particular approach' to postal rate-making."⁹⁵ But that is not at all the express holding of the court, in which MacKinnon concurred. The sentence quoted by Judge MacKinnon is preceded and followed by these holdings:

We conclude that in the circumstances of this case, the Commission's almost exclusive reliance on a cost variability approach to attribution contravenes a primary purpose of subsection 3622(b)(3). . . . We conclude that the Commission's present method for assigning unattributed costs proceeds from a faulty premise in contravention of the Act and therefore must be rejected.

We hold only that in the circumstances of this case neither the Commission's reliance on cost variability as the key to attribution nor its use of demand theory as a premise for allocation of unattributed costs complies with the Act because both plainly contravene in different ways the express statutory command that in setting postal rates every reasonable effort be made to employ cost-of-service principles to the fullest extent possible.⁹⁶

Can one imagine more explicit holdings that the Postal Rate Commission cannot use the Inverse Elasticity Rule?⁹⁷ Judge MacKinnon's opinion might therefore be better regarded as a dissenting opinion as to the reasoning of his colleagues, if not as to the holding itself, assuming his view of what the majority actually held is correct.

It is entirely understandable that Judge MacKinnon could not follow what his two colleagues--Judges Bazelon and Robinson--were saying. They reached their conclusion quoted above in some very convoluted and obscure reasoning. It is as far from a "plain reading" of the Postal Reorganization Act as anything can be.

Out of a field of seven statutory factors and an eighth unlimited discretionary category, all of which Congress wrote into the statute as guides to the Postal Service in establishing rates, the court elevated the cost-of-service criterion to such a commanding position as to render all of the other factors essentially meaningless. If actual "cost-of-service" factors were intended by

Congress to govern both the attribution of direct costs and the assignment of institutional and indirect costs, why did Congress provide that the Postal Service should take account of "the value of the mail service . . . to both the sender and the recipient," "the effect of rate increases upon the general public, business mail users, and enterprises in the private sector of the economy engaged in the delivery of mail other than letters," and "the available alternative means of sending and receiving letters and other mail matter at reasonable cost"? If those three statutory criteria mean anything, they mean that the assignment of indirect costs, which, according to differing cost accounting estimates cited by the court, ranged from a Postal Service estimate of 54.9% of the entire postal budget to a United Parcel Service estimate of 14.4%, was to be governed by factors other than a single cost-of-service criterion.⁹⁸ Yet the court insisted that the cost-of-service criterion was to govern, insofar as possible, both the attribution of direct costs and the assignment of indirect costs. Then, in order to find some use to which the other criteria might be put, the court invented but did not define a "residuum of costs," apparently a third category other than direct and indirect costs.⁹⁹ And it was that "residuum of costs" which the court held should be allocated according to the non-cost criteria specified in the statute.

We have seen how the court reasoned its way to its conclusion, but the great irony of the decision arises from an understanding of why the court felt impelled to push relentlessly to that conclusion. Yet the court does not attempt to conceal its motivation:

Debate over the Act discloses that Congress was well aware of the extent to which the availability of preferential rates, and the political nature of postal ratemaking in general, attracted lobbyists into the ratesetting process and invited the abuses that not infrequently result from their influence. A major thrust of the postal reform effort therefore was to minimize this attraction of lobbyist influence by severely curtailing the broad discretion that had characterized prior ratesetting procedures and served to shield abuses of the system. . . . We are persuaded that the conference committee amendments, which apparently were insisted upon by the Senate conferees in exchange for the major concession of retaining certain preferential classes of mail, were intended to clarify the extreme degree to which the Act restricts that prior and quite problematical discretion. In view of this it would be anomalous to construe subsection 3622(b)(3) as permitting a grudging use of cost-of-service principles which, by expanding the residuum of costs subject to discretionary allocation, simply preserves the potential for continuing the very same discriminatory treatment that the Act so clearly intended to remedy.¹⁰⁰

It is apparent, therefore, that the court was worried most of all by the threat of political influence in ratesetting. Yet it was not politics at all, as usually understood, but hard-nosed economics which led the Postal Service and the Postal Rate Commission to wish to assign a large share of postal costs to first class, using the Inverse Elasticity Rule. If the Postal Service is to be run, insofar as possible, like a business, it will succeed only as it prices its services as a business does. So a fear of politics led the court to invalidate a Postal Service pricing decision made principally on economic grounds.¹⁰¹

In late 1981, the issue became much more complicated when the U.S. Court of Appeal for the Second Circuit decided that the District of Columbia Circuit's view on this issue was incorrect. That case, Newsweek v. U.S. Postal Service, has been accepted for review by the Supreme Court.¹⁰²

Assuming the USPS intends seriously to abide by the District of Columbia court's interpretation of the statute in this decision and its successors,¹⁰³ it must attempt to apportion costs--and in most circumstances rate increases--substantially evenly among all classes of mail. Instead of overcharging¹⁰⁴ first class mail users in order to cover its fixed costs, it should make rate increases reflect as precisely as objectively possible the costs of providing services to the respective classes of mail.

At the time the 1976 Amendments were being considered, raising rates seemed to the managers much less attractive than larger subsidies. Despite the premises which seem to underlie the court's decision, the Postal Service does not have a monopoly over non-letter mail, and even its letter mail monopoly is being eroded by such new categories as the "urgent mail exclusion" which permit competitors. Substitutes do exist which threaten to divert all classes of mail away from the Postal Service. The higher second-, third-, and fourth-class mail rates required by the Greeting Card decisions, therefore, are likely to divert more mail from the Postal Service than the alternative of higher first-class rates.

To the organized mailers, subsidies always will be an extremely attractive answer, because, under any set of assumptions, the larger the subsidy the lower their rates can be. Similarly, labor finds subsidies attractive because they permit Congress, where labor influence remains powerful, to have something of a say in postal policy. In addition, as has been noted earlier, both labor and mailers greatly fear that continuing increases in first class rates will hasten the substitution of electronic and other means of delivering messages or transacting business currently flowing

through first class mail channels, with rapidly declining postal employment and gradually increasing average costs for such business as remains in the Postal Service.¹⁰⁵

If one can judge by their actions, however, the postal managers appear not to care very much about obtaining congressional reversal of the Greeting Card holdings. Leaving aside their justified concern about the unwelcome amendments which would probably accompany any congressional action they might seek, the fact is that the Postal Service, with the full cooperation of the Postal Rate Commission, appears to be pricing its services under the Greeting Card cases not much differently than it would have had the case been decided as the Postal Service wished. According to Postal Rate Commission figures, 70% of total postal costs are now being either attributed or assigned to each class of mail. The formula which the Court of Appeals had invalidated called for attribution and assignment of 50% of the costs. But that still leaves 30% to be apportioned under a discretionary criterion, or 23%, if one takes account of Congressional appropriations, and it is obvious that with respect to that portion, inverse elasticity principles govern.¹⁰⁶ Moreover, largely under the pressure of growing competition from UPS and alternative forms of delivery, the postal managers increasingly appear to be saying frankly that they have to set their rates according to market prices, for there is increasingly a market in which they have to compete.

Under its 1981 rate schedule, for example, first class rates have been increased to 20 cents for the first ounce, an increase of 33 1/3% over the previous rate, while those for third class bulk

mail rates (advertising circulars and catalogues) have gone up only 17.7%, and parcel post only an average of 8.4%. Second class rates, for newspapers and magazines, have increased only 1.9%, clearly aimed at burying the apparently floundering alternative delivery competitors. And some rates, such as those for newspapers mailed and delivered within one county, and non-profit and educational mailing, have actually declined.¹⁰⁷ One must wonder indeed how the Postal Service can square that differential range of rate increases with the court's holding in the Greeting Card cases.¹⁰⁸ To a large degree, however, such a course of action is dictated by the economic facts of life for the Postal Service. As the Court of Appeals itself noted, a 5% increase in first class rates would produce more revenue than a 100% increase in second class rates.¹⁰⁹ In view of the five billion dollar deficit facing the Postal Service in the 1982 fiscal year before the 1981 rate decisions, there was no other practical way of raising the necessary revenue except by increasing first class rates. After all, assuming no substantial diversion, every one cent increase in first-class rates yields between 600-700 million dollars of revenue annually.

F. The 1977 Commission on the Postal Service

As we saw earlier, a commission solution was invented as a way of deferring the toughest issue on which agreement could not be reached during the Congressional struggle over the proposed 1976 Amendments to the Postal Reorganization Act--the proper size of the public service appropriation. That was not the only issue, however, which was on the minds of the primary and secondary postal policy actors. The postal managers wanted three principal changes in

postal law--a Congressional reversal of the pricing policy announced by Greeting Card I, greater latitude in reducing delivery service to five days a week, and greater freedom in closing uneconomic post offices--as well as to prevent any change in the Postal Service's structure of authority as it then existed. The organized mailers were in full agreement with all three of the managers' goals for change, but in addition wanted higher annual subsidies, as well as a Congressional commitment to the permanency of the traditional four classes of mail, with most of the preferences historically attached thereto. As we have seen, the postal workers shared the mailers' enthusiasm for larger subsidies, but were ambivalent about the mail class structure. They were strongly opposed, however, to reduction in service to five days and to the closing of post offices. The postal workers instead felt keenly that the way to avoid job elimination was to guarantee maximum Postal Service participation in the electronic revolution.

All of these aims have been mentioned before, and the reasons the respective parties desired them are fairly obvious. There was one idea in the wind, however, which had been advanced from time to time by some economists and free enterprise advocates, and indeed had been embodied in legislative form in 1976 by Representatives Philip Crane and Steven Symms--the repeal of the Private Express Statutes¹¹⁰ giving the Postal Service a monopoly on the carriage of letter mail.¹¹¹ Because of the frequency with which that idea was being mentioned at the time the Commission was deliberating, it was one to which the Commission would have to speak, irrespective of what it decided to say. As we have not heretofore considered it, it would undoubtedly be useful to explore it briefly here.

Repeal of the Private Express Statutes

The argument in favor of repeal is economic. Because there is no evidence that the Postal Service is a natural monopoly experiencing declining average costs per unit of service, there is no economic justification for imposing a statutory monopoly.¹¹² Moreover, for those who believe that competition is the most reliable way of forcing the Postal Service to be efficient in offering the best service at the lowest cost, it makes no sense to preserve the statutory monopoly on letter mail. In their eyes, such a monopoly guarantees the preservation of costly inefficiencies. If the Postal Service is, in fact, more like a business than a government agency, it follows that the full competition to which businesses are exposed by law ought to be the rule for the Postal Service as well.¹¹³

As one might imagine, if the statutory monopoly were eliminated, there would be an ample supply of potential competitors for the lucrative first class mail business. The Postal Service already faces competition from several sources: (1) United Parcel Service; (2) Federal Express, Emery Air and other rapid delivery services; (3) firms specializing in home delivery of advertising materials; (4) companies which deliver their own bills by using their own employees as deliverers; (5) Western Union and other telecommunications companies which deliver a "hard copy" to the recipient; (6) firms offering electronic funds transfer systems; and (7) the telephone companies, as well as other firms providing data or voice transmission. Some of these enterprises would undoubtedly expand into the market, and a whole host of private postal companies would emerge.

During the early Seventies, the same spirit that prompted the reorganization of the postal function as a business gave additional impetus to the idea of repealing the Private Express Statutes. President Ford's Council on Wage and Price Stability had recommended repeal,¹¹⁴ arguing that repeal would retard or reverse rate increases and lead to efficient service. Senator James Buckley of New York had introduced a bill in the Senate in 1976, similar to those introduced in the House by Representatives Crane and Symms. Moreover, just as the Commission was getting down to work, in January 1977, the U.S. Department of Justice released a report making a persuasive statement of the case for elimination of the Postal Service's monopoly.¹¹⁵

It is obvious that some persons wanted to do all they could to ensure that the Commission give serious consideration to repeal. It is equally obvious that none of the indispensable postal policy actors, and few of the secondary actors, wished repeal to occur. All would be harmed. The managers would undoubtedly see first class revenues decline. The mailers would accordingly have to pay higher rates if they wanted to reach sparsely populated areas, even if rates to highly populated areas--where much more mail goes--actually declined, and the labor unions would lose a substantial proportion of their members, some of whom would undoubtedly seek employment with Postal Service competitors.

The principal argument against repeal is that new entrants into the market would only skim the cream off the Postal Service business, serving only the most profitable markets--mainly urban ones--and leave the high-cost deliveries to the Postal Service. Of

course, the quintessential example of a market unattractive to private carriers is rural delivery. No one really knows the actual costs of providing rural delivery--indeed, that has always been one of the principal dilemmas in calculating the appropriate level of the public service appropriation--but all of the estimates range substantially upward from that made by Congressman Crane, who suggested that it was less than half of the \$800,000,000 annually appropriated to the Postal Service to cover "public service" elements in the budget.¹¹⁶ A second argument against repeal of the private express statutes is that the public would inevitably suffer reductions in the quality of service, because private carriers would be unwilling to provide six-day service, doorstep delivery, and other services for which the balance of Congressional subsidies to the Postal Service is supposed to pay, or at least to provide them at the uniformly low price for which they are available today.

As a consequence of the intense opposition to repeal, the Congressional postal committees have never been willing to consider the matter seriously.¹¹⁷ When all three indispensable postal policy actors agree, there is not the slightest chance of contrary action. And they emphatically did agree with Postmaster General Bailar, who told the Senate Committee in 1976 that "maintenance of the private express statutes is imperative if we are to avoid variable postage rates for letter mail, with all the apparent disadvantages for mail in thinly populated areas, the increases in regulatory red tape, and the complexities and confusions for many citizens that would inevitably attend such a change."¹¹⁸

The Commission Report

Considering the large menu before the Commission, it could have reasonably spent several years on its report. Indeed, when the idea first emerged in legislative proposals, a two-year study was called for. Because of the urgency with which the postal workers and the organized mailers viewed the need for a larger public service appropriation, the 1976 Amendments, as finally enacted, required the Commission to report in only six months. And, as it turned out, because of the President's delay in appointing the members,¹¹⁹ the Commission in fact had only four months in which to work. In view of the impossibly abbreviated time frame, and the extreme differences of opinion about policy matters which had prompted the Congressional creation of the Commission in the first place, it is not surprising that the Commission's report contained no surprises. All of the indispensable actors got precisely what they wanted, and no more. Each of them gave up only a little.

The managers won a recommendation that the Greeting Card decisions be reversed--which was no surprise in view of the substantial lack of opposition from anyone except the National Association of Greeting Card publishers which brought the case in the first place--and also a recommendation permitting the reduction of delivery to five days a week, so long as window service were available on the day of non-delivery. The postal workers won on post office closings, with a recommendation that closings should not occur "except in those instances in which vacancy in management occurs, conditions change, or postal patrons" vote affirmatively to close the particular office. The mailers won their principal objective--perpetuation of

the existing four classes of mail. Since all of the principal policy actors opposed repeal of the Private Express Statutes and favored maximal Postal Service engagement in electronic transmission, the Commission echoed those preferences. Similarly, the Commission also urged retention of the existing decision-making structure of the Postal Service, with the Board of Governors continuing to appoint the Postmaster General. To expedite rate-making, the Commission recommended that the Postal Rate Commission be given final authority on rate-setting, subject to court review.

But on the principal mission of the Commission--the study of what constituted the public service components of the Postal Service, those which might reasonably form a basis for calculating the size of the annual public service appropriation--the members threw up their hands in despair. Claiming that such a task was inherently and monumentally baffling, and that the time frame was much too short to try to unravel it, the Commission decided that 10% of the annual budget of the Postal Service was a reasonable proxy figure for Congress to use.¹²⁰ And that was what the postal workers and the mailers had most wanted, a subsidy that would essentially double the annual Congressional appropriation. But even the 10% figure was a compromise. The managers wanted no increase; the workers and mailers pushed for 20%.

G. Legislative Impasse: 1977-1982

Despite a number of specific recommendations for legislative action, made by a Commission which Congress itself had created in 1976, and despite the continuing pressure for structural changes to

increase political accountability in postal policymaking--five years have elapsed at this writing in 1982 without any amendments to the postal laws. That is not to say that there have been no attempts to legislate, but rather that there has been no agreement by both Houses. As we have seen, the House has acted twice, overwhelmingly, on the recommendation of its committee. The Senate has not acted on either of the House-passed measures, because the Committee on Governmental Affairs had not, until May, 1980, recommended any action.¹²¹ Nor has it acted since May, 1980.

This is not to suggest that the indispensable actors have not respectively wanted legislative action. To the contrary, they have, but each group has wanted something different. Normally, in the legislative process, the way to get a bill enacted is to give a little bit to a lot of groups, or at least to as many groups as are required to build a legislative majority. That strategy will work, however, only where all of the indispensable actors want something for themselves more than they wish to deny something else to one or more of the other actors. In post-1976 postal policy, one of the indispensable actors--the postal managers--has consistently opposed every attempt to legislate anything, because it feared that any gains which might be won would inevitably impose a price it was absolutely unwilling to pay. That is what the managers, and everyone else now, have come to call "The Christmas Tree Syndrome." Their prediction is that the outcome of Congressional agreement would be a bill which contained something for everyone, except that, from their point of view, the Santa Claus behind it does not beam with affection on the Postal Service as it is now constituted and

run but rather has some extremely malevolent intentions. Considering the flavor of Congressional discussion, the postal managers are not acting irrationally.

The managers would very much like to have a bill reversing the Greeting Card decisions, but fear larger Congressional appropriations, and, worse, the return of appointment of the Postmaster General to the President, as well as the possible abolition of the Board of Governors. President Carter wanted a bill to provide for Presidential appointment, but not as much as he and OMB feared a substantial increase in appropriations to the Postal Service. President Reagan has not yet taken a stand on this issue, but his formal budget proposals to Congress call for elimination of all Congressional appropriations to the Postal Service.

Both the postal workers and the organized mailers, however, are eager for even greater appropriations, the former so as to reduce the need for rate increases that threaten to divert business from the Postal Service, thereby eliminating jobs, and the latter in order to reduce pressure for rate increases on the mail they send.

Moreover, the postal workers strongly desire statutory protection against five-day delivery and postal closings, which would result in substantial cutbacks in personnel. They have also fought for an expanded Postal Service role in electronic transmission, in order to add new jobs to the Postal Service in a field of expanding activity.

Like the postal workers, the organized mailers are adamant on the need for legislation, because there is essentially no way they can lose. Things can only be better for them. If the Greeting Card

decisions are reversed, a larger portion of postal infrastructure and delivery costs can be shifted to first class mail. Moreover, the appropriation of a larger public service subsidy would relieve pressure for increased rates.

But the postal managers do have something to lose and have managed, at least thus far, to stymie major efforts for change, of which there have been two in the House, and one in the Senate.¹²²

H.R. 7700

During his campaign in 1976, Presidential candidate Jimmy Carter made the Postal Service an issue:

The American people are now paying higher rates for a lower grade of postal service than they did before Richard Nixon turned the Post Office into the private United States Postal Service in 1971. If I am elected President, I will take quick steps to make our Postal Service efficient and dependable once again.¹²³

His principal aim was to limit the independence of the Postal Service, and his means of doing so were to make the Postmaster General a presidential appointee, subject to the confirmation of the Senate, and personally to appoint a board of governors "who represent the broad interests of the people."¹²⁴ He thereby sounded the keynote of much of the discussion of postal reform during the succeeding three years.

Some of the Administration's positions were embodied in H.R. 7700, a House bill jointly proposed by Congressman James M. Hanley (D-N.Y.), chairman of the Committee on the Post Office and Civil Service, and by Congressman Charles Wilson (D-Cal.), Chairman of the Subcommittee on Postal Operations and Services.¹²⁵ The basic

provisions of that bill, entitled The Postal Service Act of 1977, were as follows:

(1) The Postmaster General would have been appointed by the President and the Board of Governors would have been abolished; (2) Congress would have had veto power over proposed rate adjustments by resolution of either house with-in 60 days of a rate change; (3) The Greeting Card cases would have been reversed by statute. Section 3622(b)(3) would have been rewritten to define "attributable" costs as those which vary according to volume over a period of time. A maximum of 60 percent of total costs could be attributed to a class of mail (excluding parcel post). A noncost criterion would also have been added to cover "the relative demand" as a relevant consideration. (4) The public service appropriations would have been increased up to 15 percent of postal costs authorized for fiscal years 1979 and 1980. (5) The Postal Service research and development activities would have been expanded to equal 2 percent of the postal budget by fiscal 1980. (6) Congress could have vetoed changes in service, such as elimination of Saturday service, by resolution of either house within 60 days of the change. (7) Favorable rates for small newspapers and books would have been continued.

It is readily apparent that H.R. 7700 was indeed a "Christmas Tree," with at least one present that President Carter did not want. Because of his budget-reduction aims, therefore, the Carter Administration's position on the bill bore an uncanny resemblance to the Ford Administration's initial position on the 1976 Amendments. In hearings on the bill, an OMB representative, W. Bowman Cutter, expressed opposition to increasing the subsidy to 15 percent: "In our opinion, the principle embodied in the Reorganization Act, that ultimately those who utilize postal services--and not the taxpayer--should bear the costs of those services, is still a valid and reasonable concept. Increasing the public subsidy and tying it to a fixed percentage not only undercuts the principle of self-sufficiency, [but] it establishes conditions under which postal management will be less inclined to see ways for increasing efficiency . . . and reducing costs."¹²⁶

The Administration did support presidential appointment of the Postmaster General, but for a fixed term, perhaps 6 years,¹²⁷ but it opposed the Congressional veto of rates, arguing that such a provision would be unconstitutional because "it would allow Congress to take an action having the effect of law without Presidential review."¹²⁸

Predictably, the postal managers also opposed H.R. 7700. In a New York Times interview, Postmaster General Bailar in June, 1977, questioned the increased appropriations advocated by the House committee:

We've got to face the economic facts of life. Like so many other public institutions, including schools and city departments, we'll have to cut back and keep service in line with what the public wants and is willing to pay for.

[T]here must be some better use for the funds, such as for school lunches, better transportation.

. . .

Jim Finch, then Assistant Postmaster General for Government Relations, pointed out during the hearings on the bill that a higher public service subsidy would not in fact lead to rate relief for organized mailers because other provisions of the postal law required them to pay actual costs of the services they received, except to the extent defrayed by the revenue foregone appropriation. In other words, the only way to help the mailers was through extending the phasing-out period for their rate preferences. In addition to opposing increased appropriations, of course, the Postal Service expressed strong opposition to abolition of the Board of Governors and the presidential appointment of the Postmaster General because these provisions would destroy continuity and experience in management, as well as, so they claimed, harm collective bargaining.

Moreover, in order to diminish whatever momentum the bill had, the Postal Service did not even favor the provision overruling the Greeting Card case, despite the fact that Finch described the decision as "unfortunate."¹³⁰

Although the United Parcel Service opposes federal subsidies to the Postal Service in general, its representatives testified in support of the bill because section 4 prevented appropriations from being used to reduce parcel post rates, and required parcel rates to cover full costs of providing the service.¹³¹ It goes without saying that the postal workers and the organized mailers also lined up in favor of H.R. 7700. Indeed, many who testified, such as J. Joseph Vacca, President of the National Association of Letter Carriers, proposed to increase the level of the public service subsidy to 20 percent.¹³²

The organized mailers were particularly irate over the first Greeting Card decision. For example, Richard M. Schmidt, Counsel to the American Association of Publishers expressed the fear that, if Greeting Card were followed, the \$1 billion investment by the Postal Service in bulk mail centers could raise book mailing rates to \$3 per book, which would drive the publishers entirely out of the postal system.¹³³ But their support for the bill was general and unstinting. Every one of the major organized mailers' associations supported it in the hearings, as did nonprofit organizations such as the Catholic Press Association.¹³⁴

As one would expect, much of the rhetoric of the mailers emphasized the public service aspects of the postal service,¹³⁵ usually tying it to their own activity. In his bid for preferential rates for records and prerecorded tapes, for example, Henry Brief, Executive Director of the Recording Industry Association of America, explained:

We, therefore, urge this subcommittee to continue to recognize the public service aspects of this special fourth class rate by recommending that Congress include in an increased public service appropriation, that which is necessary to the very survival of the postal system, the sufficient funding to maintain a uniform postal delivery service for educational and cultural materials throughout the country.¹³⁶

H.R. 79

Having failed to persuade their Senate colleagues even to hold hearings on H.R. 7700, the House subcommittees started all over again in 1979, with a less stringent reform effort, H.R. 79, hoping that this time the Senate might be willing to consider it. Its pertinent provisions were as follows:

(1) Instead of abolishing the Board of Governors, H.R. 79 proposed restructuring it so that its chairman would be directly appointed by the president, would have an independent staff of his own, and would be designated by law as the chief executive officer of the Postal Service. The bill would have removed the Postmaster General and the Deputy Postmaster General from the Board of Governors, and specified that the Postmaster General would serve only as chief operating officer of the Postal Service. In addition, the bill would have required that at least one member of the Board of Governors have "direct postal administration background," and another "postal labor background."

(2) Instead of increasing the public service appropriation to 15% of each preceding year's total budget, H.R. 79 would have raised it to \$1.1 billion in fiscal 1980, thereafter adding \$100 million a year until 1982, from whence it would remain at \$1.3 billion annually.

(3) In order to aid the mailers, H.R. 79 would have extended the period for the phasing-out of second-, third-, and fourth-class rate subsidies through the revenue-foregone appropriation, from eight years to ten years for the for-profit mailers, and from ten to twenty years for the not-for-profit mailers. It would also have broadened the definition of those eligible for the library rate beyond the group to which it had been limited by the Postal Service and the Rate Commission.

(4) It would have provided a budget for the Postal Rate Commission that was independent of that of the Postal Service, and would have required the Rate Commission to do the study of actual public service costs, which the 1977 Commission on the Postal Service had failed, though instructed, to do.

(5) Finally, it would have required Postal Rate Commission approval of Postal Service changes in size and weight limitations on mail.

Compared to the 1977 House bill, these proposals are mild indeed. In the hearings on the bill, there was testimony from all of the indispensable actors, and many of the secondary ones. As in 1977, the mailers joined the postal workers in vigorous support of H.R. 79's key provisions, while the postal managers again stonewalled. Virtually none of those who testified, however, supported the bill's method of restructuring the Board of Governors. All but the postal managers favored presidential appointment of the Postmaster General. Virtually all opposed the proposed Rate Commission costing study as hopeless and useless, preferring, except for the managers, a simple percentage as an approximation.

Reflecting the heightened frustration resulting from three years of inaction in the face of growing pressure, the rhetoric was much more inflammatory than in 1977, even if the actual bill was milder.

In justifying a larger public service appropriation, James LaPenta, Jr., Director of the Federal Public Service Division, Laborer's International Union, AFL-CIO, put it this way:

The postal service must extend to every citizen, regardless of whether he or she lives in a tiny village, where service is highly uneconomic, or whether he or she lives in a large city, where unit costs of mail collection and delivery are relatively low and are more likely to be equalled or exceeded by revenues. This service must reach every citizen, not because each citizen can afford to pay the true cost of each such service, but because we as a people want ourselves, as a matter of public policy, to have this service in order to enhance our lives and livelihoods and to preserve our liberty. This is the difference if there is one, between a business and a public service. And so long as the "business" or postal service remains the function of an agency in any way responsive to the will of all the people, this service is, effectively, a public service in its entirety.

No commercial enterprise would be apt to touch the kind of business represented by the village post office. Yet today's U.S. Postal Service, until stopped by Congress temporarily, acting under the illusion of the business myth, curtailed just these sorts of services and many more--and did so despite the fact that the Reorganization Act insists that effective postal services be insured to residents of both urban and rural communities, and that no small office shall be closed solely for operating at a deficit. . . .

Why is it that a service that is needed and wanted by our citizens must be profitable or must pay for itself almost solely out of income derived from the sale of that service? And what, exactly does the term "pay for itself" mean anyway? In a day when a whole range of "private" industries either receive direct government subsidies, live off government contracts, get tax writeoffs and tax shelters, and sometimes pay less back in taxes than some wage earners, the term "self-supporting" is indeed illusive. Perhaps we would be wiser to ask only whether the Postal Service receives enough income to pay for its costs and stop making a sacred cow of one source of income for one government agency!¹³⁷

Eugene Dalton, President of the National League of Postmasters,
 vented the frustration of his members:

By way of explanation, I might explain the postmasters of this Nation, as pointed out by the lady preceding us at the table, have pretty well become the whipping boy of the Postal Service, due to the fact that the only thing given to us by Congress in the writing of title 39, the Postal Reorganization Act, was the right to consult.

Over a period of years, there has been a question as to actually what consultation was. I guess it depends upon the person who is wanting to use it for what will benefit them. Consultation, to some people, just means stating a fact. That is what we have to be true with the Postal Service [sic]

In fact, we have just about reached a point where we are ready to endorse anything if Congress would once again take over the running of the Postal Service. We realize, of course, that Congressmen do not wish to get involved in the appointment of postmasters again, and we do not in any way want to disturb the present promotion system and upward mobility in the Postal Service, but we do feel the time has come when Congress must accept responsibility to oversee daily transactions of the Postal Service. ¹³⁸

Similarly, hear Donald N. Ledbetter, President of the National Association of Postal Supervisors:

Unless the Congress steps in, Postal Service top management will continue to scapegoat middle management, and will continue to increase rates eventually driving away the volume it now enjoys. The means of survival are limited. If the Postmaster General chooses to cut services, cuts in volume and revenue will follow. Increased productivity has its physical limits--postal supervisors have tightened their operations and their belts until they are operating in the blue, never mind black or red. And increased mechanization will soon reach the end of expansion. Yet, the fiscal fog that seems to descend at the time the title Postmaster General is assumed has even settled in on our career man William Bolger. Recent Postmasters General have said "no" to increased appropriations. But Bill Bolger says, "It's none of my business what the Congress decides to do about appropriations." That's ¹³⁹hard for me and the people I represent to understand.

And the feelings of his Congressional colleagues were perhaps most concisely put by Congressman William Ford (D-Mich.):

But there are some very basic things that have been lost to the people of this country by the Congress, and the administration, for being allowed to opt out of their responsibility to the Postal Service, to have to be separated out from the nostalgia and really explain to people so that they understand that it's not simply a political grab or an attempt to find a new way to fix blame, but an attempt to rush to political responsibility for a Federal service that has been slipping away from us.

You can't point the finger at Bolger or even at some of his predecessors, who I had great difficulty with, as you well know, for a long time, really because there is just nobody in charge. We have a democracy, spending a tremendous amount of money and depending upon a primary governmental function that is insulated from the normal pressures of democracies, the normal way in which you affect policy in a democracy through the national Government, which has been cut off from the Postal Service, and no matter how necessary change might be and how wise it might be, the present system just doesn't make it possible for anybody to find the right lever to pull to effect that change in policy.

And as you have described the board, you have been much kinder than some of us have. The board has really been a nonexistent, faceless, nameless group that nobody in this country or town knows anything about.

As a matter of fact, I suggest probably a good many of my colleagues do not even know that we had a Board of Governors running the Postal Service, never met one, saw one or would know what one looked like when they see them. ¹⁴⁰

H.R. 826

Finally, in the spring of 1980, the Subcommittee on Energy, Nuclear Proliferation and Federal Services of the Senate Committee on Governmental Affairs held four days of hearings on both H.R. 79 and H.R. 826, a comparatively minor House-passed postal bill extending the coverage of the Occupational Safety and Health Act to the Postal Service. After the hearings, the Subcommittee and the

full committee reported out to the Senate a totally re-written H.R. 826, for which the Senate's own bill, S.2558, had been substituted. Needless to say, none of the significant provisions of H.R. 79 were included. It took no position on increasing the public service appropriation, although it required the Postal Service itself, rather than the Rate Commission, to do a public service costing study. It took no action on restructuring authority in the Postal Service, although it provided more specific criteria for the President to use in selecting appointees to the Board of Governors:

broad knowledge and diverse skills in such areas as--(A) the management of large public service organizations, (B) the conduct of effective labor relations policies and programs, (C) the financial guidance of major enterprises, (D) the supervision or design of complex systems for transportation, communications, or energy transmission, and (E) the direction of substantial programs for technological innovation. ¹⁴¹

As mentioned above, there was the OSHA provision. The bill also strengthened the mail fraud statutes. In an obvious attempt to address the concerns of the mailers and the postal workers, without really taking action on any of them, the bill required the Postal Service to notify the Senate and House Committees, in annual reports accompanying the budget request, two years in advance of all plans to reduce service, establish or close post offices, reduce personnel levels, or request rate changes. There were two provisions which were substantially identical with those of H.R. 79--the liberalization of the library rate and the continued protection of the college and school catalogues, and the establishment of an independent budget for the Postal Rate Commission.

Why the Deadlock?

The Senate bill could hardly be regarded as responsive to either the fact or the spirit of H.R. 79. Why, one must wonder, does the House continue to pass drastic reform efforts, and the Senate fail to act directly on them?

Part of the answer may lie in the greater closeness of the House members to those concerns of citizens which tend to be geographically focused, such as the proposed closing of rural post offices. Because of their greater distance from those issues, and because they never were much involved in the postmaster patronage which House members enjoyed, the Senators have, for the most part, simply stopped focusing on postal issues. They abolished the old committee that focused on postal matters, thereby ridding themselves of a postal legislation-generating staff and Senators committed to postal matters. Perhaps most important is the fact that Senators have many more, and more important, subjects to occupy their time and attention. The best symbol of the Senate's change in focus is the fact that, until the 1981 creation of the subcommittee on Civil Service, Postal Operations and General Services, the Senate subcommittee which dealt in such matters was the Subcommittee on Energy, Nuclear Proliferation and Federal Services. In such cosmic company, no wonder that postal issues were somewhat down the list of the Senate Subcommittee's priorities.

But the answer must also include the fact that the spirit of the Senate is much more conducive to the original idea of a Postal Service that would be run like a business, that would break even and that would make its decisions principally on economic rather than on political grounds. That managerial perspective has persisted much

longer in the somewhat Olympian air of the Senate, with its six-year terms and state-wide constituencies, which reduce the effective pressure which the organized mailers, the postal workers, and the public as a whole can bring to bear on the members. In the plebeian House, however, it is quite a different story. With the postal issues high on the constituents' agenda in particular districts, and with keen interest among the postal workers and the mailers in constituencies of a size in which a few activists can make a substantial difference, strong feelings inevitably get translated more quickly and directly into legislation. It may very well be, as some have speculated, that the House members are acting symbolically so as to appease those bringing pressure, knowing the entire while that the Senate will save the nation by refusing to act. The intensity of feeling expressed in the hearings, as well as in public statements, suggests that that is not the complete explanation.

The Postal Policy Lesson of the Decade

No postal legislation, as we have seen, has been enacted except when the three indispensable postal policy actors have concurred in a bargain. Since 1976, the postal legislative process has been stalemated. On the one occasion since 1976 in which the principal actors have agreed, they were able, by concerted lobbying, to block a proposal that none of them wanted--an amendment to the 1980 budget in the Senate, which had been approved by both the Committee on Governmental Affairs, and the Committee on Appropriations, to deny the Postal Service the public service and revenue-foregone appropriations if the Postal Service went ahead with certain electronic transmission services.

As is so frequently the case in an essentially stalemated policy battle, no change is likely to occur until either the stalemating party relents or the larger, diffuse and disorganized public becomes aroused. The former is not likely to occur, and neither is the latter despite the Postal Service's 1981 rate increases. In a time of severe economic depression, with high unemployment and high federal deficits, the public will complain about the Postal Service but will not rise to action.

The greatest threat to the stability of stalemate is the telecommunications revolution. It will have great effect on the Postal

Service, even if its magnitude is uncertain at the present. That

has sired a fourth, perhaps equally or even more powerful postal policy actor--the telecommunications competitors, and it should be no surprise to anyone if the initiative in postal policy has already passed to that group. Only time will tell.

III. The Public Accountability of the Postal Service

There are many economic issues in postal policy,¹⁴² but there is only one overriding political issue--how to hold the Postal Service accountable to the public, and to do so without making the Service vulnerable to political influences in either broad policymaking or particular decision making. The fear of political influence is real and justified. It was slightly more than only ten years ago that political influence played a very large part in postal personnel decisions from top to bottom, and frequently in site, architect, and construction contract selection for physical facilities as well. And, of course, on the larger postal policy questions such as six-day delivery or the closing of uneconomic small

post offices, the influence of politics is still strong as perhaps, in a democracy, it always should be.

A. The Case for Public Accountability in Principle

While the risks of political influence, both proper and improper, are clear enough, there is little clarity surrounding either the reason for or the appropriate form of greater accountability of the Postal Service to the public. Let's examine the reasons first.

Perhaps the most important reason for public accountability is that--irrespective of its organizational form and whether it loses money, breaks even or makes money--the Postal Service is a public agency. It not only receives appropriations of tax revenues from Congress, but it enjoys a Congressionally-enacted monopoly on 60% of its revenues. Its operations are totally exempt from federal, state, and local taxes. It has effective authority to interpret and administer its monopoly powers. And it enjoys the advantages of most federal agencies in being able to take property by eminent domain and borrow through the Treasury of the United States. These qualitative aspects of the Postal Service, as a matter of democratic principle, would seem to require some degree of public accountability.

The sheer size of the Postal Service and the extent to which it reaches into every corner of the nation--the quantitative aspects--not only reinforce the accountability imperative as a matter of principle but perhaps argue as well for a degree of accountability greater than that required because of its governmental powers alone. With about 650,000 employees, the Postal Service is, after all, the largest employer of non-military

governmental manpower--representing 25% of the total federal civilian work force. Its 40,000 retail outlets, as well as the mail delivery force operating out of them, touch the lives of a large number of Americans every day.

Finally, and perhaps least important, there is the matter of the taxpayer subvention of the costs of postal service. We have noted that the Postal Service can borrow through the United States Treasury, thereby incurring debt that the taxpayers must stand behind, and, as of this writing, it has an accrued debt of five to six billion dollars. In addition, there are the annual Congressional appropriations to the Postal Service. While there is no consensus on the proper amount of the public service appropriation, neither is there much dissent from the proposition that the Postal Service is likely to have, for the foreseeable future, a Congressional subsidy of some substantial size.¹⁴³ After all, one and a half billion dollars of tax revenues annually--which is about the size of the appropriations recommended by the House Committee for fiscal year 1983--are a lot of taxpayer money.¹⁴⁴ In a democracy, should it be spent by postal managers who are insulated from the policy direction and control of elected officials? As we have seen, this is neither the only rationale for greater political accountability, nor is it the most important, but it is a powerful one. And it is made even stronger by the public interest arguments which are used to justify the demand for the public service appropriation--the maintenance of a universal postal system with six-day, door-to-door delivery and service outlets

reaching into the remotest parts of the nation, which receives and delivers not only business mail and private correspondence, but also, and at prices lower than cost, materials which are thought to contribute to the public's political, educational and cultural advancement. Indeed, it has been the postal managers' attacks on some of these traditional levels of service offered by the Postal Service, in what were undoubtedly well-intentioned attempts to reduce postal costs, which have generated the persistent demand for organizational reform as a way of increasing greater accountability to the political process.

B. The Practical Causes of the Growing Demand for Greater Accountability

The hostility to the postal managers during the Seventies, however, was not due exclusively, or even principally, to policy differences over reductions in service or ratemaking or anything else. At least one of the principal reasons for dissatisfaction, and conceivably the most catalytic, was what can only be regarded as the political ineptness of the postal managers, until, but definitely not including, Postmaster General William Bolger, in managing all of their principal constituencies. It was that ineptness, or insensitivity at the least, which created most of the problems the Postal Service has had, and which has precipitated the near unanimity on the urgent need for stronger lines of public accountability. The theory underlying that consensus is that politically accountable postal managers could not possibly be as unresponsive to elected officials as the pre-Bolger Postmasters General were widely regarded as being. Some examples may be instructive.

The first three Postmasters General, along with their immediate subordinates, whom they recruited also from the corporate world, really meant to run the Postal Service like a business. All that would count would be the bottom line; if they could make it work out in black ink, nothing else would matter. So they began to do all the hardheaded things business managers always do when trying to turn around a financially troubled company. They tried to cut costs by reducing the services to recipients of mail, knowing that the recipients pay nothing for the service and that therefore they could not retaliate by withholding patronage. They shifted as many costs as possible to shippers and mailers. They attempted to reduce labor costs by freezing hiring, by introducing mechanization of sorting, and by building a new system of highly mechanized Bulk Mail Centers. And just as private managers always do, they bought labor acquiescence to their cost reduction efforts by generous wage settlements.

Most of these changes would probably not have brought the wrath of Congress down on their heads, had they not also manifested what can only be called at best a suspicion, and at worst a disdain, for all things traditionally regarded as political. Because of their suspicions of the political motives of congressmen, and their eagerness to get as far away as possible from the old patronage system of appointment and promotion of postmasters and postal employees, these new managers attempted to erect a nearly impassable and substantially unnecessary barrier between themselves and the members of the Congress, substantially unnecessary because the most important protection against politics

had already been legislated into the original Postal Reorganization Act of 1970--a strict prohibition, enforced by criminal sanctions, on congressional efforts to bring about the appointment or promotion of postal employees.

The first new Postmaster General, Winton Blount, imposed the infamous "gag rule," prohibiting any Postal Service workers from contacting their Congressmen on any postal matters. The managers deliberately avoided any advance consultation with Congressmen on the location of postal facilities, on the closing of local post offices, or on the realignment of mail routes. One major House Committee Chairman reported¹⁴⁵ that he came under a great deal of local criticism when the Postal Service, without any consultation with any local governmental officials or with him, moved the main post office outside the principal city it existed to serve. Indeed, they snubbed, perhaps even especially, the Chairman of the House Committee on the Post Office and Civil Service. Former Postmaster General Bailar recalls¹⁴⁶ as follows:

Congressman Hanley has legitimate complaints about consultation. The United States Postal Service was building a new post office in Syracuse, in his district, and should have advised him of it as it was happening. He was not consulted or advised. Indeed, he was given the wrong date as to its opening.

When local citizens complained to their Congressman, who is, after all, the only person local officials and citizens believe they have to complain to, most Congressmen found that there was nothing at all that they could do either to affect the situation, or to let local citizens know that they were doing anything about the situation. If they wrote to the Postal Service, their requests

were usually not heeded, even if courteously acknowledged.

The principal assistant to a powerful House Committee Chairman put it this way:¹⁴⁷

The Postal Service is unresponsive. In the old days, if someone complained to us--the mayor of a town, or even a postal worker about workplace conditions--and we called the Post Office Department, they would jump. Today, they pay no attention at all. It is almost as if we aren't even here.

With the lines of communication completely broken, and with the Congressman unable to give any satisfaction to his constituents that he had in fact done anything about their complaint, members were reduced to showing their concern by, as in one case, joining a group of constituents to picket the Postal Service Headquarters on L'Enfant Plaza, or, more frequently, bitterly attacking Postal Service managers on grounds of arrogance, as manifested by acting as if they were totally unaccountable to Congress.

The behavior complained about did not start gradually, but was present right from the beginning. Even before Postmaster General Blount's gag rule, immediately after the enactment of the Postal Reorganization Act, the postal managers prepared a slate of candidates to recommend to the President for appointment to the Board of Governors. The list was not cleared with either the House or Senate committee, a routine courtesy which every Congressional committee enjoys. The consequence was a great deal of unhappiness at the lack of consultation, and a refusal by the Senate to confirm the President's appointments to the Board of Governors with dispatch. They went unconfirmed for nine months.

Looking back on those years, former Postmaster General Bailar admits that "many Postal Service managers came in without political sensitivity, myself included." He goes on as follows:

We didn't allow elected officials to speak at post office dedications, and indeed we eliminated dedications entirely because we didn't want political speeches at all, mainly because the politicians usually fell all over one another claiming credit for the new facility. Not long after that rule was adopted, I met Congressman William Ford, a member of the House Committee. He showed me a copy of that day's newspaper, which had a story on me and the new post office, but it was on page 23. In the same issue, there was a front page story about the Mayor of Detroit or some other elected official speaking at the opening of a very small new retail store. Congressman Ford said to me, "Ben, which is better business?" When I got back to Washington, I rescinded the rule.¹⁴⁸

The problem is that the rule was enacted in the first place, along with a succession of other policies aimed directly at derogating the legitimacy of the political process, and that its abrogation depended on a chance meeting between the Postmaster General and a member of Congress, rather than on the kind of responsive, continuous interaction between Congress and the Postal Service, which might have prevented the rule in the first place, or which would have resulted in its speedier rescission. The cumulative effects of those many arbitrary actions have greatly heightened congressional suspicions about the extent to which the postal managers really understand, and are committed to, the obligation of responsiveness to those who, by virtue of election by the public, speak for the public. Postmaster General Bolger confessed as much, when he observed that his predecessors may well have "failed to recognize the legitimacy of the political pressures which routinely are brought to bear on Congress and the White House."¹⁴⁹

Instead of recognizing the legitimacy of those pressures, and working out ways to help Congressmen cope with those pressures without at the same time compromising the integrity of the independence of the new Postal Service, the early postal managers chose to insulate themselves from Congress, and to resist the proposals for change advanced in Congress. Moreover, they imputed malevolent intentions to Congressmen. Postal Service partisans suggest, for example, that most of the Congressional criticism¹⁵⁰ stems from Congressional resentment at being so totally excluded from the patronage they so long enjoyed in postal matters, a proposition denied by an overwhelming proportion of Congressmen. Indeed, to the contrary, the Congressmen express great relief at having the burden of postal patronage lifted from their shoulders. As one long-time House staffer said, "most members know that for every person you help with a job, you make enemies of ten others."¹⁵¹ Besides, there is something too facile about the Postal Service explanation of Congressional ire. It does not begin to explain either the intensity of Congressional criticism of the Postal Service, or its pervasiveness throughout the House, where bills which would radically reorganize the Postal Service have twice commanded more than 300 votes. Moreover, it simply cannot be the deprivation of patronage perquisites of yesteryear that is the root of resentment. Fewer than 20% of the current members of the House were in Congress when Congressmen were still involved in postal patronage.

There is also a tendency among the postal managers to dismiss Congressional criticism as attributable to the "lower quality" of the Congressmen who serve on the committees which supervise the

Postal Service. Those committees are admittedly lower in the Congressional pecking order than such high prestige committees as Ways and Means, Armed Services, Appropriations, and Foreign Affairs, or even the committees with jurisdiction over major regulated industries. Whether or not key postal Congressmen are in fact, or are perceived by their congressional colleagues as being, of "lower quality," the fact that postal managers believe it to be so makes it far too easy for them to dismiss such Congressional criticism as is legitimate, and encourages them seriously to underestimate the intensity and pervasiveness of the criticism that does get voiced.

None of this is to suggest that all of the differences between Congress and the postal managers is attributable to the managers' paranoia about all things political. To the contrary, there have also been a number of major policy differences between the Congress, prompted in part by primary and secondary postal policy actors, and in part by constituent pressure. There was and is, for example, a general consensus that Klassen's insistence on constructing the Bulk Mail Processing Centers was extremely unwise policy, especially because the decision was made at the very time the Postal Service was rapidly losing a large part of its market share in the parcel shipping market. Except for the postal managers, all of the indispensable and secondary postal policy actors--who initially supported the Bulk Mail Processing Centers--have concluded that the one billion dollar investment involved was a massive mistake. Indeed, the General Accounting Office has now suggested that the most proper course of action for the Postal Service would be simply to write off the Bulk Mail Centers as a

total loss, because they are useless except when the United Parcel Service is on strike.¹⁵²

There was also Congressional dissatisfaction over the Postal Service's marketing efforts. The general sense was "What the hell is the Postal Service doing advertising, when it can't even deliver the mail on time?"¹⁵³

Another bone of contention was the closing of local post offices. Congressman Hanley, formerly Chairman of the House Committee, put it this way:

What we are saying is that in so many little rural areas, the post office serves more than a mail distribution system. It's a social center, a part of Americana, a focus for community the absence of which would tend to destroy the community. For those people, the post office is the one little thing which they get from the federal government. For that reason, Congress keeps telling the USPS, "you just charge off your shortage from running such post offices, to the public service appropriation."¹⁵⁴

Unlike the Panama Canal Treaty or SALT II, postal closings are not the kinds of issues on which Congressmen feel that they either need to, or in fact can, take a stand on conscience, and then try to change their constituents' minds. How does a Congressman attempt to persuade a local constituent that he will just have to give up his local post office, indeed, perhaps his geographical identity, all for the sake of efficiency? That constituent feels that the benefits to him outweigh the costs, whatever they are, especially since someone else pays most of them. Such an issue is a live or die issue to constituents, and therefore not the kind of issue a Congressman can waffle on and long survive. To the constituent, it is a bread and butter political issue. To the Congressman, it is a matter of national policy of no great moment,

which may well be the reason the postal function is so particularly suited to the form of a public corporation.

In 1980 and 1981, other frictions surfaced. The Postal Service wished to go forward with a 9-digit zip code, compressed into "zip plus four" to diminish its psychological threat, while the Congress, reacting to public pressure, preferred to go very slow.¹⁵⁵ The Postal Service adopted a new collective bargaining stance to force the four major unions to deal with it as a group causing several members of Congress, including Senator Goldwater, to attack the Postal Service for "union-busting."¹⁵⁶

Perhaps the Postal Service action which most vividly underscored the accountability issue was its 1981 decision to reject the rates approved by the Postal Rate Commission and impose the 20 cent first class rate. The fact that it had the statutory right to do so is beside the point. That it did so brought home to many just how independent the postal managers felt they were.

The mutual suspicions, the policy differences, and the sense of powerlessness to do anything about their own and their constituents' complaints have compounded the rising frustration on the Hill. Congressman William Ford (D-Mich.) was speaking for many of his colleagues when he had the following to say:

The least constructive alternative that I can suggest--and I must insist on saying that I'm not aiming this at you individually, because I have absolutely no complaint about your function in your present position--the least acceptable alternative to me is the status quo. I'm willing to vote for almost anything that's different from what we have just to try to get back before the American people the question of who is running this \$17 billion business over there.¹⁵⁷

Perhaps the greatest irony of postal reorganization is the fact that those comments were addressed to Postmaster General

Bolger, the witness to whom Congressman Ford spoke, because the current Postmaster General has labored constantly to tear down the walls between the Postal Service and the Congress, to dissipate the suspicions that had been built up during the tenures of his predecessors, and to establish clearly that the current postal managers not only feel responsible to Congress but intend to act responsively. And his efforts have not gone without reward. Virtually every witness and member of Congress who is quoted in the 1979, 1980 and 1981 hearings made a point of commending Postmaster General Bolger. That even the best efforts of someone whom they admire and trust, and who is widely credited with doing the best job possible under the circumstances, cannot dissipate the negative feelings on Capitol Hill is perhaps the best evidence of how intense and pervasive those feelings really are. One may, if one wishes, ascribe the least favorable motives to the Congressmen involved, and one can side as a matter of principle, if one wishes, with the Postal Service both as to style and to policy, but one cannot blink away the fact that the Postal Service, as it is currently organized, faces perilous days ahead. Something is going to have to give, and the only question is what.

C. The Options for Policy

The Status Quo

The present dynamics of postal policy are inherently unstable. There are great uncertainties about the likely incursions of electronic means of communication on the various services provided by the Postal Service. The efforts of the Postal Service itself to make use of telecommunications technology--especially with ECOM

(Electronic Computer Originated Mail)--have aroused extensive fears within and the bitter opposition of the private telecommunications industry. The large periodical publishers and the third class advertisers are increasingly seeking alternatives to the Postal Service for the delivery of their products. Moreover, the long smoldering hostility between the Postal Service and the Postal Rate Commission has flared into the public domain. The Postmaster General has suggested the abolition of the Postal Rate Commission, and the staff of the latter have felt increasingly obligated to criticize the postal managers.

The events of 1981 have greatly reinforced the aura of non-accountability that already surrounded the Postal Service. In July, the postal managers entered a contract with its labor unions that is widely regarded as an excessively generous wage settlement. Then, in order to obtain the revenue required to fulfill the contract, the Postal Service's Board of Governors decided in September, for the first time ever, to institute a permanent first class rate of twenty cents for the first ounce over the thrice-repeated opposition of the Postal Rate Commission. The fact that it is permitted by law to do so does not mitigate the appearance of non-accountability.

Moreover, even as these and other events were unfolding, the Congressional memories of a decade of postal managers seemingly disdainful of politicians and elected officials were revived once more by the "zip + 4" contretemps. Whatever the merits of the postal managers' position--and the author does agree with it--Postmaster General Bolger undoubtedly lost some of his hard-won

personal credibility with the Congress when he first agreed to a bargain not to use Postal Service funds to publicize "zip + 4" in return for a congressional agreement not to press forward with legislation prohibiting him from doing so, and then proceeded to spend \$3 million to that end.

The Insufficiency of Reorganization Alone.

Whether or not some statutory reorganization is desirable, and it may well be, it would clearly be insufficient to solve the major problems likely to face the Postal Service over the next decade or two. The major source of instability--the telecommunications revolution which is beginning to unfold with such breathtaking speed that even many private sector companies are hard put to avoid being left behind--will not respect the organizational charts of statute writers or bureaucrats.

Alternative Means of Increasing Public Accountability

When one adds together the governmental character of the Postal Service, the sheer size of its work force, the national pervasiveness of its operations, and its use of tax revenues--any one of which alone would justify some measure of public accountability--the case for a high degree of accountability appears compelling. There would seem to be several alternative ways of either increasing accountability or of eliminating the need for it, each of which would carry with it its own peculiar risk. A non-exhaustive list would include the following:

- 1) Increasing the power of the President over the Postal Service, which might be accomplished either through presidential appointment of the Postmaster General, leaving intact the present organizational structure, or by altering the structure itself so as

to make it again a line department of the Executive Branch. Another alternative means of attaining this objective would include presidential appointment of the chairman of the Board of Governors of the Postal Service, and enlarging the powers of that position into the role of chief executive officer, with the Postmaster General's responsibilities diminished to that of a chief operating officer.

2) Increasing the Role of the Board of Governors, which if accomplished, would more approximate the original intention of the framers of reorganization that the Postal Service's Board of Governors play a very active role.

3) Increasing the power of Congress over the Postal Service, which might be accomplished by returning to Congress the authority to approve postal rates, and/or set postal rates, and/or authorize major service additions or reductions.

4) Increasing the supervisory power of the Postal Rate Commission over the financial operations of the Postal Service, so as to compel fidelity to the budgets submitted as justification for rate proposals.

5) Increasing the accountability of the Postal Service for its expenditure of tax revenues by requiring all below-cost services, such as rural post offices, library rates and the mailing of educational and cultural materials, to be supported by annual contracts with the federal agencies which have primary responsibility for meeting the needs of the respective beneficiary groups.

6) Diminishing the need for greater public accountability by substituting the discipline of the marketplace for the discipline of political institutions. This could be accomplished only by repeal of the Private Express Statutes and abolition of the Postal Rate Commission.

Increasing Presidential Power

It is rare indeed to find in any area of public policy such apparent unanimity of consensus about a proposed fundamental change as there appeared to be in postal policy in 1979 and 1980, at least if one looks chiefly to the Congressional hearings. Virtually every witness in the 1979 House hearings favored presidential appointment of the Postmaster General. A sample of the views expressed might be informative. James LaPenta, long-time union leader, said that "direct appointment eliminates any opportunity for arrogance on the part of the Postmaster General, and would furnish a Postmaster General with the incentive to provide postal service rather than lip service."¹⁵⁸ Donald Ledbetter, representing the postal supervisors, declared that "The Postal Service is answerable to no one, insulated from everyone--including the Congress and the President."¹⁵⁹ Joyce Turney, speaking for the Postmasters, elaborated on the point, saying "We continue to view the strengths of such a structure as (1) returning accountability for the performance of the Postal Service to an elected official, and (2) assuring that the Postmaster General will be responsible and responsive to some higher authority, a function which we do not believe has been even perfunctorily performed by the Board of Governors."¹⁶⁰

Except for Norman Halliday, a former postal manager now representing the National Association of Greeting Card Publishers, who opposed presidential appointment because "it really doesn't make much difference who appoints or who is appointed,"¹⁶¹ and who favored greater Congressional oversight instead, every representative of the organized mailers strongly supported presidential appointment. Former Postmaster General J. Edward Day went right to the point:

We think that there should be more input from elected officials into the Postal Service. The present system isn't even what it appears to be on the books. It is really the Louis XIV system. The man designates his own successor. Blount designated Klassen and Klassen designated Bailer and Bailer designated Mr. Bolger-- the best that we've had in a long time. . . .As the Chairman said, Mr. Bolger is a big change from what there has been in the recent past, but there is no assurance that that type of responsive, interested and knowledgeable management will continue in the next man.

Perhaps the simplest explanation was offered by Timothy May, representing the Parcel Shippers Association:

In a democracy, the power of the people to redress the malfunctions of government services ultimately depends upon their ability to bring them to account on election day. Unfortunately, no one in the Postal Service has to stand for election, and no one who stands for election has the power and responsibility for guaranteeing the performance of the Postal Service.

The fact of so much agreement on a matter of ostensibly fundamental change is itself somewhat suspicious, suggesting either that the proposed change is so obviously right as a matter of policy as to permit little disagreement, or that it is intended essentially as symbolic only and thus devoid of any substantial policy content at all. In the minds of those who favored postal reorganization to begin with--the insulation of the postal function from the ordinary processes of politics--there is a very serious question about the policy desirability of such a change. If, as Postmaster General Bolger asks, the President were to appoint the Postmaster General, why not the deputy and assistant postmasters general? Where could one stop? Do most of the postal policy actors really want a return to a politically influenced Postal Service, and, if not, how do they propose to insure the continued non-political nature of postal decision making if the President appoints the Postmaster General?

Moreover, are there any reasonable grounds for believing that a Presidentially-appointed Postmaster General would be any more susceptible to the policy positions of major postal policy actors--on USPS telecommunications activity, or on closing rural post offices, or on the public service appropriations, than the Board-selected Postmasters General have been? The same questions apply to the suggestion that the President appoint a chairman of the Board of Governors, which was one of the provisions of H.R. 79 attacked by nearly everyone who testified.

One is left, therefore, with the conclusion that the critics of the Postal Service are more interested in the symbolic significance of making the Postmaster General accountable, and presumably responsive, to the President than they are in attaining particular policy objectives. Moreover, these critics appear either not to have thought very seriously about the risks of repoliticization of the Postal Service or to have concluded that some measure of repoliticization is desirable, whatever its adverse consequences.

Increasing the Role of the Board of Governors

Until 1979, the Board of Governors was, in effect, a passive rubber stamp for the postal managers. It did not even have a Committee System until 1981.¹⁶³ An obvious way, therefore, to increase both the perception and the reality of public accountability is to breathe life into the only officers of the Postal Service who are chosen by someone elected by the public--the members of the Board of Governors. That is certainly desirable in itself, but it will take more than the one year that has passed to determine how much reality the perception embodies.

Increasing the Power of Congress

Congressmen occasionally threaten to recapture one or another aspect of postal policymaking from the Postal Service and the Postal Rate Commission, but the threats must surely be entirely symbolic. No one believes that Congress would willingly put itself back in the position of determining postal wages or setting postal rates as it did prior to reorganizations. One cannot imagine either any substantial Congressional support even for a one-house veto of postal rates.

Increasing the Supervisory Power of the Postal Rate Commission

In effect, the Postal Rate Commission was invented by Congress as a surrogate for Congressional review of postal rates. While the PRC's record of effectiveness is not unblemished, it has proved itself increasingly able during 1979-1981 to contribute substantially to the generation and consideration of alternative ideas for improving the Postal Service.¹⁶⁴

No bureaucracy relishes the scrutiny of an independent body, and the Postal Service is no exception. After chafing silently for months, the Postmaster General has recently called for the abolition of the PRC, referring to such a change as "deregulation." The only likely circumstance under which the PRC might be abolished, however, would be as part of total deregulation of the Postal Service, an indispensable part of which would include the repeal of the Private Express Statutes, thereby disestablishing the Postal Service's monopoly on the carriage of letter mail.

In the absence of that kind of full deregulation, the PRC might well be given even greater supervisory power over the Postal Service, including the monitoring of its budget fidelity. While

such a change would not appear to satisfy the demand for more Postal Service accountability to politically elected officials, it would increase the accountability of the Postal Service to the public. The open hearings of the PRC are, after all, the only decision making forum available to representatives of affected interest groups or the general public.

Increasing the Accountability of the Postal Service by Annual Contracts for Below-Cost Services

If, as part of the effort to require the Postal Service to operate with an entirely balanced budget, the burden of providing the subsidies for below-cost postal services were shifted to other federal departments or to state or local governments, the deep pocket of the taxpayers could be sewn up. The Postal Service could enter into annual or multi-year contracts to provide below-cost services with whoever wished to purchase them at a stipulated cost. Federal agencies with responsibility for agricultural or other rural areas, local municipalities wishing a higher level of postal services than that which the Postal Service could provide and still break even, or governmental agencies responsible for dissemination of literary or library materials or for serving particular groups of people--the agencies in the best position to know what services are needed and what the priorities for particular services should be--could enter such contracts. The existence of this contracting procedure would tend to place these choices where they belong--on the people who benefit or on the government agencies responsible for their well-being--and thus create a higher level of public accountability. It is not clear, however, that such changes would satisfy the demand for public accountability of the Postal Service at the top or as a whole.

Basic Restructuring of the Supply and Distribution of Postal Service

Whatever may be done about increasing the effective accountability of the Postal Service to elected officials, more profound changes might be considered. Like all fundamental changes, they will constitute real or fancied threats to both the Postal Service and to its present and potential competitors. Such fundamental changes as the following, however, promise considerable benefit to the general public:

1. Repeal of the Private Express Statutes

By abolishing the Postal Service's monopoly on the carriage of letter mail, one could substitute the discipline of competition for greater accountability to officials elected by the public. Even if such discipline did not provide the symbolic assurance thought desirable by Congressmen and other critics of the Postal Service, it would increase the efficiency of the Postal Service, probably yield better service to the public at lower cost, and dissipate some of the fears of Postal Service competitors.

Whether it would have any of those consequences is debatable. What is not debatable is that the adoption of the alternative is likely to diminish the size of the Postal Service. With that diminution in size would occur an increase in unit cost for whatever mail remained, because the bulk, if not all, of the business shifted to the private sector would be the most profitable component, principally letter mail within and between points of greatest population focus.

Proponents of repeal argue that a smaller Postal Service, a Postal Service of last resort, if you will, is bound to be more manageable than the mammoth institution of the present, as well as less costly to the taxpayers. If there are areas not served by private sector mail delivery, their service can always be subsidized much as it is today, but probably at lesser cost.

2. Abolition of the Postal Rate Commission

Those who advocate greater freedom for postal managers believe that the Postal Service can never make and implement the decisions required by the pressures of competition or the demands of any business enterprise so long as its rates are subject to approval by the Postal Rate Commission. The postal managers and their supporters blame the PRC for postal deficits, because slow rate determinations delay the institution of higher rates and the revenues that would be generated thereby, and lower-than-necessary rate awards deprive the Postal Service of the revenue it needs in order to break even. Unless other fundamental changes were made at the same time, however, it is doubtful that Congress would abolish the agency that it created to assure the public of the lowest possible postal rates.

3. Substantial Postal Service Entry into Telecommunications

There are persuasive arguments both for and against permitting the Postal Service the freedom to offer such telecommunications services as it chooses. The Postal Service feels that the only way it can protect itself against the growing substitution of electronic communication for the printed word, the carriage of which makes up its principal business, is to enter the field itself. It

argues that it would not try to compete against private carriers in areas in which it had no particular comparative advantage, such as totally electronic communications, but that it needs to have a strong enough hand to defend itself flexibly with new hybrid electronic/hard copy forms of communication, such as Mailgram, Intelpost and ECOM, without the extraordinary delays imposed by the present restrictive approval structure.

The private telecommunications industry, however, fears Postal Service initiatives in telecommunications, and is likely to fight vigorously to prevent the Postal Service from being given such authority. The private companies have the same concerns which animate the United Parcel Service--that the Postal Service will be able to undercut their rates either by cross-subsidizing with revenues from other services, especially first class, and from congressional appropriation, or by taking advantage of its tax exempt status. Those concerns need to be given great weight and those interests adequately protected or no restructuring will be possible.

Conclusion

These are not the only policy options available, but they appear to the author to be the principal ones at the present time. Like most areas of public policy, postal policy is dynamic. Even as I write, many changes are occurring. The Board of Governors, which, for most of the twelve years since reorganization, seemed to be comatose, has suddenly revived. Indeed it is energetically exploring and pursuing a variety of policy initiatives by means of a newly activated committee system, all under the leadership of

its chairman, Robert L. Hardesty. Without doubt the Governors' new activism alters the accountability equation, because they are appointed by the President and confirmed by the Senate. If the quality of the Governors and their active involvement in postal policy remain high, the demand for organizational change may well be dissipated. The mere fact that, in the 1981 House hearings, it was the Chairman of the Board of Governors who led off the Postal Service presentation, and not, as in previous years, the Postmaster General, is an important symbolic act.

But it must also be said that while there is much evidence that the Governors have bestirred themselves, and intelligently so, to accomplish short-run Postal Service goals formulated principally by the postal managers--raising rates and initiating E-COM, for example--there is as yet no public evidence that they have thought hard and seriously about the profound threat to the Postal Service posed by telecommunications. Unlike the demand for organizational change, that threat will not be dissipated by short-term solutions. It requires changes of the most fundamental nature, changes not likely to find their origin among the postal managers. It may well also be the case that the only change is in fact symbolic, and not the slightest bit substantial.

APPENDIX A1977 Report of the Commission on the Postal ServiceLevels of Services

(1) Post Offices should not be closed merely to reduce costs except in those instances in which vacancy in management occurs, conditions change, or postal patrons vote to close the Post Office.

(2) Mail delivery to all addresses should be reduced from six days to five days a week, but window service should be available on the day mail is not delivered. In our Nielsen survey, 80 percent of those citizens surveyed favored this as a means of controlling costs.

(3) The Postal Service must have flexibility to meet changing circumstances and changing needs of the public. Postal services that become obsolete, especially as a result of diversion of mail to electronic communications, should not be continued.

(4) The Postal Service should make dependability of timely delivery its primary objective. The American public rates dependability of service above fast delivery or lower cost.

Electronic Communications

(5) The Postal Service immediately should pursue opportunities to provide services which utilize existing electronic communications with the unique collection and delivery system of the Postal Service.

(6) For the future, the Postal Service should determine within the next two years whether the communications needs of the American public require the Postal Service to provide services using electronic communications to collect, transmit, and deliver messages.

Public Service Appropriations

(7) The level of public service appropriations should be increased moderately to 10 percent of the postal expenses incurred in the preceding fiscal year.

(8) Congress should appropriate \$625 million to eliminate the present Postal Service accumulated indebtedness incurred for operating expenses.

Postal Rates and Classifications

(9) Congress should amend the law to prescribe criteria for the establishment of postal rates so that factors other than cost causation shall be taken into account in distributing a significant portion of the postal costs.

(10) Congress should enact legislation to retain the four major classes of mail for the transmission of letters, newspapers and other periodical publications, advertising matter and parcels.

(11) A general relaxation of the private express statutes is not in the public interest because it would impair the ability of the Postal Service to meet its nationwide service obligations. The Postal Service should, however, permit private carriage of time-value letter mail if the Postal Service is not prepared to offer generally comparable services. Congress should determine the scope of the private express statutes.

Organization of the Postal System

(12) The Board of Governors of the Postal Service should be preserved, and the Postmaster General and Deputy Postmaster General should continue to be appointed by, and serve at the pleasure of, the Governors.

(13) The Postal Rate Commission should be preserved and given final authority in rate and classification proceedings, subject only to judicial review.

NOTES

¹ A modified version of this paper appears as Chapter II in Joel L. Fleishman, ed., The Future of the Postal Service, (New York: Praeger, forthcoming in 1982).

² If one is to believe perhaps the most reliable source of public opinion research, the University of Michigan's Survey Research Center, the visible complaints about the quality of postal service are not an accurate reflection of the public mind. In the most recent Household Mailstream Study available, that for 1978, only 5.3% of the respondents rated the Postal Service as doing a poor job for the country as a whole. That was the lowest "poor" rating given to any institution asked about in that study, which also included the telephone company (9.0%), the U.S. military (7.8%), national news media (9.8%) and various levels of government (9.8% to 16.8%). Conversely, the Postal Service's combined "good" and "very good" ratings was 71.6%, the highest of any institution.

³ Public Law 91-375, 84 STAT. 719, 39 U.S.C. 101 et seq.

⁴ See, for example, the preamble to the Postal Reorganization Act.

⁵ See, for example, the following comments of Congressman William Ford (D-Mich.) during the 1979 Hearings:

Those of us who were on this committee in 1967 remember the circus in which the most conservative members of this Congress at that time-- the pennypincher--voted for every decrease that came before the committee, and Mr. Udall finally discovered that the only way we could get an honest consideration of the two issues was to put them together, so that in order to vote for the pay raise, you had to vote for the rate increases at the same time.

U.S. House of Representatives Subcommittee on Postal Personnel and Modernization, 96th Congress, Hearings on the Postal Service Act of 1979, p. 123.

⁶ The congressional subsidy was made up of two different funds of money of about equal size, at least at the beginning. One was the "public service appropriation," meant to defray the costs to the Postal Service of providing uneconomical services demanded by the public but for which the public was, actually or presumptively, unwilling to pay through postal rates--such as the operation of a large number of very small, usually rural post offices in sparsely populated remote areas. The other was the "revenue foregone appropriation," intended to subsidize the difference between the actual costs of handling certain categories of second, third, and fourth class mail, especially that mailed by non-profit organizations and small local newspapers, and the postal rates charged to those organizations. The public service appropriation was to begin at 10% of the fiscal 1971 Postal Service budget, \$920 million, remain at that level through 1979, and then gradually to decline \$92 million a year until 1984 at which point it would be \$460 million, where it would remain fixed.

The revenue foregone subsidy was to recompense the Postal Service for services provided below cost, and was to decline as the actual rates charged were increased to the break-even point for the particular category of mail. The 1970 Act gave for-profit rate users of second and fourth class mail five years to phase up to the full costs of service, and ten years for non-profit users, favoring classes such as the blind. The 1976 Amendments lengthened the phase-in period for both for-profit and not-for-profit users to 8 and 16 years respectively. It should be noted that, for non-profit users and favored classes, only part of the subsidy would be phased out--that part which covered the difference between the costs directly attributable to the service involved and what the sender is required to pay. The continuing subsidy was for the non-attributable, institutional component of the costs. It benefits only the non-profit users and favored classes, and was never expected to be phased out. Another way of looking at the distinction between the two is that "revenue foregone" represented losses that the Postal Service could trace to rates charged senders which were lower than the costs of providing the particular service, while "public service" costs represented a subsidy to the recipients of mail for services which the Congress, or the public, insisted be provided at a price lower than what they actually cost.

⁷The principal unions were the National Association of Letter Carriers, AFL-CIO (city letter carriers); the National Association of Post Office and General Services Maintenance Employees, AFL-CIO (maintenance employees); the National Association of special Delivery Messengers, AFL-CIO (special delivery messengers); the National Federation of Post Office Motor Vehicle Employees, AFL-CIO (motor vehicle employees); the National Rural Letter Carriers Association (rural letter carriers); the United Federation of Postal clerks, AFL-CIO (postal clerks); and the National Post Office Mail Handlers, Watchmen, Messengers and Group Leaders Division of the Laborers' International Union of North America, AFL-CIO (Mail Handlers). Altogether they represented approximately 700,000 members.

⁸The non-unionized postal workers are represented by professional associations including the National League of Postmasters, representing rural postmasters, the National Association of Postmasters, representing urban postmasters, and the National Association of Postal Supervisors, representing approximately 35,000 middle-management postal supervisors.

⁹The Magazine Publishers Association, representing about 160 members which publish more than 600 consumer magazines, accounting for over 80% of total magazine advertising revenues, and the American Business Press, representing a large number of trade magazines.

¹⁰The National Newspaper Association, representing about 5000 weekly newspapers and about 500 small daily newspapers, and the American Newspaper Publishers Association, representing about 1330 daily newspapers which account for more than 90% of the daily and Sunday newspaper circulation in the United States.

¹¹The Association of American Publishers, representing about 320 publishers of all kinds of books.

¹²The Associated Third-Class Mail Users, a trade association representing about 500 third-class bulk mailers, and the Direct-Mail Marketing Association, representing about 2500 corporations, associations and small businesses.

¹³The Parcel Shippers Association, representing some 200 business members, which use the mails to ship parcels to their customers, and the Recording Industry Association of America, representing 66 record companies which manufacture 90% of the phonograph records and prerecorded tapes produced and sold in the United States.

¹⁴Libraries have continuously been greatly concerned about the postage rates they have to pay on books. Universities and colleges have long had reduced rates for their course catalogues. All non-profit organizations have had special mailing permits for their solicitations and publications.

¹⁵The managers of AMTRAK, CONRAIL, COMSAT, TVA and the SYNFUELS Corporation enjoy similar managerial independence, but those organizations are miniscule in comparison with the Postal Service.

¹⁶See, for example, The Postal Service Act of 1977, Joint Hearings Before the Subcommittee on Postal Personnel and Modernization, and the Subcommittee on Postal operations and services, House of Representatives, 95th Congress, 1st Session (1977) (hereinafter referred to as the 1977 Hearings) and The Postal Service Act of 1979, hearings before the same subcommittees, 96th Congress, (hereinafter referred to as the 1979 Hearings).

¹⁷See Postmaster General Bolger's comments in Effectiveness of the Postal Reorganization Act of 1970, hearings before the same subcommittees as in the preceding note, December, 1981, hereinafter cited as the 1981 Hearings, at p.54. See also The New York Times, February 12, 1981, A17:1.

¹⁸HR 7700 in 1977 by a vote of 377 to 11, and HR 79 in 1979, by a vote of 350 to 14.

¹⁹See testimonial by Congressman Frank R. Wolf (R. VA.) at p. 56 of 1981 Hearings.

²⁰1981 Hearings, at p. 50.

²¹The New York Times, Oct. 1, 1981, A1.

As to the general point that the postal managers enjoy substantially unfettered freedom to act, and that such troubles as they have are largely the result of their own making, it must further be noted that there is indeed a great deal of post-1979 evidence that the Postal Rate Commission has contributed beneficially to postal policymaking. By using the wedge of rate approval, it has forced the Postal Service to consider and adopt a variety of alternative rates and classifications that have been more advantageous to the Service than those proposed by it to the Commission. See, for example, the comments by Robert L. Hardesty, Chairman of the Board of Governors of the Postal Service, in 1981

Hearings, at pp 7-8. The "red-tag" rates, which require higher postage for magazines with time-sensitive information than for other magazines, were initiated not by the Postal Service, but by the Postal Rate Commission, according to Chairman Hardesty. *Id.* at p.17. Similarly, the plan for E-COM (Electronic Computer Originated Mail), which was put into effect in January 1982, was in fact the design of the Postal Rate Commission, not the Postal Service, and it is regarded by most observers as greatly superior to the Postal Service's original plan. See comments by Congressman Lionel van Deerlin (D. Cal.), in Electronic Message Service Systems, Hearings before the Subcommittee on Postal Personnel and Modernization, 1980, at p. 28.

²²The exercise of that discretion, however, can get the Postmaster General in trouble. When he attempted to force the four major postal unions in 1981 to designate one of them to bargain in behalf of all four, he brought the ire of all sides down on his head. His action was regarded by many as an attempt at "union-busting," was condemned by Senator Barry Goldwater in the strongest of language, and described by Board of Governors Chairman Hardesty as "a massive show of bad judgment on the part of management to get itself into a position where you manage to get people who hardly ever agree on the basic principles to agree that what you are doing is wrong." 1981 Hearings at p. 21.

²³See the table of rate increases in "A Candid Assessment of a Decade of Postal Reorganization," in Joel L. Fleishman ed., The Future of the Postal Service, (New York: Praeger, 1982). Whether the organized mailers have been unfairly treated, in economic terms, is another question. For a persuasive argument that they have not, see James C. Miller, III, and Roger Sherman, "Has the 1970 Act Been Fair to Mailers?," in Roger Sherman, ed., Perspectives on Postal Service Issues (Washington: American Enterprise Institute, 1980). Their conclusion is that organized mailers continue to enjoy the substantial rate preferences they enjoyed prior to postal reorganization.

²⁴1979 Hearings, p. 27.

²⁵The average percentage rate increases proposed for second and third class mail were substantially below the percentage increase for first class mail: 1.9% for second class, 17.7% for third class, and 33 1/3% for first class. See New York Times, April 22, 1980, A18:3. Very likely, lower rate increases were designed to enable the Postal Service to compete more favorably with its private sector challengers. The fact that private competitors can deliver second and third class at less cost than the Postal Service suggests that the mailers' complaints of higher rates are not without validity.

²⁶This is a point of considerable disagreement. One's conclusion depends, obviously, on the appropriate referents. If one compares unionized postal workers' salaries with the average salaries of unionized workers in industry over the last ten years, postal workers have fared somewhat better. If one compares them with wages in the highest paid industries, such as the automobile industry until 1982, they are not quite as high. For the unions' position on this point, see James La Penta's comments in American Enterprise Institute, The U.S. Postal

System: Can It Deliver? (Washington, 1978) at p. 20. For a careful, objective analysis of the comparisons, see Douglas K. Adie, "How Have Postal Workers Fared Since the 1970 Act?," in Roger Sherman, ed., Perspectives on Postal Service Issues (Washington: American Enterprise Institute, 1980) and an earlier piece by the same author, An Evaluation of Postal Wage Rates (Washington: American Enterprise Institute, 1977). Adie concludes: "A Comparison of the percentage increases in average hourly earnings for postal workers and for manufacturing workers suggests that there has been a tendency for the Post Office/Postal Service to grant its employees greater-than-average increases. Before the Act, wages paid postal employees were on average excessive. . . . Since the Act, postal workers have gained even more on workers in the private economy." Adie, 1980, at 75.

²⁷ See, for example, testimony by Eugene B. Dalton, President of the National League of Postmasters, 1979 Hearings at pp. 105-118, testimony by Donald N. Ledbetter, President, National Association of Postal Supervisors, *id.* at 118-127, and testimony by Joyce T. Turney, President of National Association of Postmasters of the United States, *id.* at 97-105. One obviously should take such self-interested protestations with at least a few grains of salt. In view of the change in mail mix resulting from United Parcel Service incursions on Postal Service business, and the mechanization of first class sorting, their claims about a greater workload appear questionable at best.

²⁸ 1979 Hearings, pp. 80-82. And see his similar comments in American Enterprise Institute, The U.S. Postal System: Can It Deliver? (Washington, 1978). See also the strong support for a USPS role in electronic mail expressed by Vincent R. Sombrotto, President of the National Association of Letter Carriers, in 1980 EMSS Hearings, cited fn. 18 *supra*, at pp. 231-239.

²⁹ "I remember . . . listening to one of the former Postmasters General who told me during the Nixon years that he had tried for one whole year to get the President of the United States to give him 10 minutes." Congressman Morris Udall, 1979 Hearings at 140.

³⁰ From an interview with the author.

³¹ 1979 Hearings, p. 126.

³² See National Association of Greeting Card Publishers vs. Postal Service, 569 F.2d 570 (D.C. Circuit 1976), discussed in Section II.E below.

³³ See John McLaughlin, "Telephone-Letter Mail Competition: A First Look," Harvard University, Program on Information Resource Policy, Research Report, P-81-9, December 1981.

³⁴ This appears to be the case only where the telephone companies charge flat rates for local service. If they move increasingly to message-unit pricing, first class mail utilization would be expected to increase accordingly. I am indebted to John Jay Daly for reminding me of the

postal policy variant of the old song, "Let me call you, sweetheart; I can't afford to write."

³⁵The Postal Service has succeeded in preventing massive diversions of such first class mail by offering pre-sort discounts to large mailers of bills. It seems doubtful, however, that they will be equally successful against the steady growth of electronic mail in its various guises.

³⁶Figures provided in an interview with Kent Rhodes, President of the Magazine Publishers Association.

³⁷Id.

³⁸See Congressman William Ford's comment in footnote 5, supra.

³⁹Id. at 204. See also his similar comment at pp 45, 50 and 51 of the 1981 Hearings.

⁴⁰See, for example, Congressman Ford's comments, Id., at 201. "So what really we're talking about here is the comfort some people take in the view that while it's nice for us to meet and talk to you, we're expected to keep our damn nose out of your business over there and you don't have to put up with interference from Congress any more in the operation of the Postal Service."

⁴¹Despite a noticeable lessening of expressed hostility from the 1977 and 1979 hearings to the 1981 Hearings, the feeling of powerlessness remains strong. As Congressman William Clay (D.Mo.), chairman of the subcommittee on Postal Operations and Services, remarked "Congress seems to have given the Postal Service unbridled authority to regulate itself--insulated from reasonable public accountability. See 1981 Hearings, p.1.

⁴²Members were, in addition to those named, Fred J. Borch, President, General Electric Co.; David E. Bell, Vice President, The Ford Foundation; Ralph Lazarus, Chairman, Federated Department Stores; J. Irwin Miller, Chairman, Cummins Engine Co.; W. Beverly Murphy, President, Campbell Soup Co.; Rudolph A. Peterson, President, Bank of America; and David Ginsburg, senior partner of the Washington law firm Ginsburg and Feldman.

⁴³Charles G. Benda, State Organizations and Policy Formation: The Reorganization of the Post Office Department, Cambridge, Mass.: Harvard University, Program on Information Resources Policy, August, 1978, Working Paper W-78-11, p. 22 (hereinafter cited as Benda).

⁴⁴Id. at 28.

⁴⁵Id. at 119-121. One must wonder why, if the marketplace was such a persuasive metaphor to the Kappel Commission, they chose to recommend the retention of the Private Express statutes, which protected the Post Office from competition in the carriage of letter mail.

⁴⁶Id. at 43-44.

⁴⁷ Kappel Commission Report, Towards Postal Excellence, p. 24.

⁴⁸ Id., p.55.

⁴⁹ Id., p.2. Also, see Benda at 86.

⁵⁰ Benda, pp. 121-122.

⁵¹ Id., pp. 134-136.

⁵² Id., pp. 141-142.

⁵³ Id. p. 143.

⁵⁴ Id., p. 152.

⁵⁵ The 1976 Amendments extended the phaseout periods to 8 and 16 years, respectively. The costs were only those directly attributable to the particular class of mail. The non-profits and the favored classes such as the blind were never expected to lose their entire subsidy. All that was to be phased out was the subsidy for that part of the difference between the rate paid and the cost of service that was directly attributable to the service. The subsidy for the cost component representing the institutional costs was never to be phased out.

⁵⁶ Benda, p. 156.

⁵⁷ D. R. Ewing and R. K. Salaman, The Postal Crisis: The Postal Function as a Communications Service, U. S. Department of Commerce, Office of Telecommunications, 77-13 (1976), at 25-26.

⁵⁸ Id. The cumulative deficit in 1975 was \$1.6 billion, with \$989 million attributable to 1975.

⁵⁹ Id. For subsequent documentation of that fact, see both works by Adie, in footnote 26 supra.

⁶⁰ The hearings were before Senate Committee on Post Office and Civil Service, 94th Congress, 2nd Session (1976), hereinafter referred to as 1976 Hearings.

⁶¹ Testimony of James T. Lynn, Director, Office of Management and Budget, 1976 Hearings, pt. 2 at 2-4.

⁶² Id.

⁶³ Id.

⁶⁴ 1976 Hearings pt. 3 at 21.

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ One very knowledgeable long-time participant in postal policy matters --Norman Halliday, Executive Vice President of the Association of Greeting Card Publishers--explains that Bailar's stand in the 1976 Amendments battle resulted from persuasion by Senator Gale McGee, the chairman of the Senate Subcommittee. It was McGee, he says, who insisted on the additional appropriation, and that the establishment of a Commission was the way McGee chose to get himself past the next election.

⁶⁸ 1976 Hearings, pt. 4 at 113.

⁶⁹ Id.

⁷⁰ In fact, fewer post offices have been closed in the decade since reorganization than in any previous decade in this century. During the first two years of reorganization, the pace of closings slowed substantially. From 196 closings in 1969, it declined to 62 in 1970 and 55 in 1971. With 1972, it began to increase again, to 261 that year, 301 in 1973, 385 in 1974, and 246 in 1975. In no year since reorganization has the number of closings ever reached the 503 closed in 1966 or even the 495 closed in 1967. See Annual Reports of the Postmaster General. The complete figures are in a table in "A Candid Assessment," op cit. note 23, supra.

⁷¹ Id., at 11.

⁷² Id., at 24-25.

⁷³ 1976 Hearings, pt. 4 at 25. See testimony of Postmaster General Bailar, id., pt. 1 at 55; see also Senate Report on H.R. 8603, 94th Congress, 2nd Session at 5.

⁷⁴ 1976 Hearings, pt. 2 at 177-188.

⁷⁵ Id., at 243-246.

⁷⁶ Id., at 241-242. See also testimony of the American Newspaper Association at 274-276; and the Association of Second-Class Mail Publications at 327. For evidence of non-profit organizations' support, see testimony of the International Labor Press Association at 194-199; Veterans of Foreign Wars at 213; and the American Legion at 278.

⁷⁷ 1976 Hearings, pt. 2 at 78.

⁷⁸ Id. As we noted above, he was apparently incorrect as to his third point, because temporary rates were in effect during most of that period.

⁷⁹ Id., at 286.

⁸⁰ Id., See generally 1976 Hearings at 285-301.

⁸¹ 1976 Hearings, pt. 5 at 102-103. This diffidence on the part of large corporations may occur, as Benda notes at p. 46, because postage rates, however costly, do not affect their competitive positions, or threaten to affect profits to a significant degree. There is a spread, however, even among the large corporations. AT&T's \$300 million postage bill is only

3% of its operating costs, while Time Inc.'s \$70 million postage for all classes of service it uses constitutes 10% of its annual budget. Opposition to postal rate increases is therefore less a function of absolute than of relative costs. Although some mail users may be indifferent to rate increases within a certain range, they would certainly switch to cheaper alternatives if such were available. The largest mail user of all is AT&T, and one may reasonably speculate that it will be among the first mailers to switch to electronic forms of communications as they become available. Political indifference to rate changes should not be confused with economic indifference. And, of course, Time Magazine was represented in the hearings by the Magazine Publishers Association.

⁸² Half was designated for repayment in 1976 and half in 1977.

⁸³ New York Times, March 31, 1976, 8:4.

⁸⁴ U.S. Senate, 94th Congress 2nd. Session, The Congressional Record, August 24, 1976 (Volume 122, part 21), p. 27418. See also New York Times, August 24, 1976, 21:1.

⁸⁵ U.S. House of Representatives, 94th Congress 2nd. Session, The Congressional Record, September 10, 1976 (Volume 122, part 23), pp. 29751-2. See also New York Times, September 11, 1976, 47:2.

⁸⁶ Public Law 94-421, 90 Stat. 1303 (codified at 39 U.S.C. 2401(d) (1976)). See S. Report No. 966, 94th Congress, 2d Sess. (1976), U.S. Code Cong. and Admin. News, 1976 at 2400.

⁸⁷ National Association of Greeting Card Publishers v. U.S. Postal Service, 569 F. 2d 570 (D.C. Circuit 1976). For a contrary view of the cause of the Postmaster General's reversal of position, see footnote 52 supra.

⁸⁸ See generally F. Ramsey, "A Contribution to the Theory of Taxation," 37 Economic Journal 47 (1927); W. J. Baumol and D. F. Bradford, "Optimal Departures from Marginal Cost Pricing," 60 American Economic Review 265 (1970); R. Sherman and A. George, "Second-Best Pricing for the U.S. Postal Service," Southern Economic Review, January 1979 at 685.

⁸⁹ 39 U.S.C. 3622 (b).

⁹⁰ For an enlightening discussion of the difficulty of determining costs, for example, see Melvyn A. Fuss, "Cost Allocation: How Can the Costs of Postal Services Be Determined?," in Roger Sherman, ed. Perspectives on Postal Service Issues (Washington: American Enterprise Institute, 1980) at 30-46. See also Alan L. Sorkin, The Economics of the Postal System (Lexington, Mass. Lexington Books (1980), Joel L. Fleishman, ed., The Future of the Postal Service New York: Praeger (1982), and Mitchell Knisbacher, "Government Competition with Private Enterprise: How to Price the Mails?" Draft Working Paper, Program on Information Resources Policy, Harvard University, 1982.

⁹¹ In the first postal rate hearing the Chief Hearing Examiner of the Postal Rate Commission concluded that "there is no reliable proof that

the Postal Service is subject to economies of scale. . . ." (Examiners Initial Decision R71-1 at 98). More recently, Rodney E. Stevenson of the University of Wisconsin has rejected the assumption of economies of scale, with Roger Sherman of the University of Virginia agreeing that "sophisticated analyses of postal cost--in both time series and cross section--give not a shred of evidence that average cost over the postal system can be expected to decrease with mail volume." R. E. Stevenson, "The Pricing of Postal Services," in Trebing, ed., New Dimensions in Public Utility Pricing, 1976 MSU Public Utility Studies at 427, 455.

⁹² Nat. Assoc. of Greeting Card Publishers v. U.S. Postal Service, 569 F. 2d 570 (D.C. Circuit 1976).

⁹³ Associated Third Class Mail Users v. U.S. Postal Service, 405 F. Supp. 1109 (D.D.C. 1975).

⁹⁴ 39 U.S.C. 3622(b)(3)

⁹⁵ 569 F. 2d 570, at 606, footnote 6.

⁹⁶ 569 F. 2d 570, at 593.

⁹⁷ It seems likely that, if the court had thought carefully about the issue, it would have been more precise in its holding. The opinion clearly reads as if the judges are invalidating the use of the Inverse Elasticity Rule on statutory grounds. As later decisions appear to make clear, however, the court is less concerned with the Rule itself than with the method by which the Postal Service allocates and assigns the costs which comprise the rate base for particular classes. The USPS, for example, included the capital costs of the National Bulk Mail System in the category of "institutional" costs, despite the fact that first class mail, which had to bear a share of those costs, never used the System. On the other hand, street collection costs were also considered institutional costs, irrespective of the fact that second and third class mail cannot be mailed in street corner boxes.

⁹⁸ 569 F. 2d 570, at 590, footnote 81.

⁹⁹ The only apparent justification for the court's inventiveness is in the statutory language of subsection 3, which speaks in terms of "direct and indirect postal costs attributable to that class or type plus that portion of all other costs of the Postal Service reasonably assignable to such class or type." That language makes it seem that the drafters had in mind three cost categories, but no one has ever been able to figure out the difference between "indirect" and "all other" costs. As a consequence, the Postal Service and the Postal Rate Commission have always spoken in terms of those costs which can be attributed to a particular class of mail as "attributable" or "direct" costs, and those costs which could not be attributed as "assignable," institutional or indirect costs.

¹⁰⁰ 569 F. 2d 570, at 588-589.

¹⁰¹ In NAGCP III, the Court of Appeals, made even clearer its conviction that Congress was worried more about influence in postal rate-setting

than anything else, and threw the ball back to Congress as a policy matter: "In the context of postal ratemaking, however, the dominant objective of Congress, as ascertained by the court in NAGCP I, was not so much the regulation of demand for postal services as the prevention of discrimination among the mail classes. . . . The choice of goals and objectives is a policy choice of the legislature, and the court's function is to ascertain the legislature's choice and apply it, including the assurance of faithful application by agencies which make decisions subject to judicial review." National Association of Greeting Card Publishers vs. U.S.P.S., 607 F.2d 392 (D.C. Cir. 1979) at 403-4.

¹⁰²Newsweek v. U.S. Postal Service, 663 F.2d 1186 (Second Circuit, 1981), cert. granted April 19, 1982.

¹⁰³National Association of Greeting Card Publishers v. U.S.P.S., (NAGCP II), no. 76-1611, D.C. Cir. June 27, 1978, and NAGCP III, 607 F. 2d 392, cert. denied, Jan. 1980.

¹⁰⁴Whether the Postal Service is "overcharging" first class mail users is a sharply controverted issue, and obviously depends on how one apportions fixed costs. The organized mailers contend that they don't need a fleet of delivery trucks adequate to deliver six days a week; it's first class that needs them. UPS, they point out, delivers parcels only two days a week in some areas. By that logic, it is the second, third, and fourth class users who are being overcharged for the benefit of a service capacity required only for first class mail.

¹⁰⁵1979 Hearings at 80. And of course the opponents of Inverse Elasticity Rule pricing have repeatedly pointed out the same thing.

¹⁰⁶R77-1. According to the Commission, all classes of mail meet at least 100% of costs, with first class contributing 124%.

¹⁰⁷The New York Times, April 22, 1980, pp. 1 and A18.

¹⁰⁸The answer to one's wonder is found in Postmaster General Bolger's statement of April 21, 1980, attributing the varying differential increases to "new and finer cost studies." See "Statement by Postmaster General William F. Bolger," Mimeo, April 21, 1980 at p.4.

¹⁰⁹569 F. 2d 570, at 588, footnote 65.

¹¹⁰39 U.S.C. 601-606; 18 U.S.C. 1693-1699, 1724. For more detail about these statutes, which were enacted in 1845, see George L. Priest, "The History of the Postal Monopoly in the United States," Journal of Law and Economics, vol. 13 (1973).

¹¹¹1976 Hearings, pt. 4 at 167. Crane argued that repeal would give the Postal Service incentive to operate efficiently "by virtue of the fact that there would be a number of firms in the field and alternative means of delivery (and) labor demands for 'no-cut' contracts would be far less reasonable and therefore less likely. By the same token, wage settlements would be likely to reflect more accurately the economics of the situation rather than the ability of the union to force a settlement irrespective of the financial position of the Postal Service."

- 112 Changing the Private Express Laws: Competitive Alternatives and the United States Postal Service, Department of Justice Report 1-1977, (1977), at 8. See also Leonard Waverman, "Pricing Principles: How Should Postal Rates Be Set?," in R. Sherman, ed., Perspectives on Postal Service Issues (Washington: American Enterprise Institute, 1980).
- 113 See John Haldi, Postal Monopoly: An Assessment of the Private Express Statutes (Washington: American Enterprise Institute, 1974).
- 114 See Changing the Private Express Laws, op cit. note 83 supra.
- 115 New York Times, January 20, 1977; 21:5.
- 116 Testimony of Representative Philip Crane (Ill.), Hearings before Senate Committee on the Post Office and Civil Service, 94th Congress, 2nd Session pt. 4 at 167-170.
- 117 Hearings have occasionally been held on the Private Express Statutes. See Private Express Statutes, Hearings Before the Subcommittee on Postal Operations and Services, 96th Congress, 1979. As this work goes to press in 1982, the Senate Subcommittee on Economic Goals and Intergovernmental Policy has announced a series of hearings on the same subject.
- 118 1976 Hearings, pt. 1 at 53. It is as speculative as it is ironic to think that in addition to the promptings of ever-rising rates, it may have been an initiative of the Postal Service itself which gave repeal of the private express statutes such saliency as it acquired in the mid-Seventies. In 1973, the Postal Service proposed a new definition of letter mail which included newspapers and magazines, so as to bring them within the protection of the Private Express Statutes, but at the same time suspended application of the statutes' prohibition of private carriage to them. Despite the fact that newspapers and magazines had always been regarded as covered by the Private Express Statutes, that move looked very threatening indeed to newspaper and magazine publishers who vigorously opposed the redefinition as too broad and because it implied that the suspension might at some point be dropped entirely.
- 119 Its membership included the following persons: Gaylord Freeman, Honorary Chairman, First National Bank of Chicago, Chairman; James H. Rademacher, Retired President, National Association of Letter Carriers, Vice Chairman; Rose Blakely, Businesswoman; David W. Johnson, General Executive Vice President, American Postal Workers Union; Paul J. Krebs, Consultant; Kent Rhodes, Chairman of the Board, Reader's Digest Association; and Hobart Taylor, Jr., an attorney.
- 120 The full text of the Commission's recommendations are contained in the Appendix.
- 121 On May 15, 1980, the Committee favorably reported out H.R. 826, discussed below.
- 122 These two are singled out because they were passed, by lopsided majorities, in the House of Representatives. At least a dozen other bills have been introduced in both houses. For a brief discussion of each of them, see American Enterprise Institute. Postal Service Legislative Proposals (Washington: American Enterprise Institute, 1977).

¹²³New York Times, June 12, 1977, 1:1.

¹²⁴Id.

¹²⁵A similar but not identical bill, S. 1692, was introduced in the Senate during the same session, by Senators John Melcher (D-Mont.), Quentin Burdick (D-N.Dak.), and George McGovern (D-S.Dak.).

¹²⁶Testimony of W. Bowman Cutter, Executive Associate Director for Budget, OMB in Joint Hearings before the House Subcommittee on the Post Office and Services and the Subcommittee on Postal Personnel and Modernization of the Committee on the Post Office and Civil Service, 95th Congress, 1st Session (1977) at 179-180, hereinafter cited as 1977 Hearings.

¹²⁷Id. at 180.

¹²⁸Id. at 181.

¹²⁹New York Times, June 12, 1977. See also New York Times, March 10, 1977, 49:2 where Postmaster General Bailar notes: "[t]here are some very practical political problems about trying to go into electronic funds transfer or electronic communication of messages, even though it is a very popular issue--especially among those people who feel that we need a Postal Service of size and pervasiveness, touching all facets of the nation. . . .

It is a popular issue among the people who feel that the Federal Government's payroll should stay where it is rather than go down."

¹³⁰1977 Hearings at 207.

¹³¹Id. at 91, statement of Robert E. Smith, a vice president of UPS.

¹³²Id. at 82-83.

¹³³Id. at 12. His argument is premised on the view that if full attribution of costs is made to each class of service incurring the costs, and, therefore, parcel post were required to pay the lion's share of the fixed expenses of the Bulk Mail Centers used principally by parcel post but which have unused capacity far beyond present demand, the parcel post rates could not possibly be competitive with UPS rates.

¹³⁴Id. at 41-47, 62.

¹³⁵Id. at 12, 14, and 22.

¹³⁶Id. at 22.

¹³⁷1979 Hearings, at 76.

¹³⁸Id., at 105, 107.

¹³⁹Id., at 119.

- ¹⁴⁰Id., at 126.
- ¹⁴¹United States Senate, 96 Congress 2d Sess., Report No. 96-776, H.R. 826, Sec. 8(a). See also accompanying committee report No. 96-776 from the Committee on Governmental Affairs. May 15, 1980.
- ¹⁴²See Fleishman, ed., The Future of the Postal Service, (New York: Praeger, 1982).
- ¹⁴³It is possible, of course, that the Postal Service appropriations will fall victim to President Reagan's budget reduction. A concerted effort of that kind is the only serious threat to continued postal appropriations, and it is not clear in the spring of 1982 that even such an effort can do in the postal subvention.
- ¹⁴⁴Markup Hearings Before the Committee on Post Office and Civil Service, March 10, 1982, p. 29.
- ¹⁴⁵In an interview with the author.
- ¹⁴⁶In an interview with the author.
- ¹⁴⁷In an interview with the author.
- ¹⁴⁸In an interview with the author.
- ¹⁴⁹In an interview with the author.
- ¹⁵⁰In an interview with the author.
- ¹⁵¹In an interview with the author.
- ¹⁵²General Accounting Office, Report, 1979.
- ¹⁵³In interviews with the author.
- ¹⁵⁴In interviews with the author.
- ¹⁵⁵See Nine-Digit Zip Code System, Hearing Before the Subcommittee on Postal operations and services, May 12, 1981.
- ¹⁵⁶See Effectiveness of the Postal Reorganization Act, Joint Hearings, December, 1981, at 21.
- ¹⁵⁷1979 Hearings, at 204.
- ¹⁵⁸Id., at 64.
- ¹⁵⁹Id., at 119.
- ¹⁶⁰Id., at 101.
- ¹⁶¹Id., at 157.

¹⁶²Id., at 39.

¹⁶³See 1981 Hearings, pp 7 and 17. Statement of Chairman Hardesty.

¹⁶⁴See examples discussed in footnote 21 supra.

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