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THE U.S. POSTAL SERVICE AND POSTAL INSPECTION SERVICE: MARKET COMPETITION AND LAW ENFORCEMENT IN CONFLICT?

HEARING

BEFORE THE

SUBCOMMITTEE ON THE POSTAL SERVICE

OF THE

COMMITTEE ON
GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

JULY 25, 2000

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THE U.S. POSTAL SERVICE AND POSTAL INSPECTION SERVICE: MARKET COMPETITION AND LAW ENFORCEMENT IN CONFLICT?

TUESDAY, JULY 25, 2000

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE POSTAL SERVICE,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 1 p.m., in room 2247, Rayburn House Office Building, Hon. John M. McHugh (chairman of the subcommittee) presiding.

Present: Representatives McHugh, LaTourette, and Fattah.

Staff present: Tom Sharkey, Loren Sciurba, Jane Hatcherson, Heea Vazirani-Fales, Matthew Batt, clerk; Robert Taub, Dan Moll, deputy staff director, full committee; Earley Green, Denise Wilson, and Neil Snyder.

Mr. MCHUGH. Good afternoon. The hearing will come to order.

On behalf of all of us here on the subcommittee, I want to welcome you and thank you for being here as we continue our oversight agenda of the 106th Congress.

In 1970, the Postal Reorganization Act redefined the Postal Service as an independent, self-sufficient establishment of the executive branch. Under this new regime, the Postal Service was to become more business-like in its structure and operations, although I happen to believe, as most of you are, I am sure, aware, that after 30 years the time has come for additional reforms of the 1970 act. I think, by most reasonable measures, it has been and remains a success.

The Postal Service has improved its service and efficiency, it is no longer supported by the taxpayer, and it has diversified its operations; however, the Postal Service is not a private corporation. It is still very much a part of the Federal Government, and, as it continues its competitive mission, questions arise as to how much of its Federal power should be employed in market competition.

Of all the trappings of government still held by the Postal Service, perhaps one of the most potent is its authority over the Postal Inspection Service. For over 200 years, postal inspectors have ensured the sanctity of the seal and have done so incredibly well by enforcing Federal statutes that protect the mail, Postal employees, customers, and assets.

In this capacity, the Inspection Service plays a major role in a wide range of law enforcement activities. The Inspection Service does a fine job, but there is a potential for conflict of interest be-

tween Postal management's need to generate revenue and the Inspection Service's mission to enforce the law.

I first raised these concerns to the Justice Department in 1998 when it was proposed that the Attorney General delegate authority to the Postal Service to investigate violations of various wire and electronic communications laws. I questioned if perhaps this constituted an unfair competitive advantage in the area of electronic commerce.

The Department's response of December 3, 1999, contains some interesting observations and raised even more questions. The letter states that, although the Department believes the Attorney General's delegation of the authority was appropriate, some basic questions about the relationship of the Inspection Service to the Postal Service remain.

We have made the letter available today for inclusion in the hearing record, but I would like to quote just one section this afternoon, and I would ask unanimous consent to include the entire correspondence as part of the record, and without objection that will be done.

Quoting now,

> Fundamental questions about the Federal identity of the position need to be addressed if there is to be any reconciliation of law and policy. The drafters of the Postal Reorganization Act of 1971 apparently did not contemplate the Postal Service's emergence as a profit-motivated business and did no provide safeguards against the possibility of conflicts between the Postal Service's goals in managing the Inspection Service and the law enforcement goals of the Federal Government.
>
> Current law also does not address problems of disparity in the Federal criminal justice system's handling of crimes against the Postal Service and crimes against its private sector competitors.

Since the date of this letter, the Postal Service has stepped up its e-commerce initiatives and has touted the security of the Inspection Service as a feature that sets its products apart from those of its private competitors. It is no doubt true that the Inspection Service affords valuable protection for consumers, but this sort of marketing raises concerns among private competitors who do not enjoy the luxury of an in-house Federal law enforcement agency. We would never imagine giving Microsoft law enforcement authority over their e-commerce products, for example. Some also suggest we should question the wisdom of giving the Postal Service that same power.

Control over the Inspection Service also raises questions about the continued effectiveness of law enforcement. The Inspection Service is directed by Postal management and reliant upon Postal revenue. Although the Postal Service is financially secure today, the Postmaster General has warned us in this subcommittee that lean times will soon arrive. If this comes to pass, the Postal Service may not be able to adequately fund the Inspection Service, and, even when funds are available, the very fact that the Postal Service has a financial interest in the priorities of the Inspection Service can raise the perception that such priorities are not driven solely by law enforcement concerns.

The conflict of interest exists, and we must decide what, if anything, should be done about it. Some solutions have already been proposed. For instance, Congress could enact legislation transferring the Inspection Service to another executive agency with law

enforcement responsibility. Others suggest that the Inspection Service jurisdiction shall either be greatly expanded to equally protect private postal delivery and express services or radically reduced to cover those laws directly related to the Postal monopoly.

I want to emphasize that the purpose of today's hearing is not to take the Inspection Service away from the Postal Service, although that is an option that has been proposed. Our objective today is simply to explore in the light of day the relationship between the Postal Service's competitive agenda and the Inspection Service's law enforcement mission.

It is my hope that this will be a first step in an open policy discussion on what I believe is a very serious issue, and I thank you all for being here today.

With that, I would be happy to yield to the distinguished gentleman from the great State of Philadelphia—great State of Philadelphia? Well, may be—a place I am looking toward visiting in the next several days. The ranking member, Mr. Fattah.

[The information referred to follows:]

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 3, 1999

The Honorable John M. McHugh
Chairman, Subcommittee on the Postal Service
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This responds to concerns you have regarding the competitive impact of the delegation of investigative jurisdiction to the Postmaster General pursuant to 18 U.S.C. Section 3061(b)(2). I agree with you that the delay which occurred in this matter is intolerable. There appears simply to be no excuse for it.

I can assure you that it was never our intention to overlook or discount your competition policy concerns in previous correspondence. In providing a detailed discussion of the statutory criteria for a Section 3061 delegation, we meant to clarify the factors that the Attorney General must consider when evaluating a delegation of authority to the Postmaster General for law enforcement purposes. We continue to believe that the Attorney General's decision to delegate authority can only be evaluated in the context of the statutory criteria provided by Congress.

The postal laws confer two significant criminal justice functions upon the Postal Service: control of a federal law enforcement agency and responsibility for the federal criminal laws designed to protect Postal Service assets. Before any permanent alteration is made to the scope of the Postal Inspection Service's enforcement authority, those distinctions need to be evaluated and possibly redrawn. However, the consideration of these issues does not negate the Attorney General's responsibility to ensure that the Postal Inspection Service has the enforcement tools it needs to carry out its federal enforcement mandate. The Postal Inspection Service has a prominent role in high-profile, cooperative federal initiatives to deter the unlawful use of the mail or electronic equivalents of the mail in the commission of fraudulent crimes against consumers. Recent legislation broadening the Postal Inspection Service's enforcement authority to investigate and stop deceptive sweepstakes and skill contests is but one example of the confidence that Congress has placed in the Postal Inspection Service to appropriately carry out its law enforcement activities.

The Department of Justice understands the potential for abuse that exists as a result of the law enforcement powers and protections assigned to the Postal Service, and we concede that support for the enforcement activities of the Postal Inspection Service may be viewed as somewhat incongruous with this concern. However, the tension is not a result of internal policy inconsistencies at the Department of Justice but, instead, it is a reflection of fundamental and lasting changes in the relationship of the Postal Service to the federal government.

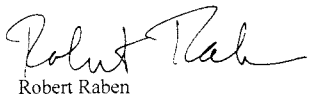
Fundamental questions about the federal identity of the Postal Service need to be addressed if there is to be any reconciliation of law and policy. The drafters of the Postal Reorganization Act of 1971 apparently did not contemplate the Postal Service's emergence as a profit-motivated business and did not provide safeguards against the possibility of conflicts between the Postal Service's goals in managing the Postal Inspection Service and the law enforcement goals of the Federal Government. Current law also does not address problems of disparity in federal criminal justice's system's handling of crimes against the Postal Service and crimes against its private sector competitors.

We are very reluctant to address questions based on hypothetical laws, and therefore we are unable to address some of the specific questions associated with your competition concerns.

To summarize, we do not believe that the Attorney General's delegation of authority to the Postmaster General impedes progress on postal reform or is inconsistent with current law. If there are inconsistencies to be found, it is because of the obsolescence of the postal laws and not because of divided loyalties or positions within the Department.

We commend the subcommittee for leading the national debate on postal reform and reiterate our support for your work. Please let me know if you have any remaining questions or concerns that require our attention.

Sincerely,



Robert Raben
Assistant Attorney General

cc: The Honorable Chaka Fattah
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BERNARD SANDERS, VERMONT
INDEPENDENT

December 2, 1999

The Honorable Janet Reno
Attorney General
United States Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Madame Attorney General:

I am writing to respectfully request that the Department provide the courtesy of a written response to my letter to you of June 7, 1999, regarding the serious competition policy concerns that are raised by your delegation to the Postal Service of additional authority to enforce wire and related electronic communication laws.

Unfortunately, a six-month period without any written response whatsoever is consistent with the poor response time to the Subcommittee's correspondence with the Department during the past five years.

Please provide a full and detailed written reply to the June 7 letter no later than Monday, December 6, 1999. If the Department fails to respond by this deadline, I will request the full Committee on Government Reform to take appropriate action.

Sincerely yours,

This is intolerable!

John M. McHugh, Chairman
Subcommittee on the Postal Service

cc: Honorable Dan Burton, Chairman, Committee on Government Reform

Honorable Joel I. Klein, Assistant Attorney General, Antitrust Division

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BERNARD SANDERS, VERMONT
INDEPENDENT

June 7, 1999

The Honorable Janet Reno
Attorney General
United States Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Madame Attorney General:

Thank you for your Department's response to my October 13, 1998 letter regarding the delegation to the Postal Service of additional authority to enforce wire and credit card fraud laws. Copies of both letters are enclosed for your reference.

While your Department's response clearly explained the legal grounds for the decision to expand the Postal Service's law enforcement authority, it overlooked my concerns about the effect of such a delegation on fair competition between the Postal Service and private industry for the provision of various electronic products and services. Note that your Department's response states that the Postal Service's plans to offer electronic commerce products and services were "not especially important to the Department's analysis."

I find this position difficult to reconcile with the government's interest in fair competition. A Postal Service with the authority to itself enforce criminal wire and credit card fraud laws would, I believe, have an unfair advantage over private sector suppliers of electronic products and services, who obviously lack similar authority.

I would appreciate a written follow-up response explaining this delegation of law enforcement authority in light of the government's interest in fair competition, given the fact that the Postal Service may soon be competing with private industry in this field. I would especially appreciate the input of the Department's Antitrust Division.

With best wishes, I am

Sincerely yours,

John M. McHugh, Chairman
Subcommittee on the Postal Service

cc: The Honorable Joel I. Klein, Assistant Attorney General, Antitrust Division
William J. Henderson, Postmaster General

U.S. Department of Justice

Office of Legislative Affairs

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Office of the Assistant Attorney General

Washington, D.C. 20530

JAN 14 1999

The Honorable John M. McHugh
Chairman, Subcommittee on the
Postal Service
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515-6143

Dear Mr. Chairman:

I am writing to respond to your letter dated October 13, 1998 to the Attorney General regarding the Postmaster General's request for a delegation of investigative authority to the Postal Inspection Service. The Attorney General had already signed the requested delegation on October 9, 1998 when you wrote your letter.[1]

Under the authority of 18 U.S.C. Section 3061(b)(2), the Attorney General may delegate investigative jurisdiction for specific federal crimes to the U.S. Postal Inspection Service when she determines that "violations of such laws have a detrimental effect upon the operation of the Postal Service." The Postmaster General specifically requested investigative jurisdiction under this provision for violations of 18 U.S.C. Section 1029 (access device fraud); Section 1030 (computer fraud and abuse); Section 1343 (fraud by wire, radio, and television); and Section 2701 (unlawful access to stored communications).

When the proposed Delegation was forwarded from the Postal Service to the Department of Justice, it was accompanied by two previously signed Memoranda of Understanding--one between the Director of the FBI and the Chief Postal Inspector and a similar agreement between the Chief Postal Inspector and the Director of

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[1] Postmaster General Henderson signed the proposed delegation on August 18, 1998 and the Postal Inspection Service sent it to the Department of Justice for the Attorney General's consideration. The supporting memoranda of understanding that accompanied the delegation had been signed as follows: by the Chief Postal Inspector on May 28 and June 17, 1998; by the Director of the Secret Service on June 24, 1998; by the Director of the FBI on June 10, 1998.

the U.S. Secret Service (which shares general jurisdiction with the FBI for Section 1029 and parts of Section 1030).

The U.S. Postal Service sought this delegation on behalf of the Postal Inspection Service because the systems by which the Postal Service processes the mail, accounts for revenues, sells postage, and manages personnel and property are increasingly electronic. In requesting the delegation, the Postal Service also pointed to its current communications systems that validate and deliver electronic messages. While the Service also explained that it intends to greatly expand its electronic services to include an "electronic postmark" and secure payment systems, these plans were not especially important to the Department's analysis. Indeed, criminal attacks against existing Postal computers could injure the Postal Service as much or more than any attack against conventional mail. Thus, the Postal Inspection Service's request for expanded jurisdiction was a logical extension of its existing jurisdiction to defend its systems and services.

The Delegation's two MOUs--which create mutual obligations to share relevant information, coordinate investigative strategy, and resolve disputes--were the result of long and careful negotiation among the three criminal investigative agencies. However, while the FBI and the Secret Service are the only two federal agencies with general jurisdiction over computer crimes, many other federal criminal agencies investigate computer crimes directed against their own systems and services. These include the Department of Defense (Defense Criminal Investigative Service, Air Force Office of Special Investigations, Naval Criminal Investigative Service, and the Army Criminal Investigative Service) and other federal agencies such as NASA and the Department of Energy acting under the criminal investigative authority of their Inspectors General.[2] In this regard, the delegation merely puts the Postal Inspection Service on the same footing as these other criminal agencies.

While more federal agencies are developing the ability to investigate electronic crimes against their own networks, it becomes more important than ever for these criminal agencies to integrate their efforts, as you quite correctly suggest in your letter. This investigative cooperation was the purpose of the two MOUs described above, which refer extensively to the National Infrastructure Protection Center (NIPC), a multi-agency investigative coordination center directed by the FBI. In fact, the President, in Presidential Decision Directive 63, designated the NIPC as the lead coordinating entity in the investigation of federal computer crimes. This national plan, in which the Postal

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[2]Indeed, the Inspector General of the Postal Service would have the same general criminal jurisdiction.

Inspection Service now plays a role, accomplishes two things: it employs the full resources of federal law enforcement in defending the nation's critical information systems while improving the agencies' ability to work together to their best advantage.

In your letter, you inquired whether the Department of Justice determined whether or not this grant of investigative jurisdiction would confer an "unfair competitive advantage on the Postal Service." However, as you know, the Postal Service is a creation of federal law, and the delegation statute in question, 18 U.S.C. Section 3061(b)(2), directs the Attorney General to consider whether the specified crimes would have a "detrimental effect upon the operation of the Postal Service." She is not instructed by the statute to evaluate commercial interests or other non-investigative factors.[3]

In reviewing this request from the Postmaster General, the Department of Justice recognized two important elements: 1) the Postal Service's interest in its own electronic systems and services is as valid as its authority over its corporeal property; and 2) the Postal Service was able to reach balanced coordination agreements with the FBI and Secret Service--the investigative agencies with general criminal jurisdiction over these matters.

The Department of Justice agrees with the President's Commission on Critical Infrastructure Protection that protecting important information systems in the United States must become a high federal priority. Moreover, this is a huge and difficult task, and we cannot afford to turn away federal law enforcement agencies ready to contribute to this mission.

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[3]You inquire in your letter whether the Department has "considered the impact of delegating this federal law enforcement authority only to the Postal Service and not to other providers of e-mail and electronic communications." As noted above, many federal agencies, such as DOD and NASA, already have both in-house communications providers and in-house law enforcement authorities with jurisdiction to investigate--in accord with strict criminal procedure--any computer crimes directed against those systems or services. However, the Attorney General could not, under this or any other statute, designate non-agent communications providers themselves--whether public or private--to conduct law enforcement investigations of any kind. Indeed, this distinction between rules governing communications providers and those controlling law enforcement agents (even within the same agency) lies at the heart of the Electronic Communications Privacy Act, 18 U.S.C. Sec. 2701 *et seq.*

Thank you for sharing your concerns about this with us. Please do not hesitate to contact us if you would like additional assistance regarding this or any other matter.

Sincerely,

Dennis Burke

Dennis K. Burke
Acting Assistant Attorney General

cc: The Honorable Chaka Fattah
Ranking Minority Member

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BERNARD SANDERS, VERMONT
INDEPENDENT

October 13, 1998

The Honorable Janet Reno
Attorney General
United States Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Madame Attorney General:

I am writing in regard to the enclosed proposed delegation of authority from you to the Postmaster General, as well as recently signed memoranda of understanding between the Postal Inspection Service and the Federal Bureau of Investigation and the Secret Service. These documents authorize the Postal Inspection Service to conduct law enforcement for violations of various wire and electronic communications laws. I would appreciate a detailed explanation of the legal and substantive basis for the delegation of authority and memoranda.

As you know, the Subcommittee has been examining the role, if any, for the Postal Service in the provision of electronic services to the public. One concern voiced by witnesses before the Subcommittee is whether the Postal Service is inappropriately broadening its mission into electronic commerce services by unfairly leveraging its assets as a $60 billion government agency, which enjoys the protections of a statutory monopoly for the delivery of letter mail. The Department recently submitted comments on amendments to my legislation, H.R. 22, which advances the first comprehensive modernization of our nation's postal laws since 1970. A central component of this legislation is to ensure that in the provision of competitive products, the Postal Service is competing fairly with the private sector.

I would appreciate an explanation as to why the Department believes there is any need to give the Postal Service additional law enforcement authority to protect its electronic services – including those that are not yet offered by the Service. Why is the Postal Service's current authority to protect its assets inadequate to the task?

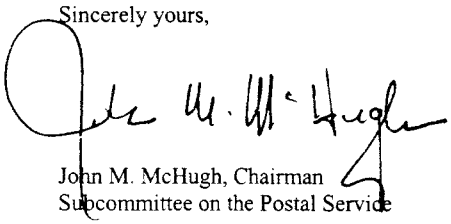
It may be difficult to foresee the outcome of this delegation in a dynamic and rapidly changing communications marketplace. What analyses has the Department conducted of the Postal Service's need for this delegation and the potential consequences on competition? Is the Department concerned about the potential for unintended consequences if the proposed delegation of authority is approved and implemented?

Also, in your response to this letter, please address the following questions in light of the fact that Congress has not explicitly entrusted electronic communications services to the Postal Service: Given the government's interest in fair competition, would broadening the Service's law enforcement authority into electronic products confer an unfair competitive advantage on the Postal Service? How is it appropriate to grant this proposed delegation to the Postal Service when it is also attempting to offer a variety of commercial electronic commerce services? Has the Department considered the impact of delegating this federal law enforcement authority only to the Postal Service and not to other providers of e-mail and electronic communications? Would it be more effective and efficient to have all federal law enforcement in this area centralized in a single agency?

Please provide a written response on this matter at your earliest convenience. I would further appreciate your commitment to not move forward on the enclosed delegation until the Department fully examines and analyzes the potential consequences of this action. In that regard, I believe that it would also be helpful for the Department to reassess the appropriateness of the enclosed memoranda in light of the potential impact on competition.

With best wishes, I am

Sincerely yours,



John M. McHugh, Chairman
Subcommittee on the Postal Service

Enclosures

cc: William J. Henderson, Postmaster General and Chief Executive Officer

Karla W. Corcoran, Inspector General, U.S. Postal Service

Honorable Henry J. Hyde, Chairman, Committee on the Judiciary

Honorable Tom Bliley, Chairman, Committee on Commerce

Honorable F. James Sensenbrenner, Jr., Chairman, Committee on Science

DELEGATION OF AUTHORITY

BETWEEN THE

ATTORNEY GENERAL OF THE UNITED STATES

AND UNITED STATES POSTAL SERVICE

The Attorney General of the United States and the U.S. Postal Service are authorized by 18 U.S.C. § 3061 (b)(2) (Section 6253, Pub. L. 100-690) to provide by agreement for the enforcement of laws of the United States by the Postal Service where the Attorney General determines that violations of such laws have a detrimental effect upon the operations of the U.S. Postal Service.

The Attorney General finds that, acting pursuant to the mandate of the Postal Reorganization Act of 1970, Pub. L. 91-375, to provide prompt, reliable, and efficient services (39 U.S.C. § 101 (b)), the U.S. Postal Service has developed, uses, and will continue to use computerized processes for the efficient processing and delivery of mail, accounting for postal revenues, and for management of personnel and property. Moreover, databases within computers store information about Postal Service operations, deliverable addresses, and financial transactions, and present technology offers the possibility of unlawful access to and manipulation of these essential processes and databases.

In addition, the U.S. Postal Service offers communications systems for the electronic receipt, validation, transmission, and delivery of electronic messages, as well as for the payment and receipt of postage, and it intends to expand these as well as develop other communication services for the American public. Present technology offers the possibility of interception, alteration and counterfeiting of electronic messages and postage by persons acting with fraudulent intent. The U.S. Postal Service proposes to offer services that will provide safeguards against such activity. These services include an "electronic postmark" that will provide evidence of the sending and/or receipt of electronic messages between senders and recipients of electronic messages, as well as a secure system for the payment and receipt of postage. The utility and value of these services to the public is directly related to their integrity. Criminal attacks against their integrity would have a detrimental effect upon the operations and finances of the U.S. Postal Service.

Building upon its experience and expertise in protecting the integrity of conventional, corporeal mail, the U.S. Postal Service proposes to use the investigative and security resources of the Postal Inspection Service to preserve and protect the integrity of the databases it uses to operate the Nation's universal postal service and the electronic communication services it offers and will offer to the public. To achieve this purpose, the U.S. Postal Service should be able to take advantage of the protection provided by existing statutes prohibiting access device, computer, and wire fraud within the limited jurisdictional area granted by this delegation.

THEREFORE, the Attorney General and the Postmaster General agree as follows:

1. Purpose

The general purpose of this delegation is to ensure the Postal Inspection Service does not lose its ability to investigate criminal conduct against the present and future operations and services of the U.S. Postal Service. The Attorney General and the Postmaster General agree that a limited delegation of jurisdiction to investigate violations of Title 18, United States Code, §§ 1029, 1030, 1343, and 2701 will accomplish this objective. It is not the intention of the Attorney General and the Postmaster General to expand the investigative role of the Postal Inspection Service beyond the provisions of 18 U.S.C. § 3061.

In this context, the parties understand "criminal conduct that has a detrimental effect upon the operations of the Postal Service" to mean criminal conduct in which the Postal Service is an actual or intended victim. It also means conduct that directly affects electronic messages conveyed by the Postal Service and the counterfeiting or misuse of any electronic postmarks used by the Postal Service. It also means criminal conduct directed against any computer, computer system, communication system, delivery system, payment system or other similar property owned or leased by or provided to the Postal Service.

2. Limited Jurisdiction

The U.S. Postal Service recognizes the concurrent jurisdiction of the Federal Bureau of Investigation and the U.S. Secret Service as the principal law enforcement agencies responsible for the enforcement of 18 U.S.C. §§ 1029 and 1030, and the Federal Bureau of Investigation as the principal enforcement agency responsible for the enforcement of 18 U.S.C. §§ 1343 and 2701.

The Federal Bureau of Investigatic ' and U.S. Secret Service recognizes the U.S. Postal Inspection Service as the principal law enforcement agency responsible for the investigation and enforcement of laws affecting the U.S. Postal Service, its property and property in its custody, mail and the use of the mails, and other postal offenses, as established by 18 U.S.C. § 3061 and by 39 U.S.C. § 404(a)(7).

These three law enforcement agencies have, in a spirit of cooperation intended to strengthen the enforcement of these statutes, established and signed Memoranda of Understanding ("MOU") that define the limited jurisdiction granted by the delegation. A copy of each of the MOUs is attached and made a part of this delegation.

3. Delegation of Authority

In accordance with 18 U.S.C. § 3061 (b)(2) (Section 6253, Pub. L. 100-690), the Attorney General hereby finds that conduct in violation of 18 U.S.C. §§ 1029, 1030, 1343, or 2701 can be directed against an operation or service of the U.S. Postal Service, and clearly such conduct would have a detrimental effect upon the U. S. Postal Service. Therefore, within the terms of the MOUs, the Attorney General authorizes the Postal Inspection Service to investigate and prevent violations of these statutes, and to arrest persons who violate these statutes,

Janet Reno Attorney General U.S. Department of Justice	Date	William Henderson Postmaster General United States Postal Service	Date

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE FEDERAL BUREAU OF INVESTIGATION
AND THE POSTAL INSPECTION SERVICE

Pursuant to the mandate of the Postal Reorganization Act of 1970, Pub. L. 91-375 to provide prompt, reliable, and efficient services (39 U.S.C. § 101 (b)), the U. S. Postal Service has developed and uses computerized processes for the efficient processing and delivery of mail, the accounting for postal revenues, and the management of personnel and property. Moreover, databases within computers store information about U. S. Postal Service operations, deliverable addresses, and financial transactions. Technology offers the possibility of unlawful access to and manipulation of these essential processes and databases.

In addition, the U. S. Postal Service offers communications systems for the electronic receipt, validation, transmission, and delivery of electronic messages, as well as for the payment and receipt of postage, and it intends to expand these as well as develop other similar services. Technology offers the possibility of interception, alteration and counterfeiting of electronic messages and postage by persons acting with fraudulent intent. The U. S. Postal Service proposes to offer services that will provide safeguards against such activity. It will offer an "electronic postmark" that will provide evidence of the sending and/or receipt of electronic messages between senders and recipients of electronic messages. It will offer a secure system for the payment and receipt of postage.

The utility and value of these services to the public is directly related to their integrity. Criminal attacks against their integrity would have a detrimental effect upon the operations and finances of the U. S. Postal Service. Building upon its experience and expertise in protecting the integrity of conventional, corporeal mail, the Postal Inspection Service proposes to use its investigative and security resources to preserve and protect the integrity of the databases used by the U. S. Postal Service to operate the Nation's universal postal service and the electronic communication services it offers and will offer to the public. To achieve this purpose, the Postal Inspection Service should be able to take

advantage of the protection provided by existing statutes prohibiting access device, computer, and wire fraud within the limited jurisdictional area described in this memorandum.

THEREFORE, the signatories agree as follows:

1. Purpose

The Attorney General of the United States and the Postmaster General of the U. S. Postal Service are authorized by 18 U.S.C. § 3061(b)(2) (Section 6253, Pub. L. 100-690) to provide by agreement for the enforcement of laws of the United States by the Postal Inspection Service where the Attorney General determines that violations of such laws have a detrimental effect upon the operations of the U. S. Postal Service. It is the intention of the U. S. Postal Service to obtain authority from the Attorney General for the enforcement of 18 U.S.C. §§ 1029, 1030, 1343, and 2701.

The general purpose of this Memorandum of Understanding ("MOU") is to ensure that, with the evolution of new Postal Service products that do not constitute "mail" in the traditional, corporeal sense, the Postal Inspection Service does not lose its ability to investigate criminal conduct directed against the operations of the U. S. Postal Service. The signatories to this MOU agree that a limited delegation of jurisdiction to the Postal Inspection Service to investigate violations of 18 U.S.C. §§ 1029, 1030, 1343, and 2701 will accomplish this objective. The signatories, therefore, support a delegation of authority to prevent and investigate violations of these statutes and to arrest persons who violate these statutes, within the terms of this MOU.

It is not the intention of the parties to expand the investigative role of the Postal Inspection Service beyond the provisions of 18 U.S.C. § 3061. In this context, the parties understand the phrase "criminal conduct that has a detrimental effect upon the operations of the U. S. Postal Service" to mean that criminal conduct in which the U. S. Postal Service is an actual or intended victim. It also means conduct that directly affects electronic messages conveyed by the U. S. Postal Service and the counterfeiting or misuse of any electronic postmarks used by the U. S. Postal Service. It also means criminal conduct directed against any computer, computer system, communication system,

delivery system, payment system or other similar property owned or leased by the U. S. Postal Service.

2. Recognition and Delegation of Authority

The U. S. Postal Service recognizes the relevant jurisdiction of the Federal Bureau of Investigation ("FBI") as a principal enforcement agency for the enforcement of 18 U.S.C. §§ 1029 and 1030 and the principal enforcement agency for enforcement of §§ 1343 and 2701. The Postal Inspection Service will notify and coordinate its investigations relating to these violations with the FBI in accordance with the provisions of this MOU.

The FBI recognizes the Postal Inspection Service as the principal law enforcement agency responsible for the investigation and enforcement of laws affecting the U. S. Postal Service, its property and property in its custody, mail and the use of the mail, and other postal offenses, as established by 18 U.S.C. § 3061 and by 39 U.S.C. § 404(a)(7).

This MOU does not in any way limit the specific investigative authorities of the FBI or the Postal Inspection Service to investigate violations of these statutes pursuant to this Memorandum of Understanding. This MOU is intended to strengthen the enforcement of these statutes by the exercise of a limited delegation of jurisdiction to the Postal Inspection Service to investigate violations of 18 U.S.C. §§ 1029, 1030, 1343, and 2701.

3. Investigative Coordination

Before the commencement of a formal investigation into conduct potentially in violation of the statutes discussed in this MOU, the Postal Inspection Service will notify the FBI at the local level using agreed upon procedures. Upon receipt of this information, the FBI will inform the Postal Inspection Service whether or not the FBI intends to participate in the investigation, is already investigating the conduct or is investigating related conduct. However the investigation may thereafter proceed, the FBI and Postal Inspection Service will endeavor to coordinate investigative activity. The FBI will share with the Postal Inspection Service information developed in other FBI

criminal investigations to the extent that such information indicates criminal conduct directly affecting the U. S. Postal Service.

In addition, when the activity involves a violation of 18 U.S.C. § 1029 or § 1030, the FBI will be notified through the National Infrastructure Protection Center (NIPC), FBI Headquarters, or its successor organization.

Recognizing that the U. S. Postal Service is a significant feature in the nation's critical infrastructure, the FBI will seek to integrate the Postal Inspection Service into the threat analysis and warning functions of the National Infrastructure Protection Center (NIPC). This will permit the Postal Inspection Service to receive timely information regarding threats to its infrastructure and to have access to the analytical capabilities of the NIPC. The FBI and Postal Inspection Service will work to establish mechanisms to ensure that intrusion events on Postal Service computers or other events indicating a possible infrastructure threat are immediately conveyed to the NIPC for analysis.

When the U. S. Postal Service offers a new electronic service to the public the Postal Inspection Service will consult with the FBI regarding its impact upon any of their investigative programs or authority.

4. Dispute Resolution

While the Inspection Service and FBI anticipate working in concert to the extent authorized by law and in accordance with this MOU, if any local dispute arises between the agencies regarding the conduct of an investigation, it should be resolved at the field level. When this can not be accomplished between the FBI Special Agent in Charge (SAC) and the Postal Inspector in Charge (INC), the dispute shall be directed to the respective Headquarters investigative staff for resolution.

5. Amendment

This MOU may be amended only by the mutual consent of the signatories.

6. Effective Dates

This MOU shall be in effect upon its execution by the signatories. It shall be reviewed by the agencies three years after its inception to determine if corrections or adjustment in the delegation of authority or the relationships between the parties is required

Louis J. Freeh 6/10/98 Date
Director
Federal Bureau of Investigation

K. J. Hunter 5/28/98
Kenneth J. Hunter Date
Chief Postal Inspector
Postal Inspection Service

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES SECRET SERVICE
AND THE POSTAL INSPECTION SERVICE

Pursuant to the mandate of the Postal Reorganization Act of 1970, Pub. L. 91-375, to provide prompt, reliable, and efficient services (39 U.S.C. § 101 (b)), the U. S. Postal Service has developed and uses computerized processes for the efficient processing and delivery of mail, the accounting of postal revenues, and the management of postal personnel and property. Moreover, databases within computers store information about Postal Service operations, deliverable addresses, and financial transactions. Technology offers the possibility of unlawful access to and manipulation of these essential processes and databases.

In addition, the U. S. Postal Service offers communications systems for the electronic receipt, validation, transmission, and delivery of electronic messages, as well as for the payment and receipt of postage, and it intends to expand these and develop other similar services. Technology offers the possibility of interception, alteration, and counterfeiting of electronic messages and postage by persons acting with fraudulent intent. The U. S. Postal Service proposes to offer services that will provide safeguards against such activity. It will offer an "electronic postmark" that will provide evidence of the sending and/or receipt of electronic messages between senders and recipients of electronic messages. It will offer a secure system for the payment and receipt of postage.

The utility and value of these services to the public is directly related to their integrity. Criminal attacks against their integrity would have a detrimental effect upon the operations and finances of the U. S. Postal Service. Building upon its experience and expertise in protecting the integrity of conventional, corporeal mail, the Postal Inspection Service proposes to use its investigative and security resources to preserve and protect the integrity of the databases used by the Postal Service to operate the Nation's universal postal service and the electronic communication services it offers and will offer to the public. To achieve this purpose, the Postal Inspection Service should be able to take advantage of the protection provided by existing statutes prohibiting access

device, computer, and wire fraud within the limited jurisdictional area described in this memorandum.

THEREFORE, the signatories agree as follows:

1. Purpose

The Attorney General of the United States and the Postmaster General of the U. S. Postal Service are authorized by 18 U.S.C. § 3061(b)(2) (Section 6253, Pub.L. 100-690) to provide by agreement for the enforcement of laws of the United States by the Postal Inspection Service where the Attorney General determines that violations of such laws have a detrimental effect upon the operations of the U. S. Postal Service. It is the intention of the U. S. Postal Service to obtain authority from the Attorney General for the enforcement of 18 U.S.C. § 1029 and § 1030.

The general purpose of this Memorandum of Understanding ("MOU") is to ensure that, with the evolution of new Postal Service products that do not constitute "mail" in the traditional, corporeal sense, the Postal Inspection Service does not lose its ability to investigate criminal conduct directed against the operations of the U. S. Postal Service. The signatories to this MOU agree that a limited delegation of jurisdiction to the Postal Inspection Service to investigate violations of 18 U.S.C. § 1029 and § 1030 will accomplish this objective. The signatories, therefore, support a delegation of authority to the Postal Inspection Service to prevent and investigate violations of these statutes and to arrest persons who violate these statutes, within the terms of this MOU.

It is not the intention of the parties to expand the investigative role of the Postal Inspection beyond the provisions of 18 U.S.C. § 3061. In this context, the parties understand the phrase "criminal conduct that has a detrimental effect upon the operations of the U. S. Postal Service" to mean that criminal conduct in which the U. S. Postal Service is an actual or intended victim. It also means conduct that directly affects electronic messages conveyed by the U. S. Postal Service and the counterfeiting or misuse of any electronic postmarks used by the U. S. Postal Service. It also means criminal conduct directed against any computer, computer system, communication system, delivery system, payment system, or other similar property owned or leased by the U. S. Postal Service.

2. Recognition and Delegation of Authority

The Postal Inspection Service recognizes the relevant jurisdiction of the U. S. Secret Service as a principal enforcement agency responsible for the enforcement of 18 U.S.C. § 1029 and § 1030. The Postal Inspection Service will notify the U. S. Secret Service of its investigations relating to violations of 18 U.S.C. § 1029 and § 1030 in accordance with the provisions of this MOU.

The U. S. Secret Service recognizes the Postal Inspection Service as the principal law enforcement agency responsible for the investigation and enforcement of laws affecting the U. S. Postal Service, its property and property in its custody, mail and the use of the mail, and other postal offenses, as established by 18 U.S.C. § 3061 and by 39 U.S.C. § 404(a)(7).

This MOU does not in any way limit the specific investigative authorities of the U. S. Secret Service or the Postal Inspection Service to investigate violations of these statutes pursuant to this Memorandum of Understanding. This MOU is intended to strengthen the enforcement of these statutes by granting a limited delegation of jurisdiction to the Postal Inspection Service to investigate violations of 18 U.S.C. § 1029 and § 1030.

3. Investigative Coordination

Upon the commencement of an investigation into conduct potentially in violation of 18 U.S.C. § 1029 or § 1030, the Postal Inspection Service will notify the U. S. Secret Service at the local level using agreed upon procedures of the initiation of an investigation. Upon receipt of this information the U. S. Secret Service will inform the Postal Inspection Service whether or not the U. S. Secret Service intends to participate in the investigation, is already investigating the conduct, or is investigating related conduct. Furthermore, the U. S. Secret Service or the Postal Inspection Service will promptly inform the other agency if, when conducting an investigation, it receives information about or discovers criminal activity that is within the investigative jurisdiction of the other agency. However the investigation may thereafter proceed, the U. S. Secret Service and

the Postal Inspection Service will endeavor to coordinate their respective investigative activities with the other agency.

In addition, the Postal Inspection Service will provide the same notification to the Special Agent in Charge, Financial Crimes Division, U. S. Secret Service Headquarters, of an investigation into a violation of either 18 U.S.C. § 1029 or § 1030. Furthermore, Special Agent in Charge, Financial Crimes Division, shall be advised that similar information is being provided to the National Infrastructure Protection Center (NIPC), FBI Headquarters.

When the Postal Service offers a new electronic service to the public, the Postal Inspection Service will notify and consult with the Special Agent in Charge, Financial Crimes Division, regarding its impact upon any of the investigative programs or authority of the U.S. Secret Service.

4. Dispute Resolution

While the Postal Inspection Service and the U.S. Secret Service anticipate working in concert to the extent authorized by law and in accordance with this MOU, if any local disputes arise between the agencies regarding the conduct of an investigation, it should be resolved at the field level. When this cannot be accomplished between the Secret Service Special Agent in Charge (SAIC) and the Postal Inspector in Charge (INC), the dispute shall be directed to the respective Headquarters investigative staff for resolution.

5. Legislation

The Postal Inspection Service or the U.S. Secret Service will inform the other agency if it intends to seek legislation amending either 18 U.S.C. § 1029 or § 1030.

6. Amendment

This MOU may be amended only by the mutual consent of the signatories.

7. Effective Dates

This MOU shall be in effect upon its execution by the signatories. It shall be reviewed by the agencies three years after its inception to determine if corrections or adjustments in the delegation of authority or the relationships between the parties are required.

Lewis Merletti Date 6/26/98	Kenneth J. Hunter Date 6-17-98
Director	Chief Postal Inspector
U.S. Secret Service	U.S. Postal Inspection Service

Mr. FATTAH. The location of our first Postmaster General and first Post Office as a country, Philadelphia.

Let me welcome our panelists, and particularly I would like to welcome both the Deputy Postmaster General and Kenneth Weaver, who has recently been appointed as the chief postal inspector.

This hearing is an important one. I think the subject matter, as outlined by the chairman, is one appropriately right for comment, and it is true that there are competitive features to the Postal Service of today.

I would also say, however, there are many areas in which the Postal Service is not does have competition, and that it has as its responsibility to provide universal service and to over 40,000 post offices around the country. In those areas it is not a matter of a competition that drives the Postal Service but public service.

I want to welcome you all here today. I look forward to your comments.

Thank you.

Mr. MCHUGH. I thank the gentleman, as always, for his participation and his support and leadership.

We are also pleased to be joined today by the gentleman from the great State of Ohio, who has been one of the more active members of the subcommittee on these issues, and we are pleased that he is here and I would be happy to yield to Mr. LaTourette if he has any opening comments.

Mr. LATOURETTE. I don't have any opening comments. I am looking forward to the hearing and I appreciate the opportunity to speak.

Mr. MCHUGH. I thank the gentleman.

Most of you are aware that the full committee procedure and rules requires all witnesses to be administered an oath, so if you gentlemen would be so kind as to stand and raise your right hands and answer after me.

[Witnesses sworn.]

Mr. MCHUGH. The record will show that all members at the front table, all five, answered the oath in the affirmative.

With that, let me formally introduce and welcome our panel members today.

We're honored and pleased to have Mr. John Nolan, who is Deputy Postmaster General, and who is accompanied by Mr. Kenneth Weaver, who is the chief postal inspector.

Gentlemen, welcome. Thank you for being here.

Next we have Mr. James Campbell, Jr., an attorney, a scholar, postal policy scholar particularly. If any of you doubt that, I suggest you may want to pick up his testimony and read it in its entirety, as I did, and I think you will agree that he is fully deserving of that title.

We are also honored to be joined today by Mr. Richard Gallo, who is national president of FLEOA, the Federal Law Enforcement Officers Association, and he is accompanied by Mr. Gary Eager, FLEOA agency president, the U.S. Postal Inspection Service.

Gentlemen, thank you. Mr. Eager, particularly, we appreciate all the effort and cooperation you have given to this subcommittee on a wide range of issues, and this one included.

We are looking forward to all of your testimony.

I have, as I mentioned, read the testimony. As you know, we do try to ask the witnesses, to the best of their ability, to summarize that for presentation here. Without objection, all of your testimony will be entered into the record in its entirety, and we look forward to your comments.

With that, perhaps we should proceed as we introduced.

Mr. Nolan, thank you, again, for being here.

STATEMENT OF JOHN NOLAN, DEPUTY POSTMASTER GENERAL, ACCOMPANIED BY KENNETH C. WEAVER, CHIEF POSTAL INSPECTOR

Mr. NOLAN. Thank you, Mr. Chairman.

The Postal Service and the mail system have been important to the growth and prosperity of this country. The growth and development of the Nation's mail system are inextricably interwoven with that of the Postal Inspection Service. As such, it is difficult to envision a Postal Service that does not include the fundamental Inspection Service function as it existed in one or more forms for most of our history.

We find ourselves, to a certain extent, the victims of our own success in carrying out the legal mandate to maintain Inspection Service to ensure the sanctity of the mail and the security of our employees. We believe that success is, in sizable part, a direct result of the historic integration of Inspection Service operations into the fabric of the Postal Service.

Trust in the USPS and the Inspection Service was not decreed as part of the law. It occurred over time, as the result of a lot of hard work. Inspectors live and breathe the mail. They understand the workings of the mail system and the interplay of its parts as no other security or law enforcement agency could, yet they maintain an independence of operation that is essential to carry out its mission.

Now, some feel that the success that the American people and our employees benefit from causes the Postal Service to have an unfair advantage in the commercial marketplace. We believe the major benefit of the Inspection Service lies not in the marketplace but in its support of congressional oversight for the mail and universal service. From consumer child to child pornography to physical security of property, personnel, and the mail, the Inspection Service has been an effective agent for ensuring that the will of the Congress and the American people is reflected in the conduct of the Nation's mail service, and mailers pay all the cost to maintain this function.

As communications in this country expand into a new medium called the Internet, the Postal Inspection Service is ensuring that the same protection of Postal property and operations and the same trust and the sanctity of information entrusted to the Postal Service is maintained. To do less would be a disservice to the people of this country, in our opinion.

The issue of most importance is not competition, it's the privacy, security, and trust in the way Americans are able to communicate

through their Postal system. The current structure and operation of the Postal Inspection Service helps make that requirement a reality.

Mr. MCHUGH. Thank you very much. We appreciate that and appreciate your comments.

[The prepared statement of Mr. Nolan follows:]

Statement of
John Nolan
Deputy Postmaster General
United States Postal Service
before the
Subcommittee on the Postal Service
Committee on Government Reform and Oversight
U.S. House of Representatives
July 25, 2000

Good afternoon Mr. Chairman and Members of the Subcommittee. I appreciate this opportunity to discuss with the Subcommittee the integral role played by the Postal Inspection Service within the United States Postal Service. Ken Weaver, the Chief Postal Inspector, accompanies me this afternoon.

The Inspection Service is indeed an integral part of the Postal Service. Like the Postal Service itself, the Inspection Service can trace its roots directly to our first Postmaster General, Benjamin Franklin, who determined a need for an internal function to safeguard the integrity and security of the mail and postal revenue. Franklin's vision was codified by William T. Barry, who was appointed by President Andrew Jackson and became the first Postmaster General to sit as a member of the President's Cabinet.

In 1830, PMG Barry established an Office of Instructions and Mail Depredations as the investigative and inspection branch of the Post Office Department. The head of that office, P. S. Loughborough, is considered the first Chief Postal Inspector. Consequently, the Inspection Service predates such fundamental postal pillars as free city delivery, street letter boxes, and even postage stamps.

Today, a professional force of approximately 2000 Postal Inspectors, augmented by 1,500 uniformed Postal Police Officers and 900 professional and technical support personnel, uphold over 200 federal criminal and civil statutes that effect the integrity of the U.S. Mail and the postal system. Postal customers, postal employees, and the American taxpayer are the direct beneficiaries of these efforts.

The growth and development of the nation's mail system is inextricably interwoven with that of the Postal Inspection Service. As such, it is extremely

difficult to envision a Postal Service that does not include the fundamental Inspector function as it has existed in one form or another since colonial times.

It is also not readily apparent that dramatic change in the Inspection Service is needed now. The Inspection Service is uniformly recognized, both domestically and internationally, as a model practitioner among law enforcement agencies. This is not because it is federal in nature but because it is effective in action. Its high reputation is founded on a record of professionalism, integrity, and results. Few agencies, of any size, can compare to the Inspection Service in terms of investigative efficiency as measured by successful court action. More than 90 percent of Inspection Service cases brought to trial are concluded in convictions.

The reputation and respect Inspectors have earned over the years has caused them to be used in all types of sensitive investigations on behalf of the U. S. Government. The Department of Justice requested the services of Postal Inspectors to lead the investigations into the incidents at Ruby Ridge, Waco and in the Martin Luther King assassination. The independence of the Inspection Service, as not being a part of either the Justice or Treasury Departments, has proven to be a valuable asset.

We believe that this success is, in sizeable part, a direct result of the historic integration of Inspection Service operations into the fabric of the Postal Service. Inspectors live and breathe the mail. They understand the workings of the mail system and the interplay of its parts as no other security and law enforcement agency could. They are working partners with postmasters, clerks, carriers, and all postal employees in ensuring the safety, security, and integrity of the mail, the people who move the mail, and the organization that supports both.

It is also probably true that Postal Inspectors are the most 'local' of all federal law enforcement officers. This is a natural by-product of their integration into the mission of the Postal Service. Every post-office, every mail collection box, every employee, indeed, every home and business mail receptacle is made more safe and secure under their watchful eye. This intense local focus combined with their expertise in matters of the mail and operations contributes to the significant partnerships that exists between the Inspection Service and state

and local law enforcement agencies. It is also of great utility in the many joint projects conducted by the Inspection Service with their counterparts in other federal agencies, the military, and even with foreign posts and investigative bodies.

Mr. Chairman, in your invitation to today's discussion, you indicated that the increasingly commercial operations of the Postal Service might raise competition policy questions about the role of the Postal Inspection Service. If I may paraphrase that issue, we might ask, "Does the Inspection Service provide an unfair competitive advantage for the Postal Service?" I think the record shows that the answer is no.

As I have noted, the Inspection Service and its antecedents have been protecting the mail for centuries. During that time, the Postal Service has had numerous products that have faced competition. In 1913, for example, we began parcel post service, and in 1970 we introduced a pioneering new service called Express Mail. Subsequently, both of these markets have grown considerably; however, the Postal Service's market shares have not kept pace with the competition. The presence of the Inspection Service has not deterred private sector competitors from literally monopolizing these markets.

On the other hand, in recent years, it has become clear that the Postal Service has shown new competitive strength across all of its markets. This success properly belongs to the nearly 800,000 career postal employees, including Postal Inspectors, who have raised customer service and satisfaction to record levels and who have contributed to the financial success of the Postal Service that has allowed us to lower the real cost of postage by keeping successive postage rate increases well below the rate of inflation.

The major benefit of the Inspection Service does not lie in the marketplace but in its support of congressional oversight for the mail and for universal service. From consumer fraud, to child pornography, to physical security of property and the mail, the Inspection Service has been an effective agent for ensuring that the will of the Congress and the American people is reflected in the conduct of the nation's mail. Furthermore, its dedication and support have helped provide the

security and confidence needed to maintain a universal delivery system that fairly serves every citizen.

We are aware of other suggestions that would alter the role, location, or charter of the Inspection Service. Some theorists believe that federal law enforcement agencies of all pedigrees should be consolidated under a single agency. In many instances, and certainly with the Inspection Service, this would tend to dilute the unique perspective and expertise that present arrangements now provide. In effect, the marketplace of specialized law enforcement activities we now enjoy would become a centralized collective – a federal police agency.

It has also been suggested that the Inspection Service and its budget might move to another agency, without any change in its mission. At its heart, this suggestion attempts to transfer current postal obligations to the backs of taxpayers. In keeping with the same philosophy upon which the Postal Service has consistently declined billions of dollars in public service subsidies for which it is eligible, we reject this thinking as well.

Finally, some seem to believe that the Inspection Service provides a governmental aura for the Postal Service that private firms do not have. The truth is the Postal Service is a federal entity, and our mandate carries with it both advantages and disadvantages in the marketplace. We believe firmly, however, that no private-sector company would care to trade places with us because the shortcomings outweigh the benefits. We have acted on that belief before this Subcommittee by seeking changes in our legislative charter.

In summary, we believe the Inspection Service provides a distinct public service that is effectively conducted as currently organized. History and prevailing market results do not support arguments that the present arrangement provides the Postal Service with unfair competitive advantage. In fact, the opposite seems much more likely. Therefore, we believe it is in the best interest of customers, employees, and the American people to retain an effective Postal Inspection Service as an integral part of the United States Postal Service.

Mr. Chairman, that concludes my testimony. I would be happy to respond to your questions.

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Mr. MCHUGH. Mr. Weaver, the agenda does not call for you to make a formal statement. I think you are aware of that. But we appreciate your being here and I'm sure there will be questions that we would want you to respond to. And even if we don't, you should.

Mr. WEAVER. Thank you.

Mr. MCHUGH. OK. Great. We'll get back to you.

I think it would be wisest to just proceed through all of the opening statements and then we can just open to general questions.

With that, Jim Campbell would be next, sir.

STATEMENT OF JAMES I. CAMPBELL, JR., ATTORNEY, POSTAL POLICY SCHOLAR

Mr. CAMPBELL. Thank you, Mr. Chairman and members of the subcommittee. Thank you for your kind remarks, Mr. Chairman, probably uncalled for, but anybody who struggled through the footnotes is entitled to say his piece.

As you know, I have been counsel to the private express companies for about 25 years, almost since they first started. In my statement I tried to give you a sense of how, from a private express standpoint, we have looked at the activities of the Inspection Service as they affect us.

In my statement, I make a couple of introductory comments, which I'd like to emphasize.

First, to the extent that there are any problems identified, I don't feel that the cause lies in the administration of the Inspection Service itself. In my personal experience, I've never had an instance in which I felt the inspectors were acting in an unreasonable or unfair or improper manner. I think that the cause lies more within the institutional framework in which they operate, as I've tried to make clear in my statement.

Second, I am very well aware that enforcement of the monopoly is not the main task of the Inspection Service; that the Inspection Service has maintained the security of the mails for, as you said, 200 years; and that this is a public service that we have all benefited from. I wouldn't want my statement to suggest otherwise.

What I've tried to do in our statement is to give you some of the details of the history of our relationship with the Inspection Service over the last 25 years, but also the benefit of the legal research that we've necessarily done to try to understand what's going on. That's why all the footnotes.

As nearly as I can tell, the search and seizure power—and that's what we're talking about, use of Government power here against private competitors—that power was given to the Post Office Department in 1872, almost certainly without debate and without any clear intent.

As nearly as I can tell, the administration of this power vis-a-vis private competitors was not a major issue, was not a controversial issue, all the way through the life of the Post Office Department, that is through 1970. There are very, very few cases, very little controversy that I've discovered.

The real problem arises in the 1974 Postal monopoly regulations which were adopted by the Postal Service and which really were

different in kind from anything the Post Office Department had done.

Now, as I was writing this statement, I did not really intend to focus on these regulations, but the more I got into it and the more I thought about all this past history that I remember, the more I realized that really it was those regulations that put the Inspection Service in the business of harassing customers of private express companies, for two reasons.

First, those regulations take such a complicated view of the monopoly that the regulations depend upon administrative enforcement for their effectiveness, and hence the Inspection Service has to enforce.

Second, the regulations, by their nature, are very intimidating, very coercive. They basically tell mailers, "You have to cooperate with the Inspection Service, regardless of what you think is reasonable, regardless of what you think the law is, or you may face some serious consequence," and so mailers have cooperated, much more, perhaps, than they wanted to.

I certainly won't go through it, but if you look back at the history of what has gone on—and I could give you much more documentation if you wish—but if you look at the history of the last 25 years I think it is fair to say that the investigative powers of the Postal Service have been used in a manner which intrudes upon the mailers and the customers of private express companies to a greater degree than Congress envisioned or probably authorized.

I think it is fair to say that effect of this has been to work against what, at least in retrospect, was sound public policy—a certain desirable level of competition.

I think that there is, nonetheless, some merit in the position argued by the Postal Service that, after all, the Postal Service is only using the tools given them by Congress to do the job that Congress has mandated. They have protected revenue and universal service.

I think that really what is implied by this history is a need for Congress to clarify some of the aspects of the institutional framework of the Postal Service, and I have four suggestions.

One is that the monopoly is far too complicated today. It would be highly desirable to simplify the monopoly so it does not depend upon so much administrative enforcement. And this is not so difficult. Many other countries have done so. H.R. 22 has a proposal along these lines that would pretty much do it.

Second, I think that the enforcement of the monopoly ought not to be committed to somebody that has a commercial interest. This is just fundamental fairness. I think that enforcement of the monopoly could be committed to the Department of Justice. I know Treasury is another possibility. But somebody other than the Postal Service, itself.

Now, this could be done either by taking this small function out of the Postal Service or by moving the Inspection Service. I have no particular opinion on that, but I think that the Postal Service ought not to be enforcing the monopoly.

Third, I think that the administration of the monopoly—that is to say the rulemaking power—ought not to be handled by the Postal Service, either. I think that with a simplification of the monopoly you have much less need for rulemaking, for administration, but,

nonetheless, the residual function ought to be handled by somebody impartial. The Rate Commission is the obvious candidate. Justice is another possibility. FTC is even a possibility. But somebody other than an interested commercial body.

And then, last, you raised a point in your opening statement which is a problem that has emerged over the past couple of years. To some degree there seems to be a potential for the Postal Service they say, "Our exclusive access to the Inspection Service, to the police power of the United States, gives us a commercial advantage. We have the only really secure e-mail because our e-mail is protected by the Inspection Service. We have the only really secure parcel service," or whatever it might be. That would seem to be, obviously, inappropriate. The enforcement authority of the United States should not be a commercial chip.

Resolving that problem is not so easy. I have no simple answers to that. As you mentioned in your statement, you might commit the Inspection Service to the job of watching all letters and parcels and moving them to another agency. You might limit the authority of the Inspection Service to just deal with the noncompetitive aspects of the Postal Service's business. I think this is a matter that does deserve some attention. It is a matter that is of some concern to private express companies. But, as I said, I have no simple ready solution.

Thank you, sir.

Mr. MCHUGH. Thank you very much, Jim.

[The prepared statement of Mr. Campbell follows:]

Subcommittee on Postal Service
Committee on Government Reform
United States House of Representatives
Hearing on Competition and the Role of Postal Inspectors
July 25, 2000

STATEMENT OF
JAMES I. CAMPBELL JR..

The topic of the Subcommittee's hearing today, competition policy questions raised by the role of the Postal Inspection Service, is both timely and important. As the Subcommittee has recognized in developing H.R. 22, the Postal Modernization Act of 1999, the Nation's delivery services sector is evolving rapidly due to technological and commercial innovation. This evolution has rendered imperative a fundamental review of the legal privileges and burdens that bedevil Postal Service efforts to compete on fair and equal terms with private companies. In this review, the role of the Inspection Service presents an especially sensitive area, for the Inspection Service is wielding the police power of the United States. Extra care is appropriate to ensure that national police authority is not debased to the status a commercial chip in the increasing competitive game in which the Postal Service finds itself.

By way of introduction, I should explain that I am an attorney in private practice. I have worked on regulatory issues for the present generation of private express companies—DHL, Federal Express, and TNT (now part of TNT Post Group)—since mid 1970s. Based on this experience, I am familiar with competition issues presented by the Postal Inspection Service. I am, however, testifying today in my personal capacity at the invitation of the Subcommittee. I have not consulted with any private express company in the preparation of my comments ,and my comments should not be construed to represent the views of anyone but me.

ISSUES ADDRESSED

At the outset, I would like to clarify the issues addressed in my testimony. First, it should be kept in mind by all that enforcement of the postal monopoly has *not* been the primary function of the Inspection Service. The basic mission of the Inspection Service has been to protect the security of the mails. I have absolutely no doubt the United States has benefitted from the work of the dedicated men and woman of the Inspection Service to this end. Nothing in my testimony should be interpreted to suggest any lack of appreciation on my part for this important public service.

Second, the Inspection Service operates at the direction of the Postmaster

General. As I explain below, I believe that competition issues presented by the activities of the Inspection Service are issues that arise primarily from the organization and mandate of the Postal Service, not from administration of the Inspection Service.

Finally, the focus of my remarks is on the Postal Service's express or implied use of *governmental authority* to investigate or compete with private competitors, i.e., the authority to make searches of private property under an express or implied threat of legal sanction and the authority to seize private property. I see no reasonable objection to the Postal Service investigating private competitors for possible violations of law in the same manner as, for example, Federal Express might investigate whether a competitor is contravening the antitrust law in a manner injurious to the interests of Federal Express.

LEGISLATIVE HISTORY

From the earliest days of the Post Office Department in the late 18th century, the Postmaster General has employed one or more trusted persons to travel about the country and investigate the operations of postal employees and contractors. Given the financial stakes and the geographic extent of postal operations, it is hard to imagine any alternative to a corps of trusted internal auditors. These persons were originally called "surveyors." After 1801, they were called "special agents." The term "postal inspector" was initiated in 1880.

Before 1872, special agents apparently exercised no special law enforcement authority in their investigations of private express companies. In 1840s, private express companies such as Wells Fargo and Adams Express posed a serious challenge to the Post Office Department in many markets, yet reports from special agents appear to rely on personal observation and market assessments of postmasters.[1]

So far as I have been able to determine, the postal act of 1872[2] represents the first occasion in which Congress gave general authority to the Post Office Department to search private property for violations of the postal monopoly and to seize illegally transported letters. Congressional motives, however, are unclear. The postal act of 1872 was the first codification of the postal laws since 1825. It was based on a draft codification and revision of the postal laws proposed by the Post

[1]*See, e.g.*, "Report of the Postmaster General," S. Doc. 66, 28th Cong., 2d. Sess. (1845).

[2]Act of June 8, 1872, ch 335, 17 Stat 283.

Office Department in 1863.[3] Rather than acting on the Post Office's proposal immediately, Congress incorporated revision of the postal laws into a vaster project, revision of the entire body of U.S. statutes. The postal act of 1872 was in fact an advance specimen title of the Revised Statutes adopted by Congress in 1874.

Although the act of 1872 was portrayed by sponsors as primarily a codification of prior law, it introduced subtle but important changes, including changes which conferred on the Post Office broad search and seizure authority in respect to violations of the postal monopoly. In the 1872 act, §§235-237 codified §5 of the postal act of 1852, a provision that authorized special agents of the Post Office to search vessels for illegally transported letters and seize them.[4] In the original bill,

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[3]"The Post Office Department, Prepared by the Post Office Department for the Committee on the Post Office and Post Roads" (Feb. 2, 1863), referred to in *Annual Report of the Postmaster General* (1862) (Dec. 1, 1862) at 23-34. Congress took no immediate action on this proposal. In 1866, Congress appointed three Commissioners to revise and consolidate the entire body of U.S. statutes. Act of June 27, 1866, ch 140, 14 Stat 74. On 26 January 1869, the two remaining Commissioners reported to the House Committee on the Revision of the Laws. They stated that several specimen titles had been prepared, including one containing the postal laws which was "in the hands of the congressional printer." "Report of the Commissioners to Revise the Statutes of the United States," H.R. Misc. Doc. 31, 40th Cong., 3d Sess (1869). The specimen postal title prepared by the Commissioners was sent to the Post Office Department for comment. On 29 October 1869, the Postmaster General appointed a committee to study the draft code. On March 30, 1870, the committee submitted a 30-page report. "Report of the Committee Appointed by the Postmaster General to Examine and Revise the Postal Code" (1870). The Commissioners' proposed postal code and comments of the POD Committee were sent to the House of Representatives. Less than two months later, on April 25, 1870, the postal code was introduced in the House of Representatives during the second session of the 41st Congress as H.R. 1860. The original bill contained printing errors, and it was reintroduced in corrected form as H.R. 2295 on June 24, 1870. From a study of the report of the Postmaster General's committee, it appears that H.R. 2295 presents the Commissioners' draft postal code in normal typeface with the revisions proposed by the Post Office, together with a few additions by the House Post Office and Post Roads Committee, printed in italics. H.R. 2295 was reported from committee in the third session of the 41st Congress and brought up for floor debate on December 7, 1870. In describing the reported bill to his colleagues, the Chairman of the House Committee on Post Office and Post Roads, Representative Farnsworth, assured the House that the Commissioners' draft was a codification of existing law, to which only specified revisions, noted in italics, were being proposed.

[4]Act of August 31, 1852, ch 113, 10 Stat 140. Section 5 read as follows: "Sec. 5. And be it further enacted, That no collector or other officer of the customs, shall permit *any ship or vessel, arriving within any port or collection district of the United States*, to make entry or break bulk until all letters on board the same shall be delivered into the post-office . . . . And the collector and every officer of the customs at every port, without special instructions, and *every special agent of the Post-Office Department*, when instructed by the Postmaster-General to make *examinations and seizures*, shall carefully search every vessel for letters which may be on board, or have been carried or transported contrary to law; and each and every of such officers and agents, and every marshal of the United States and his deputies, *shall at all times have power to seize all letters, and packages, and parcels, containing letters which shall have been sent or conveyed contrary to law on board any ship or vessel, or on or over any post-route of the United States, and to convey such letters to the nearest post-office*; or may, if the Postmaster General and the Secretary of the Treasury shall so direct, detain

H.R. 2295, the corresponding provisions appeared in normal typeface, indicating no change from prior law. In fact, however, §236 provided a major enlargement in the authority of special agents to seize illegally transported letters. Whereas the 1852 act seemingly addressed only letters found on vessels, §236 of the 1872 act authorized special agents to seize letters "on any post road."[5]

Section 299 of the act of 1872 likewise introduced a substantial expansion in the search authority of special agents. In this case, the corresponding provision in H.R. 2295 was printed in italics, identifying it as a revision of prior law (probably suggested by the Post Office). Although neither the House nor the Senate discussed this new provision, it is clear from the text that this new search authority was carefully limited.[6]

In this opaque manner, Congress, in 1872, first authorized the Post Office to exercise broad police power to investigate private competitors. In current law, sections 235, 236, and 237 of 1872 act appear, illogically reordered, as sections 605, 604, and 606 of title 39, United States Code. Even today, their origin in a maritime provision and the clumsy addition of seizure authority on any post road in §604 are

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the said letters, or any part thereof, until two months after the trial and final determination of all suits and proceedings which may at any time, within six months after such seizure, be brought against any person for sending, or carrying, or transporting any such letters contrary to any provisions of any act of Congress . . . . [emphasis added]" As the text of section 5 indicates, the key phrase "or on or over any post-route," describing the seizure authority, apparently pertained to letters which (a) were found on vessels and (b) which "shall have been sent or conveyed" contrary to law, whether by sea or land. As reworded in §237 of H.R. 2295, however, the seizure authority allows the seizure of letters and packets which are being carried "on any post road" regardless of whether they are discovered on board a vessel.

[5]Section 236, similar to current 39 USC 604, read as follows: "Sec. 236. That any special agent of the Post-office Department, collector, or other customs-officer, or United States marshal or his deputy, may at all times seize all letters and bags, packets or parcels, containing letters which are being carried contrary to law or board any vessel or on any post-route, and convey the same to the nearest post-office, or may, by the direction of the Postmaster-General or Secretary of the Treasury, detain them until two months after the final determination of all suits and proceedings which may, at any time within six months after such seizure, be brought against any person for sending or carrying, such letters."

[6]Section 299, similar to current 39 USC 603, read as follows: "Sec. 299. That the Postmaster-General of the United States may empower, by a letter of authorization under his hand, to be filed among the records of his department, any special agent or other officer of the post-office establishment to make searches for mailable matter transported in violation of law; and that the agent or officer so authorized may open and search any car or vehicle passing, or lately before having passed, from any place at which there is a post-office of the United States to any other such place, and any box, package, or packet, being, or lately before having been, in such car or vehicle, and any store or house (other than a dwelling-house) used or occupied by any common-carrier or transportation company in which such box, package, or packet may be contained, whenever said agent or officer has reason to believe that mailable matter, transported contrary to law, may therein be found."

evident when one knows what to look for. Section 299 of the 1872 act now appears as 39 USC 603. Its distinctly different origin is likewise apparent.

§ 603. Searches authorized

The Postal Service may authorize any officer or employee of the Postal Service to make searches for mail matter transported in violation of law. When the authorized officer has reason to believe that mailable matter transported contrary to law may be found therein, he may open and search any—

(1) vehicle passing, or having lately passed, from a place at which there is a post office of the United States;

(2) article being, or having lately been, in the vehicle; or

(3) store or office, other than a dwelling house, used or occupied by a common carrier or transportation company, in which an article may be contained.

§ 604. Seizing and detaining letters

An officer or employee of the Postal Service performing duties related to the inspection of postal matters, a customs officer, or United States marshal or his deputy, may seize at any time, letters and bags, packets, or parcels containing letters which are being carried contrary to law on board any vessel or on any post road. The officer or employee who makes the seizure shall convey the articles seized to the nearest post office, or, by direction of the Postal Service or the Secretary of the Treasury, he may detain them until 2 months after the final determination of all suits and proceedings which may be brought within 6 months after the seizure against any person for sending or carrying the letters.

§ 605. Searching vessels for letters

An officer or employee of the Postal Service performing duties related to the inspection of postal matters, when instructed by the Postal Service to make examinations and seizures, and any customs officer without special instructions shall search vessels for letters which may be on board, or which may have been conveyed contrary to law.

§ 606. Disposition of seized mail

Every package or parcel seized by an officer or employee of the Postal Service performing duties related to the inspection of postal matters, a customs officer, or United States marshal or his deputies, in which a letter is unlawfully concealed, shall be

> forfeited to the United States. The same proceedings may be used to enforce forfeitures as are authorized in respect of goods, wares, and merchandise forfeited for violation of the revenue laws. Laws for the benefit and protection of customs officers making seizures for violating revenue laws apply to officers and employees making seizures for violating the postal laws.

POSTAL INVESTIGATION OF PRIVATE EXPRESS COMPANIES, 1872-1970

Over the years since 1872, the Post Office Department's efforts to enforce the postal monopoly waxed and waned. As the investigative force of the Post Office Department, postal inspectors participated in these efforts. In 1879, Special Agent B.K. Sharretts undertook a substantial investigation of the letter carriage of business of Wells Fargo in the western United States.[7] Between 1872 and 1951, the Chief Postal Inspector consulted the Solicitor of the Post Office Department on 36 occasions for formal legal opinions on the scope of the postal monopoly. Investigation of private express companies was not, however, confined to postal inspectors. Other senior postal officials and postmasters sought advice on postal monopoly issues from the Solicitor. In the 1890s, the Railway Mail Service, led by the Second Assistant Postmaster General (in charge of contracts for transport of mail), conducted a major campaign against the carriage of letters by railroads. In the Depression years of the 1930s, the Solicitor of the Post Office Department began the practice of giving legal advice directly to mailers, by letter and by pamphlet, to dissuade them from using private expresses.

Although the Post Office Department had its difficulties with private express carriers, it appears that it only very rarely employed its limited search and seizure authority. Special Agent Sharretts, for example, based his report on allegations of postmasters and personal observations. Between 1872 and abolition of the Post Office Department in 1970, there appear to be only two judicial opinions on the scope of the search authority of postal inspectors.[8] Neither involves a private express company or customer.[9] In this period, there appears to be only one case involving

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[7]"Well, Fargo & Co.'s Letter Express: Report of a Committee Appointed by the Postmaster General" (January 5, 1880).

[8]*See also*, *Blackham v. Gresham*, 16 F.609 (S.D.N.Y. 1883) (search authority held constitutional).

[9]In *United States v. Helbock*, 76 F.Supp. 985 (D. Oregon, 1948), a postal inspector gained admittance to a private house in the company of a deputy U.S. marshal. After the deputy marshal left, the postal inspector seized some obscene pictures. The court ordered the persons released and the pictures returned: "The inspector gained access to this home as a real or apparent aide of the deputy marshal. His authority, if he had any, ended when the deputy marshal left the premises. At 986. In *United States v. Haas*, 109 F.Supp. 443 (W.D. Pa. 1952), the court took an only slightly less skeptical attitude towards the search authority of a postal inspector but held that "the defendant . . . voluntarily

postal exercise of seizure authority in aid of the monopoly. In 1943, a postal inspector seized certain checks while being transported by a private messenger service operating in New York City.[10]

In summary, prior to 1970, it appears that, speaking generally, Congress, the Post Office Department, and the courts shared the view that postal inspectors should employ governmental authority to investigate postal monopoly violations only in extraordinary circumstances and that such authority should be employed only against private express companies, not against their customers.

POSTAL SERVICE'S 1974 MONOPOLY REGULATIONS

With establishment of the Postal Service in 1970, the Inspection Service became far more active in defending the postal monopoly by intrusion into the affairs of mailers and customers of private express companies. The legal basis for this increase in the activities of the Inspection Service lies in the comprehensive postal monopoly regulations adopted by the Postal Service in 1974. The 1974 postal monopoly regulations were different in kind, as well as degree, from anything promulgated by the Post Office Department. The practical effect of the 1974 regulations was to circumvent normal legal process and place the Inspection Service in the business of enforcing the postal monopoly by intimidation of mailers.

The 1974 regulations adopted a fundamentally new approach to defining the scope of the postal monopoly and its enforcement.[11] Instead of determining the scope of the monopoly by interpreting the word "letter," the 1974 regulations defined every

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and willingly consented to the Postal Inspector entering his dwelling." At 444.

[10] The procedural posture of this case was such that it offers no insight into scope of the Post Office's seizure authority. In *Goldman v. American Dealers Service*, 135 F.2d 398 (2d Cir. 1943), the plaintiff asked a court to order return of the checks arguing their were illegally seized. The district court agreed. The Post Office asked the appellate court to condone the seizure and Post Office custody of the checks regardless of the underlying merits. Hence, the appellate court was constrained to assume that the seizure was illegal (i.e., outside the scope of § 604 because the checks were not"letters"). The only issue addressed by the court was whether the Post Office could keep possession of illegally seized items for up to six months. The Second Circuit affirmed the district court's ruling that seized items may be ordered returned by the courts if forfeiture proceedings are not brought promptly by the U.S. attorney, as required by §606. In one other case, *Blackham v. Gresham*, 16 F. 609 (S.D.N.Y. 1883), a court denied a petition for an injunction to prohibit the Post Office from conducting searches for and seizures of privately carried letters. The court's opinion addresses whether the private express's activities violated the postal monopoly, not the scope of the Post Office's search and seizure authority.

[11] The 1974 regulations were adopted after two notices of proposed rulemaking and a third notice adopting the final rules; these notices are important because they illuminate the legal position underlying the regulations. 38 FR 17512-16 (Jul 2, 1973) (first notice of proposed rulemaking); 39 FR 3968-74 (Jan 31, 1974) (second notice of proposed rulemaking); 39 FR 33209-16 (Sep 16, 1974) (final regulations).

tangible communication to be a "letter" and fixed the scope of the monopoly by means of administrative regulations which purported to "suspend" the postal monopoly for specific types of communications or particular classes of mailers or services. The new definition of "letter" was held to be "a message directed to a specific person or address and recorded in or on a tangible object." 39 CFR 310.1(a). This definition of "letter" included all printed matter and commercial papers as well as non-verbal media such as photographs and blueprints.[12] To counter public opposition, the new regulations announced "suspensions" of the postal monopoly to allow for the private carriage of newspapers, magazines, checks (when sent between banks), and data processing materials (under certain circumstances). 39 CFR 310.1(a)(7) n. 1, 320.

By making the right to use private carriers a matter of administrative grace, the regulations forced mailers and private carriers to acquiesce in enhancement of the investigative powers by the Inspection Service. The first and second notices of proposed rulemaking attached reporting conditions for private express companies operating within the scope of proposed suspensions for intra-company and data processing documents; they would be required to register with the Postal Service and provide annual reports of their operations. The second notice also provided for affidavits from major customers of private carriers. The final notice of rulemaking abandoned most of these reporting procedures as "unworkable" and unnecessary since a proposed suspension for private carriage of intra corporate documents was deleted. The final rule, however, required private carriers operating within the scope of the data processing suspension to register with the Postal Service, to allow postal inspectors access to covers of shipments (which showed delivery times), and to keep records. The final rule further stated that the Postal Service may administratively withdraw the suspension with respect to a particular private carrier if it failed to abide by the terms of the suspension.[13]

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[12]The 1974 regulations provided that USPS's Law Department would issue "advisory opinions" on the scope of the monopoly. 39 CFR 310.6. Pursuant to this section, USPS lawyers have advised that the postal monopoly covers carriage of various items not normally considered "letters" in ordinary usage. PES Letter 74-24 (1974) and PES letter 75-1 (1975) (payroll checks); PES Letter 75-5 (1975) (Disney posters); PES Letter 76-5 (1976) (fishing license); PES Letter 75-32 (1975) (San Francisco 49er football tickets); PES Letter 75-11 (1975) (IBM punch cards); PES Letter 74-14 (1974) (blueprints); PES Letter 78-11 (1978) (data processing tapes and computer programs); PES Letter 76-8 (1976) (gasoline company credit cards). PES letter 75-9 (1975) (boxes of merchandise with advertisements enclosed); PES Letter 74-7 (1974) and PES Letter 74-15 (1974) (intra-company memoranda); PES Letter 78-14 (1978) (documents, which are electronically transmitted and converted to hard copy form, when being carried from the telecommunications receiver to the addressee or from the sender to the telecommunications transmitter).

[13]"Failure to comply with the notification requirements of this section and carriage of material or other action in violation of other provisions of this Part and Part 310 are grounds for administrative revocation of the suspension as to a particular carrier for a period of less than one year . . . ." 39 FR at 33213d codified 39 CFR 320.3(d).

When, in 1979, the Postal Service adopted a suspension of the postal monopoly to allow private carriage of urgent letters—the suspension that most directly affects private express companies—it strengthened the role of the Inspection Service still further. In the urgent letter suspension, enforcement provisions applied to customers as well as private express carriers. In addition, the suspension required that all records, not merely covers of shipments, be made available to postal inspectors. For good measure, the regulation provided that *failure to cooperate with postal inspectors created a presumption of guilt.*[14]

Another innovation of the 1974 postal monopoly regulations was the possibility of "alternate payment of postage agreements." Section 310.2(b)(1)(ii) provides that letters may be transmitted by private carriage if "the amount of postage which would have been charged on the letter if it had been sent through the Postal Service is paid by stamps, or postage meter stamps, on the cover *or by other methods approved by the Postal Service*." Private carriage of letters on which postage has been paid by affixing stamps or postage meter stamps is provided in 39 USC 601(a)(2). In the italicized language, however, the Postal Service further authorized itself to negotiate individual deals with customers of private express companies. These, in turn, created a need for continual monitoring by the Inspection Service.

In addition to adopting an inherently more intrusive approach to defining the scope of the postal monopoly, the 1974 regulations added other provisions which added to the commercial risks of non-cooperation with the Inspection Service. The regulations proclaimed that mailers and private carriage contravening the postal monopoly were subject to a "back postage" fine, i.e., a civil fine equal to the postage that would have been due if privately carried letters had been posted instead. The first notice of proposed rulemaking explained:

> *Administrative machinery is provided under which postage owing to the Postal Service because of private carriage in violation of the Statutes can be determined and collected.* The process for determining postage owed could include a hearing on the record in cases involving disputed issues of fact. The proposal reflects *an exercise of the Postal Service's authority to prescribe the manner in which postage is to be paid and is intended to make the administration of the Private Express Statutes more effective.* The availability of a right to collect postage is not intended, however, to affect in any way the

[14] "The failure of a shipper or carrier to cooperate with an authorized inspection or audit conducted by the Postal Inspection Service for the purpose of determining compliance with the terms of this suspension shall be deemed to create a presumption of a violation for the purpose of this paragraph (e) and shall shift to the shipper or carrier the burden of establishing the fact of compliance." 44 FR at 61182a, *codified* 39 CFR 320.6(e).

> exercise of other options available under civil and criminal law for carrying out the purposes of the Statutes. [38 FR at 17513a (emphasis added)]

In 39 CFR 310.5, the back postage fine was adopted essentially as proposed:

> Payment of postage on violation.
>
> (a) Upon discovery of activity made unlawful by the Private Express Statutes, *the Postal Service may require any person or persons who engage in, cause, or assist such activity to pay an amount* or amounts not exceeding the total postage to which it would have been entitled had it carried the letters between their origin and destination.
>
> . . . .
>
> (c) *Refusal to pay an unappealed demand or a demand that becomes final after appeal will subject the violator to civil suit by the Postal Service* to collect the amount equal to postage.
>
> (d) The payment of amounts equal to postage on violation shall *in no way limit other actions to enforce the Private Express Statutes* by civil or criminal proceedings. [39 FR at 33212b *codified* 39 CFR 310.5 (emphasis added)]

For a large company, a back postage fine could amount to a substantial monetary penalty depending on the length of time over which back postage was calculated.

The 1974 regulations also introduced procedural rules for Postal Service adjudication of postal demands for back postage or withdrawals of suspensions as to particular individuals. The rules provided that the Judicial Officer of the Postal Service or an administrative law judge would preside over such cases. 39 CFR 959.16. Where the General Counsel is seeking withdrawal of a suspension as to an individual, facts alleged by the General Counsel and not denied within 15 days may be considered proven. § 959.6(b)(3). Postmasters are designated as process servers. § 959.8. The accused has no right to trial by jury and no access to subpoena authority. § 959.18. If the Judicial Officer does not serve as the presiding officer, the losing party before the administrative law judge may appeal to the Judicial Officer. § 959.24. The Judicial Officer may, in turn, refer the case to the Postmaster General for decision. § 959.25. Mailers and customers of private express companies might reasonably consider compromise with postal inspectors preferable to adjudication under such circumstances.

Since 1974, the regulatory scheme has been amended but not substantially revised. Although the Postal Service proposed significant revisions to the 1974 regulations in 1978, it withdrew these proposals when the Department of Justice filed

extensive comments concluding that the law required an analysis of competitive impact and adoption of least anti-competitive alternatives. The most significant amendments have been in the area of suspensions. Since 1974, the Postal Service has added regulations suspending the postal monopoly for intra university mail systems (1979), international shipping documents (1979), urgent letters (1979), advertisements included in packages (1980), and international remail (1986).

For present purposes, the main point to note is that *the 1974 postal monopoly regulations substantially increased the authority of the Inspection Service to intrude into business operations of private companies, the administrative need for them to do so, and the penalties risked by businesses who failed to cooperate with the Inspection Service.* In addition, I am convinced that the 1974 postal monopoly regulations substantially exceed the legal authority of the Postal Service. The cornerstone of these regulations is the claimed authority to suspend the postal monopoly and attach conditions to such suspensions, yet it appears clear that Congress never authorized the Postal Service to suspend the postal monopoly.[15] Nor does it seem plausible that the Postal Service can itself create a new civil fine for violation of the postal monopoly[16] or establish administrative courts for adjudication of postal monopoly violations. Indeed, it is questionable whether the Postal Service may, at least without approval of the Postal Rate Commission, establish alternate provisions for domestic postage payable on items transmitted by private carrier.

INSPECTION SERVICE EFFORTS TO PREVENT
DEVELOPMENT OF EXPRESS COMPANIES(1975-79)

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[15]Others have noted the absence of statutory authority for administrative suspensions of the monopoly as well. *See, e.g.*, N. Schwartz, "Legal Memorandum of Assistant General Counsel, Litigation Division, Concerning the Role of the Postal Rate Commission in the Excerise of the Legal Controls over the Private Carriage of Mail and the Postal Monopoly," Postal Rate Commission Docket No. MC 73-1 (1974) at 33-43 ("a suspension under section 601 prevents private carriage; it does not permit private carriage as the Postal Service believes"); G. L. Priest, "The History of the Postal Monopoly in the United States," 18 J.L. & Econ. 33 (1975) at 79-80 ("Congress . . . has never delegated the power to repeal the private express statutes"). As statutory authority for these suspensions, the Postal Service cites an 1864 postal act. Act of March 25, 1864, ch. 40, 13 Stat 37, codified at 39 USC 601(b). However, it is apparent from even a superficial reading of the legislative history of the act that this provision was never intended to confer authority to suspend the postal monopoly. See Cong. Globe, 38th Cong., 1st Sess., 1243 (1864). The gist of the 1864 law was to allow the Postmaster General to reapply the postal monopoly by suspending, on a selective basis, an exception to the postal monopoly (the exception, found at 39 USC 601(a), allows private carriage of letters in stamped envelopes).

[16]In 1844, the Attorney General held that the Post Office Department had no authority to charge a mailer the postage it would have received on letters dispatched by private express, even if the letters were dispatched illegally. 4 Ops AG 349. In 1918, the Solicitor of the Post Office Department came to the same conclusion. 6 Ops Sol POD 619. There was no pertinent change in the postal laws prior to the 1974 postal monopoly regulations.

Modern express companies first developed in the 1970s. The leading international express company, DHL, was founded in 1969. The pioneer in the domestic express market, Federal Express, began in 1972. The commercial *raison d'être* of these companies was their ability to make use of improvements in air transportation and telecommunications technologies to provide a faster and more reliable delivery service than available from the Postal Service, albeit one that was also more expensive to produce. In many ways, the 1970s were a replay of the 1840s. In the 1840s, the first generation of express companies, including Adams Express and Wells Fargo & Company, developed mainly because they adapted to the possibilities of early railroads more quickly and efficiently than the Post Office Department.

In 1973, the USPS Board of Governors expressed doubts about the equity of applying the postal monopoly statutes against these new express companies:

> In addition to the practical problems of detecting such violations and enforcing the [Private Express] Statutes, there may be serious equitable considerations. Primary among these is whether a Postal service is offered which is comparable to that of the courier in terms of convenience, celerity, certainty and cost. The answer has been negative in numerous investigations.[17]

Despite the Board of Governors's appreciation of the economic benefits of private express companies, the Postal Service employed the Inspection Service to suppress their development. The 1974 postal monopoly regulations put mailers on notice that the Postal Service could, in its discretion, impose large administrative fines against companies making use of private express companies and deny a mailer the right to use private express companies for transmitting vital business documents. The Law Department supplemented these regulations with numerous letters to mailers holding illegal the use of private express companies until particular circumstances. In many cases, Law Department opinions were generated in response to, or in coordination with, investigations conducted by the Inspection Service.

In this environment of legal intimidation, postal inspectors made numerous calls on customers of private express companies to dissuade them from use of private express companies. The following letter, dated June 7, 1979, from a Postal Inspector N.H. Green to Otis Elevator, describes and exemplifies these efforts:

> This letter is in reference to our meeting of March 13, 1979,

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[17] "Statutes Restricting Private Carriage of Mail and Their Administration: A Report by the Board of Governors to the President and the Congress, Pursuant to Section 7 of the Postal Reorganization Act" (1973) *reprinted*, House Committee on Post Office and Civil Service, 93d Cong., 1st Sess., Comm. Print No. 93-5 (1973), Appendix E at 83.

regarding your firm's use of private couriers. . . . At that time it was learned that inter-office deliveries are being made to Hartford (Connecticut), San Bruno (California), and Paris (France) on a daily basis by Purolator Courier Corporation and DHL. In addition the latter courier is providing weekly service to your office in Saudi Arabia.

The items being carried include: (1) corporate reports; (2) internal directives in bulk (for internal use) and (3) blueprints and drawings (to Saudi Arabia only).

As discussed, there presently exist a group of federal laws, collectively known as the Private Express Statutes and Regulations, which have legally monopolized the carriage of letter mail by the U.S. Postal Service. In this regard, a 'letter' has been defined as "a message directed to a specific person or address and recorded in or on a tangible object."

With regard to internal directives, blueprints, and drawings, these items constitute letter mail. As such, their carriage outside the mailstream is not permitted unless proper postage is affixed as described in 39 CFR 310.2(b)(1)-(6). . . .

As further discussed, the Postal Service has exercised its authority to suspend the operation of the Private Express Statutes to allow for the transportation of data processing materials outside the mailstream, provided that certain requirements are met. It appeared that your corporate records might qualify as 'output' for this suspension.

As a means of correcting the impermissible carriages described, the use of Express Mail Service to Harford, San Bruno, and Paris was suggested in lieu of private courier usage. It is my understanding that such Express Mail Service had been explored, with the assistance of the Postal Customer Service Representative Phil Trille, and found unacceptable based on a cost comparison.

In line with that decision, it becomes necessary to determine if your corporate reports qualify as 'output' for our data processing suspension. To assist in making this determination, responses to the following questions would be appreciated:

1) Please provide a brief description of the reports and the manner in which they are produced?

2) Are the reports the direct output of electro-mechanical or electronic processing?

3) Are the report produced on a regular, periodic basis?

4) Are the reports returned to the address' [sic] from where the data output used to generate them originated?

5) Are the shipment of these reports completed within 12 hours or by noon of the office of the address' [sic] next business day?

6) What percentage of the shipment (by weight) do these reports represent?

The information requested should be sent to me at . . . .[emphasis original]

This letter illustrates several aspects of the activities of the Inspection Service. First, the Inspection Service's approach to competitive issues was, perhaps necessarily for a law enforcement agency, coercive not commercial. Customers of private express companies did not invite investigations by postal inspectors of their own volition. Second, the Inspection Service relied on the Postal Service's expansive regulatory definition of the letter monopoly as though it was vested with the same legal authority as statute. Unsuspecting mail room managers had no way to distinguish between the law of Congress and advocacy by the Postal Service Law Department. Third, the intricate details of "suspensions" of the postal monopoly served to justify extensive Inspection Service investigation into the activities of mailers. Fourth, the Inspection Service's enforcement activities were closely related to the commercial activities of the Postal Service, especially the effort to persuade mailers to use the Postal Service's Express Mail services.[18]

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[18]In February 1979, Inspector Greene sent to at least some customers of private express companies letters demanding a list of private couriers used, a detailed description of items sent by private express, a statement as to frequency of use and average weight. He concluded, "The information furnished will assist me is making a complete and proper application of the Private Express Statutes and Regulations." *See* testimony of James I. Campbell Jr., Legal Counsel, DHL Corporation, in *Private Express Statutes: Hearings Before the Subcommittee on Postal Operations and Services of the House Committee on Post Office and Civil Service*, 96th Cong., 1st Sess. (1979) at 201. The letter in question was appended as Appendix A to my testimony and retained by the Subcommittee but not reprinted in the hearing record. See also, testimony of John Delany, Senior Vice

As counsel for DHL at the time, I can attest to the fact that, in the late 1970s, the Inspection Service employed such tactics and arguments across the country in an effort suppress the emergence of private express services. In addition to calls on individual mailers, postal inspectors participated in large public briefings for mailers. In fall 1976, postal inspectors induced the Custom Service to conduct a large scale search of documents imported by couriers via the port of San Francisco.[19]

In June 1979, the express industry got its first glimpse of records of the Inspection Service relating to enforcement of the postal monopoly as a result of discovery in a proceeding before the Postal Rate Commission. In late 1978, the Postal Service filed with the Postal Rate Commission a proposal to begin an intra-city express mail service called Express Mail Metro Service.[20] As part of this proceeding, Purolator Courier sought of a complete accounting of efforts to use the Inspection Service and the postal monopoly laws to suppress competition by private express companies. After numerous pleadings, the Commission granted Purolator's request but limited it to redacted records relating to three cities: Chicago, Gulfport (Mississippi), and Columbus (Ohio).[21] Records of 10 Inspection Service investigations were produced. They indicated that, on at least some occasions, enforcement efforts of the Inspection Service were closely coordinated with sales efforts. For example, in a report dated March 9, 1979, Inspector R.P. Bednarski described "numerous contacts" with an unnamed company in the Columbus area in 1978. Inspector Bednarski continues:

> On February 2, 1979, contact was made with Mr. J. Severe, [USPS] Customer Services Representative, located at the Columbus, OH, Post Office. The situation regarding United States Postal Service and [redacted] was related to Mr. Severe. Mr. Severe stated he would contact officials of [redacted] in an attempt to sign [redacted] to an Express Mail contract.

President and General Counsel, Purolator Courier Corporation, id at 121, 127 ("An overwhelming body of evidence leads to the conclusion that the USPS has used the Private Express Statutes in an in terrorem fashion to induce customers away from private expedited carriers and into using Express Mail."). *See also Postal Service Amendments of 1978: Hearings on S. 3229 and H.R. 7700 Before the Subcommittee on Energy, Nuclear Proliferation, and Federal Services of the Senate Committee on Governmental Affairs*, 95th Cong., 2d Sess. (978) at 335 (testimony of Time Critical Shipment Committee).

[19]*See* Commission on Postal Service, *Report*, Volume 3b.(1977) at 1934, 1938 (testimony of Philip Steinberg, President, Pacific Merchant Shipping Association). See also, id at 1948, 1951 (testimony of John Chambers, Bank of America).

[20]Postal Rate Commission, Docket MC 79-2, Express Mail Metro Service Proposal, 1978.

[21]Library Reference USPS-LR-12.

After these records were produced, Purolator renewed its request for a complete set of Inspection Service records. The Postal Service resisted, and in the end, Purolator settled for a formal admission that Postal Service practices revealed in respect to the three cities "accurately reflect prevailing Postal Service policies and practices at the times they were prepared."

In its final order in the Express Mail Metro Service case, the Postal Rate Commission summarized its assessment of the evidence on the use of the Inspection Service to suppress competition in the following terms:

> Intervenors state that in carrying out its duty to enforce the Private Express Statutes, Postal Service, after warning customers of private couriers of putative Private Express Statute violations, improperly suggested that they switch from private courier to Express Mail, to avoid being in violation of the law. Postal Service counsel answered by saying that part of the function of a postal inspector is to advise persons as to how the Private Express Statutes can be complied with. The use of Express Mail is one form of compliance. Thus it is perfectly legitimate for the inspection service to inform people of Postal Service offerings they may not previously have been aware of. We have carefully examined [testimony of certain mailers visited by postal inspectors]. In addition, we have examined letters by postal inspectors to customers of private couriers, postal inspector reports, and the Formal Admission filed by the Postal Service, in which the Postal Service states that the postal inspector reports accurately reflect Postal Service policies and practices. *Upon review of this evidence there appears to be some indication that some postal inspectors have been over-zealous in their discussion of Express Mail Service with alleged violators of the Private Express Statutes. On several occasions the Postal Service inspectors too heavily emphasized the use of Express Mail as a means of complying with the law. As a result it is likely that customers of private couriers were intimidated into using Express Mail "just to satisfy the investigative point." It seems that there have been instances in which in any effort to encourage the use of Express Mail postal inspectors have stressed Express Mail and have not adequately explained to customers other ways to comply with the law, such as by affixing postage.* We find, however, that no such pattern of anticompetitive behavior in this regard would indicate a

predatory design on the Service's part.[22]

In response to Postal Service efforts to suppress the growth of private express services, private express companies and their customers petitioned Congress for relief. By mid 1979, it was clear that Congress was prepared to adopt a legislative exemption from the postal monopoly for urgent letters. To forestall legislation, the Postal Service adopted the administrative suspension for urgent letters now codified at 39 CFR 320.6.[23]

SENATOR SYMM'S QUESTIONNAIRE (1982)

In 1982, Senator Steven Symms of the Joint Economic Committee posed a long list of questions to the Postal Service about the operation of the postal monopoly laws. One question, G-29, dealt with the activities of the Inspection Service in respect to private express companies.[24] Although Senator Symms did not pursue this inquiry, the question and answer provide the Postal Service's summation of the controversies of the 1970s.

> *Question*: Have postal inspectors, at any time in the last ten years, used the possible threat of postal monopoly penalties to encourage persons to use the Postal Service's Express Mail? Have customer representatives from the Postal Service done so? Please submit all internal directives [etc.]
>
> *Answer*: It is important to keep in mind that the purpose of the Private Express Statutes is to enable the Postal Service to provide efficient, responsive, and convenient universal services at reasonable rates. The Statutes accomplish their purpose by protecting mail volume and postal revenues. It follows, then, that as a natural consequence of achieving compliance with the Statutes some volume of letters will be carried in the mails which had previously been carried privately. It follows also that as persons whose activities do not comply with the Statutes learn of this fact, some of them will wish to know how they may come into compliance through use of postal services.
>
> One of the duties of the Postal Inspection Service is to achieve compliance with the Private Express Statutes. In the course of

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[22]Opinion and Recommended Decision at 40-41 (1980) (footnotes omitted) (emphasis added).

[23]44 F.R. 40076 (July 9, 1979) (proposed rule); 44 F.R. 61178 (Oct. 25, 1979) (final rule).

[24]Senator Symm's inquiry was pursuant to his service on the Joint Economic Committee. To the best of my knowledge, material from this inquiry was not published.

> carrying out these duties, postal inspectors will necessarily inform members of the public when their activities are considered to be in violation of the Statutes. In some such instances inspectors have informed these persons of the options of paying postage on letters carried by private courier or of using postal services such as Express Mail service as possible methods of fulfilling their delivery needs in a manner consistent with law.
>
> Because of their knowledge of mailing patterns in a given community, postal customer service representatives have on occasion been contacted by inspectors seeking general information that might be helpful in identifying persons not in compliance with the Private Express Statutes. Subsequently, these representatives might, if the mailer desired, contact the mailer to discuss service offerings such as Express Mail service.
>
> *We know of no instances in which either postal inspectors or customer service representatives can fairly be said to "threatened" mailers or in which inspectors can fairly be said to have "sold" Express Mail service.* Even those instances in which inspectors have discussed Express Mail service when the need for rapid delivery service was raised by the mailer have ceased since new instructions were issued in 1979. These instructions provide when a mailer has been identified as not being in compliance with the Private Express Statutes, the inspector may advise that such infractions are avoidable by using the Postal Service or by paying postage on letters shipped by private courier. If the mailer indicates a need for a rapid delivery or inquires about a specific service offering, such as Express Mail service, the inspector is to refer the mailer to a customer service representatives and is not to participate in the follow-up attention, if any, given by the customer service representative.
>
> It should be noted that this matter was the subject of Congressional hearings in 1979. . . . *Notwithstanding that no abuses were established, in response to Congressional concerns the Postal Service amended its instructions to inspectors to ensure so far as it could that no abuses would occur.* [emphasis added]

In brief, in 1982, the Postal Service informed Congress that no fair minded person could question the propriety of the Inspection Service's efforts in respect to

the postal monopoly, and that nonetheless, in response to (apparently baseless) concerns of Congress, the Postal Service had instructed postal inspectors to be less engaged in the sale of Express Mail services.

DISCOVERY OF ADDITIONAL INSPECTION SERVICE RECORDS

In December 1988, a second set of Inspection Service records relating to the postal monopoly came to light as a result of a discovery request by the Air Courier Conference of America in the Postal Rate Commission's Express Mail Rulemaking. In this docket, the Postal Service petitioned the Postal Rate Commission for expedited procedures for changing Express Mail rates. In discovery, interrogatory 2 of Air Courier Conference of America (ACCA) asked the Postal Service for documents and records relating to enforcement of the postal monopoly against private express companies or their customers. When the Postal Service protested against the burden of complying with this request, the Postal Rate Commission limited the interrogatory to "reports of the described activity which have been submitted to, or prepared by, Headquarters within the last 5 years."[25] In response, the Postal Service produced records of 24 Inspection Service cases.

On January 28, 1994, a private express company specializing in insurance documents, Insurance Courier Services, filed an Freedom of Information Act with the Inspection Service requesting records of Inspection Service investigations under the postal monopoly laws during the previous five years. In December 1994, the Inspection Service provided a list of 141 postal monopoly cases initiated roughly from 1984 to 1990. This list includes all cases for which records were provided in response to the ACCA discovery request. In addition, the Inspection Service provided reports relating to 65 cases initiated between 1989 and 1994. Some of these related to cases included in the 1984-1990 list. Many of the cases are closely related to one another, so that the number of companies investigated is in fact, significantly less than suggested by the total number of "cases." Finally, the Inspection Service provided a list of 29 alternative postage agreements signed between 1990 and 1994.

This Postal Service's responses to these discovery requests provide that most complete picture available of the efforts of the Inspection Service in support of the postal monopoly. According to these files, targets of Inspection Service postal monopoly investigations in this period included the Federal Records Center, Patuxent Navel Air Station, Naval Federal Credit Union; the state governments of Florida, Georgia, Massachusetts, New Hampshire, and Oklahoma; commercial and charitable organizations such as Bell South, Blue Cross Blue Shield, IBM, the Old Time Gospel Hour, Kay Jewelers, and the Washington Redskins; various other banks, drug stores, realtors, retailers, farm bureaus, school boards, teachers unions, insurance companies,

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[25]Docket No. RM88-2. Presiding Commissioner's Ruling No. 4 (Sept. 9, 1988).

and a state prison; and a handful of private express companies. Among other things, this file demonstrates the degree to which Inspection Service's postal monopoly investigations served to pressure specific mailers into "alternate postage payment agreements" as the price for Postal Service's not carrying the mail (most prominently, Bell South Corporation, which is a party to 17 agreements).

INVESTIGATIONS OF FEDEX CUSTOMERS (1992-1994)

Beginning in 1992, the Inspection Service seemed to focus on customers of Federal Express, including a credit company, bank, insurance company, and paper products company. In June 1992, the Inspection Service led a briefing of federal agencies participating in a major contact between the General Services Administration and Federal Express, warning them not to use Federal Express in contravention of the postal monopoly laws and regulations. In response, Federal Express petitioned Congress for relief from what it considered to be unfair and unreasonable harassment of its customers by the Postal Service. This confrontation produced several interesting products.

On August 31, 1992, the Postal Service responded to an inquiry from Senator Jim Sasser of Tennessee concerning activities of the Inspection Service related to enforcement of the postal monopoly. This letter offered the first detailed explanation of the Postal Service's position on several issues. On the question of legal authority for Inspection Service searches of mailers' premises, the Postal Service referred not to the specific search authority in 39 USC 603 but to the general authority set out in 39 USC 404(a)((7), authorizing it "to investigate postal offenses and civil matters relating to the Postal Service."[26] The Postal Service also cited 18 USC 3061, a 1968 statute which does not mention searches.[27] Most importantly, the Postal Service

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[26]Section 404 is a list of broad powers granted the Postal Service. The authority to investigate postal offenses and civil maters granted in §404(a)(7) appears to authorize investigations pursuant to powers and limits found in other provisions of the postal laws, not to authorize investigations of an unlimited nature in areas where Congress has specifically placed limits on postal investigations (as in postal monopoly investigations). Nonetheless, this issue has never been addressed by a court. *Cf. U. S. v. City of St. Louis*, 452 F.Supp. 1147 (E.D.Mo.1978) (Postal Service's authority to deliver the mail does not provide a basis for letter carriers to cut across private property in the course of mail delivery).

[27]39 USC 3061 provides: "(a) Subject to subsection (b) of this section, Postal Inspectors and other agents of the United States Postal Service designated by the Board of Governors to investigate criminal matters related to the Postal Service and the mails may—(1) serve warrants and subpoenas issued under the authority of the United States; (2) make arrests without warrant for offenses against the United States committed in their presence; (3) make arrests without warrant for felonies cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony; (4) carry firearms; and (5) make seizures of property as provided by law."

"(b) The powers granted by subsection (a) of this section shall be exercised only—(1) in the enforcement of laws regarding property in the custody of the Postal Service, property of the Postal

maintained that all interviews of mailers are voluntary and added an ambiguous reference to the limits on search authority set out in 39 USC 603:

> Although the Postal Service has not, to our knowledge, conducted unconsented "searches" of the private property of the customers of private express companies or the private express courier, to the extent that 39 U.S.C. Sections 603-04 would not apply, general Federal law governing a search and seizure would apply.

The Postal Service also provided its first discussion of the legal authority for establishing, in the 1974 postal monopoly regulations, a civil fine equal to the postage that would have been charged by the Postal Service on items sent by private express. The Postal Service offered, in essence, no statutory justification for this penalty. Rather, it avoided an answer by stating: "it has been the general practice of the Postal Service not to seek recovery of the 'back postage.'"

In addition, the Postal Service's letter to Senator Sasser listed 31 pending Inspection Service cases "generated since January 1, 1991, pertaining to investigations of customers of private express companies for possible violation of the private express statutes."[28] A copy of the letter to Senator Sasser is placed in Appendix A to this statement.

In 1994, Senator Paul Coverdell of Georgia became interested in Inspection Service visits to customers of private express companies. He proposed an amendment to the postal law to decriminalize use of private express companies. S. 1541, 103d Cong., 1st Sess. If the Coverdell amendment were adopted, the Inspection Service would be required to confine enforcement efforts to private express companies, leaving undisturbed the relatively innocent and ignorant customers. The Postal Service fought this amendment fiercely. To relieve pressure for the Coverdell amendment, on March 24, 1994, in testimony before the Senate Governmental Affairs Committee, Postmaster General Marvin Runyon promised that

> the Inspection Service will no longer take the lead in conducting these types of audits. Where called for, our marketing professionals will meet with customers to explain any laws and

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Service, the use of the mails, and other postal offenses; and (2) to the extent authorized by the Attorney General pursuant to agreement between the Attorney General and the Postal Service, in the enforcement of other laws of the United States, if the Attorney General determines that violations of such laws have a detrimental effect upon the operations of the Postal Service."

[28]Of these, 14 do not appear in the answer to the ICS FOIA request (further analysis is needed to reconcile these two lists.

> regulations, and offer whatever help we can to serve their mailing needs.

In response, Senator Coverdell withdrew his amendment.

In addition, Senator Coverdell posed a number questions to the Postal Service about use of the Inspection Service to enforce the postal monopoly laws. These questions were similar to those propounded by Senator Sasser in 1992. This time, the Postal Service answered still more circumspectly. On the question of legal authority for searches of mailers' offices, the Postal Service referred primarily its self-proclaimed authority to terminate the right of an uncooperative mailer to make use of the postal monopoly "suspension" that allows access to the services of a private express company:

> The Postal Inspection Service does not search businesses or people without a warrant. No searchers have been conducted to enforce the Extremely Urgent Suspension. *Under the express terms of that suspension, those who elect to use it are bound to show the Postal Service, on request, that they are complying with it. . . . If a company is not willing to comply with these terms of the suspension, then postal service may bring an action before the Judicial Officer to revoke the suspension at to that company.* [emphasis added]

The Postal Service also explained its reasons for believing that decriminalization of the use of private expresses would be contrary to sound public policy, noting the difficulties that private express companies would face in determining whether a given envelope contained a "letter."

> Many times . . . *only the sender may know whether the contents of an envelope include letters, or whether they will lose their value if not delivered on time.* If enforcement against the sender in such a case were not permitted, then the Postal Service could find it necessary to change some its rules, including the Extremely Urgent Letter Suspension, to define eligibility more narrowly in terms of delivery times, price, or similar matters fully disclosed to or known by the carrier.

When asked to state the amount of "back postage" collected from enforcement of that provision in the 1974 postal monopoly regulations, the Postal Service replied vaguely, "Since the real measure of the success of any enforcement program is prevention . . . the full answer to this question is not available." The Postal Service's carefully phrased answers to Senator Coverdell's questions are reproduced in

Appendix B to this statement.

ENFORCEMENT OF THE POSTAL MONOPOLY AFTER 1994

Since 1994, the Postal Service's Rates and Classification Division has taken over from the Inspection Service the task of contacting mailers and private express companies to enjoin compliance with the postal monopoly laws. I know of only a few such contacts along these lines, so it appears likely that the incidence of enforcement efforts has declined. On the other hand, the 1974 postal monopoly regulations continue to threaten mailers with the prospect of back postage fines and withdrawal of the privilege of using private express services. Many U.S. companies are no doubt influenced by these regulations.

COMPETITIVE ADVANTAGES OF THE INSPECTION SERVICE

In the last few years, another type of competitive issue relating to the Inspection Service has become evident. By means of the Inspection Service, the Postal Service has the ability to offer products which are secured by the police power of the U.S. government. For example, parcels transported by Express Mail are protected by the Inspection Service, whereas parcels shipped via Federal Express are not. Similarly, electronic mail services provided by the Postal Service may be protected by the Inspection Service whereas similar services provided by private companies would not be so secured. In a commercial market, it is obvious that federal police protection may offer an important competitive advantage. Federal Express, for example, would likely be delighted to advertise that its parcels are protected by the Federal Bureau of Investigation while parcels entrusted to a competitor are not.

As a matter of principle, the Inspection Service should not be employed to confer competitive advantage on the Postal Service's competitive products. One can imagine more than one way to translate this principle into statutory provisions. One approach would be to limit the jurisdiction of the Inspection Service to non-competitive postal products. A second approach would be to make the Inspection Service independent of the Postal Service and extend the jurisdiction of the Inspection Service to include some products of private delivery services. While I do not presume to know the best answer, I believe this issue deserves serious consideration.

CONCLUSIONS

The Postal Service has, since 1970, used the Inspection Service to intrude into the business practices of mailers and customers of private express companies to a degree that appears far greater than ever intended or sanctioned by Congress. In many cases, these efforts have been directed towards suppression of forms of competition

which it is apparent, at least in retrospect, should have been encouraged rather than discouraged as a matter of public policy. While the role of the Inspection Service in postal monopoly cases has been reduced since 1994, a shift in the organization chart of the Postal Service does not address the public policy issues raised.

On policy grounds, the Postal Service's basic defense is that it has done no more than use the tools given by Congress to defend its revenues and protect universal service as mandated by Congress. There is at least some merit in this defense, certainly in regards to the activities of the Inspection Service itself. The Postal Service's intrusive and anticompetitive use of investigative authority over the last 30 years has revealed not so much shortcomings in the Inspection Service as flaws in the Postal Reorganization Act of 1970 and related statutes and regulations. In this respect, I believe the 1974 postal monopoly regulations are especially culpable because they increased the authority of the Inspection Service to intrude into business operations of private companies, the administrative need for them to do so, and the penalties risked by businesses who failed to cooperate with the Inspection Service.

A related, but somewhat different, problem is posed by the potential for competitive advantage based on the Postal Service's exclusive access to the services of the Inspection Service.

Accordingly, I suggest that the Subcommittee may wish to consider the following reforms relating to competition issues posed by the activities of the Inspection Service:

1) *Simplify the definition of the postal monopoly.* The postal monopoly should be defined in a simple manner that does not depend for its effectiveness upon extensive investigation of mailers or customers of private express companies or upon exercise of administrative discretion. Appropriate simplification of the postal monopoly law is relatively straightforward task in light of the numerous foreign precedents. In essence, the postal monopoly should be described in terms of the weight of items transmitted and the price of carriage. A reasonably low price threshold obviates the need for extensive monitoring or investigation. H.R. 22, the Postal Modernization Act of 1999, indeed, proposes one such approach.

Simplification of the definition of the postal monopoly would also make feasible decriminalization of the use of private express companies as proposed by Senator Coverdell in 1994. I believe this would be a desirable reform. American businesses generally have been unfairly and unfortunately targeted by the Postal Service because it is reluctant to pursue enforcement of its inflated claim of monopoly against private express companies who are fully informed about the intricacies of the law and highly motivated to defend themselves.

2) *Transfer responsibility for enforcement of the postal monopoly to an impartial agency.* Enforcement of the postal monopoly should be shifted to the Department of Justice or, possibly, another federal agency.[29] The Postal Service itself should have no greater authority than a private company to investigate its commercial competitors for legal violations. A transfer of authority could be effected either by transferring the entire Inspection Service or by divesting the Inspection Service of this particular function.

3) *Transfer responsibility for administration of the postal monopoly to an impartial federal agency.* As important as impartial enforcement is impartial administration. The 1974 postal monopoly regulations reflect a commingling of regulatory and commercial functions that is inconsistent with due process of law and fundamental fairness. A more simply defined postal monopoly will require much less in the way of implementing regulations. Nonetheless, residual administrative functions should be exercised impartially by, say, the Postal Rate Commission.

4) *Limit the ability of the Postal Service to use the Inspection Service for competitive advantage.* As noted, this reform will entail consideration of a range of policy options from contraction of the Inspection Service's jurisdiction to non-competitive postal products to expansion of its jurisdiction to transportation of all documents and parcels.

Thank you for this opportunity to present my views on the competition policy questions raised by the role of the Postal Inspection Service.

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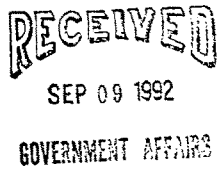
[29]The Department of Treasury is another possible candidate, but I would be concerned about the commingling of ownership and governmental responsibilities.

APPENDIX A

THE POSTMASTER GENERAL
Washington, D.C. 20260-0010

August 31, 1992



Honorable Jim Sasser
Subcommittee on Federal Services,
Post Office and Civil Service
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510-6252

Dear Senator Sasser:

This responds to your August 3 letter, cosigned by Senator Pryor, concerning Inspection Service activities related to the Private Express Statutes.

The Postal Service seeks voluntary compliance with the Private Express Statutes. Since the restriction on the shipment of letters by private carriers is not a complete prohibition, obtaining compliance is complicated by the need to distinguish between lawful and unlawful private carriage. The Inspection Service visits the premises of companies, government agencies, and others who may have knowledge of the facts relating to the private shipment of letters, but only by consent. When records relating to such shipments are relevant, they may also be examined, provided the party consents.

This year, the Inspection Service began a series of visits to Federal agencies in connection with the shipment of letters under the General Services Administration's (GSA's) contract with Federal Express for expedited shipments. These visits are conducted to determine if violations of the Private Express Statutes are occurring and to obtain voluntary compliance with the law. The GSA has made clear its desire to avoid any violation of the Statutes and the investigation is being carried out in conjunction with the Inspectors General of GSA and the other agencies visited.

Answers to your specific questions are enclosed.

Best regards,

Marvin Runyon

Marvin Runyon

1. Clarification of the Postal Service's position regarding its statutory and other legal authority --

   (a) to conduct "searches" of the premises of the customers of private express companies; and

   (b) to demand "back postage" from customers of private express companies for items allegedly carried in violation of the private express statutes.

Response:

1(a) The Postal Service has specific statutory authority "to investigate postal offenses and civil matters relating to the Postal Service" 39 U.S.C. Section 404(a)(7). Additionally, the Postal Service is granted the general authority to exercise "all other powers incidental, necessary or appropriate to the...exercises of its specific authority." 39 U.S.C. Section 401(10). The Inspection Service also has the specific statutory authority to conduct investigations into criminal conduct. 18 U.S.C. Section 3061.

Based on this statutory authority, the Inspection Service uses the normal and generally accepted methods of conducting civil and criminal investigations. This includes visits to the premises of companies, government agencies or other enterprises where an infraction of any law relating to the Postal Service may have been committed. It would also include interviewing individuals who have knowledge of facts that would show whether an infraction has been committed, and with permission, this would also include the examination of business records which contain relevant information.

It is the opinion of the Inspection Service that interviews of customers of a private express courier and voluntary examination of their mailing records pose no serious question regarding the lawful conduct of the inspector in the investigation of a violation of the Private Express Statutes.

Searches of private property for the enforcement of a regulation or a criminal statute by an agent of the Federal government would require the agent to obtain a warrant from a magistrate. Camara v. Municipal Court of San Francisco, 387 U.S. 523 (1967); Michigan v. Tyler, 436 U.S. (1978). Although the Postal Service has not, to our knowledge, conducted unconsented "searches" of the private property of the customers of private express

companies or the private express courier, to the extent that 39 U.S.C. Sections 603-604 would not apply, general Federal law governing a search and seizure would apply.

1(b) The Postal Service has adopted 39 C.F.R. Section 310.5, which provides for the payment by "persons who engage in, cause, or assist" activities made unlawful by the Private Express Statutes of "an amount...not exceeding the total postage to which {the Postal Service} would have been entitled had it carried the letters..." Sections 401(2) and (10) of Title 39 provide the broad authority for this regulation.

The amount which is equal to the lost postal revenue, is due and payable after receipt of a formal demand from the Inspection Service. However, it has been the general practice of the Inspection Service not to seek recovery of the "back postage." Postage is collected prospectively from the date of audit. The principal reasons for this practice are there are often inadequate records to accurately assess the back postage and more importantly, voluntary compliance is easier to achieve if there is no penalty.

The criminal penalties prescribed in 18 U.S.C. Section 1696 provide that the operator of a private express company is subject to a $500 fine and the shipper, $50 fine. These fines are payable to the Postal Service. The Postal Service is entitled to "collect...fines, penalties, and forfeitures arising from offenses affecting the Postal Service." 39 U.S.C. Section 2601(a)(2). Fines collected from persons convicted of offenses against the United States when such offenses affect the Postal Service are deposited into the Postal Service Fund. 42 U.S.C. Section 10601(b)(1) (b)(ii); 39 U.S.C. Section 2003.

2. Copies of notices provided by the Postal Services, by whatever medium, to customers of private express companies regarding their legal obligations under the private express statutes.

Response:

Attached are copies of brochures and other general information on the Private Express which are routinely mailed to persons requesting such information. Also, a copy of the Postal Laws, 39 U.S.C. Sections 601-606 and 18 U.S.C. Sections 1693-1697, concerning Private Express is usually provided.

Exhibit 1 — 39 C.F.R. Section 310 and Section 320, the regulations implementing the laws governing their day-to-day operation.

Exhibit 2 — A brochure explaining the purpose and basic provisions of the Private Express laws.

Exhibit 3 — A summary of the urgent letter suspension and data processing suspension which covers most of the material shipped by private and municipal organizations.

The above documents are routinely given as information by Postal Inspectors during Private Express interviews.

Attached Exhibits (4A-4C) are form letters mailed by Postal Inspectors when conducting routine monitoring to determine if firms using the urgent letter suspension are in compliance with the regulations.

3. Copies of files and records generated since January 1, 1991, pertaining to investigations of customers of private express companies for possible violation of the private express statutes (for privacy purposes, the names of these customers may be redacted and a generic description substituted, e.g., "large manufacturing company" or "state highway department".)

Response:

There was insufficient time to request the case files and prepare them for release, therefore, listed below is a summary of the closed cases jacketed since January 1991. A list of the open cases is also included. However, this material may not be released while the case is pending.

063-1091632-AR(2) - Investigation of a label-producing firm for possible violation of the Statutes. The investigation disclosed no violation.

063-1065102-AR(2) - Investigation of a credit reporting agency for possible violation of the Statutes. Firm was found to be in violation and they entered into an Alternative Postage Agreement with the Postal Service.

063-1066467-AR(2) and 063-1079475-AR(2) - Investigation of a Real Estate Board for PES violations. The firm entered into an Alternative Postage Agreement.

The following cases concern Public Utility Companies who have elected to enter into Alternative Postage Agreements with the Postal Service:

063-1060464-AR(2)
063-1066797-AR(2)
063-1088325-AR(2)
063-1088326-AR(2)
063-1088327-AR(2)
063-1088328-AR(2)
063-1034389-AR(2)
063-1067113-AR(2)
063-1067116-AR(2)
063-1067118-AR(2)
063-1068395-AR(2)
063-1068397-AR(2)

The following is a list of the open cases currently under investigation.

063-1097903-AR(2)	Insurance Firm
063-1088330-AR(2)	Public Utility
063-1088333-AR(2)	Public Utility
063-1088339-AR(2)	Public Utility
063-1092270-AR(2)	State Agency
063-1064713-AR(2)	State Farm Organization
063-1088324-AR(2)	Bank
063-1089372-AR(2)	Bank
063-1085078-AR(2)	State Agency
063-1087826-AR(2)	Financial Corporation
063-1079372-AR(2)	Credit Union
063-1079374-AR(2)	Management Firm
063-1089800-AR(2)	Federal Agency
063-1097697-AR(2)	Public Utility and Grocer
063-1086297-AR(2)	County Government
063-1073971-AR(2)	Insurance

Not included are seven Annual or Area cases. These administrative cases require the assigned Inspector to conduct monitoring activities of couriers and shippers as well as respond to inquiries concerning private express matters. Quite often a customer of a private express firm will make inquiry of the Inspection Service whether their operation or activity is in violation of the Statutes, and request assistance to bring their shipping activities into compliance with the Statutes.

4. Copies of internal Postal Service documents (letters, memoranda, guidelines, etc.), produced or in use since January 1, 1991, which pertain to the purpose, scope, legality, or conduct of investigations of customers of private express companies for possible infringement of the private express statutes.

Response:

We have not understood this request to include internal predecisional documents, or records the disclosure of which would frustrate enforcement efforts.

Attached Exhibit 5 is the section governing Private Express from the Inspection Service Manual. This section sets forth the Inspection Service's policies governing Private Express Investigations by Inspectors.

Exhibit 6 indicates GSA's desire to comply with Private Express Statutes requirements.

5. A detailed accounting of any and all monies received by the Postal Service since January 1, 1991, from customers of private express companies, in the nature of so-called "back postage" for items previously transmitted by these customers via private express.

Response:

At times, shippers voluntarily enter into an Alternative Payment of Postage Agreement with the Postal Service. This Agreement is used when a customer wishes to use courier services for mail that does not qualify under any of the suspensions of the Statutes. Rather than affix postage to each individual piece of mail, the company conducts a survey of their mail for a stipulated period of time. After the survey is completed, a payment plan is finalized.

> 39 C.F.R. Section 310.2(b)(2) provides for alternative methods of paying postage when letters are carried outside the mails. The agreements must:
>
> 1. be written;
> 2. remain in effect for a specified period of time;
> 3. adequately ensure payment of an amount equal to the postage to which the Postal Service would have been entitled had the letters been carried in the mail; and
> 4. provide for periodic review, audit and inspection.

Since January 1991, the Postal Service has collected $53,854.37 that may be interpreted as back postage. This amount is classified as back postage only because it represents the amount of postage accrued from the time the surveys begin to the time when the agreements are finalized. After the agreements have been finalized, payments are made on an agreed-to basis. Agreements are reviewed annually or when there is a postage rate or volume change.

For example, a recent Alternative Postal Agreement with a credit reporting firm may have the appearance of collecting back postage. The investigating Inspector initially made contact with the firm in June 1991. At that time, the Inspector determined there was a violation of the Private Express Statutes, but the Inspector encountered resistance from the manager who had responsibility for administering the contract. Ultimately both parties agreed there was a violation; that October 1991 would be the appropriate date to have the contract take effect; and for computing the amounts of postage due the Postal Service.

APPENDIX B

Letter from Postmaster General Marvin Runyon to Senator Coverdell, April 1994

Questions Submitted by Senator Paul Coverdell

Question: The Postal Service has suggested that it has the legal authority to search the premises of businesses and private persons in the general statutory provisions authorizing the Postal Service to investigate postal offices. On the other hand, the statute (39 USC 603) that provides for explicit search authority by the Postal Service is carefully limited to certain specific situations, none of which include the search of private businesses and persons. Is it the position of the Postal Service that it has the authority to conduct searches of businesses and private persons beyond the scope of their authority granted in 39 USC 603?

Answer: The Postal Inspection Service does not search businesses or people without a search warrant. No searches have been conducted to enforce the Extremely Urgent Letter Suspension. Under the express terms of that suspension, those who elect to use it are bound to show the Postal Service, on request, that they are complying with it. Ordinarily this is done by showing records establishing that the "$3.00 or twice the postage" rule was met. If not, the company may show that the materials it sends are not letters, or that they are letters which lose their value if not delivered within the established time frame, and that the service purchased is a same-day or overnight service which gets them there within the time limits. If the company is not willing to comply with these terms of the suspension, the Postal Service may bring an action before the Judicial Officer to revoke the suspension as to that company. The authority for prescribing the terms of the suspension is in 39 U.S.C. 601, which requires the payment of postage on letters sent outside the mails, but authorizes the Postal Service to suspend that requirement as it finds the public interest requires. The Postal Service could have included licensing or reporting requirements as a condition of the suspension, but chose instead to require only that supporting documentation be provided on request.

Question: If so, what are the legal bounds of such authority? Can the Postal Service use all the investigative techniques of police officers? Interviewing witnesses, surveillance, wiretaps, random checks?

Answer: This question appears to refer to criminal enforcement measures. The Private Express Statutes include several criminal provisions, 18 U.S.C. 1693-1699. The last criminal conviction was in 1976. United States v. Black, 418 F. Supp. 378 (D. Kan. 1976), aff'd, 569 F.2d 1111 (10th Cir.), cert. denied, 435 U.S. 944 (1978). Under 18 U.S.C. 3061, "Postal Inspectors and other agents of the Postal Service designated by the Board of Governors to investigate criminal matters related to the Postal Service and the mails" have, with respect to postal offenses, the same general authority as other federal law enforcement personnel.

Question: Please provide any legislative history that illuminates the Congressional intent to authorize the Postal Service to conduct searches of private businesses and persons, whether by means of specific statute (39 USC 603) or the more general statutes.

Answer: As mentioned in answer to the first question, the Postal Service has not conducted any searches of private premises to enforce the Extremely Urgent Letter Suspension. The suspension does not require a business to consent to a search. It does require users of the suspension to document their compliance with it upon request. The statute which authorizes the Postal Service to set the terms of any suspension, 39 U.S.C. 601, was adopted many years before the Postal Service began the practice of relaxing application of the statutory requirements through regulatory suspensions under that section. While Congress has not had the occasion to provide any formal legislative history in the context of the Extremely Urgent Letter Suspension, the procedural and other terms of that suspension were adopted in a very public way, involving both Congressional and public input through a public rulemaking and extensive Congressional

hearings. See Private Express Statutes, Hearings before the Subcomm. on Post Office and Civil Service, House of Representatives, 96th Cong., 1st Sess. (1979).

Question: How much money has the Postal Service collected from enforcement of 310.5 since 1970? How much money has the Postal Service collected from "alternative postage agreements" in that same time?

Answer: Since the real measure of the success of any enforcement program is prevention, and we cannot know exactly how many billions of dollars in revenues have been kept in the postal system because the Private Express Statutes are there and are enforced and obeyed, the full answer to this question is not available. Looking only at postage collected from those who have been investigated is just the tip of the iceberg. For 1989 through 1994, the amount of postage under these agreements is $1,204,925. These figures do not include firms opting to apply postage to mail pieces under 39 U.S.C. 601(a), and we do not have records or any method to identify the amounts of postage paid in that way.

Question: Section 1696(b) of the Criminal Code establishes a fine of $50 for the use of an illegal private express. Does the Postal Service agree that only the Department of Justice may charge a person under this provision and seek judicial enforcement? Alternatively, does the Postal Service believe it has the authority to enforce this provision as well?

Answer: Under 39 U.S.C. 404(7) and 18 U.S.C. 3061, the Postal Service has the authority to investigate postal offenses, including this one, and to refer matters to the Attorney General for consideration of prosecution. Only the Attorney General, however, may initiate a prosecution. The courts have ruled in general that the Postal Service does have authority to enforce the Private Express provisions of title 18 by rulemaking, Associated Third Class Mail Users v. United States Postal Service, 440 F. Supp 1211 (D.D.C. 1977), aff'd, 600 F.2d 824 (D.C. Cir.), cert. denied, 444 U.S. 837 (1979); and by suit for injunction, United States Postal Service v. Brennan, 574 F.2d 712 (2d Cir. 1978), cert. denied, 439 U.S. 1115 (1979).

Question: As a practical matter, are there any situations in which postal inspectors discover that someone is using an illegal private express but are unable to identify or locate the private express itself. If so, please explain.

Answer: The problem is not so much the one described, but situations in which the Postal Service discovers that someone is illegally using a legitimate private express company to send letters that are not exempt or covered by a suspension. Under the rules the private carrier has a responsibility to inform its customers of the regulations and to refrain from carrying a shipment when the form of the shipment or any other information indicates it is not lawfully subject to private carriage. 39 C.F.R. 310.4. Many times, nevertheless, only the sender may know whether the contents of an envelope include letters, or whether they will lose their value if not delivered on time. If enforcement against the sender in such a case were not permitted, then the Postal Service could find it necessary to change some of its rules, including the Extremely Urgent Letter Suspension, to define eligibility more narrowly in terms of delivery times, price, or similar matters fully disclosed to or known by the carrier.

Question: When "auditing" private businesses for their use of the "Urgent Letter" suspension, do postal inspectors second guess customers as to what is "urgent" or do they apply more objective criteria?

Answer: What anyone -- an inspector or even the shipper -- thinks about the subjective urgency of a particular letter is irrelevant to whether it qualifies for the Extremely Urgent Letter Suspension. To qualify for the suspension, a letter must meet one of two tests. If the price paid for private carriage is $3.00 or twice the applicable postage, then it qualifies, period -- how urgent it is does

not matter. The remarkable growth of the private expedited delivery industry occurred under the umbrella of this test. When customers pay less than that, the letter will qualify for the suspension only in very limited circumstances. Delivery must be completed within a tightly-defined time frame varying with distance, and the value of the letter in an objective sense must be lost even if delivered only a little late -- for example, news copy that will miss the press run if not delivered within the limit. What the customer (or an auditor) subjectively thinks about the urgency or importance of the letter or of using an alternative to the Postal Service makes no difference, except to the extent it motivates the sender to spend $3.00 or twice the postage to get it there. If the Postal Service had adopted an "urgency in the eyes of the sender" suspension, it might as well have suspended the Private Express Statutes in their entirety, because people do not want to use a private carrier unless they have important business reasons from their own perspective for looking elsewhere than the postal system. In cases where there is any doubt, either the shipper or an Inspector may obtain an official advisory opinion from the Postal Service General Counsel.

Question: If, as seems to be the case, the Department of Justice has seldom or never enforced this provision against users of private express, preferring to go after the private express themselves, what is the practical danger to repealing a law that is so rarely enforced anyway?

Answer: The danger is that law-abiding citizens would be free to ignore the Statutes, and to enclose in envelopes virtually any letters they want to send, leaving large established private carriers unable to tell (and with little incentive to learn) whether particular items tendered to them are letters or not. After all, Congress has delineated the restrictions on private carriage in content-driven terms ("letters"), and typically only the sender knows the contents of an envelope, whether it is given to the Postal Service or to a private carrier. There is something fundamentally wrong with defining as a criminal offense the conduct of only one party to a commercial transaction, and at that, the party with less access to determinative facts. In our observation, the reason that private couriers rather than their customers more typically turn up as defendants to enforcement suits, is that most shippers, who are also customers of the Postal Service, want to comply with the law when it is pointed out to them. A few entrepreneurs, seeking to establish or enlarge their business, have been willing to take greater legal risks.

Question: On what economic basis does the Postal Service maintain that the proposition of affordable universal postal service requires the maintenance of a legal postal monopoly? Are there any studies by recognized economists supporting this position?

Answer: The proposition is one which has been established and maintained by the Congress and by the laws of the United States, not just the Postal Service. In general, the economic rationale is known as "cream skimming." As a financially self-supporting uniform national service with uniform rates, the postal system incurs costs and service obligations which do not directly pay for themselves. Within its overall network it must average its costs and services in many ways. Profitmaking competitors, in comparison, would be free to "skim the cream" by offering either lower rates or better service selectively as they find most profitable, emphasizing bulk transmissions and comparatively dense or easily-served routes. As this kind of competition takes away letter mail revenues, those customers still depending on the postal system would face higher prices, and the financial viability of universal service would be threatened.

In the Postal Reorganization Act, Congress directed the Board of Governors to study and report back on the future of the Private Express Statutes. Their report, with the economic studies they commissioned, was published in 1973. The Private Express Statutes and Their Administration: A Report by the Board of Governors to the President and the Congress, Pursuant to Section 7 of the Postal Reorganization Act (June 29, 1973). The recommendations of this report led, after consideration in Congress and in public rulemaking proceedings, to the regulatory suspensions of the Statutes, eventually including the Extremely Urgent Letter Suspension.

Question: On what economic basis does the Postal Service assert the proposition of affordable universal postal service requires the enforcement of the Private Express Statutes against users of private express. Are there any studies by recognized economists supporting this position?

Answer: We see this as more a matter of effective enforcement of the law than as one of economic theory. A business transaction typically needs both a seller and a buyer. If the transaction is illegal, enforcement ought to be more effective when applied against both parties, or whichever party is chargeable with knowledge of the facts which make the transaction unlawful.

Question: What is the statutory authority for the Postal Service's "suspensions" of the postal monopoly?

Answer: Section 601 of title 39, United States Code, provides as follows:

§ 601. Letters carried out of the mail

((a) A letter may be carried out of the mails when--

(1) it is enclosed in an envelope;

(2) the amount of postage which would have been charged on the letter if it had been sent by mail is paid by stamps, or postage meter stamps, on the envelope;

(3) the envelope is properly addressed;

(4) the envelope is so sealed that the letter cannot be taken from it without defacing the envelope;

(5) any stamps on the envelope are canceled in ink by the sender; and

(6) the date of the letter, of its transmission or receipt by the carrier is endorsed on the envelope in ink.

(b) The Postal Service may suspend the operation of any part of this section upon any mail route where the public interest requires the suspension.

As you know, on March 9, the Senate unanimously passed an amendment sponsored by myself, Chairman Pryor and Senator Murkowski asking the Postal Service to suspend audits against private shippers until the Congress receives and considers a GAO study on the matter requested by Senator Pryor.

Question: As the will of the Senate is clear on this matter, are you complying with this request?

Answer: The Postal Service will do what Congress says it wants us to do. After all, the Private Express Statutes are there because the Congress enacted them, to make it possible to provide the kind of national postal system that serves every community the same, whether that makes a profit in some places or not. Businesses do not do that. Their job is to earn the greatest return they can for their shareholders. If at some point Congress should decide that the Private Express Statutes are outdated, or need to be watered down, then we will have to adjust to that. The marketplace will adjust whether we do or not. I do not believe that the universal service concept and the monopoly ought to change, but if the law changes then we will abide by it. Until then it would not be responsible to give an ironclad commitment that we will not enforce the law regardless of the circumstances. I have taken an oath to uphold it. Right now we are getting organized to do more educating and helping our customers up front, so I do not think you will see audits on any great scale.

Question: What do you hope to accomplish by these audits?

Answer: We want to help people understand and comply with the law.

Question: Could you pleased explain why government entities are "educated: when found to be in violation, while private companies are fined?

Answer: We educate private companies too, and we are going to be doing more of it. We have not fined anybody. We have signed some agreements to let people send letters outside the mail when they are not entitled to do so, unless they pay postage. The law provides for that, in section 601 of Title 39. Without such an agreement, they could not have lawfully continued to do what they were doing. If the Government wants to sign an agreement like that, we will give them the same opportunity. We have not ruled out collecting postage from them.

Question: How do you determine which businesses you will audit? Certainly there must be some basis for you to believe a certain business is not in compliance. What sources give you that basis?

Answer: The people who use private delivery firms are our customers too. They give us a lot of mail to deliver, and they give some to the private couriers. Our people work with them very closely. Sometimes they ask us what is lawful or not. Sometimes they tell us they want to give some of the letter business we have been getting to a private carrier. Sometimes our employees notice that is what they seem to be doing. There are a great many ways that potential problem situations can be identified. We need to do a better job following up first by educating and helping our customers comply. Their first contact should not be a postal inspector.

Question: If "voluntary" consent is not obtained by the business, is it your view that the Postal Service has the specific statutory authority to "audit: private businesses in an attempt to enforce the Private Express Statutes?

Answer: Not without a subpoena or a warrant.

Question: If a business refuses to be audited, and insists that a warrant be issued, what will the reaction be of the Postal Service?

Answer I assume here you are talking about somebody who has had the rules explained to them, who has had our people offering to help them, but is taking the attitude that they are not going to comply with the regulations by coming forward with any verification that their practices meet the terms of the suspension. We do not get many of those now, by the way. In a situation like that, the rules provide that the Postal Service may initiate a legal proceeding before the Judicial Officer to revoke the suspension as applied to that shipper. At that point the shipper would need to come forward with records or other evidence demonstrating its compliance with the terms of the suspension, or else risk losing its benefit. A revocation would be appealable to the courts.

Question: Will you please provide a list of the businesses "audited" by the USPS over the past five years?

Answer: We have provided some information on this to you and your staff, but prefer not to violate our customer's confidentiality by placing their names in the record of a public hearing.

Question: Will you please provide the total annual cost to the Postal Service to conduct these audits?

Answer: For FY 1993, the Inspection Service expended an estimated 2,800 total hours, for a total cost of $197,000, on all audits that covered Private Express compliance.

Mr. MCHUGH. We next have Mr. Richard Gallo, president of FLEOA.

Mr. Gallo.

STATEMENT OF RICHARD J. GALLO, NATIONAL PRESIDENT OF THE FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION [FLEOA], ACCOMPANIED BY GARY L. EAGER, FLEOA AGENCY PRESIDENT, U.S. POSTAL INSPECTION SERVICE

Mr. GALLO. Gary Eager will be reading our statement.

Mr. MCHUGH. OK, whose statement will be read by Mr. Eager.

Mr. Eager.

Mr. EAGER. Thank you, Mr. Chairman and distinguished members of the subcommittee. We appreciate being invited here to discuss various aspects of the Postal Inspection Service and the direction that we feel it is taking, discussing the potential of moving the Inspection Service to another branch of the executive branch of Government.

FLEOA believes any type of move to the executive branch of Government, we should factor in the direction the Service is taking today and the competitive aspect of complaints that are generated by other companies that were in an unfair advantage.

We believe that right now, in terms of where we are headed, that the Inspection Service is having some difficulty in obtaining the resources, both fiscal and personnel resources, to accomplish our mission. And, of course, our membership is very sensitive to the—I would refer them to allegations of unfair competition, which FLEOA would see as crime prevention and just doing our job that has been vested with us.

Since the Postal Reorganization Act, technology and competition has advanced such that the Postal Service is changing. They are in a quasi business environment, which is requiring them to deal with monetary issues, and, based on statements made recently by our Postmaster General, were having projections of reduced revenue, and, as such, the Postal Service is having to look at areas, like any business, to cut overhead.

FLEOA feels that sometimes it appears that the Inspection Service is being seen as overhead. Examples of that would be our lab personnel. Our lab personnel have been trying to get pay comparability since, I believe, 1995, and it was recently denied by the Postal Service, and, as you can imagine, our crime labs are our very foundation for some of our investigative efforts.

Prosecutors don't care about the internal politics within the Postal Service and the competition. They want lab results to proceed with prosecution.

In addition to that, our allocation of resources has come into question in that we have not had a significant increase in resources since 1975. I believe we had 1,700 inspectors in 1975, and today we have an authorized complement, I believe, of approximately 1,900. When you look at our complement and the way they are allocated, it creates some concern for FLEOA in that we don't know—I mean, there has not been a level of service study done since 1994. The only thing that we can say about our complement is it is merely a historical number, and that is a great concern.

When the OIG was established, some of those resources were actually pushed over to the IG, but this was done, again, without a level of service review to see what was needed.

I wrote the chairman of the Board of Governors a letter back in March 1999 expressing our concern that resources would be diverted to the IG at the detriment of our public service obligations, and I received a response back that this was not going to happen when, in fact, we believe it did happen.

Those are concerns with regard to resources and the perception that we feel like sometimes we are being dealt with as overhead and it is at the detriment of the public.

The Inspection Service exists—goes back to our very history, sanctity of the mail, and that is our primary task. When we question how resources are being allocated or do we have enough to do our jobs, it comes in—it becomes questionable when we haven't had a level of service review for that many years.

An example of that would be our mail fraud program where we have had a reduction of approximately 25 percent commitment from 1992 to 1999. There are other agencies working mail fraud, and as well they should, but that doesn't diminish our responsibility to be aggressive in that area.

Last, I'd like to say that, you know, in discussing moving us to the executive branch of Government, FLEOA believes that this issue obviously should be debated, but that privatization or moving us to the executive branch of Government with the Postal Service moving toward privatization—every time I read the paper, I read where they say we are having a reform or privatization, but there is no mention of the future of the Inspection Service, and I submit that the Inspection Service has a role, has always had a role, and will have a law enforcement role in the future.

The sanctity of the mail and an individual's privacy should not be done away with because of privatization. We can maintain a mail stream and enforce the laws that we currently have. If anything, we should expand our jurisdiction to incorporate that, possibly with other carriers in the Postal system in the future. It is a concern.

We don't have all the answers, but we see ourselves going down a road and our future looks, you know, questionable.

I have no answers with regard to competitors or—we, as Postal inspectors, have no competitors. We are just simply cops trying to do our job and our public service role.

Thank you.

Mr. MCHUGH. Thank you, Mr. Eager.

[The prepared statement of Mr. Eager follows:]

FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

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STATEMENT OF

GARY L. EAGER

AGENCY PRESIDENT FOR THE U.S. POSTAL INSPECTION SERVICE

FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

BEFORE

THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
SUBCOMMITTEE ON THE POSTAL SERVICE
U.S. HOUSE OF REPRESENTATIVES

RE: "THE U.S. POSTAL SERVICE AND THE POSTAL INSPECTION SERVICE: MARKET COMPETITION AND LAW ENFORCEMENT CONFLICT?"

P.O. Box 740, Washington DC 20044
Administrative Services (717) 938-2300 • 1811 Newsletter (607) 277-4899

July 25, 2000

House Subcommittee on the Postal Service
Committee on Government Reform and Oversight
Washington, D.C. 20515-6147

Re: U.S. Postal Inspection Service.

Mr. Chairman and Members of the Subcommittee:

Mr. Chairman, distinguished members of the Subcommittee, ladies and gentlemen, my name is Gary Eager. I am a member of the National Executive Board of the Federal Law Enforcement Officers Association (FLEOA), which is a voluntary non-partisan professional association representing exclusively the interests of more than 18,000 members who are federal law enforcement officers, and special agents from more than fifty agencies in the Federal Government. We are the largest such organization in the world representing Federal law enforcement. There are 1030 Postal Inspectors belonging to FLEOA which comprises 50% of our workforce. Broken down further, approximately 60% of the Postal Inspectors assigned to field offices belong to FLEOA.

I serve FLEOA as the Agency President for the U.S. Postal Inspection Service, elected by my fellow FLEOA Postal Inspector members and have served in this capacity for the past 4 years. I also serve as the National Chapters Director for FLEOA. I am a U.S. Postal Inspector working as a supervisor assigned to the Southeast Division, Atlanta, GA. I have been a Postal Inspector for more than 22 years primarily working street crimes such as armed robberies of post offices having been assigned to offices in Chicago, IL, Gary, IN, Cincinnati, OH, and Memphis, TN. Prior to becoming a Postal Inspector, I was employed as a police officer for the St. Louis, MO, Metropolitan Police Department. All in all I have more than 27 years experience in law enforcement. I am also proud to say I am a Viet Nam veteran.

Seated with me is Richard Gallo, National President of the Federal Law Enforcement Officers Association. Mr. Gallo is here to show solidarity and our association's total support for our FLEOA Postal Inspectors.

FLEOA appreciates the opportunity to appear before you today to provide testimony on the feasibility of having the U.S. Postal Inspection Service, a federal law enforcement agency, separated from the U.S. Postal Service. FLEOA believes any discussion of this nature must include not only an overview of the current direction of the Inspection Service, but should weigh the Postal Service's move toward reform and/or privatization.

FLEOA's overriding concern is the issue of privacy and sanctity of America's communications and the future role of the Inspection Service.

Distinguished members of this Subcommittee, FLEOA respectfully asserts that the Inspection Service appears to be having difficulty obtaining the necessary fiscal and personnel resources to fulfill its public service obligations. Although well intentioned, it appears that the Inspection Service is continually presenting a "value added" approach to Postal Service management in an effort to gain recognition on what we mean to the overall performance of the organization.

Second, we are concerned about the perception from the private sector that the Postal Service has an unfair advantage over its competitors by having a federal law enforcement agency attached to it.

Last fall, Ken Weaver was appointed as our new Chief Postal Inspector. We believe he is a capable leader and has the utmost integrity, but we are concerned that he will not be afforded the latitude to get our Agency back on track. I want to make it clear, we are not speaking on the Chief's behalf nor have we collaborated with any of his direct reports in bringing these issues forward

The U.S. Postal Inspection Service, one of America's oldest law enforcement agencies, can trace its roots to Benjamin Franklin. We have a proud history of service to the American public and to the Postal Service. The men and women of the Inspection Service rank among the finest in the federal, state and local law enforcement communities.

As a federal law enforcement agency we enforce over 200 federal laws relating to the fraudulent use of the postal system and U.S. Mail. The protection of the Postal Service and its nearly 800,000 employees are also core responsibilities of the Inspection Service. In addition, the Inspection Service has traditionally been a leader in areas of security and crime prevention.

In 1970 the Postal Reorganization Act was passed by Congress which changed the Postal Service by defining it as an independent establishment of the executive branch of the Government of the United States. The purpose of the act was to improve the efficiency and the performance of the Postal Service in a growing competitive business environment.

Since the Postal Reorganization Act the competition and technological advances have far surpassed what we believe was envisioned in 1970. The rise of major corporations and the advances in electronic communication via the Internet has and will continue to change the Postal Service. Accordingly, the Postal Service, like any business, is having to adjust to the changing business environment by prioritizing those program areas that keep the organization fiscally sound and cutting those Departments viewed as overhead.

The U.S. Postal Inspection Service's role in the past has been the protection of postal employees and the mail; enforcing postal laws; personnel and plant security; conducting internal audits; and conducting criminal investigations. This traditional role abruptly changed in 1996 when the Office of Inspector General for the U.S. Postal Service was created. The Inspection Service's loss of their Inspector General jurisdiction for the Postal Service changed the Inspection Service's priorities to criminal investigations supporting the concept of sanctity of the mail, security and crime prevention.

The Inspection Service's loss of their Inspector General responsibility was primarily a result of a working relationship and a chain of command that was not providing the necessary oversight for the Postal Service as required and expected. The managers of the Inspection Service and those of the U.S. Postal Service were both aligned under the Postal Career Executive Service which promoted the perception that the U.S. Postal Service was being provided oversight by its own managers which in many instances proved to be true. The lack of independence by an objective Inspector General did not provide the mechanism needed for organizational accountability.

Prior to the new OIG being established, the Inspection Service's priorities were consistent with the business needs of the Postal Service often -- times at the detriment of their public service obligations. The commitment to the criminal programs was adversely impacted by the necessity of the Inspection Service to prioritize its audit and revenue protection programs. The personnel resources allocated to the various programs reflected this commitment to prioritize those program areas deemed most important to the Postal Service, specifically those programs tied closely to its revenue. It appeared and many of us believe that the Postal Service placed greater value on our audit and revenue protection programs than they did on some of our criminal programs. This emphasis even became more pronounced from 1992 through 1999.

After the OIG was established, the process of transferring responsibilities began which resulted in the loss of Postal Inspector positions despite the fact that no level of service review was conducted to establish a base line for Inspector positions. Crime rates, population studies, facility size, volume of mail, etc., which would normally be considered were not analyzed to determine if the Inspection Service could perform at the proper level of service to meet its public service obligations. The last level of service review was conducted in 1994, and was only selectively applied. Even this level of service review was flawed, i.e., it addressed the re-allocation of resources from an existing complement. The baseline for Inspector positions is and has been a business decision as opposed to a law enforcement decision based on the needs of the organization. We feel that if a proper level of service review had been conducted in 1996, it would have disclosed the Inspection Service was understaffed.

For more than 20 years the Inspection Service has not been allocated a significant increase in personnel resources despite the increase in demands for its public service commitment. In 1975 there were approximately 1700 Postal Inspectors compared to an authorized complement of approximately 1900 in the year 2000. The Postal Service, on the other hand, experienced a significant growth in both employees and the volume of

mail it handled. Inspection Service management continued throughout the years to prioritize and reprioritize programs and relied on a professional workforce that could do more with less. During this time frame, other federal law enforcement agencies increased in both allocation of personnel and fiscal resources consistent with their public obligations. The Inspection Service's growth did not parallel that of the Postal Service or that of other federal law enforcement agencies consistent with their public service demands. **The only thing that can be said about our complement is that it is simply a historical number.**

Naturally, all local, state, and federal agencies suffer from time to time with resource needs, but they do in fact put forth an effort to identify what is reasonable and affordable and direct their efforts toward providing the best service possible. The FBI, Secret Service, DEA, and other federal law enforcement agencies have grown significantly over the past 20 years and clearly do not operate within a closed personnel resource budget. We submit our Government does not consider these agencies overhead. Most of all, they conduct some form of program management to evaluate and measure how well they are doing. For all practical purposes the Inspection Service quit program management in 1993, but did manage to re-allocate as many resources as possible to their revenue protection and audit programs at the detriment of many criminal programs such as mail theft, prohibited mailings, and mail fraud.

In the 1999 Annual Report of Investigations of the United States Postal Inspection Service, our management system shows we are to align our activities with the Postal Service management system called "Customer Perfect." The Inspection Service aligns its goals with three main categories of the Postal Service: "the Voice of the Customer, the Voice of the Employee and the Voice of Business." I could go into great detail concerning establishing goals which are allegedly tied to the voices, but it would be merely rhetorical. The voices do nothing to address our resource needs. As previously stated, we simply re-allocate. Even given our displeasure with this concept being applied to a law enforcement organization, I submit FLEOA is simply acting as a Voice of the Employee.

In December of 1997, the Inspection Service budget and other issues prompted FLEOA to conduct a survey among its Postal Inspector membership to get their input as to what they felt was the status of the Postal Inspection Service. Sixty-one per cent (61%) of the membership felt the public was not getting the proper level of service; seventy-five per cent (75%) indicated there was not enough personnel resources assigned to the criminal programs; seventy-four per cent (74%) indicated the workload was not fairly distributed; and seventy-six (76%) indicated that our position among the federal law enforcement community had weakened. Even though our survey accounted for only 25% of the work force, we considered the responses to be disturbing. The results were provided to former Chief Postal Inspector Kenneth Hunter.

The partial results of the survey as identified above were also conveyed to Mr. Einar Dyhrkopp, Chairman of the Board of Governors, U.S. Postal Service, in a letter dated March 31, 1999. The letter expressed our concern that the monetary budget for the

Inspection Service was being greatly reduced due to money being diverted to the Office of Inspector General. Mr. Dyhrkopp was also advised that the Inspection Service had no personnel budget based on analysis of workload, demographics, crime trends, etc. Mr. Thomas Koerber, Secretary to the Board of Governors, responded on behalf of Mr. Dyhrkopp by stating that many of the issues raised in our letter could be more appropriately handled by management or the Chief Postal Inspector. He also assured FLEOA that "Management has assured the Governors that there is no corresponding decrease in the Inspection Service budget to accommodate funding for the OIG." This response was simply not accurate.

A victim of re-allocating resources has been our Mail Fraud Program where other federal law enforcement agencies are expending many more work hours than the Inspection Service to combat the fraudulent use of the mail. The Inspection Service has reduced their allocation of work hours in this program by 25% since 1992. This is not consistent with the level of service required to meet public demands. Despite this situation, the Inspection Service has achieved remarkable results with limited resources. We want to emphasize that other agencies should work mail fraud, but that should not diminish the Inspection Service's primary responsibility in this program area. Perhaps a greater commitment by the Inspection Service would probably allow the other agencies to divert their resources in areas of their primary jurisdictions. I can assure you that a greater commitment by us in the Mail Fraud Program would please every U.S. Attorney's office in the country.

Another example is the refusal of the Postal Service to provide adequate pay for our lab personnel. The issue of establishing a pay scale comparable to other federal law enforcement agencies for our lab personnel goes back as far as 1995. It is my understanding the OIG recently submitted a report recommending the pay adjustments; however, the Postal Service denied the pay comparison without considering the OIG report. As you can imagine, our crime labs are an integral part and form the very foundation for our investigative successes. Denying pay comparability is not only a bad law enforcement decision, but it is a bad business decision. We are losing personnel and I doubt if they will or can be replaced since people with those skills are hard to find especially since they can get better pay with other agencies. The impact of this decision will not only have an adverse impact on our investigations, but will hamper our liaison with prosecutors and other law enforcement agencies. Prosecutors do not care about our internal problems; they just want lab results from our investigations in a timely manner.

On June 26, 2000, the Inspection Service once again announced a reduction in complement consistent with the Postal Service being faced with the need to reduce the overall complement. These reductions are to take place at the end of fiscal year 2001. This will include 23 Inspector positions in addition to 72 investigative analyst positions which were just recently approved. This reduction is in addition to the targeted reduction of 125 Postal Inspector positions as a result of the audit function being reassigned to the Inspector General. Again, this is being done without a level of service review or any consideration that the Inspection Service was severely understaffed prior to 1996. In addition, this reduction clearly points out that our resources are in fact being

reduced to staff the OIG without any supporting study or justification other than the traditional method of re-allocating resources.

When reviewing my testimony, consider that the Postal Service has an annual budget of 64 billion dollars and the allocation to the Inspection Service is only ¾ of one percent. Included in this budget are the 1400 Postal Police Officers who provide security at our major facilities. And of course, the cost of our lab personnel in the overall picture speaks for itself. Simply put, it appears the Postal Service is acting like a business by cutting costs from those areas considered overhead. I submit the Inspection Service is not overhead nor are we a corporate security entity. We are a federal law enforcement agency with a public service mandate and should be accorded the tools to carry on our mission based on sound, reasonable public service considerations.

As it stands now, the future of the Inspection Service is naturally tied to the fiscal viability of the U.S. Postal Service in addition to the value placed on its public service obligations. The need for the Inspection Service remains the same as it did at the very beginning of our Nation, however, the value placed on it by its parent organization is becoming a questionable factor when evaluating whether or not the American people and the Postal Service are getting the protection to which they are entitled.

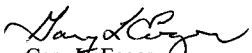
As I previously mentioned, we are concerned about the ongoing perception by some that having a law enforcement agency tied to the Postal Service is an unfair business advantage. This concern is being heightened now that the Postal Service is moving into the area of e-commerce and some competitors might think that our law enforcement activities could be used as a marketing tool. What these competitors see as unfair competition is viewed by FLEOA as crime prevention. However, we feel our members being law enforcement officers are very sensitive to any such allegations. The reality is that the Inspection Service is the only major federal law enforcement agency tied to a quasi-government/quasi-business agency. This relationship creates problems and/or perceptions that other federal law enforcement agencies do not experience. We are facing budget cuts; it appears to many of us that we are viewed as overhead; our lab and program management is and has deteriorated; we need a level of service review; our allocation of resources is questionable; and last, we are uncertain of the future.

Should consideration be given to placing us under the executive branch of government with other federal law enforcement agencies? FLEOA recommends that this issue be debated to ensure the Inspection Service remains the primary agency to conduct investigations of violations of the sanctity and fraudulent use of communications as intended by our forefathers. In the event the reform of the Postal Service continues to move toward privatization; FLEOA believes at some point the Inspections Service will have to move to the executive branch of government to survive as a federal law enforcement agency. This would be practical and good public policy. Consistent with this move should require legislation to include all carriers in the postal system. Sanctity and privacy of communications should not be the victim of privatization or reform. FLEOA believes the ultimate outcome of the debate will rest with the Congress and Postal Service's attitude toward our public service obligations and the forces of

competition. The Inspection Service was meant to be a part of the government and our existence supports and enforces every citizens right to have security for their communication.

This concludes FLEOA's statement. FLEOA and I wish to thank the Subcommittee for its work on this topic. I stand ready to answer any questions the Subcommittee may have.

Respectfully,



Gary L. Eager
FLEOA Agency President, U.S. Postal Inspection Service

Mr. MCHUGH. Rather than start a line of questioning, as I predicted the votes have been called. We have one 15-minute and two 5-minute votes, so if you can bear with us, we will try to return as quickly as possible.

We will stand in adjournment until return.

[Recess.]

Mr. MCHUGH. With the permission from the minority, we will begin to get into the question period. I appreciate all of your patience.

When I first looked at this issue, I kind of felt like the Sunday night dinners where I'd look down on my plate and there would be a nice helping of mashed potatoes and next to it would be Harvard beets. Some of it seems very palatable and others of it less so. But I think we need to talk about the framework that exists today, and I would start with Mr. Eager.

To what extent does the administrative side of the Postal Service work with you folks to define where you ought to be directing your objectives?

You mentioned in your testimony a 25 percent cut since, I believe you said, 1992 on the allocations directed toward mail fraud. To some of us that seems like an ill-advised or perhaps inappropriate reallocation of resources. Do you get to discuss that with Mr. Nolan and others as to how you can best allocate what, in a Government setting, is always going to be limited resources, Mr. Eager?

Mr. EAGER. I would think that would be more appropriate for Chief Weaver to answer.

Mr. MCHUGH. I'll get to him.

Mr. EAGER. We don't—as FLEOA, we don't discuss resources at all with management in terms of what is needed.

Mr. MCHUGH. Well, if I may, I don't mean to interrupt you, but let's take away the resource question, the dollars. That's a budgetary activity and that's an administrative function. But do you talk about the categories of your oversight responsibilities? You know, "We ought to be looking more over here rather than here," and that kind of thing.

Mr. EAGER. Well, it appears, like I said, that our history, instead of an allocation of resources—we had a level of service review in 1994 to look at the placement of Postal inspectors throughout the country and basically what they would work, but in essence this was merely a reallocation of resources. It was a very closed universe as to applying resources to where they should go.

What we believe is sorely needed is a current level of service review to take in demographics, crime rates, volume of mail, number of employees, and examine that to determine a baseline for the number of people we need in certain cities.

Mr. MCHUGH. Did you feel the 1994 review, forgetting the limited resources—I understand your point there—but, given the available resources, was it a fair review and an effective one?

Mr. EAGER. Yes. It was based on the tools they were given, because they knew—I believe, this is my opinion, that they went into it knowing it was merely a reallocation. It was just—and there had been a trend of a lot of the hours going toward revenue protection during that period of time under the previous administration.

Mr. MCHUGH. OK.

Mr. Weaver, at the suggestion of Mr. Eager, which I think was a sound one, to what extent are you provided the opportunity to work with Mr. Nolan or others to talk about that allocation of resources and where you are directing your attention?

Mr. WEAVER. I thank Mr. Eager for referring that, but we have ongoing discussions about where we are directing our resources, but, for the most part, once we have an established budget we determine where to prioritize our work and where to allocate those resources.

It is true that between the years of 1992 and 1999 there was a reduction of hours devoted to our fraud work, but I think you need to take a look at more than just the raw numbers to determine what happened. It did not mean that we de-emphasized our fraud work, and it certainly didn't mean that we did not accomplish the work that we set out to do, because I think our results are pretty impressive in the fraud area. But what it did mean was that each year we have to prioritize our work and devote our resources where the action is, and that could change from year to year.

During that span of time, as you are probably well aware, Mr. Chairman, we had some situations happen in the Postal Service where we had to divert resources, maybe from our fraud work, things like assaults and violence in the Postal Service, which was very important.

So there are elements like that that come into play. There's also elements like working on inter-agency task forces, where we find it is more beneficial to work with other agencies than merely taking out on our own and working certain investigations, and that may result in a reduction of hours, too.

The fact of the matter is that during this timeframe our work hours have increased over that time period from about 5 million work hours to 5.2 million, so there has been a shift in hours from within our work.

Mr. MCHUGH. Fair enough.

The case has been made by those who feel very strongly that the Service is being inappropriately directed that, in fact, more and more of the Inspection Service work has been directed, and I suspect, if it's true, not by the Service, itself, but directed toward revenue assurance. In fact, I believe I just heard Mr. Eager say that one of the outcomes of the 1994 review was to emphasize that. There may be good reason for that.

Do you agree with that assessment that that has happened factually, No. 1? And, No. 2, if it has, doesn't that call into question the utilization of the Service for a purpose that may not be a No. 1 priority in terms of preserving the seal, as we say?

Mr. WEAVER. As far as whether I agree that there was a shift, there was a re-distribution toward revenue protection, and to some degree that is valid, to where we look at the protection of the revenue and the assets of the organization. I think that is what we are entrusted to do, so to that extent there was.

We also have to look at the time period that we're talking about. During that time period, the Inspection Service was also performing the role of the Inspector General and was performing audits and audit-related activities, so I think some of the work that was

done in the revenue assurance area was a mere extension of that audit work that we performed.

Since then, at least since I have taken over the organization, I am dedicated to refocusing our mission and refocusing our efforts to what our mission is, and that's protection of the employees and assets and ensuring that the American people have confidence in using the mail system.

Mr. MCHUGH. And I appreciate that, and I want to underscore right here nothing in this hearing is in any way intended to call into question your abilities. In fact, I would note that in the full testimony of FLEOA they, I think very appropriately and right at the onset of their testimony, their full written testimony, attest to your professionalism and support, your approach, so I commend you for that.

Mr. Nolan, obviously I'd like to have you respond to the conversation we just had, but if you look at the budget allocations for the Inspection Service since that review in 1994 in its entirety, I think it is fair to say that the budget increases have been incremental, I suspect mostly a reflection of pay adjustments.

You heard the comment from Mr. Eager that he has concerns that the administration views the Inspection Service—I believe the phrase he used was "overhead." Would you care to respond to that and why, in an era when you definitely have the Postal Service into new endeavors like e-commerce, that I don't happen to personally believe is any way inappropriate, why we haven't seen a commensurate inspection of the Inspection Service, and, in fact, the current plan calls for diminution of another 125 agents and such. What's the rationale behind all of that?

Mr. NOLAN. Well, there's a couple of things that come together here. No. 1, the 125 agents deal with audit work, which has now been transferred to the Inspector General's function, so that work that was done by the Inspection Service now will be done by the Inspector General, so there's a—that's really a separate issue.

I think that, when it comes to resources in the Inspection Service, the Postal Service has had lean times before. When you are structured to break even, almost every year is a lean year, and we feel very strongly that the mission of the Postal Service and the need to maintain security is paramount.

As Ken Weaver said, we don't control what the Inspection Service works on. They do what they feel they need to do to accomplish that mission.

I think some of the numbers that were raised before are a little bit off. In the 1970's it was said there were 1,700 Postal inspectors, now there's about 2,100 Postal inspectors, so that growth of 20 percent is certainly a reasonable growth, given the fact that the number of employees that we've got has certainly not grown that much during that period.

I think that the—from the standpoint of management, the Inspection Service needs to be independent in the way it operates, meaning that it needs to make its decisions about where it needs to put its emphasis, and that shouldn't be done by management dictating and is not done that way.

I think that the key thing, though, is that their involvement in every aspect of the Postal Service to know where to place their em-

phasis to be most successful is the key thing, and that's where the current structure, I think, serves us so well.

Mr. MCHUGH. Thank you.

Mr. MCHUGH. Jim Campbell, the point I was trying to explore here is that any time you've got an activity like the Postal Service it seems, if not just logical, absolutely essential that there be a level of coordination between the administrative function and what they perceive to be the shortcomings, the challenges, and the direction of, in this case, the Inspection Service.

To what extent do you think that's important, No. 1, and, No. 2, when you have a proposal, as we do several, to move it to another agency, whether it be Treasury or whatever, Justice, is that not—that coordinated effort not lost? And is that a problem?

Mr. CAMPBELL. Well, from the standpoint of the private companies, we don't want to see, of course, the Inspection Service being used as a commercial tool—that is, as part of commercial policy; that we don't want to see coordination for commercial ends.

As I say in the statement, we did notice—we didn't know why—but we did notice in 1992 or 1993, an increase in visits by Postal Inspectors the private express companies.

Maybe this, in fact, was a result of the 1992 review. I don't know.

Mr. MCHUGH. There was a 1994 review, though.

Mr. CAMPBELL. There was a review——

Mr. MCHUGH. Maybe they were getting ready for it.

Mr. CAMPBELL. Well, I don't know. You're talking about larger issues that I certainly can't comment on——

Mr. MCHUGH. Yes.

Mr. CAMPBELL [continuing]. In terms of commercial policy, certainly, we would not like to see such a coordination.

Mr. MCHUGH. You say for commercial interest.

Mr. CAMPBELL. Yes.

Mr. MCHUGH. When you say that to me, I'm thinking the ad that was used that, in fact, very directly touted the fact that the Postal Service's e-commerce initiative does have the Inspection Service guarantee, if you will, behind it. That's one thing. Are there other phases of that that concern you for commercial purposes?

Mr. CAMPBELL. You know, people forget what happened not too long ago, but in the mid-1970's—I remember it very well—the express companies were just struggling entities. They were just starting out. And there's no question that the Postal Service was afraid of the express companies and tried to stop them from developing, and the Inspection Service was very active, and it was presumably coordinated all the way up to Mr. Bolger, but I don't know the details of internal Postal management meetings. I just don't know, but that's a serious matter.

Now, the express companies are today big and successful and it is not so much of a threat, but e-commerce is another new developing area. You surely would not want to see that sort of use of the police power to stop a new industry.

Mr. MCHUGH. Yes.

Mr. Nolan, do you want to respond to that?

Mr. NOLAN. I'd find it very hard for anyone to believe that the Postal Service was highly successful in killing the industry that we are supposed to have been attacking. United Parcel Service made

$700 million last quarter. So if we set out to do it, we did a very poor job of it.

I think the fact is that, in conjunction with audits in the past, there were identifications of areas where, whether it is in revenue protection or monopoly, that the Inspection Service emphasized. That is not part of their role at this point in time.

It has been shifted. The audit function has been shifted to the IG. At its peak, we had two people in the country that were involved in monopoly related issues.

The fact is that we did not have an appreciable impact on that industry. The fact is we are not trying to kill the Internet industry for the competition. This is not about competition. This is about effective law enforcement.

When we—in our ads for e-commerce, what we are touting is the fact that the same trust and security that you have with the mail you would have with the Postal Service on the Internet. We're not touting Federal agency. We're not touting the Inspection Service. To the extent that people feel strongly that by doing business with us they are dealing with a secure agency, I think we ought to be congratulated for that. But we are not touting the fact that it is the Inspection Service.

We feel there are a lot of technical issues involved in security. We also feel that there are laws and policies that we have that private companies don't have that are as important, in some respects, as the Inspection Service role in those areas.

Frankly, we don't sell lists. We have been maintaining for this Nation names and addresses of people who move forever. People know they can trust us in that space.

I think that the issue here really, though, is not—for us in the Inspection Service it is not competition, it is effective law enforcement.

Mr. MCHUGH. Yes. Jim.

Mr. CAMPBELL. I just want to clarify one point. I certainly did not mean to imply that the Postal Service is doing to anybody what they were trying to do to us in the late 1970's. I have no reason to think so. It's simply a danger that you should learn from history. That's all.

Mr. MCHUGH. I understand. Thank you.

The gentleman from Ohio, Mr. LaTourette.

Mr. LATOURETTE. Thank you, Mr. Chairman.

Mr. Nolan, just to followup on your last answer, isn't it implicit, though, in that kind of advertisement that you're almost saying that your stuff is safe? I mean, that's what you want people to believe, that your stuff is safe. And you don't say necessarily that others aren't safe, but implicit in that statement is why is your stuff safe, and isn't it safe because of the ability of the Postal Service to rely on Federal law enforcement powers to ensure its safety, which you don't have to say "Inspection Service," but isn't that implicit in that observation?

Mr. NOLAN. Well, I think—what I hope will be—what is implicit in that whole thing is a range of things. Part of it is that people know that we're not going to sell lists, unlike other companies that are doing this for profit, or when they go out of business the last thing they do is to sell the list to someone else. So I think we imply

a lot of things by those ads, but basically what we are saying is, "Whatever causes you, as an individual, to feel good about dealing with the Postal Service, you can continue to feel good about the Postal Service because we're there."

Mr. LATOURETTE. OK.

Mr. Campbell, in his opening statement Chairman McHugh referenced a letter that was written by Deputy Attorney General Mr. Raben, who is well known to the full committee because of his work on other matters recently, but in the second page of that letter—I just want to read you an observation that he makes and invite your comment on it relative your written testimony that talks about maybe some of the competitive problems. The specific quote is, "Current law also does not address problems of disparity in the Federal criminal justice system's handling of crimes against the Postal Service and crimes against its private sector competitors."

I think that's the one argument, I suppose, that he's making. Others make the argument that, well, if a crime is committed via a private parcel service, you have access to police officers, you have access to internal security measures, you have access to the courts.

Is there any observation that you would like to make relative to Mr. Raben's comment?

Mr. CAMPBELL. I think that the Department of Justice has put their finger on the problem, but I don't know how bad the problem is. I do think it is true, if you read through title 18 of the U.S. Code, you'll see that there are lots of laws that protect the Postal Service, the property of the Postal Service, the employees of the Postal Service, that don't apply to private companies.

The position of the private companies certainly would be that, where the Postal Service competes with a private company, these laws should apply equally to everybody. It is just a simple matter of principle. It is not that the Postal Service should be less protected, but the safety of a FedEx or UPS driver is no less important than the safety of a Postal Service worker. That's simply their position.

H.R. 22, as you know, provided for an overall review by—I think it wound up the FTC in the last version—of the laws to just identify these differences for Congress to make a judgment on. I think it is a good idea.

Mr. LATOURETTE. Thank you.

Mr. Nolan, I have a couple of questions that don't relate to the specific topic of this hearing, but they are of concern to some of the folks in Ohio relative to our State law relative to charitable mail versus the Postal Service's rules and regulations, and specifically Ohio is one of, I think, 12 or 13 States that has a requirement that people involved in mail solicitations for charity—one, we require you have a professional fund raiser, and, two, there needs to be a contract in place between the charity that seeks to do it saying that they're going to get some money back. The fear is that these solicitations go out and none of the dough comes back to the charity, and so we have a particular problem with—everybody likes police work and police athletic leagues, for instance, but when you peel back the onion we find out none of the money goes to any kids or police agencies.

Is that a problem that you are familiar with, the disparity between the Postal Service regulations in that regard and potential conflict with State laws?

Mr. NOLAN. I, personally, am not. I'm sorry.

Mr. LATOURETTE. OK.

Mr. NOLAN. But we can certainly research that and get back to you on it.

Mr. LATOURETTE. That's what I was going to ask you, to not hog up the purpose of this hearing. If I gave you a couple of questions in writing, could you get back to me on that?

Mr. NOLAN. Absolutely. Immediately.

Mr. LATOURETTE. Thank you, Mr. Chairman.

Mr. MCHUGH. I thank the gentleman.

Inappropriate—the word is in the eye of the beholder, oftentimes, kind of like beauty, and we've heard that word quite often here today.

Let me ask Jim Campbell, in your opinion, do you believe that the Postal Service has the legal authority to regulate in areas in which it also competes?

Mr. CAMPBELL. No.

Mr. MCHUGH. You do not?

Mr. CAMPBELL. But they exercise that authority.

Mr. MCHUGH. Pardon me?

Mr. CAMPBELL. But they exercise that authority, nonetheless.

Mr. MCHUGH. Well, yes, obviously.

Mr. CAMPBELL. That is to say, the Postal Service monopoly regulations tell the private express companies, "You have to charge at least so much." They have a certain set of rules about how you conduct the business. There are provisions about how you have to open your books to inspectors. There are provisions that provide that if you do not abide by the regulations they can, in essence, suspend your right to operate—that is, withdraw the administrative suspension with respect to a given private express company or a given customer. So, in essence, it is price and entry regulation.

Do I think that Congress ever gave them that authority? No, I don't. The Postal Service bases their claim to that authority—the suspension power—on a 1864 law which is now 39 U.S.C. 601b, I think that if you go back and look at the history of that law, it is perfectly clear that they do not have such authority.

Now, this has never been tested in court, so it is a difference of opinion, but that's certainly my opinion.

Mr. MCHUGH. Well, that's what we ask for.

Let me ask you another opinion. Given what you just said, do you think there is any legal validation in their activities on e-commerce and on a competitive product as represented in the MOU that was executed between the Inspection Service, the FBI, and the Secret Service? Does that fill the gap, in your opinion, at least in that area?

Mr. CAMPBELL. Mr. Chairman, what I have to say about 601b and the suspension power is the result of a lot of time in the library, and some of it in the archives of the United States. I have not spent so much time on the e-commerce memo of the Attorney General. I know what you're talking about, but I just don't know enough about it to really make a comment.

Mr. MCHUGH. Fair enough.

Mr. Nolan, do you want to respond to your illegal behavior, alleged?

Mr. NOLAN. I think we are very legal. I, obviously, I think what Jim Campbell said is right, there is a difference of opinion there. I do think that we are focusing on an area where the Postal Service, as I said, spends typically less than one person a year working on. It is not a major activity that we undertake to monitoring the private express statutes. Private express statutes do not pertain to the Internet, so I don't think that's particularly relevant.

I do think that what we're trying to do on the Internet is offer choice, offer—and in that choice, a lot of features. But we're not trying to set standards. We're not trying to preclude competition. We're trying to satisfy customers and maintain the viability so we can maintain our universal service.

I think it is—some of the issues that related to the private express statutes and hard copy mail and the couriers we could probably debate forever, but I don't think it is relevant to the issue that we're facing with e-commerce and I don't think it is an issue that is an ongoing issue for the Postal Service and any industry right now because we're not actively enforcing it. We don't have problems in that area.

Mr. CAMPBELL. Mr. Chairman, excuse me, but I really have to comment on this at one point.

So far as I can determine—and I certainly have not made a systematic study—it is true that the Postal Service has not been spending a lot of resources enforcing the Postal monopoly regulations since 1994, since the Postmaster General made that statement to the Senate committee. However, that is not what is going on in real life.

What is going on in real life is that the postal monopoly regulations are Federal regulations that are embodied in the Code of Federal Regulations, and that has a real effect on people.

If you go to a businessman and say, "I have a very good service and I would like to offer you this delivery service," and the business checks the Code of Federal Regulations and it says I can't do this service legally, and that chills the business significantly. Very large businesses are affected by that.

The fact that the Postal Service does not make a lot of calls on customers doesn't change the fact that those regulations affect business. And if the regulations are not meant to be enforced, they should be withdrawn. If they are not legal, they should be withdrawn.

Those regulations are a serious problem.

Mr. NOLAN. And I think that the chairman knows our feelings, as his, that the laws governing the Postal Service need to be changed. We need Postal reform.

I don't think that anyone, in their wildest dreams, would say that the Postal Service is on the advantageous end of an unlevel playing field, given the restrictions that we have. I don't think anyone would trade places with us with the restrictions that we have.

I think that, to maintain universal service at reasonable prices and recognizing what is going on in the industry and throughout the country and the world, change needs to occur.

I think it is dangerous, though, to start picking out individual bits and pieces of that, and I think it makes more sense to do the kind of thing which you have undertaken, which is to look at the whole system to try and see what changes need to occur.

So we're not protestors for no change. In fact, we want change. But in this particular issue I think picking out one individual piece of that is just not an acceptable way of approaching it.

Mr. MCHUGH. Yes. And I fully understand that. If I thought we could win, we'd have a vote on the broader issue today, but I can still count.

Mr. NOLAN. You get the yellow jersey.

Mr. MCHUGH. Yes. But, nevertheless, with full respect of what you say about picking, the purpose of the hearing is to do just that, and we're going to continue a little bit further, if we may.

Jim Campbell made a series of suggestions, some of which have been supported in advance by others—for example, narrowing of the monopoly to serve as a way by which to take care of some of these competitive concerns.

Mr. Eager, how would FLEOA respond to a suggestion, a proposal to narrow the monopoly and contain yourselves to that function?

Mr. EAGER. Well, Mr. Chairman, we sit back and we hear everyone talking about privatization in the future, and we are a law enforcement agency, and our memberships are Federal agents. The very root of what we do is arrest people and pursue prosecution of people that violate statutes from the Postal laws.

When we hear talk of monopoly or this and that, what our concern really goes back to is the sanctity of the mail, the very root of the reason we exist.

We are attached to a quasi-business/quasi-Government entity. The Inspection Service is Government, was meant to be Government, but yet when I hear the conversation from the business aspect of it, it has very little law enforcement meaning to me.

Mr. MCHUGH. Yes.

Mr. EAGER. But I do know what the intent was when we were formed by our forefathers, and if they were here today they would tell all of us that anyone should be able to mail something and there should be an expectation of privacy, and if it is taken, someone should get them.

Mr. MCHUGH. How would you react to the polar opposite of that proposal, and instead see your jurisdiction expanded to cover the private side of the equation, as well?

Mr. EAGER. I think time is going to take care of that. I think Congress, I think the way the Postal Service moves in the future, technology, competition, I think it is going to move us in that area. At some point there will probably have to be consideration to move us under the executive branch of Government, again taking the route back that people have an expectation of privacy in their mail.

And I believe I said earlier, if it does move toward privatization or reform, that shouldn't negate our responsibility to the public to make sure that privatization doesn't interfere with their expectation of privacy.

Mr. GALLO. And, Mr. Chairman, if I could just mention——

Mr. MCHUGH. Mr. Gallo.

Mr. GALLO. Thank you. The Deputy Postmaster General was mentioning how they have to break even at the end of the year. Federal law enforcement sometimes doesn't break even. We are not a profitmaking organization. If it takes several million dollars to track someone down, that's what it takes. That's what is done. These guys, these Postal inspectors, the Feds, they're cops, and sometimes law enforcement is not a profitmaking industry. It is not meant to be.

Mr. MCHUGH. Yes.

Mr. EAGER. And, Mr. Chairman, we're concerned about the nuts and bolts of things, such as our lab. They are a very integral part of the Inspection Service, and the fact that we have been trying to achieve pay comparability for them since 1995 and that was denied—I understand there was an IG report that came out. I haven't read the report, but I believe it recommended it and that it was denied without what I believe to be consideration of that report.

What we're talking about here are forensic people that are instrumental in some of our investigations, and we are losing—we could potentially lose a lot of people from this, and they are hard to replace. That's a nuts and bolts law enforcement decision. It's not overhead. When we cut that, it hurts our agency, and FLEOA feels that way very strongly.

Mr. MCHUGH. I believe you also make the claim that the pay disparity severely restricts your ability to both attract and retain those positions.

Mr. EAGER. Yes, sir.

Mr. MCHUGH. Mr. Nolan, do you want to respond to that? If you choose not to——

Mr. NOLAN. No, that's fine. That's fine. Both the chief inspector and I agree that the inability to make a final decision on that has gone on too long. There has been no denial of—in a final form of that request for modification to the pay structure. There are still meetings taking place. The next meeting is scheduled for August 9th. It needs to be resolved. There are some knotty technical problems that we have been trying to work through. We need to do that. We need to work through them, and we're going to make sure that that happens, but there has been no final denial. The labs are a very important part of our operation, and sometimes people with best intentions get involved in little nitty-gritty details and fail to see the big picture. I think we need to get to that big picture and solve it.

Mr. MCHUGH. OK. Let me return to my original question to Mr. Eager.

How would you respond to an action that would either limit the Postal Inspection Service to investigations by narrowing the monopoly, or, second, to take the opposite track, and that is to expand their jurisdiction and to include the private sector companies.

Mr. NOLAN. Well, the Inspection Service needs to make sure that people follow the law. If the law changes, then the work that the Inspection Service would do would change. So, to the extent that there is a law on the books, we need to enforce the law.

The fact is that attacking the monopoly issue has not been a major emphasis for the Inspection Service. How that monopoly law

might change and, therefore, what the Inspection Service might do I can't say.

When it comes to expanding the Inspection Service to cover private enterprises, my concern with that is one of scale and one of familiarity.

Part of the reason why the Inspection Service is so successful is that they live and breathe this stuff every day. They are part of everything we do. They are in every meeting that we hold. They understand what is going on. We don't direct their activities, but knowing what is going on in our organization makes them a lot more effective.

To now increase that span of control over areas where we are not as familiar I think does nothing to enhance our abilities to do our current job and could undermine that and may not make us the best people in the world to take on that new responsibility.

Again, we fund our own security and Inspection Service activities. Those are not funded in the private sector. With increased law enforcement activities of some nature—and, again, I don't recommend it be ours—would there come some increased regulation of those private companies. Who can say? And I'm not sure that they would be particularly thrilled with that.

So I think that the whole thing would need to be examined, but for us to expand our role I don't think would enhance our current success and our current mission, and I'm not sure that we would be the best people in that other space.

Mr. MCHUGH. Mr. Weaver, do you agree with that?

Mr. WEAVER. Yes, Mr. Chairman, I do agree with it. And, as far as our role goes, you go back to the law and the fact that under title 39 we have been charged with a mission, and that mission has been unswerving. To expand our authority—again, I agree with the Deputy Postmaster General that we would lose focus, we would lose what was intended to—what our intended goal and mission was. And I just don't think it would be good for the Postal Service or it would be in the best interest of the American people to do that.

Mr. MCHUGH. Mr. Nolan, I've got just one quick question. I am detecting a lack of enticement on your part that to move the Postal Inspection Service to the Treasury Department or Justice would produce almost half a billion dollars in budgetary savings. This is so important that that's not an issue?

Mr. NOLAN. Well, first of all, I think it is so important that it is absolutely a completely small issue for us, compared to the importance of maintaining the trust and carrying out the mission that we have, so I do think it is a very small issue.

I also don't think it is a good idea to throw additional costs on the taxpayers because the Treasury obviously or the Federal Trade Commission or whoever is going to want money to support those activities of an Inspection Service, and I think the current model that says that you've got to pay what you get, pay for what you get, is not a bad one. But I do think for us it is a completely secondary issue, and second is way out of the ball park compared to the first one, and that's the sanctity of mail, the protection of our employees. It is not a budgetary issue to us.

Mr. MCHUGH. What about containing the Inspection Service to pursuing questions that are related only to non-competitive products? I mean, after all the core of this discussion and those who seem to be concerned about it focuses on the issue of the Postal Service's ability to market the Inspection Service in the competitive area as a value-added kind of asset.

Mr. NOLAN. Again, I am being very careful to make sure that our organization does not market the Inspection Service as the reason why we have trust.

Mr. MCHUGH. But, if I may, but you did make a suggestion in a public ad that that was there, and that—I mean, I'm not necessarily criticizing the attempt. I understand the role of advertising. But the suggestion was certainly there that that makes your product better than a private company.

Mr. NOLAN. Yes. No ad that we've put out has indicated that the Inspection Service is part of our security, and——

Mr. MCHUGH. Well, back to Mr.—I don't mean to keep interrupting you, but back to Mr. LaTourette's point, you didn't use the words, but you made the suggestion. You don't agree?

Mr. NOLAN. I know what you're saying. To some people the fact that we have an Inspection Service is important. And would we do anything to tell them no, it's not important? The answer to that is no.

Mr. MCHUGH. OK.

Mr. NOLAN. I think that, from a practical standpoint, if you say that all that we would work on is the noncompetitive things, the only thing that we have is noncompetitive, in a sense, is first-class mail. Advertising mail certainly has competition. Parcels have competition. When you are looking at investigating crime, crime doesn't know classes of mail, and we travel from one class of mail to another when we are investigating certain aspects of crime, whether it is pornography or child abuse, whether it is fraud. It travels across all classes of mail, and so I don't know how you do that. I really don't know how you do that.

Mr. MCHUGH. How do you do that?

Mr. CAMPBELL. I think Mr. Nolan has a good point. I'm not suggesting that it is a very simple matter. A lot of H.R. 22 deals with exactly these kinds of problems, because there is a certain unity of operation in the transport and collection and delivery of the mail, and some of it is competitive and some is not the provision in H.R. 22 about allocating overhead, the equal cost coverage provision, is an attempt to deal with that issue.

With respect to the Inspection Service, I think that you have to think in similarly creative terms when you have joint operations. Obviously, if the Postal inspectors find a truck of stolen first-class mail, they are not going to give the mail to the Postal Service and give the parcels back to the thieves. All right. Nobody is advocating anything silly like that. But perhaps with accounting procedures you can take care of it.

Certainly, as implied by your questions, you want to draw the line at misuse of the Inspection Service. You want to draw the line at activities that are not bound up with monopoly mail. When you get into e-commerce, that is probably operationally separate. The solution, in H.R. 22, was to create a separate corporation, which

presumably would have taken care of the problem. But you want to first try to limit the Inspection Service to joint operations that you can't avoid protecting, as long as you are protecting first-class mail. In addition, you want to ensure the work of the Inspection Service is not expanded beyond those activities. You have to do it with some good will and some creativity. That's all.

Mr. MCHUGH. Sounds like a damn good bill. I'll have to look at it. [Laughter.]

Mr. CAMPBELL. Go back and look at it again and see if you don't like it.

Mr. MCHUGH. And I appreciate the accolades. The purpose of the hearing is really not on that focus, but it does provide one approach.

Jim Campbell, you mentioned in your comments that there was the phrase used "a coercive nature"——

Mr. CAMPBELL. Yes.

Mr. MCHUGH [continuing]. With respect to the Postal Service, Inspection Service and its powers. Don't you find that in any law enforcement organization? I mean, doesn't the FBI have the coercive power of Federal law behind it? Does not the local police Doctor have the coercive power of the municipal code? I mean, isn't that kind of part and parcel with having a police agency overseeing anything?

Mr. CAMPBELL. Sure it is. Nobody objects—nobody can reasonably object to the fact that a law enforcement agency uses coercive powers. The problem in the past has been that the monopoly regulations create some of this coercion, apparently out of thin air, as predicates for using the suspension, taking advantage of suspension, and because the coercion is coming from a competitor in the field whose commercial incentive determines how the power of the Government is being used.

Now, as I suggested in the testimony, you can certainly imagine, at least, redefining the monopoly in terms that are much more self-executing, so you don't need so much administration. You don't need so much coercion.

But, furthermore, the coercion that is being used, the judgment that goes into enforcement, "Shall we, push this guy or not?"—that judgment ought to be rendered by somebody who is impartial, not by somebody with a commercial interest.

Mr. MCHUGH. Yes.

Mr. CAMPBELL. That's all I'm saying. I'm certainly not suggesting that in the end, whatever the monopoly is and whatever the laws are to enforce, it will not be coercive. Obviously they are going to be coercive.

Mr. MCHUGH. So your concern is either, No. 1, your last point, that when you have a competitive interest it causes difficulties in terms of a truly unbiased enforcement of provisions.

Mr. CAMPBELL. Sure.

Mr. MCHUGH. Or, No. 2, that, as a followup to your earlier comment, in your opinion you have a nexus here between the natural and probably unavoidable coercive power of any police agency and what you feel are, if not inappropriate, perhaps illegal or excessive assumption of power, police power, because I believe you said they

didn't, in your opinion, have the authority under law to do some of the things you are doing. True?

Mr. CAMPBELL. Yes. I think that I do not want to be too accusatory here, but I do think that even veterans of the Postal Service, looking back over the last 25 years, would say that probably they've done a bit too much in pushing on the private express laws.

I think that if we could all rewrite history, you could imagine a much more objective, fairer approach to defining and enforcing the monopoly. My suggestion is simply that if you look back at that 25 years, you can clarify the mission of everybody so that the next 25 years are better. That's all.

Mr. MCHUGH. Mr. Nolan.

Mr. NOLAN. I thought I heard earlier that there wasn't any inference that the Postal Inspection Service had operated inappropriately, it was the way the law was written that was the real problem. Now apparently that's—I'm either hearing it differently, or maybe there is some other coercion taking place.

My sense was that what Jim Campbell had a problem with was the way the law was written that made that monopoly statute something that people didn't even have to walk in the room and talk about, someone reading it would be uncomfortable.

I think there is a big difference. When it comes to the Postal Service and how we reacted back in 1970 to competition that we never had before I think is an interesting discussion, but I don't think it is particularly relevant to where we are today.

Mr. MCHUGH. I thought I heard Mr. Campbell respond to my question, did he believe that precisely—I didn't mention if section 1341 permits the Postal Service to regulate in the area in which it also competes, that in his opinion they did not.

What did we hear?

Mr. CAMPBELL. I think that the heart of the Postal monopoly regulations of 1974, which are the current regulations, is the suspension power—the power that the Postal Service exercises, purportedly under 601b of Title 39. I think that the Postal Service has misinterpreted that provision. I'm not the only one who thinks so. I have good reason for thinking so. I think those regulations—the heart of those regulations represents a misinterpretation of the law.

Now, that's not to say that there is no Postal monopoly. Obviously, there is a Postal monopoly.

Mr. MCHUGH. Well, I was specifically talking about competitive products.

Mr. CAMPBELL. I'm sorry.

Mr. MCHUGH. So am I.

Mr. CAMPBELL. I'm sorry. With the monopoly regulations what the Postal Service is doing is defining the line between competitive and noncompetitive.

Mr. MCHUGH. OK.

Mr. CAMPBELL. It is not exactly that they are regulating competitive products, but they are defining that line in a rather creative manner, let's say.

Mr. MCHUGH. Speaking of creativity, Mr. Nolan, hypothetically, if we were to move the Postal Inspection Service en masse, just pick it up as it exists today and imbued with all of the authority

and all of the responsibilities it has and plop it into Treasury, for example, wouldn't your creativity still allow you to suggest that you, as the United States Postal Service, have a certain assurance of sanctity that others do not, because, indeed, a Postal Inspection Service located in Treasury or within the Postal Service would still have the responsibility of doing what it does today? Not that you would ever inappropriately advertise, but if you were just, you know, sitting around thinking about it.

Mr. NOLAN. I don't think it would be as effective. I think that we've got a focus with the Inspection Service right now that couldn't be guaranteed if the agency was picked up en masse and moved to another location.

I think that the Nation benefits from the fact that we maintain that focus and cover all activities that we undertake.

Mr. MCHUGH. Yes, sir. I understand that. And that really wasn't the point of my question. My question was more a truth in advertising question. I mean, in terms of—one of the major concerns that we've heard repeatedly is that the Postal Service right now is using the existence of the Postal Inspection Service as a reason why your e-commerce product is more secure than perhaps some other one.

My question is, if you did that—and I understand you would say you have not, but if you were to do that today and tomorrow the Postal Inspection Service were part of Treasury, the same assurance is there. I understand your concern about diminution of effectiveness. I'm talking more about the advertising kind of perspective.

Mr. NOLAN. Again, I continue to believe that the reasons why people trust us are varied, and I think that the Inspection Service doing its job to some people indicates there should be trust, I think to some people the fact that we've handled addresses a certain way and can't sell things and have certain mandates that we have to live by and certain policies that we adhere to, and the way we've done business over the years indicates that we should be trusted.

I think you are not going to see from us an emphasis on the Inspection Service as the reason why people should do business with us. If we had an Inspection Service that was constantly monitoring our products and services and reported to someone else, would we still have that same benefit if they were as effective? The answer is probably yes. We would still emphasize the fact that this is an organization that can be trusted, both, we think, from a technology standpoint and from a practice standpoint.

The investigatory aspect of it is really just one leg of a stool and can't stand without the others.

Mr. MCHUGH. Right, because your announcement—"yours" being USPS—announcement that Post-X would be the first commercial provider of electronic postmark speaks very specifically about affording the sender legal protections and remedies for illegal interception and tampering.

If that were an Inspection Service—I assume that's who you meant, and if you didn't I think one can reasonably conclude that, but an Inspection Service in Treasury would still provide those legal protections and remedies for illegal interception.

Mr. NOLAN. We believe it is against the law to permit interception and modified seal, et cetera, communications, whether you're

dealing with the Postal Service or anybody. The fact is we just happen to use the Inspection Service to do investigation. But I think that statement could be made by our competitors, too.

Mr. MCHUGH. FedEx could tout the FBI, for example?

Mr. NOLAN. Sure.

Mr. MCHUGH. Really?

Mr. NOLAN. That's correct.

Mr. MCHUGH. Jim Campbell, is it not true that many of the concerns you voice are not, in and of themselves, remedied by just a transfer of location out of the Postal Service? I mean, I think you'd make the argument that—many have said that would do it. I don't see that that does. I don't see that without—if you're going to transfer, the same problematic circumstances exist across the wide range unless you also take the next step of doing some kind of jurisdictional amendment.

Mr. CAMPBELL. I think you're right. As I said in the beginning, I think the Inspection Service, by and large, in my experience, has been attempting to enforce the legal framework that they're given by others, by the Law Department or by Congress or whatever, and the fault lies not so much with the Inspection Service and how the law is administered but with the overall legal framework. I think you have to look at both.

Mr. MCHUGH. Mr. Weaver, did you want to say something?

Mr. WEAVER. Yes. Thank you, Mr. Chairman. I think, once again, we've got a—and I agree with Mr. Campbell. I think we perform the role that we are given by law, and will continue to perform that. And I've always said that these hypothetical situations, although we need to consider them and we need to think about them, from our perspective it is very important for the organization to determine where they are going before you extract the Inspection Service from the organization.

We have been charged with a mission of protecting the mails, protecting the employees of the Postal Service, and we're going to continue to do that and continue to enforce the laws, and that's our primary mission and I can't see it changing unless there is a major change in the organization, and then we have to look at it.

Mr. MCHUGH. Mr. Eager or Mr. Gallo, if you've ever read a budget bill in Congress you know we spend a lot of time dealing in fantasy, so let's spend a little time here right now.

If you had, if not unlimited, a significant opportunity for added resources and you—either or both of you together—could direct those resources, where would you put them right now? What would you like to see the Inspection Service doing beyond what they are budgetarily capable of doing today?

Mr. EAGER. It would be, again, based on a review of what is needed, but prohibitive mails, narcotics interdiction, we do a lot of good work in that area, but it is just, you know, I believe we could do more. I believe we could do more in the area of child pornography. But those are just guesses without an assessment by each division as to what the complaints are or what the needs are, discussions with the U.S. Attorney, and, of course, mail fraud, health care fraud.

Again, it would be consultation with the U.S. Attorney's office in conjunction with their priorities as a law enforcement agency that we would consider.

Mr. MCHUGH. Mr. Gallo, have you got any——

Mr. GALLO. The devil is in the details. How much staffing? Funded by corporate taxes? User fees for this service?

For the expansion of the Inspection Service's jurisdiction to ensure the sanctity of all communications, giving that to the professional men and women, these criminal investigators within the Inspection Service to expand their jurisdiction to these other areas of communication, they would handle the job and they'll handle it professionally, just as professionally as they are handling it now.

But, as you said, with the budget bills, the devil would be in the details. How would they be funded? How much staffing?

Mr. MCHUGH. Yes. Mr. Eager.

Mr. EAGER. Our concern, of course, is the future. I mean, every time we pick up, like I said before, the paper, we read of privatization, reform. I'll be retired, but I wonder about the sanctity of my mail when I'm 70 years old. If it is privatized, what happens. If it is reformed to the extent—where does privacy, where does the sanctity issue go?

The Inspection Service has done it. I mean, for 200 years we've done this, and we should have a place in the future of doing this.

Mr. MCHUGH. Yes.

Mr. EAGER. And that's why I think maybe it should be debated. I think the future will take care of itself, again, with technology. We may very well get to that point of needing to move under the executive branch of Government, depending on what happens to the Postal Service.

Mr. MCHUGH. So you would share Mr. Weaver's opinion that, in terms of a logical sequence, you have to position the Postal Service in whatever way you're going to, and there's a variety of thoughts as to what should occur there before you can make a rational judgment on the Inspection Service?

Mr. EAGER. Absolutely. I mean, because if you just pick us up and put us under the executive branch of Government right now at this time with our current jurisdiction, you're still going to have the perception of unfair competition because we're enforcing the same statutes. The only way it could be conceivable is if it is expanded to other postal carriers in the postal system.

Mr. MCHUGH. You mention your review in 1974 of the Inspection Service, the evaluation—or 1994, wasn't it, sorry, 1994 as the last time that was conducted.

Mr. EAGER. Yes, sir.

Mr. MCHUGH. I get the impression that you feel another one is due. Is that a correct impression?

Mr. EAGER. Yes, sir, I do.

Mr. MCHUGH. Mr. Nolan or Mr Weaver, you want to——

Mr. WEAVER. Yes, Mr. Chairman. I am very familiar with the review that was conducted in 1994. It was a level of service review. What it attempts to do is evaluate the work flow and evaluate the resources to that work flow.

I'm not saying it didn't need to be done, but it was not fully implemented probably the way it should have been. But I—it is a valid concern.

Mr. MCHUGH. Mr. Eager.

Mr. EAGER. I've known Chief Weaver for over 20 years and he's a very capable, a man of integrity and a leader, and FLEOA is well pleased that he is our chief. We just hope he is afforded the tools to take our agency in the direction that we need to go.

Mr. MCHUGH. Do you agree with that, Mr. Nolan?

Mr. NOLAN. Absolutely.

Mr. MCHUGH. Well, I'm glad we settled that.

The ranking member had other business and he has been tremendous, as all of you are aware, on all of this and continues to take an active interest in this particular hearing, but he has got to figure out how to be in two places at once, but he has submitted a number of questions for the record that he will submit to you gentlemen. We very much appreciate your responses at your earliest convenience.

Mr. MCHUGH. As is the custom, we also ask for your indulgence in other followup questions from the committee, if you could provide those for the record.

I'd like to ask Mr. LaTourette if he has any concluding or additional comments or questions.

[The information referred to follows:]

Response To Written Questions Submitted By Chairman John McHugh To The Federal Law Enforcement Officers Association, September 28, 2000

1. In general, how would you describe labor-management relations involving your association and postal management? What is the state of labor-management relations on the workroom floor of the Postal Inspection Service? How could relations be improved?

Labor-management relations between FLEOA and Inspection Service management is deemed very poor. Consistently over the past four years we have tried everyway possible to improve communications and establish a protocol to resolve problems. In the absence of a formal grievance procedure, it has and is our hope that issues can be resolved when they can be identified as right or wrong as opposed to win or lose. In almost every serious issue we have brought forward, management has either ignored the problem or taken an avenue that we deem inappropriate. It has become abundantly clear that management has does not hold themselves to the same standard of conduct as they do the field Inspector. FLEOA has tried to force accountability on many issues that were subsequently referred to the Officer of the Inspector General or the Subcommittee for the Postal Service as appropriate. And we have been criticized for making these referrals even though we felt this was the only way to shed light on the problem.

It is the feeling of many, that management has the "who do they think they are" attitude toward FLEOA. We, on the other hand, have tried many avenues to get their attention for the common good of the Inspection Service. The responses we get are: "We're looking at that." "Yes, there appears to be a problem." "You don't have all the facts." "It's more complicated than that." "We're not prepared to discuss that at this time." We had incidents where the misconduct of managers was largely ignored especially when you see that no or little action had been taken. And as bizarre as it seems, we've had incidents where it actually looked like the manager involved in misconduct were rewarded. Fortunately the numbers of incidents are few, but the message is clear.

Management's relationship with FLEOA would improve if they would simply apply the same standard of conduct for managers as they do for the field the field Inspectors. In addition, we would like avenues other than the EEO to dispute what we deem are unfair decisions that are not consistent with postal policy.

Management's attitude and lack of independence is what led to the creation of the Office of Inspector General. This same attitude prevails and we submit if asked, the new Inspector General would most probably acknowledge there are difficulties even with her liaison with Inspection Service management. In our opinion, accountability is very shallow.

2. The Postmaster General has stated that as a "result of pressures of the competitive environment" personnel reductions and "heroic cost cutting measures" will be necessary. Given the cost cutting that is continuing at headquarters, is FLEOA concerned that the Inspection Service may not have sufficient resources in the future?

Yes we are concerned about our staffing, both present and in the future. The Inspection Service has not had a level of service review since 1994 and as such they have not documented exactly what they need to fulfill their public service obligations. It appears to many of us that resource decisions are business decisions and the Inspection Service is being treated as overhead.

3. What changes do you believe need to occur in the near future in order to permit the Inspection Service to effectively fulfill its law enforcement responsibility?

The relationship of having the Chief Inspector report to the Postmaster General has led us in the direction of the business needs of the Postal Service, which in the past few years has diverted resources from the criminal programs. The trend of putting more resources into the Revenue Assurance Program was stepped up the last few years and was recently halted. Many had the perception that the Inspection Service was being used as revenue collectors. With the reporting relationship as it is, it is only natural the Inspection Service prioritize its programs toward the priorities of the Postal Service. With a closed universe of personnel resources, our public service obligations have suffered and a level of service review would most probably prove that we have been in a state of deterioration.

The more competition from the private sector, budget concerns, and the move toward privatization has and will continue to adversely affect the Inspection Service.

At some point a determination will have to be made to move the Inspection Service under the Executive Branch of Government if this Service is to survive as a federal law enforcement agency. FLEOA maintains that the Inspection Service has always had the primary role in protecting the sanctity and privacy of communication and if anything their jurisdiction should expand to ensure every American's rights are protected. This would be good public policy.

4. Under the Revenue Assurance Program, the Postal Service used the Inspection Service to audit bulk mailers. I understand that in the near future this function will no longer be a responsibility of the Inspection Service except for those cases that rise to the level of civil or criminal fraud. To what extent, if at all, did FLEOA's membership believe that this was an appropriate or efficient use of Inspection Service personnel? Please explain.

There has been a shift recently in the Revenue Assurance Program wherein resources are directed toward criminal activity. We hope this policy continues, however, we are realistic and have doubts about the future.

From 1992 there had been a gradual increase in personnel resources directed to the Revenue Assurance Program. It appeared the philosophy was the more personnel working in this area would bring in more money. Unfortunately, an increase in resources meant a decrease in other program areas. For example, the number of work hours expended in the Mail Fraud Program has decreased by 25% since 1992.

5. You note that you believe the Inspection Service is understaffed. Do you believe that this is primarily a problem of improper resource allocation, or improper assessment of law enforcement needs? Has FLEOA made any assessment of what the Inspection Service complement should be?

We believe the Inspection Service has a problem in both the proper allocation of resources and the proper assessment of law enforcement needs. This is very clear cut in view of the fact the Inspection Service has conducted no analysis since 1994 to determine our needs. Matter of fact, the study in 1994 was flawed, i.e., the issue of resources was a closed universe and the study was designed to determine how we could best reallocate our resources consistent with priorities that encompassed the demand for revenue protection and OWCP investigations.

Management presents a picture that the reduction in hours allocated to such program areas as mail fraud was a result of hours being directed toward other criminal projects such as assaults. When assaults happen, we respond. From a program point of view this is factored in the overall analysis and has little to do with the trend reduction in mail fraud hours. In reality, an increase in assault hours probably would have reduced hours in other areas of the External Crimes Program such as the Mail Theft Project as opposed to mail fraud. Management exercises no baseline study to determine the number of positions needed.

6. Why do you believe that the "Customer Perfect" management system is inappropriate for the Inspection Service? What management model should be employed instead?

The Inspection Service has taken the "Customer Perfect" management system used by the Postal Service to manage their business and have tried to apply it to a law enforcement agency. The policy statement and the goals look great on paper, but the reality of our performance should be based on traditional law enforcement and prosecutorial considerations. In our opinion, the "Customer Perfect" model has unnecessarily aligned the Inspection Service too close to the business aspects of the Postal Service.

Response To Written Questions Submitted By Congressman Chaka Fattah To The Federal Law Enforcement Officers Association, September 28, 2000

1. How do you feel about those who wish to limit the role of the Inspection Service to only internal security and crimes directly related to the postal monopoly?

The Inspection Service's primary mission has always been to ensure the privacy and sanctity for U.S. Mail. Most attacks on the postal system come from non-employee perpetrators. Limiting the Inspection Service's jurisdiction to only internal security would not provide the proper protection for the American public nor would it ensure their Constitutional Right to privacy for their mail.

The Inspection Service's current jurisdiction is limited to those crimes directly related to the postal monopoly. The real issue is expanding our jurisdiction consistent with the Postal Service's move into e-commerce, etc. The Inspection Service's expanding role in areas where the Postal Service does not have a monopoly appears to be creating concern among some legislators and from some businesses engaged in competition. Does the Postal Service have a competitive advantage by having a federal law enforcement agency attached to it? The answer to this question directly relates to whether or not the Postal Service, a quasi-business/government entity, is using a federal law enforcement agency as a marketing tool. The Inspection Service was not created to be a quasi-business/government agency. The Inspection Service is a government agency attached to an agency that is engaged in business and is expanding its role resulting in competition from the private sector.

The Inspection Service's role should be expanded to include all carriers engaged in commerce in the postal system. It seems it would practical to move the Inspection Service under the Executive Branch of the Government and expand our jurisdiction accordingly in an effort to enhance privacy and sanctity for everyone thereby removing any perception of a competitive edge and establishing a firm law enforcement foundation for the future to deal with technological advances in communication.

2. How do you feel about those who wish to expand the role of the Inspection Service, beyond mail fraud?

The jurisdiction of the Inspection Service is well beyond just mail fraud and incorporates numerous other federal statutes. The Inspection Service also works investigations with jurisdiction ancillary to our own. For example, Inspectors working an armed robbery of a postal facility may discover the suspect committed other crimes such as bank robbery and bring charges accordingly.

3. What steps, if any, should this subcommittee take relative to whether market competition and law enforcement are in conflict?

The debate concerning whether or not the Postal Service's marketing activity is in conflict with their law enforcement obligations stems from the very structure of the Postal Service being a quasi-business engaged in competition with businesses in the

private sector. The role of the Inspection Service is one of public service and our organization is expected to operate within the realm of our government obligations not as a business asset. What we do in terms of crime prevention could be perceived as a business advantage while this would make good law enforcement sense. This perception will probably continue to grow due to the Inspection Service being attached to the Postal Service. In addition, this negative perception has grown as a result of efforts in revenue protection being emphasized the past few years giving the impression to many that Inspectors were being used as money collectors.

We feel the Subcommittee should clearly define to the Postal Service what is acceptable conduct with regard to their customer service obligations as it applies to the Inspection Service. We also feel the Subcommittee should strongly consider that the Inspection Service is in fact a government agency protecting assets that belong to the public. The U.S. Postal Service is a public company and the organizational behavior should reflect the same.

In the event competition moves the Postal Service more toward privatization, the Subcommittee should review and defend our Constitutional Rights to have privacy and sanctity for our correspondence even if this means expanding the jurisdiction of the Inspection Service to include other major carriers in the postal system and placing us under the executive branch of government such as the U.S. Department of Treasury or the U.S. Department of Justice. This would be good public policy.

4. Has the Postal Service appropriately and effectively managed the Inspection Service to best fulfill its law enforcement mission?

The Inspection Service like all federal law enforcement agencies has had its ups and downs. However, the Inspection Service's budget is tied to the fiscal performance of the Postal Service. There hasn't been a clear assessment of what the Inspection Service needs to perform the proper level of service for many years. The last level of service review was conducted in 1994 and was only selectively applied. When the Office of the Inspector General was formed, resources were diverted from the Inspection Service to staff this organization without any consideration as to exactly what was needed on the front end. The allocation of our resources has been and currently is a business decision as opposed to what is actually needed stemming from crime trend analysis, volume of mail, size/number of facilities, number of employees, population studies, etc. The staffing of the Inspection Service is simply a historical number and many of us feel we are treated as overhead. The Postal Service has not appropriately nor effectively managed the Inspection Service in identifying and providing the proper level of law enforcement service to the public.

5. Is it appropriate to market the Service in order to increase the value of competitive postal products and services?

No. The Postal Service provides a public service with public trust. Naturally the competitive nature of the business is directly related to the fiscal strength of the organization. Thus, it is apparent that the Postal Service has to find ways to strengthen its financial base in order to maintain its public service role. The Inspection Service should not be a part of any type of marketing activity other than providing law enforcement assistance to the customers of the Postal Service. Our role should be one of crime prevention/investigation and we should leverage our efforts throughout the postal system for the good our Nation as a whole.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY CHAIRMAN JOHN MCHUGH TO JAMES I. CAMPBELL JR., SEPTEMBER 5, 2000

Question 1. Your noted that concerns about improper direction of Postal Service activities could not be addressed simply by changing the management or rulemaking authority. What specific measures would you suggest need to be taken in order to effectively eliminate the alleged competitive advantage the Postal Service gains from the Inspection Service?

Answer. In my prepared statement, I suggested four steps that could be taken to eliminate the competitive distortions caused by the Postal Service's exercise of official investigative powers, not merely its command of the Inspection Service. In the following notes, I will try to be more specific about what measures Congress might feasibly consider to implement these suggestions.

(1) Simplify the definition of the postal monopoly. Simplifying the postal monopoly ultimately requires revision of the statutory provisions that define the postal monopoly, specifically, 18 U.S.C. 1694-99 and 39 U.S.C. 601-02.

Section 503 of H.R. 22 offers one approach. It would offer substantially simplify the postal monopoly by amending 39 U.S.C. 601. I agree with this proposal.

Personally, however, I would prefer a more thorough approach to eliminate anachronistic statutory provisions. Like sections 603 through 606 of title 39 of the United States Code, discussed in my prepared statement, sections 1693 to 1699 of title 18 and sections 601 and 602 of title 39 are so antiquated that they are virtually indecipherable. I believe that all of these provisions should be repealed. The postal monopoly should be defined by relatively straightforward statutory provisions placed in chapter 6 of title 39. Examples of such simplification may be found in sections 29 and 30 of the Australian Postal Corporation Act of 1989 and sections 1 and 2 of the Postal Act of the Netherlands. In general, modern postal laws such as these declare that the monopoly extends to the carriage of "letters" (defined to include written correspondence and possibly printed advertisements) provided (i) each letter weighs less than X and (ii) the price of carriage per letter is less than Y. Additional exceptions—for example, for letters enclosed with cargo and letters carried to a post office—are also set out. Penalties for violation of the postal monopoly can be expressed as civil fines and included in title 39.

Because legislative clarification of the monopoly would entail substantial modification of the scope of the postal monopoly, the foregoing suggestions may be politically impossible in the absence of comprehensive postal reform. Therefore, it may be worthwhile to consider a more modest approach as well. In the short term, even without substantive reform, it would highly desirable to transfer authority to administer the postal monopoly to an impartial agency, like the Department of Justice or the Postal Rate Commission. It seems to me likely that, based on a fresh look at the underlying postal monopoly statutes, an impartial agency would adopt much simpler implementing regulations than those adopted by the Postal Service.

As mentioned in my prepared statement, I would also limit liability to penalties for violation of the monopoly to private carriers, excluding their customers. Because private carriage service is necessarily offered to the public at large, no illegal private operator of significant size can escape detection. Conversely, no operator too small to be detected will pose a significant financial threat to the postal service. Eliminating penalties on users of private express companies would do much to eliminate abuses of enforcement. In my view,

this step would be a desirable reform regardless of whether the definition of the postal monopoly is simplified although simplification would certainly make it easier.

(2) Transfer responsibility for enforcement of the postal monopoly to an impartial agency. Pending an overall decision on the relationship between the Inspection Service and the Postal Service, I believe that section 204 of title 39 should be amended to declare that, in an investigation of an alleged offense under the postal monopoly laws or other laws directly related to the activities of competitors (specifically, 18 U.S.C. 1693-99, 1725, and 39 U.S.C. 601-06), the Chief Postal Inspector and any Postal Inspector shall report to, and be under the exclusive direction of, the Attorney General (or possibly, the Secretary of the Treasury). I would also amend 39 U.S.C. 2601to eliminate the Postal Service's pecuniary interest in criminal fines arising out of violations of the postal monopoly. The purpose of the postal monopoly is not to enrich the Postal Service but to finance public service activities that otherwise would have to be paid by the Treasury.

(3) Transfer responsibility for administration of the postal monopoly to an impartial federal agency. I believe that section 401(2) of title 39 should be amended to declare that the Postal Service does not have authority to adopt, amend, or repeal regulations that implement the postal monopoly laws or other laws directly related to the activities of competitors (specifically,18 U.S.C. 1693-99, 1725, and 39 U.S.C. 601-06). Instead, I believe that an impartial agency, such as the Department of Justice or the Postal Rate Commission should be authorized to adopt such regulations.

(4) Limit the ability of the Postal Service to use the Inspection Service for competitive advantage. As noted in my prepared statement, potential use of the Inspection Service for competitive advantage in areas outside the collection, transportation, and delivery mail, raises a myriad of issues relating to the future not only of the Inspection Service but also of the Postal Service itself. Without trying to address such broad issues, it would seem to me desirable, for the time being, to amend section 204 of title 39 to provide that, in an investigation of an alleged offense other than an offense primarily concerned with the physical collection, transport, or delivery of mail by the Postal Service, the Chief Postal Inspector and any Postal Inspector shall report to, and be under the exclusive direction of, the Attorney General (or possibly, the Secretary of the Treasury).

Question 2. In your testimony, you stated your view that the suspension powers exercised by the Postal Service under section 601(b) are unlawful. If the suspension of the monopoly were to be repealed without other changes to title 39, to what extent, if at all would this affect private express companies? Absent the suspension of the monopoly, would private express companies be effectively outlawed? In your opinion, what authority permits existence of private express carriers?

Answer. This question highlights the anomalies of the current legal situation. An answer requires an explanation of the legal issues surrounding the Postal Service's claim to a "suspension power," an area I touched on briefly in footnote 16 of my prepared statement.

As careful study of the text and administrative history of the regulations will reveal, the Postal Service's claim that 39 U.S.C. 601(b) authorizes it to suspend the postal monopoly is absolutely central to the scope and effect of current postal monopoly regulations, including the unfortunate level administrative enforcement discussed in my prepared statement. The Postal Service's alleged suspension power is the lynchpin of the postal monopoly regulations because it allows the Postal Service to exempt politically powerful groups—such as newspapers, banks, and express companies—from the of monopoly, thus making possible an extremely broad claim of monopoly by thwarting public demand for

congressional review

The Postal Service states that its authority to suspend the postal monopoly is based on 39 USC 601(b). Section 601 states in full:

> (a) A letter may be carried out of the mails when—
> (1) it is enclosed in an envelope;
> (2) the amount of postage which would have been charged on the letter if it had been sent by mail is paid by stamps, or postage meter stamps, on the envelope;
> (3) the envelope is properly addressed;
> (4) the envelope is so sealed that the letter cannot be taken from it without defacing the envelope;
> (5) any stamps on the envelope are canceled in ink by the sender; and
> (6) the date of the letter, of its transmission or receipt by the carrier is endorsed on the envelope in ink.
> (b) *The Postal Service may suspend the operation of any part of this section* upon any mail route where the public interest requires the suspension.

The Postal Service interprets §601(b) to allow it to create exceptions to the postal monopoly by placing great weight on the phrase "any part of." As the Postal Service has explained to this Subcommittee:

> The principal civil provision of the Private Express Statutes is 39 U.S.C. 601, which enumerates six conditions under which letters may be carried outside the mails, including the payment of postage by affixing stamps. Congress has included in 39 U.S.C. 601(b) authority to suspend "any part of" section 601 where required by the public interest. *The Postal Service has considered that the plain meaning of this language permits it to suspend one or all of the conditions for outside carriage, including the requirement to pay postage.* The section has been applied both in fairly narrow ways, for example, by permitting postage to be paid in bulk by check so that stamps do not have to be placed on letters carried privately, and more generally, by suspending all six conditions for certain categories of items such as those described in the question. [*General Oversight of the U.S. Postal Service*, Hearings before the Subcommittee on the Postal Service of the House Committee on Government Reform and Oversight, 104th Cong., 1st Sess. (1997) at 651-52 (emphasis added)]

Validity of the "suspension power" thus depends on the correctness of the Postal Service's interpretation of the phrase "suspend the operation of any part of this section." The word "suspend" is not an uncommon word; a contemporary dictionary defines "suspend" to mean: "to cause to cease for a time from operation or effect, as a law, rule, privilege or the like: to suspend parking rules; to suspend ferry service. Random House Dictionary (unabridged, 1966). Since the Postal Service may suspend the "operation" of "this section"—i.e., §601—and "the operation" of "this section" is to permit private carriage of stamped mail, it appears clear that §601(b) merely confers on the Postal Service authority to discontinue permission to carry stamped letters out of the mails, i.e., to prohibit private carriage of letters even where postage has been paid. Read literally, §601(b) does not allow the Postal Service to suspend the operation of the postal monopoly laws themselves. The interpretation advanced by the Postal Service is wholly inconsistent with the terms of the act.

A "plain meaning" interpretation of §601(b) is fully supported by the legislative history of the underlying act. 39 USC 601(b) is derived from §7 of the Act of March 25, 1864, ch. 40, 13 Stat. 36, which stated:

> That the Postmaster General be, and he is hereby, authorized and empowered to suspend the operation of so much of the eighth section of the act of the thirty-first of August, 1852, as authorizes the conveyance of letters otherwise than in the mails on any such mail routes as in his opinion the public interest may require.

The eighth section of the 1852 act referred to provided that a letter may be carried out of the mails if enclosed in an envelope bearing a government stamp. Act of August 31, 1852, ch 113, §8, 10 Stat 141. In 1864, the Congress considered repealing this exception to the postal monopoly. The Senate wanted to do so, but the House resisted. The conference committee compromised on a provision that allowed the Postmaster General to suspend the exception on those routes where abuses were greatest. The compromise was explained by Congressman Alley, one of the conferees, as follows:

> [The Senate proposed a] section [which] repeals the law of 1852 so far as it authorizes the conveyance of letters otherwise than in the mails. By the law of 1845, all mail matter was prohibited from being carried upon post routes by any one out of the mails. In 1852, that law was amended so as to provide that letters and other mail matter might be carried by express companies or by individuals, provided legal postage was prepaid and the envelopes in which the matter was carried were stamped. The Senate proposed by this additional section to repeal that law. *In case of the repeal of that law, we should fall back upon the law of 1845.* That law was regarded as working a hardship, at the time of the enactment of the law of 1852, upon the business interests of the country, and the reasons alleged by the Senate for its repeal were, that upon the Pacific coast, in many instances, great abuses had been practiced.
>
> The conference committee agreed upon an amendment to that provision of the Senate, and to it the unanimous assent of the committee of both Houses was given. As proposed to be amended, it will read as follows: [as quoted above]
>
> *This leaves the matter entirely in the discretion of the Postmaster General, and he may adopt the remedy so far as it may seem necessary to promote the interest of the public service.* [*Cong. Globe*, 38th Cong., 1st Sess, 1243 (1864) (emphasis added).

The "remedy" which the Postmaster General was thus authorized to adopt was the repeal of the 1852 act so as to "fall back upon the law of 1845," i.e., to reestablish the postal monopoly prohibitions. Congress certainly had no thought of authorizing the Postmaster General to suspend the operation of the law of 1845, i.e., the postal monopoly itself.

The "any part of" language found in §601(b) was introduced as a result of a 1938 amendment. In that year, Congress amended the stamped envelope exception at the request of the Post Office. Act of June 29, 1938, ch 805, 52 Stat 1231. The House committee report, dated June 16, 1938, indicates that the amendment was drafted by the Post Office Department. The House report quoted the requesting letter from the Post Office as follows:

> If letters be sent outside the mails . . ., they may be forwarded only in Government-stamped envelopes. . . . . It is the view of the Department that section 239 of the act of June 8, 1872, should be amended *so as to permit letters to be sent in envelopes with postage stamps affixed thereto or with the metered indicia showing that postage has been prepaid.* [H.R. Rep. No. 2785, 75th Cong., 3d Sess (1938) (emphasis added)]

The gist of the Post Office proposal was to allow private carriage of "envelopes with stamps affixed" and "envelopes with the metered indicia showing" as well as, as before, "envelopes with embossed postage thereof." The Post Office proposal also added the words "or any part thereof" to the description of the Postmaster General's suspension authority so that it read:

> But the Postmaster General may suspend the operation of this section or any part thereof upon any mail route where the public interest may require such suspension.

Although the Post Office letter did not explicitly address this aspect of its proposal, the apparent purpose of the phrase "or any part thereof" was to allow the Postmaster General flexibility to bar private carriage if postage was paid by some methods but not others, for example, by metering but not by stamps. Neither does the House committee report mention authorizing the Post Office to suspend the postal monopoly itself. On the same day the House committee reported the bill as proposed by the Post Office, it was approved by both

House and Senate without significant debate. 83 Cong. Rec. 9665 (June 16, 1938) (Senate); id. 9670 (House) (June 16, 1938).

The current version of §601(b) was adopted as §901(b) of the 1960 postal code. Although minor changes in phraseology were adopted in the 1960 code, there is no basis to believe the import of the provision was changed 180 degrees. S. Rept. No. 1763, 86th Cong., 2d Sess. (1960).

The legality of the Postal Service's claimed suspension power has never been addressed by a court. For completeness, however, it should be noted that the Supreme Court has twice mentioned the suspension power in discussing postal monopoly issues, assuming without discussion that the Postal Service *is* authorized to suspend the postal monopoly. *Air Courier Conference of America v. American Postal Workers Union*, 498 U.S. 517, 519 (1991); *Regents of Univ. Cal. v. Public Empl. Rel. Bd.*, 485 U.S. 589, 593 n. 1 (1988). In neither case, however, was the lawfulness of the Postal Service's interpretation of §601(b) briefed by the parties or subject to a legal ruling by the Court.

While no court has ruled directly on the legality of the Postal Service's claim of a suspension power, a very similar claim of administrative suspension authority was rejected in *MCI Telecommunications v. American Telephone and Telegraph Co.*, 512 US 218 (1994). In that case, AT&T sought summary reversal of a 1983 FCC regulation that exempted "non-dominant" long distance telecommunications carriers from the tariff filing requirements of the Communications Act of 1934. The D.C. Circuit Court agreed with AT&T. The FCC and MCI appealed. The Supreme Court affirmed. In its defense, the FCC noted that the act specifically authorized the FCC to "modify any requirement" of the act. The Court, however, pointed to the importance of tariff filing in the overall regulatory scheme and dictionary definitions of "modify" as "to change moderately or in minor fashion." The Court concluded that exempting all but one carrier from the tariff filing requirements of the act was more than a modification. As the Court said, "*What we have here, in reality, is a fundamental revision of the statute . . . . That may be a good idea, but it was not the idea Congress enacted into law in 1934.*" 512 U.S. 231-2 (emphasis added). In contrast, the Postal Service's claim to a suspension power, which allows one competitor to regulate others, is not even a good idea.

The Postal Service's argument concerning the phrase "suspend . . . any part of" is further undercut by a remarkable letter written in November 1974, two months after adoption of the 1974 postal monopoly regulations. A mailer requested, inter alia, clarification of the legal effect of a USPS suspension on the criminal proscriptions that make up the postal monopoly. A USPS lawyer replied *by disclaiming authority to suspend the criminal statutes*:

> we do not know how we can clarify the status of carriers or users of carriers under the criminal Private Express provisions [if they are] operating under [an administrative] suspension . . . promulgated by the Postal Service under the civil Private Express provisions [i.e., 39 U.S.C. sec. 601(b)]. *No express authority exists in the Postal Service to suspend the provisions of the criminal laws.* We doubt very much, however, that a successful prosecution could be maintained against someone operating in good faith under *a suspension of the civil prohibitions on the private carriage of letters.* [*Hearings on the Postal Reorganization Act Amendments of 1975, H.R. 2445, Before the Subcommittee. on Postal Service of the House Comm. on Post Office and Civil Service*, 94th Cong. 1st Sess. (1975) at 346 (emphasis added)]

In this letter the Postal Service apparently concedes that the administrative suspensions are a legal sham. The Postal Service may not have authority to suspend the postal monopoly, but no court would convict someone who has been misled by Postal Service regulations.

In short, I conclude that the Postal Service does not have authority to suspend the postal monopoly or to condition use of such suspensions on cooperation with the Inspection Service because Congress never granted such authority to the Postal Service or its

predecessor, the Post Office Department. While I have investigated every step in this history personally (and filled in some blanks), I cannot claim credit for original discovery. So far as I am aware, that credit should go to a Yale professor of law and economics, George Priest, and a Postal Rate Commission lawyer, Norman Schwartz, cited in footnote 16 of my prepared statement.

This is the legal background of the suspension power and serves as the basis for an answer to your questions.

If the suspension of the monopoly were to be repealed without other changes to title 39, to what extent, if at all would this affect private express companies? My answer is that, from a *legal* standpoint, repeal of 39 U.S.C. 601(b) would have no effect on private express companies. All that would happen is the Postal Service would lose the power to prohibit private carriage of stamped envelopes on selected postal routes, a power the Postal Service and its predecessor, the Post Office Department, have never found occasion to use in the 136 years since it was granted by Congress.

As the foregoing history explains, repeal of §601(b) would also eliminate the provision which, since 1974, the Postal Service has cited as primary authority for its postal monopoly regulations. This claim has always been specious, a defect not cured by the passage of time. As a practical matter, however, because even specious postal monopoly regulations are widely relied upon by mailers and private carriers, it is obvious that repeal of §601(b) would raise questions in the minds of many about the right of private carriers to transport items which, according present regulations, can be carried only because of the Postal Service has suspended the monopoly. Contrary to popular belief, the list of such items includes items mentioned in part 310 of the regulations as well as items mentioned in part 320. A partial list would include:

- Newspapers, and periodicals
- Checks and other commercial papers
- Legal papers and documents.
- Matter sent for filing or storage
- Data processing materials
- Intra-university mail
- Urgent letters and documents
- Advertisements in parcels
- International remail

In real life, after a short period of uncertainty, I do not believe that private carriage of any of these items would face serious legal risk if §601(b) were repealed. The Postal Service itself has no authority to prosecute anyone, and I do not believe that the Department of Justice would prosecute someone for operating a business that was begun in good faith reliance on federal postal regulations. Indeed, I would expect the Department of Justice to issue a statement of policy that effect soon after repeal of §601(b).

Repeal of §601(b) would, of course, require the Postal Service to live within the means provided by a pre-1974 vision of the postal monopoly. The effect would hardly be noticeable. The postal monopoly laws have not changed significantly since 1872. The national postal system carried on, protected by a postal monopoly, for more than a century without mention of the suspension power. If §601(b) were repealed, the Postal Service would merely revert to an interpretation of the postal monopoly laws somewhat more in keeping with the statutes of Congress.

In summary, I believe that the effect of repeal of §601(b) on private express companies would be beneficial because it would eliminate many of the coercive and intrusive aspects of the current postal monopoly regulations described in my prepared statement. I do not believe that current private express operations would be jeopardized. Nor do I believe that the Postal Service finances would be significantly affected by a return to pre-1974 interpretation of the postal monopoly law. Over the long run, this is not a satisfactory legal

situation for the private express companies or the Postal Service because postal monopoly law is not clearly defined nor logically related to the public interest. However, it is substantially *less unsatisfactory* than the current situation, which is characterized complex and coercive postal monopoly regulations of highly dubious authority whose main effect is to intimidate unsuspecting mailers.

Absent the suspension of the monopoly, would private express companies be effectively outlawed? For the reasons stated above, I do not believe that private express companies, or other private carriers operating within the terms of current suspensions, would be "effectively" outlawed if §601(b) were repealed. As a matter of legal theory, I accept that private carriage of urgent "letters" would be—indeed, is now—inconsistent with the postal monopoly law of 1872. However, for reasons too lengthy to go into, I also believe that a full blown litigation of the scope of permissible private carriage would result in a judicial determination that the term "letter," as used in the 1872 postal act, is a relatively narrow term that includes only a portion of what is now first class mail. This narrow definition of "letter" substantially mitigates the theoretical legal exposure of private express companies. In any case, if §601(b) were repealed, I cannot imagine any set of circumstances that would lead to a full blown litigation of the subject. All parties affected would strongly prefer Congressional clarification to uncertain and costly litigation.

In your opinion, what authority permits existence of private express carriers? I think this has been answered by the foregoing discussion. Whatever is not prohibited is permitted.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CHAKA FATTAH TO JAMES I. CAMPBELL JR., SEPTEMBER 5, 2000

Question 1. Your testimony discusses at length the fact that the Postal Service exercised its authority to suspend the operation of the Private Express Statutes relative to private express carriers. In your opinion, can the postal service further exercise its authority to relax the Express Statute and permit further competition in the delivery of letter mail?

Answer. For the reasons set out in my answer to Question 2 from Mr. McHugh, I believe that Congress has never granted the Postal Service authority to suspend the postal monopoly laws. Therefore, I do not believe that the Postal Service is authorized to "further exercise its authority to relax the Express Statute and permit further competition in the delivery of letter mail."

QUESTIONS SUBMITTED TO POSTMASTER GENERAL WILLIAM J. HENDERSON IN FOLLOW-UP TO THE "U.S. POSTAL SERVICE AND THE POSTAL INSPECTION SERVICE: MARKET COMPETITION AND LAW ENFORCEMENT IN CONFLICT?" HEARING ON JULY 25, 2000 CHAIRMAN JOHN MCHUGH'S QUESTIONS

1. **Please provide for the record the number of work hours allocated to mail fraud since 1992.**

Answer:

Year	# Employees
1992	625,500
1993	629,919
1994	585,196
1995	567,860
1996	543,366
1997	538,375
1998	528,909
1999	524,790

In Fiscal Year 2000 to date 17.4 percent of all criminal work was devoted to fraud (second only to mail theft). See attached (a).

Also, fraud against the Postal Service was changed to expenditure investigations (for tracking purposes) during this period of time.

2. **How many employees did the Postal Service have in 1970? How many postal inspectors? How many do they have today, respectively?**

Answer: EMPLOYEE COMPARISON

	1970	1999
Total career postal employees:	548,572	797,795
Total number of postal inspectors:	1,274	1,549

Source: 1970, 1999 Annual Reports

3. **In the Inspection Service's 1999 Annual Report, it stated that a new mission and vision would be developed in fiscal year 2000 to incorporate "competitive strategies." What is meant by "competitive strategies" in the context of the Inspection Service's law enforcement mission?**

Answer: Inspection Service competitive strategies involve:

- Improving customer confidence in the U.S. Mail through fraud investigative and prevention efforts.

- Ensuring the protection of Postal Service revenues through workers' compensation and financial investigations.

- Remaining dedicated to being the premier law enforcement agency that is investigating and preventing the sexual exploitation of children and the mailing of child pornography.

- Postal Service security issues where the Postal Service is the victim.

- Inspectors' involvement in the initial stages of new e-business product and service development to ensure security. The Inspection Service will conduct investigations if these new products and services are criminally attacked.

4. **Does "competitive strategies" include supporting the Postal Service's efforts to grow revenue and market share in competitive areas such as Express Mail, Priority Mail, and Parcel Post? In what ways does the Inspection Service help the Postal Service to compete?**

Answer: No. The Inspection Service is involved only with criminal violations or uses of these products. The Inspection Service continues to support the Postal Service's goals to provide a universal mail service that is safe and secure from fraud and dangerous material.

The Inspection Service is part of the Postal Service, and its mission is to protect employees and customers, revenue and assets and to ensure confidence in the mail.

5. **As the Internet has grown as a medium for legitimate communications and business transactions, it has also become a medium for criminal activity. What emerging problems involving criminal misconduct and the Internet have the potential to affect the Postal Service, the U.S. mail, and the new electronic products and services that the Postal Service offers? What kinds of violations take place and what do you think will be the key problems in the future?**

Answer: Criminal misconduct on the Internet has thus far consisted primarily of fraud and child exploitation. For the most part, the Internet and Internet-based products and services offer new ways to commit old-fashioned crimes rather than new crimes.

Recently, an independent Harris Poll reported that the majority of Americans feel more confident in conducting business utilizing the security and privacy afforded by the Postal Service, than communicating over the Internet. We have found that what is true in the real world remains true in the virtual world. There is a dramatic growth in business solicitations and advertising on the Internet; however, most often payment and shipment remains via the Postal Service or private courier. Fraud schemes continue to utilize the telephone, mail, television, radio, and now, the Internet, to lure victims. The underlying offense, and most effective remedy, remains the Mail Fraud Statute.

6. **What are the major activities of the Postal Inspection Service in addressing criminal misconduct and the Internet? Can you describe what the Inspection Service is doing and the special expertise that is required in this area?**

Answer: The Inspection Service is quickly developing additional capabilities to investigate the high-tech nature of crimes on the Internet. To date, almost 25 percent of all Inspectors have been trained in handling digital evidence and Internet investigations. In addition, the Inspection Service has established a digital evidence unit within the Forensic and Technical Services Division.

7. **Can you describe how the Postal Inspection Service coordinates with other federal, state, and local law enforcement agencies in investigating criminal misconduct in the e-commerce area? What is the jurisdiction of the Postal Inspection Service in the e-commerce area compared to other federal, state, and local law enforcement agencies?**

Answer: As the primary law enforcement arm of the Postal Service, the Inspection Service works closely with agencies on a number of issues of mutual concern. We have an employee detailed to the Infrastructure Protection Center. We have had an employee detailed to the Internet Fraud Complaint Center. We continue to receive referrals from the Internet Fraud Complaint Center and make inquiries with them. A Postal Inspector is detailed to the Federal Trade Commission as the manager of their complaint database, Consumer Sentinel. We have an analyst review their database for top violators and make referrals to inspectors. Inspectors can also query their database. We are active in a number of interagency working groups. We are involved in the Interagency Coordinating Committee and participated in the development of Department of Justice guidelines. Inspectors are involved with various task forces on a local basis and several inspectors are involved in the High Technology Crimes Association. Their development of the credit card industry security group, participation on financial crimes task forces, long standing relationship with the Federal Trade Commission, and continued success in multi-jurisdictional efforts to combat internet related fraud, has earned them a reputation among law enforcement groups as a valuable player in the electronic communications frontier.

Any violation of federal law pertaining to the Postal Service or use of the mail becomes the responsibility of the Postal Inspection Service. The Inspection Service places a high priority on its responsiveness to all complaints falling under its jurisdiction. Memorandums of Understanding (MOUs) have been signed with the Department of Justice, U.S. Secret Service, and Federal Bureau of Investigation relating to four statutes for which limited delegation of jurisdiction was received. (18 USC 1029, 18 USC 1030, 18 USC 1343 and 18 USC 2701). The agreement defines this to mean: criminal conduct in which the Postal Service is an actual or intended victim; conduct that directly affects electronic messages conveyed by the Postal Service; counterfeiting or misuse of any electronic postmarks used by the Postal Service; or criminal conduct directed against any computer, computer system, communication system, delivery system, payment system or other similar property owned or leased by or provided to the Postal Service.

8. **Does the Inspection Service generally take the lead in investigating violations that may affect the Postal Service's e-commerce products and services? For example, has the Inspection Service investigated possible misuse or other violations involving the Service's e-commerce products and services? Can you describe the Inspection Service's accomplishments in this area?**

Answer: Yes. The Postal Inspection Service has the lead in investigating crimes that affect the e-business products and services, subject to the division of responsibility with

the Postal Service Office of Inspector General (OIG). Because the Postal Service has introduced a limited number of e-business products and services, Inspectors have not yet seen crime that would affect the products and services. The Inspection Service continues to work with postal managers when products are in the formative stages to make the products and services as secure as possible.

9. Does the Inspection Service get involved in other types of e-commerce investigations that do not involve the Postal Service's e-commerce products and services? If so, can you describe the Inspection Service's role and accomplishments in this regard?

Answer: The Inspection Service gets involved with e-commerce criminal activities when the U.S. Mail is used in furtherance of the crimes. The Internet is used by criminals as a medium to conduct illegal businesses, advertise illegal services and products and to communicate with others.

The Inspection Service is a recognized leader among law enforcement in child exploitation investigations. The majority of the cases Inspectors encounter originate online.

It should be noted that these types of crimes (advertisement and child exploitation) are not expanding, they are not new and they are evolving to a more immediate medium of solicitation. The Inspection Service does not see a need to expand its jurisdiction to address these dynamics, but it is enhancing its training efforts to increase postal inspectors' ability to respond.

10. The Inspection Service and the Federal Trade Commission both have responsibilities in the area of consumer protection. How does the Inspection Service coordinate with the Federal Trade Commission in the e-commerce area? What successes have resulted?

Answer: The Inspection Service and the Federal Trade Commission (FTC) have maintained an excellent working relationship for many years. Both agencies focus on consumer protection. Both believe strongly in fraud prevention. The FTC works joint cases combining the best aspects of its powers to combat fraudulent activity, and in the case of the Inspection Service, the criminal Mail Fraud enforcement ability. The Inspection Service and the FTC were the largest contributors to the multi-agency fraud prevention campaign known as KNOW FRAUD. The focus of the first KNOW FRAUD initiative was on telemarketing fraud. KNOW FRAUD 2, scheduled for early 2001, will focus on identity fraud. This October both agencies will hold a joint press conference to announce the results of Project Mailbox IV. As the name implies, this is the third consecutive year for the mailbox initiative, which focuses on deceptive mail solicitations being received by consumers.

Moreover, as a result of the close ties between the two agencies, a postal inspector is currently on special assignment with the FTC as program manager for the Consumer Sentinel consumer complaint database. The Consumer Sentinel was established to serve as a central repository for all consumer complaints to be shared with all law enforcement agencies. It was later expanded to include a separate identity fraud database. The one-year special assignment of the Postal Inspector is to examine how

the agencies can better and more immediately share complaint and intelligence information regarding fraudulent promotions.

11. On April 27, 2000, Mr. Nolan unveiled the Postal Service's Electronic Postmark at the National Postal Museum. The Postal Service's press release quoted him as saying, "The Electronic Postmark will give on-line communicators a little peace of mind and add a level of trust and security that Americans have come to expect from sending a regular hard-copy letter." How is the Inspection Service helping to maintain the security of the Electronic Postmark?

Answer: The Inspection Service has worked with postal managers as security consultants on this project. Postal Inspectors reviewed the application from a security perspective, discussed code with contractors, and worked to assure that electronic postmark (EPM) servers are placed in secure locations. The application cannot be installed before the Inspection Service approves the security at the installation site.

12. Postal materials state that the Postal Service's new international document delivery service – Post eCS – combines the advantages of couriers, faxes and the Internet with the protection of the U.S. Postal Service.

How has the Postal Inspection Service been involved in protecting the security of Post eCS communications? In the future, will the Inspection Service investigate tampering or misrepresentation if it involves Post eCS communications?

Answer: The Inspection Service has functioned as a security consultant on PosteCS. As with all applications, Inspectors work to assure the product is as secure as practical and that the capability to retain the evidence that would be necessary to conduct an investigation is retained in the system. As with the EPM, they work with postal contractors to identify and address vulnerabilities in the product. The Inspection Service will investigate tampering or misrepresentation involving PosteCS in line with the division of responsibility with the Postal OIG.

13. When the Postmaster General announced on April 5, 2000, that USPS eBillPay service was available, he said the Postal Service would ensure secure service via the Internet. How will the Inspection Service be involved in helping maintain the security of payments made through eBillPay? For example, will the Inspection Service investigate criminal misconduct if it involves eBillPay?

Answer: The Inspection Service, in conjunction with Postal Information Security staff, is working to assure the eBillPay product is a secure system that protects customers' sensitive financial data. As with other products discussed previously, the Inspection Service has been involved with the eBillPay product since early in the project. Protection of the information our customers entrust to the Postal Service is a top priority on this product.

The Inspection Service will investigate criminal misconduct involving eBillPay in line with the division of responsibility with the Postal OIG.

14. In a December 3, 1999 Department of Justice letter, it was noted that the Postal Reorganization Act did not provide any safeguards against the possibility of

conflicts of interest between the Postal Service and the Inspection Service. Does the Service have processes to ensure that it does not apply its law enforcement powers or leverage its protections in an abusive manner? If so, please discuss the review process.

Answer: We do not agree with the interpretation of the excerpt of Assistant Attorney General Raben's comments in his letter of December 3, 1999. There is not a conflict between the current structure of the Postal Service and Inspection Service as established by the Postal Reorganization Act of 1971. A conflict may exist if the Postal Service becomes a profit motivated business. As noted by Mr. Raben, that is a hypothetical situation.

The Postal Reorganization Act granted specific powers to the Postal Service, including the power *"to investigate postal offenses and civil matters relating to the Postal Service."* The role of the Inspection Service is to ensure that postal services to the American public remain safe and secure. This role is distinct from the Postal Service's obligation to provide these services.

Although the Inspection Service receives funding from the Postal Service, it operates within the Postal Service as a type of separate entity. Neither the Postmaster General nor any of the officers has ever tried to direct or influence a criminal investigation – nor have they attempted to deter the Inspection Service from conducting a criminal investigation. The independence and integrity of Postal Inspectors is evidenced by their investigations involving top postal officials, including members of the Board of Governors and former Postmaster General Runyon.

There are several processes, both internal and external, to ensure that the Inspection Service does not apply its law enforcement powers or leverage protections in an abusive manner. Internally, Inspectors review operations to ensure investigative resources are properly committed to support the goals of the Inspection Service, which are published. This process includes ongoing reviews by senior level managers (Deputy Chief Inspectors – Field Operations, Deputy Chief for Criminal Investigations and Inspectors In Charge) and a formal quality assurance review process. Externally, Inspection Service criminal investigations are ultimately validated by the United States Attorney. Inspection Service civil investigations are first examined by the Postal Service Law Department before being referred to the Federal Courts. Inspection Service conduct is scrutinized by the courts, Congress, the media and the Inspector General of the Postal Service. Additionally, there are criminal and civil penalties for abuse, as well as personal liability for misconduct.

15. Please provide for the record, a copy of the course materials used to instruct Inspectors on the federal laws over which the Inspection Service has jurisdiction as referred to on page 6 of the 1999 Postal Inspection Service Annual Report of Investigations.

Answer: Attached are the requested course materials used to instruct Inspectors on the federal laws over which the Inspection Service has jurisdiction. See attachment (b).

16. On April 27, USPS and PostX announced that PostX would be the first commercial provider of the Electronic Postmark. USPS information noted that it "[a]ffords the sender legal protections include[ing] remedies for illegal

interception [and] tampering ...." According to the PostX press release of the same day, the Electronic Postmark offers "an added layer of security to electronic messaging, including investigation of illegal interception or tampering of Electronic Postmark communications?" The PostX release also quotes Mr. Nolan as saying that that the Postal Service brings "security and trust" and "integrity and protection" to the Internet. These phrases are present in the USPS materials as well.

In a March 6, 2000 briefing by Mr. Weaver to the Strategic Planning Committee of the Board of Governors, he noted that the Inspection Service will provide the same level of security to the Postal Service's electronic products as it does to traditional hard-copy mail.

Is the Electronic Postmark the on-line equivalent of the postmark on a hard copy letter? Would criminal violations involving the Electronic Postmarks be prosecuted under the same laws as hard-copy mail with a physical postmark, or would different laws apply?

Answer: There are specific federal statutes that have historically been applied to "hard copy" mail, (i.e., in Title 18, Desertion of Mails, Obstruction of Correspondence, Obstruction of Mail, Delay or Destruction of Mail, Theft of Mail, Theft of Mail by a Postal Employee, etc.). The Postal Service's electronic systems are still coming on line. We have not yet had the opportunity to present for prosecution a violation of Postal Service electronic commerce. Therefore, no court has yet ruled on the violations of these specific statutes as applied to electronic products. This is a new area of the law.

Other federal statutes currently apply to electronic transmissions (wire fraud (18 USC § 1343), fraud using access devices (18 USC §§ 1029, 1030).

17. In regard to electronic communications sent through the Postal Service's Post eCS service: do the same laws that apply to U.S. mail protect Post eCS communications, or do different laws apply?

Answer: No, because Post eCS is not hardcopy mail; the same laws do not necessarily apply to it as would apply to hardcopy mail. For instance, the criminal statutes relating generally to theft, tampering or fraud through the U.S. Mail apply on their face only to hardcopy mail. 18 U.S.C. 1341, 1701 – 1738. By Memorandum of Understanding (MOU) with the Department of Justice, the Postal Inspection Service also has certain authority to investigate and enforce violations of 18 U.S.C. §§ 1029, 1030, 1343, 2701, and 2702 (relating respectively to: fraud and related activity in connection with access devices; fraud and related activity in connection with computers: fraud by wire, radio, or television; unlawful access to stored communications; and disclosure of the contents of stored communications.) The MOU requires that investigations by the Inspection Service under these statutes must relate to mail services, or any "electronic message conveyed, or intended to be conveyed, in whole or in part, by or through, the U.S. Postal Service or any data base utilized by the Postal Service."

Although the traditional U.S. mail protections may not apply, other laws would apply to electronic communications that would provide similar protections. For instance, because an electronic service may create "records" within the meaning of the Privacy Act 5 USC 522a, the protections provided therein would apply to such electronic communications

held by the Postal Service. Similarly, the Stored Electronic Communications Privacy Act, 18 USC 2701 – 2711, may require the Postal Service to protect stored electronic communications.

The GAO recently published a report addressing USPS electronic services and the laws applicable thereto. See, "U.S. Postal Service: Postal Activities and Laws Related to Electronic Commerce", GAO/GGD-00-188, September, 2000, Appendix II.

18. Are electronic payments made through the Postal Service's eBillPay service protected by the same laws that apply to checks sent in the U.S. mail, or do different laws apply?

Answer: Depending on the nature of the illegal activity, the primary law we envision being used in these cases is 18 USC 2701. There may be cases where 18 USC 1030 or 18 USC 1343 may be utilized.

19. Are Postal Service employees subject to laws that help ensure that they do not violate the security and privacy of customers using Postal Service e-commerce products? Do these laws give e-commerce customers extra assurance that the Postal Service will maintain its reputation for safeguarding security and privacy in the online world?

Answer: In addition to traditional laws concerning actions by postal employees, our employees are subject to 18 USC 2702, which prohibits employees from divulging electronic communications. The trust the American public has in traditional postal products and services helps to assure confidence in e-business products and services of the Postal Service. Depending on the nature of the illegal activity, the primary law we envision being used in these cases is 18 USC 2701. There may be cases where 18 USC 1030 or 18 USC 1343 may be utilized.

The Postal Service has established an exacting policy for the maintenance of all customer records. For example, our Privacy Act notice for our eBillPay service outlines the very limited "routine uses" for all eBillPay records, which are more restrictive than even that which is required by the Privacy Act. The Postal Service is committed to maintaining its firm policy of safeguarding security and privacy in both the online and hardcopy worlds. The Postal Service seeks to set an example for other public and private e-commerce participants in the realm of online privacy and security.

20. In a February 2000, article in Government Executive Magazine, Stephen Kearney, the Postal Service vice president in charge of e-payments, is quoted as saying that one of the reasons the Service should have a role in electronic commerce is because it has the force of the Inspection Service to investigate fraud and U.S. attorneys to prosecute it, while private companies cannot offer that extra assurance.

Does this statement tout the Inspection Service as means of adding value to the Postal Service's e-commerce products? Please explain.

Answer: No. It is our understanding that *Government Executive* magazine misquoted Mr. Kearney. The Inspection Service is involved only with criminal violations or uses of these products. The Inspection Service continues to support the Postal Service's goals

to provide a universal mail service that is safe and secure from fraud and dangerous material.

The Inspection Service is part of the Postal Service, and its mission is to protect employees and customers, revenue and assets and to ensure confidence in the mail.

21. In 1998, the Postal Service entered into two Memoranda of Understanding with the FBI, and the Secret Service. Why are these MOUs necessary, and how do they help the Postal Inspection Service?

Answer: The statutes covered by the MOU are within the investigative jurisdiction of the Secret Service and FBI. The purpose of the MOUs with these agencies and the delegation from the Attorney General, was to ensure that when violations of these statutes affected the Postal Service, Inspectors would retain investigative jurisdiction. This is consistent with the law enforcement mission of the U.S. Postal Inspection Service. Both the Attorney General and the directors of the other agencies agreed to this approach. The delegation increased the amount of investigative resources devoted to an emerging problem affecting the American public. This also permits the Secret Service and FBI to devote their resources to investigate violations of these statutes committed through systems other than the Postal Service.

The MOUs provide the Inspection Service with increased authority to investigate criminal activity targeting electronic services provided by the Postal Service to the American public.

22. The MOUs specifically state that the Inspection Service will have the authority to investigate conduct that directly affects electronic messages conveyed by the Postal Service and the counterfeiting or misuse of any electronic postmarks used by the Postal Service. How do these MOUs work in practice? Has the Postal Service been able to conduct investigations in this area since the MOUs were signed? If so, what were the results in terms of prosecutions and convictions?

Answer: The delegation of authority and the MOUs give the Inspection Service investigative authority and jurisdiction over crimes with a postal nexus. This helps to assure efficient law enforcement and avoid duplication of effort among the various agencies.

Because the Postal Service has launched a limited number of e-business products and services, and because those have been launched recently, Postal Inspectors have not yet conducted an investigation that would fall under the procedures established in the MOUs. However, the capability exists to conduct such investigations when the need arises.

23. One of the MOUs required the Inspection Service to consult with the FBI when the Postal Service offers a new electronic product or service to the public. Have any such consultations taken place?

Answer: The Inspection Service communicates with other law enforcement agencies on a frequent basis, including discussions about postal e-business. We have notified the

FBI and Secret Service staff and have sent a formal letter to the Directors in accordance with the requirements of the MOU. See attachments (C1) and (C2).

24. Concerns have been raised regarding the effect of the 1998 MOUs between the Postal Service, the FBI, and the U.S. Secret Service. These concerns relate to the effect that delegating additional law enforcement powers to the Postal Inspection Service may have on fair competition between the Postal Service and private industry for the provision of various electronic products and services. How do you respond to these concerns?

Answer: The delegation of additional law enforcement powers was justifiably given for a risk-management approach, just like any other business.

The purpose was specifically stated and it was not meant to expand our investigative role beyond 18 USC 3061.

The intention was to give limited jurisdiction where the Postal Service is an actual or intended victim of criminal activity.

Jurisdiction is limited in that it is concurrent with FBI and USSS.

According to the National Consumers League, over half of all Internet fraud it tracked was paid for through the U.S. Mail either using a check or money order. This clearly demonstrates the need for the MOUs and the shared jurisdiction.

25. These MOUs delegated authority to the Postal Inspection Service to "preserve and protect the integrity of the databases it uses to operate the Nation's universal postal service and the electronic communication services it offers and will offer to the public." Does the Postal Service consider electronic communication to be part of its universal service obligation?

Answer: The Postal Service believes that the new services it has introduced are reasonably related to its postal mission, and that through these services the Postal Service can enhance universal service. These services help us to meet the needs of our customers within the context of the kinds of personal and business correspondence that the Postal Service has traditionally facilitated for them.

26. According to a U.S. Postal Inspection Service National Communication dated June 26, 2000, "business circumstances at the Postal Service" have necessitated the reduction of employees and the Inspection Service is slated to lose 95 positions, in addition to 125 which are already scheduled to be eliminated as a result of the loss of audit functions. How did the Postal Service determine that the Inspection Service needed to lose 95 additional positions? How did the Inspection Service determine which positions will be eliminated? Which positions are scheduled to be eliminated and from which areas of the Inspection Service? I'm not sure if this question has been answered.

Answer: The reduction of 125 positions is for audit work being transferred to the OIG. The positions used to perform this work are the ones being eliminated. The Inspectors in

these positions are being reassigned to vacancies in other areas. The vacancies have been created by retirements.

In the last year, the Inspection Service had approval to increase its complement by 89 investigative analyst positions to pilot a new program. As these positions were not yet filled, a decision was made to surrender 72 of these positions. In addition, 23 vacant Inspector positions were surrendered temporarily. The Inspection Service is beginning a process to evaluate whether the reductions should come permanently from administrative support, postal police or Inspector positions.

27. The Postal Service is required by law to investigate postal offenses, and is also directed to cover its own operating expenses, including those of the Inspection Service. This effectively ties the budget of a law enforcement agency to the Service's financial goals. How does the Postal Service determine the appropriate level of spending for the Inspection Service? What methods or procedures are used by the Inspection Service to determine where to allocate its resources? When will the next evaluation take place?

Answer: The Inspection Service budget request is based upon funding required to accomplish the annual goals and objectives as outlined in their mission statement. The budget reflects historical and anticipated needs to continue effective and successful law enforcement investigations. Resources are utilized to retain adequate support personnel; enable Inspection Service management the ability to allocate resources for anticipated increases in criminal activities in areas such as robberies, burglaries, identity theft and other frauds against citizens; and adequately conduct extended investigations or task forces, such as the Inspection Service investigation of the WACO incident.

In addition, the budget includes the updating and maintaining of computer systems, law enforcement equipment and other related services.

The last level of service review was conducted in 1994. The Inspection Service evaluated workloads nationwide and allocated available resources in the most effective manner possible. The Inspection Service is currently reviewing their strategic plans and will consider doing a service review in the future. Currently, no dates have been set for the review.

28. In a March 6, 2000, briefing to the Strategic Planning Committee of the Board of Governors, Mr. Weaver stated that the Inspection Service had increased resources for computer forensics and additional training to enhance investigative skills in the high-tech area. Does the Inspection Service have sufficient resources devoted to computer forensics and high-tech training?

Answer: The Inspection Service currently has sufficient resources dedicated to high-tech training. As the nature of crime takes on a more technical nature, we will continue to enhance and expand our training. The Inspection Service has recently added new positions in the area of computer forensics.

29. The article "Thinking Outside the Box" by Cary Baer of Direct Marketing Consulting and Chairman of the Board of PostCom, the Association for Postal Commerce, was published in the DM Newsletter last November. In the article, Mr. Baer questions the necessity of the "galleries" -- the system of catwalks

and viewing tubes incorporated into postal facilities so that Inspection Service personnel can monitor postal employees. Are galleries still being used? Do they have a detrimental effect on labor-management relations? Do they have a deterrent effect on internal crime? Has a study been conducted to determine if they are still the most effective and cost-efficient means of employee surveillance, particularly when compared with less intrusive means such as remote cameras? Are they still being built? If so, how much do they add to the cost of constructing a postal facility?

Answer: Yes, galleries are still being used. Currently there are 6,562 look out galleries (LOGs) throughout the Postal Service system. LOGs are located in facilities where the full time employee complement equals or exceeds 20 employees (processing and distribution centers (P&DC), bulk mail centers (BMC), larger post offices, stations and branches). They are used as one of the primary investigative aids in internal crime investigations. From the first day on the job, postal employees learn that Postal Inspectors use LOGs and cameras in criminal investigations.

Yes, LOGs have a deterrent effect on internal crimes.

No study has been conducted to determine if they are still the most effective and cost efficient means of employee surveillance.

LOGs cost approximately $280 per linear foot – this is a one-time cost, incurred at the initial time of construction.

Criminal Investigative System (CIS) cameras will run between $80,000 - $150,000, depending upon the size of the facility and the number of cameras needed (further breakdown provided below). This initial cost includes the equipment, installation, and 4-year maintenance agreement. This cost does not include replacement costs for equipment that may break down and need to be replaced, nor does it factor in replacing/updating the entire system, which should occur on a 7-year schedule. Replacement cost for the system will be approximately half of the original cost of the system.

Typical medium standard building design (MSBD) will consist of 15-20 cameras, a 3-bay console, four 9-inch monitors, a 21-inch monitor, 2 recorders, a muliplexer, and a computer with a flat screen. The cost for this type of system will run in the $80,000 range.

A large MSBD or small P&DC will have upwards of 50-75 cameras, two 3-bay consoles, eight 9-inch monitors, two 21-inch monitors, 4 recorders, 2 multiplexers, a mulitplexer switching tower, and 2 computers with flat screens. The cost for this type of system will run in the $150,000 range.

Large P&DCs (example – the Boise, ID and Spokane, WA P&DCs recently completed) cost approximately $200,000. Initial cost includes a 4-year maintenance contract for these systems. After the 4-year term, annual maintenance agreements must be issued. Cost for the maintenance contract is $2,000 - $4,000 per site, depending upon the number of cameras. Maintenance contracts include cleaning/repairing and exercising the equipment. MSBDs are serviced 1/year; P&DCs are serviced 2/year.

Current building criteria/policy is that CIS are built in lieu of traditional LOGs.

CIS equipment provided in all new construction where 10-year full-time employee complement will equal or exceed 20 employees – this does not apply to temporary facilities expected to be occupied less than 2 years.

Facilities less than 9,000 square feet (SF) will not have a CIS unless it meets the employee complement threshold. If employee complement is met, a limited CIS is provided.

In facilities greater than 9,000 SF, but less than 50,000 SF, a CIS must be installed. In processing plants with a workroom in this size range, the CIS contains a nondomicile office; in all other facilities the CIS has a criminal investigative office (CIO) that is a self-contained unit.

Facilities with workroom larger than 50,000 SF, a spine of LOGs may be required, depending upon evaluation/assessment by local Inspector. If over 150,000 SF more than a single spine of galleries may be needed to supplement cameras and the CIO. This hybrid system designed in conjunction with equipment requirements and required access to workroom floor.

30. Should investigations of individual workers compensation recipients be handled as criminal investigations or management reviews? Why?

Answer: The Fraudulent Workers' Compensation Program is designed to reduce and deter criminal misuse of the Postal Service workers' compensation program. Its objectives are to initiate criminal investigations against individuals responsible for defrauding under the Federal Employees' Compensation Act (FECA), which subsequently reduces compensation costs to the Postal Service. FECA fraud is a criminal action which the U.S. Postal Inspection Service investigates and initiates prosecution. Title 18 USC 1920, False Statement or Fraud to Obtain Federal Employees Compensation, is the primary statute for which FECA fraud is charged. The enforcement of this statute requires law enforcement authority, which is far outside the realm of a managerial review. FECA fraud causes the Postal Service to incur millions of dollars each year in chargebacks for fraudulent claims and enforcement cost. There are approximately 12,000 current and or former postal employees receiving workers' compensation benefits. The majority of these employees are entitled to these benefits provided by FECA; however, those who abuse the program are directly responsible for unrecoverable financial losses and contribute to low morale issues within the workplace. The Inspection Service directs its efforts toward the investigation and prosecution of fraudulent workers' compensation claims. The criminal prosecution of individuals who commit FECA fraud is the only guaranteed means to prevent an individual who defrauds the program from receiving future benefits. FECA fraud results in often-unrecoverable damages to government agencies. The summary below is an example in which the program was defrauded and the recovery will be limited. Cases of this nature required surveillance and investigative skills, which cannot be accomplished through a management review.

An Inspection Service investigation revealed that a wheelchair-bound former Louisville, KY, letter carrier had falsified almost every aspect of his claim of aggravation and worsening of his legs from a pre-existing medical condition that had occurred in the

military. The Office of Workers' Compensation Programs (OWCP) authorized payments for modifications of a new home for the claimant, including a modified van with a lift-ramp, a two-car garage, a paved driveway, widened doorways for wheelchair access, a handicap-accessible bathroom, a lifting-lowering device for the bathtub, a king-size adjustable bed, wheelchair ramps and the biannual sealing of his driveway. The claimant's wife, who was a nurse's aide, was approved by OWCP as his attendant, thereby increasing his monthly benefits to $3,350. Postal Inspectors, however, observed the claimant walking, driving several types of vehicles and climbing stadium bleachers, all without an attendant or a wheelchair. In addition to defrauding the Federal Employees' Compensation Act, the claimant defrauded the Veterans Administration and several other government agencies. He was sentenced in April 2000 to a year and a day in prison, 3 years' supervised release and $51,967 in restitution; a civil action is pending to recover other losses. As a result of the investigation, the Postal Service realized future cost savings of almost $1.2 million.

Postal management does not have the investigative skills or authority to pursue fraudulent claims. Postal management refers suspicious claims to the Postal Inspection Service for investigative attention. Some claimants have bypassed prosecution and returned to postal employment and subsequently resumed receiving FECA benefits.

FECA is a generous employee benefit, which is subject to significant abuse. The H.R. 3829 bill introduced in March 2000, if successful, could reduce the opportunity for fraud. FECA reform is an essential vehicle to support government agencies in the overall management of workers' compensation claims.

Management reviews are beneficial in the coordination of benefits, and ensuring the proper forms and procedures are followed. They are extremely necessary as the Postal Service is the single largest user of the Department of Labor - Office of Workers' Compensation Program. A management review is an administrative function and cannot be substituted for oversight of criminal acts.

31. What effect would there be on internal security if authority over the Inspection Service were transferred?

Answer: The Inspection Service manages and overseas the security programs of the Postal Service. The Inspection Service, through the use of experienced law enforcement personnel, possessing state-of-the-art security knowledge, identify security needs and provide security solutions for the protection of Postal Service assets, its employees and customers, and the mail.

As law enforcement officers, Inspectors are trained to assess risks in any given situation and correspondingly identify methods to minimize those known risks. The Inspection Service is thus uniquely positioned to quickly assess organizational risks and respond to those risks with effective security solutions. Currently, over 2,000 Inspectors respond throughout the country to postal crimes and identify the methods of attack and recommend security enhancements. Inspectors report this information to National Headquarters where trends can be analyzed for prompt action. This allows the Postal Service to focus on its mission of delivering mail to its customers. Inspectors also respond swiftly to special requests of the Postmaster General to address security-related issues.

Inspectors are familiar with postal operations as Inspectors receive training in postal operations, often worked for the Postal Service prior to entering the Inspection Service, and have worked assignments focusing on postal operations. Inspectors have fostered working relationships with postal executives, managers and employees through years of working internal security for the Postal Service.

If the internal security function were to be transferred from the Inspection Service, there would be no integration of law enforcement and security. The Postal Service would have to undertake the task of forming a security function that would be responsive, knowledgeable, and able to work in the law enforcement, security and postal communities. Separating internal security of the Postal Service from the Inspection Service risks eliminating the level of confidence and trust currently enjoyed by the Postal Service.

The Inspection Service's security responsibilities are as follows:

Physical Security (including Robbery/Burglary Countermeasures)

The purpose of the physical security project is to assess the security of the postal environment to determine if it is adequate to protect employees, property, mail, assets and revenue through a risk assessment process. The Inspection Service monitors new construction and remodeling of postal facilities to ensure security features are properly included. As part of the Postal Service's physical security program, Inspectors assess security risks at postal facilities. Based on the level of risk, we recommend various solutions, including the use of burglary/robbery countermeasures equipment.

If the Inspection Service reported to a non-postal authority, a Postal Service function would have to manage a physical security program. The Inspection Service has provided a significant advantage because of its institutional knowledge of postal operations and the security field. Therefore, they have been able to customize security requirements as needed, to address the risk presented. Security consultants, either internal or external, may not be as adept at identifying the security risks and matching them with equipment, procedures, or personnel.

Security Force

The Security Force provides security at postal facilities where risk, vulnerability, and history demonstrate the need for their presence. Security Force personnel at postal facility control centers monitor robbery and burglar alarms to provide protection to postal employees, property, and assets. The Security Force also escort high-value shipments, such as registered mail and postal remittances.

If the Inspection Service were transferred to another agency, the Security Force could be maintained by the Postal Service. The Security Force could be decentralized and the responsibility for uniformed security would belong to local postal managers. However, it would be difficult to have an armed security force with certain arrest powers, under the control of various local postal managers. The removal of the Inspection Service in internal security will eliminate the Security Force's daily contact with a law enforcement agency, and any security benefits derived from the Security Force's interaction with the Inspection Service will be lost.

National Security Committee (NSC)

Approximately three years ago the National Security Committee (NSC) was established. This committee, chaired by the Chief Postal Inspector (CPI), includes representatives from all of the major functional groups within the Postal Service. The committee's mission is to identify, recommend and promote policies and procedures that are designed to protect employees, safeguard assets and preserve the overall integrity of the postal system. The Inspection Service has been instrumental in identifying the systemic security issues affecting the Postal Service, and sharing these findings with the NSC. In Fiscal Year 2000, the Inspection Service, working with and through the NSC, allocated $52 million to address security deficiencies at several thousand postal facilities. Transferring authority would eliminate our participation on the NSC, thus adversely impacting national efforts to address the systemic security issues facing the Postal Service.

Area Security Coordinators (ASC)

Approximately two years ago the Postal Service established 11 Area Security Coordinators (ASC) positions dedicated to focusing on security. The ASCs have significantly increased security awareness, implemented security enhancements at numerous postal facilities, and provided guidance and direction to area/district security committees. The success of the program is due in large part to the close working relationship between the ASCs and Inspectors. Transferring authority would significantly and adversely impact the interaction between the ASCs and Inspectors, thus jeopardizing this program that is still in its infancy.

Personnel Security Clearances

In Fiscal Year 2000 the Inspection Service Operations Support Group processed approximately 70,000 requests for security clearances. The majority of those requests were on contract employees that would be considered high risk, i.e., airline employees and the Priority Mail Processing Center contract employees. In addition to these low-level clearances, the Inspection Service processes and updates security clearances for individuals who are required, by federal law, to have a security clearance. On an annual basis the clearance process has successfully identified hundreds of potential contract employees who have significant criminal histories (to include theft, drug usage, weapons convictions and violent behavior), and thus are denied access to our employees, facilities, and the mail entrusted to us.

Transferring authority would create a significant void and workload shift that would have to be absorbed by the Postal Service. Significant Postal Service resources would have to be allocated to process the clearance requests. Extensive training would have to be provided for the new security clearance technicians. Failure to conduct the security clearances would put us at increased risk for theft, drug usage and violent incidences. Failure to conduct the security clearances and updates mandated by law would place us in direct violation of those federal mandates.

Security Control Officers (SCOs)

The Postal Service has a Security Control Officer (SCO) in place at each one of its postal installations. The primary responsibility of the SCO is to ensure the general

security of the facility under the rules and regulations issued by or concurred in by the CPI. This includes the safety of on-duty employees and the security of mail, postal funds, property and records. The Inspection Service develops, coordinates, manages and conducts training for the SCOs. Transferring authority would eliminate the Inspection Service involvement in developing/coordinating/conducting this training, and a recognized group possessing state-of-the-art security expertise would not be available to oversee security programs.

Volume Mail Attack

Inspectors, in investigating volume mail attacks on collection boxes, cluster boxes, and vehicles, are able to identify methods of criminal attacks and report this information. Analysis of this information is performed to identify risks to the Postal Service and the mail. As a result of this effort, security enhancements and improvements are initiated resulting in a decline in volume attacks. The recent security enhancements and improvements for collection boxes are an example of this process. Without the input of the Inspectors, criminal trends may not be detected timely and proposed security solutions may be ineffective. The blending of criminal investigations and security resources by the Inspection Service provides swift problem identification and response.

Document Security

The Inspection Service assists in the development of secure payroll and vendor checks and postal money orders. The Inspection Service is able to use its law enforcement experience and knowledge to pro-actively recommend security enhancements for checks in order to deter and better detect fraudulent documents.

The Inspection Service has many criminal investigators experienced in investigating stolen and altered money orders. In addition, the Inspection Service has qualified forensic personnel who are familiar with alteration of money orders. This experience and knowledge has enabled the Inspection Service to recommend improvements in the technology incorporated in postal money orders to reduce its vulnerability to alteration.

If the Inspection Service has no future input into creating a more secure postal money order product, postal money orders and other financial instruments may be more vulnerable to alteration and misuse.

Product Development and Consultant

The Inspection Service provides security consultant services in product development, often providing security requirements as needed. Inspectors use intelligence obtained during investigations of criminal attack against the Postal Service and its products as a basis for promoting more secure products. Inspectors also review new product developments to identify any unforeseen risk to the Postal Service, its employees and customers, and the mail. Inspectors use the knowledge of criminal activity to determine risks and advise the Postal Service of risk aversive action.

Violence in the Workplace

The Inspection Service is responsible for the prevention and investigation of instances of violence in the workplace. As part of the Workplace Environment Improvement

Committee (WEIC), the Inspection Service is working with management and labor union representatives to identify potential areas of concern and to develop programs and intervention efforts to minimize the potential for conflict and violence in the Postal Service.

Our prevention efforts, investigation of credible threats and assaults, and working relations with management and union representatives places the Inspection Service in a strategic position to prevent, and if necessary, investigate violent behavior. Our participation with management in developing and implementing programs promoting a safe workplace contributes to the overall safety and security of all postal employees. Although the local police can and do respond to some instances of violence involving postal employees, their efforts are focused after the violence occurs.

Classified National Security Information Program

The Inspection Service is responsible for the Classified Information Program of the Postal Service. We maintain several classified programs and assist the Postal Service in actively supporting other federal agencies in their classified programs. We have access to and are responsible for the management, accountability, and protection of classified national securit information. Classified information is used by designated postal officials, employees, and contractors who require access in the performance of their official duties according to Execu Order 12958, Classified National Security Information. The Postal Service does not have original classification authority, but does, on occasion, classify derivative information. On ar annual basis, we are required to report to the Information Security Oversight Office (ISOO): Agency Security Classification Management Program Data and Cost Estimates for Security Classification Activities.

Transferring authority would impact the Postal Service since resources would have to be allocated to maintain the Classified Program and individuals trained in order to process security clearance requests. Failure to maintain this program would place the Postal Service in direct violation of the EO 12958.

Aviation Security

A Postal Service group currently oversees the day-to-day function of aviation mail security. Responsibilities are split with the Inspection Service group responsible for the security aspects of the program and the Postal Service group responsible for the operations aspects. The Inspection Service provides the threat parameters and current threat situation, as well as the procedural security requirements.

If the Inspection Service were transferred out of the Postal Service the ability to share threat information could come into question. Depending on the responsibilities of the Inspection Service, the cooperative fashion within which the program works would deteriorate. The Postal Service would not have the expertise available to analyze and understand threat information.

Counterterrorism

The Inspection Service, through its investigative and response capabilities, is the core of the Postal Service's counterterrorism program. Through programs such as aviation mail security, facilities security, mail bomb investigations and prohibited mail investigations

(which includes weapons of mass destruction among others), the Inspection Service provides a strong deterrent to use of the mail for terrorism. The screening of mail by the Inspection Service during threat situations relies upon close internal cooperation and coordination to prevent delay of mail. While the FBI has primary jurisdiction for acts of terrorism, they rely on the Inspection Service for its expertise in matters involving the U.S. Mail.

If authority over the Inspection Service were transferred, the Postal Service would be left without an internal function capable of addressing terrorist threats. The deterrent factor would be diluted making the mail system vulnerable to attack or use by terrorists for an attack. Transferring the authority of the Inspection Service would fundamentally change the relationship between the Inspection Service and the Postal Service that currently allows the Inspection Service to ensure "automatically" that the Postal Service is protected. The Inspection Service also serves as a reliable and trusted source of information for other agencies concerning terrorism issues involving the mail and postal system.

Hazardous Material

The hazardous materials (HazMat) program is the overall responsibility of the Postal Service. The Inspection Service provides enforcement support for violations under the criminal code (Title 18) as well as response coordination if necessary. Transferring authority over the Inspection Service could leave the Postal Service without HazMat enforcement ability.

Emergency Planning

During natural or technological disasters, the Inspection Service provides the Postal Service with necessary security and coordination. In the event of a national emergency, the Inspection Service provides the enforcement and security activities which would be required to protect the postal system which could, depending upon the emergency, become the primary national communications system.

If authority over the Inspection Service were transferred, the development of emergency plans that include enforcement and security components could be jeopardized. Currently, the Inspection Service will react to the needs of the Postal Service as directed by the Chief Postal Inspector and the Postmaster General. Under another Department or Agency, the Inspection Service could be directed to respond to the needs of that Department or Agency, leaving the Postal Service vulnerable or unable to meet its mission during times of natural or national disaster.

32. The Postal Service's regulations regarding the use of Commercial Mail Receiving Agents (CMRAs) have resulted in strong dissatisfaction among CMRA operators and customers. The Postal Service, with the Inspection Service in the lead, has worked with industry groups representing CMRAs and with groups representing specific classes of CMRA customers, such as victims of domestic violence, in order to revise the rules.

How has the Postal Service modified its CMRA policies in response to input from the variety stakeholders? Has the Inspection Service initiated any meetings or contacts with other law enforcement agencies to discuss the

possibility that the proposed regulations might lead to increases in domestic violence by revealing the location of potential victims? If so, please discuss. If not, why not. What, if any, comments have you received from the National Coalition Against Domestic Violence regarding the final CMRA rule published in January of 2000?

Answer: The Postal Service kept the law enforcement community apprised of the developments with the CMRA rulemaking from the beginning. However, we made significant accommodations to the National Coalition Against Domestic Violence in response to their concerns about our releasing information on post office box holders and CMRA addresses. Protections now exist where they did not prior to the rulemaking. For example, the Postal Service will only release information to law enforcement or government agencies upon written request. Before the revisions, post office box address information would be released to the general public if the box holder was soliciting business with the general public. Most significantly, as a result of the rulemaking we have placed protections in place for individuals victimized by domestic violence. The new regulations allow for an individual who has obtained a court order of protection to file a copy of it with their post office of delivery. The order will be attached to their application to deliver mail at a CMRA, so the post office will not release the information without a court order, even to law enforcement. This makes the process more difficult for law enforcement to readily obtain information during investigations, but provides added protection to those fearing for their safety.

The Inspection Service consulted with the Coalition before the rules were finalized; the Coalition did not voice any objections to what became the final standards, nor have we heard from them since.

33. The Inspection Service's efforts to detect and prevent the criminal use of private mail boxes and the subsequent reaction by stakeholders typifies the inherent conflict between the Inspection Service's law enforcement role and its desire to support the Service's revenues initiatives.

33a. Does the Postal Service believe it is in competition with CMRA's?

Answer: The Postal Service does not view the CMRA industry as a competitor.

33b. How do you respond to critics who claim that the Postal Service's proposed changes to the CMRA regulations were simply a marketing ploy to undermine the value of the CMRA industry in order to encourage use of Post Office boxes?

Answer: This assertion is unwarranted and an objective review of the rules will reveal, for the most part, the changes were clarifications to existing CMRA rules. There were several new requirements for the CMRA or its customer that did not create advantages for similar services offered by the Postal Service. The primary purpose of the rule changes was to clarify existing CMRA rules to improve security in the mail delivery process to protect the interests of all postal customers. Every attempt was made, to the extent possible, to mirror the current rules and regulations for post office box service to avoid conflict of interest claims. Additionally, an audit of the CMRA rules by the Office of the Inspector General determined claims that the rules treated private boxholders unfairly or that the Postal Service revised the rules to retaliate against the CMRA industry were invalid.

34. You reported that there was to be an intensive joint education program to assist consumers in identifying a CMRA location. The Inspection Service, Retail Operations and CMRA industry representatives would conduct this program. In addition, you reported that the Inspection Service and the CMRA industry would work together on indicators that will help CMRA owners identify potential fraudulent operations by a boxholder. You were to develop a training agenda for CMRA operators, which will provide an orientation regarding the noticeable signs of criminal activity and how to contact the appropriate authorities. What is the status of this effort?

Answer: The Inspection Service and the industry are in the process of developing a training module for Inspectors to present to new CMRA owner/operators. The industry is to notify us when and where the next training sessions will be held.

Both groups have exchanged E-mail and telephone numbers of appropriate individuals to better coordinate intelligence and sharing of information.

Both groups earlier agreed to a checklist of indicators that CMRA operators should look for that indicate potential fraudulent activity on the part of their customers, and contact points.

35. The Subcommittee has heard from CMRA owners who contend that they have always been able to detect fraudulent operations by boxholders. They contend that rather than issue, what some have characterized as, "Draconian" regulations, the Inspection Service should have simply established an education program and worked cooperatively with the industry to identify potential criminal activity as is apparently being done. Did the Inspection Service initially consider such an approach? If so, why was such an approach not pursued?

Answer: First of all, the changes to what existed were relatively minor. We have had rules in this area for decades. The new rules enhance the existing application process to ensure identification, and they add protections that did not exist before for those CMRA box holders with court orders of protection. However, the law enforcement community, most notably the 50 states attorneys general, feel the regulations do not go far enough. They have indicated their intention of pursuing state legislation to further restrict the ability of fraudulent promoters to deceive the public into thinking they are mailing to a physical address of a business or individual. Their major issue is not requiring the "PMB" designation exclusively. They object to any addressing that is not clear and direct. The correlation – PO box and private mailbox (PMB) seems reasonable to most in law enforcement. If we merely enforced what already existed, CMRA users could use "suite," "drawer," or any other name designation, which could be misleading. It is much less confusing to educate the public that one designation (PMB) indicates the address is a CMRA and not a permanent business office. Further, there would be no protection in place for those fearing domestic violence as now exists with the new regulations.

A critic of the CMRA regulations calculated that the financial impact of the new regulations on the economy could be as much as $1 billion. When the Inspection Service initially proposed changing the CMRA regulations to

protect customers from criminal activity did it consider the impact that such regulations would have on the economy?

Answer: The CATO Institute provided this loss estimate. The Postal Service's Office of Inspector General in their review of the CMRA rulemaking process reported that this number is invalid. The Postal Service sought to minimize any costs on CMRAs and their customers by delaying the effective date of the rule to allow the affected businesses the opportunity to use up old stationery and advise correspondents of their new addresses in the ordinary course of business. Every reasonable accommodation was made.

36. **Last year you reported that the Inspection Service does not have the ability to determine the number of similar CMRA-related investigations conducted by other law enforcement agencies, including the Federal Bureau of Investigation, the U.S Secret Service, State Attorneys General, and local District Attorney offices.**

    Has the Inspection Service initiated any efforts to collect information from other law enforcement agencies on the number and nature of CMRA-related investigations, prosecutions and convictions? Has the Inspection Service initiated any efforts to coordinate with other law enforcement agencies in its investigations of CMRA-related alleged criminal activity? What, if any, unique knowledge, expertise and law enforcement authority does the Inspection Service possess that would make in better suited to conduct such investigations than the aforementioned law enforcement agencies?

Answer: The Inspection Service has modified its case reporting system to track the instances of CMRA involvement in the criminal activity it investigates. Within a year we should have reliable figures to gauge how effective the new regulations work. We have been able to extract an ad hoc report from our Fraud Complaint System, which shows that 23 percent of fraud complaints received involve a CMRA address.

The Inspection Service continues to strongly encourage other law enforcement agencies to adopt programming changes similar to what we have done to track this information. Preliminary discussions with the FTC indicate the possibility that the Consumer Sentinel is equipped to track this information, with only minor modifications.

The Postal Service delivers mail to approximately 130 million addresses in the nation. The Inspection Service is entrusted to enforce roughly 200 statutes designed to specifically protect the Postal Service, its employees, and its customers from harm. The investigative focus on postal crime would significantly diminish without the Inspection Service. Inspectors are trained in how mail is processed; to preserve the sanctity of the seal and the privacy of its customers while conducting investigations; to obtain information from Postal Service business records and databases. Inspectors conduct their investigations throughout the year with minimal disruption to mail flow or postal operations. In fact, many Inspectors are recruited from the ranks of postal employees and bring their wealth of experience to our investigations. Since the birth of the nation, Postal Inspectors have had a dual mission that is unique- to preserve and enhance a government business service to the public, while enforcing laws to protect the users of that service. The Inspection Service's ability to solve complex mail fraud schemes, rid

the mail of illegal drug trafficking and money laundering, and protect letter carriers on their appointed rounds is unequalled.

Finally, in many cases that plague the Postal Service or its customers, yet which lack prosecutorial appeal, Inspectors have found unique ways to achieve alternative resolutions or use civil and administrative actions that most other law enforcement agencies do not practice.

37. When the Inspection Service conducts an investigation pursuant to violations of the Domestic Mail Manual (DMM), does it follow the Federal Rules of Civil Procedure, and Federal Rules of Evidence? Does the Inspection Service have its own rules of evidence and procedure for such investigations? If so, where are they written, and how are they amended?

Answer: Neither the Federal Rules of Civil Procedure nor the Federal Rules of Evidence prescribe rules for the conduct of an investigation. Investigations conducted by the Inspection Service, whether of violations of the DMM or federal civil or criminal law, are all governed by the U.S. Constitution, and by the case law interpreting the many due process and search and seizure requirements imposed thereby. The Rules of Civil Procedure do provide some tools for discovery purposes, which would apply to the Inspection Service in the context of a civil proceeding in federal court. In administrative proceedings, the Inspection Service and the Postal Service are bound by the procedural requirements published in the Federal Register and contained in Title 39 of the Code of Federal Regulations.

The Inspection Service does not have its own rules of procedure for administrative proceedings. Investigators are guided by the Federal Rules of Evidence with respect to the chain of custody of documents and other evidence. Investigations are conducted along the guidelines taught at the Inspection Service academy, in continuing education courses, and as summarized in the Inspection Service Manual.

38. What administrative options are available to the permit holder or third party to appeal from a finding by the Postal Service of a revenue deficiency? How does this process work?

Answer: A revenue deficiency may be assessed in the amount of the unpaid postage against any person or organization that mailed, or caused to be mailed, ineligible matter at the Nonprofit Standard Mail rates in violation of Section E670 of the Domestic Mail Manual (DMM).

Nonprofit mailers have two levels of appeal:

> If the Postmaster or manager, Business Mail Entry made the initial revenue deficiency assessment, the first level of appeal is to the Rates and Classification Service Center (RCSC) in the Area corresponding to the district where the assessment was made. The second level of appeal is to the Manager, Mail Preparation and Standards, at Headquarters, who issues the final USPS administrative decision.
>
> If the initial revenue deficiency assessment was made by the RCSC, the first level of appeal is to the Manager, Mail Preparation and Standards. The second

level of appeal is to the Vice President, Marketing Systems, who issues the final administrative decision.

All administrative appeals must be submitted in writing within 30 days of the previous USPS decision. Any decision that is not appealed as prescribed becomes the final agency decision; no appeals are available within the USPS beyond the second appeal.

For other revenue deficiencies (not related to ineligibility of matter for the Nonprofit Standard Mail rate) a mailer may appeal the assessment by sending a written appeal within 30 days of receipt of the notification to either:

a. The district manager, Finance, for revenue deficiencies for fees. The district manager, Finance, issues the final USPS decision.

b. The postmaster or manager, Business Mail Entry, for revenue deficiencies for postage. The postmaster or manager, Business Mail Entry, forwards the appeal to the RCSC manager serving the entry post office, who issues the final USPS decision.

In all cases, the mailer may be asked to give more information or documentation to support the appeal. Failure to do so within 30 days of the request is grounds for denying an appeal. Any decision that is not appealed as prescribed becomes the final agency decision.

39. Assuming fraud is not a factor, is there a situation in which a permit holder or third party could not appeal such an administrative ruling? How does the Inspection Service protect the rights of third parties under the DMM section E670.5.13 from economic injury? What procedures and/or criteria does the Inspection Service use to determine when to assess a third party instead of the permit holder for any alleged deficiency? How many investigations have concluded in the last five years where a postage deficiency has been assessed against the permit holder rather than a third party? In those cases in which an assessment was made against a third party, what was the reason for the decision?

Answer: The Postal Inspection Service does not assess revenue deficiencies. Local Postal Service management makes such assessments. In addition, the Postal Inspection Service's role in investigating revenue deficiencies has changed over the last few years. The primary role of the Postal Inspection Service in this area is the investigation of deficiencies that appear to involve fraud. Revenue Assurance personnel within Postal Service Finance now do the investigation of revenue deficiencies not involving fraud.

With respect to your specific questions:

1. "Assuming fraud is not a factor, is there a situation in which a permit holder or third party could not appeal such an administrative ruling [revenue deficiency]?"

All revenue deficiencies may be appealed. For Nonprofit permit holders or third parties, the appeal process is set forth in the Domestic Mail Manual (DMM) at section P011.5.0,

Revenue Deficiency – Nonprofit Standard Mail. For other permit holders or third parties, the appeal process is set forth in the DMM at section P011.4.0. Revenue Deficiency – General.

2. "How does the Inspection Service protect the rights of third parties under the DMM section E670.5.13 from economic injury?"

The Inspection Service works on potential revenue deficiencies where fraud is a factor. In such cases, Inspectors are trained to conduct investigations with discretion. The first sources of information in such cases are Postal Service employees and files. As a case develops, records and evidence are obtained from the mailer and from third party providers of mailing services as necessary. In all investigations, case agents are sensitive to the need for exercising discretion in seeking records from third parties. The Inspection Service endeavors to protect third parties from economic harm as much as it can consistent with its responsibilities.

3. What procedures and/or criteria does the Inspection Service use to determine when to assess a third party instead of the permit holder for any alleged deficiency?

When the Inspection Service investigates a potential revenue deficiency that may involve fraud, if the matter is not resolved through civil or criminal proceedings, the results of the investigation are turned over to postal management. Postal Service management decides whether to assess a revenue deficiency and then whether to assess a third party instead of the permit holder for the alleged deficiency. The principal factors in the decision are, first, culpability, and second, the ability to pay.

4. "How many investigations have concluded in the last five years where a postage deficiency has been assessed against the permit holder rather than a third party?"

Neither the Postal Service nor the Inspection Service maintains consolidated records that track this information. All revenue deficiencies that do not involve fraud are initially resolved at the local level. Depending upon the method of appeal, if any is utilized, information concerning final decisions are maintained in different locations.

5. "In those cases in which an assessment was made against a third party, what was the reason for the decision?"

As noted in the previous response, Postal Service records do not track the assessment of revenue deficiencies in one central location.

QUESTIONS SUBMITTED TO POSTMASTER GENERAL WILLIAM J. HENDERSON IN FOLLOW-UP TO THE "U.S. POSTAL SERVICE AND THE POSTAL INSPECTION SERVICE: MARKET COMPETITION AND LAW ENFORCEMENT IN CONFLICT?" HEARING ON JULY 25, 2000
REP. CHAKA FATTAH'S QUESTIONS

1. **The Inspection Service has long been viewed as the "silent service." Please briefly share with this Subcommittee your most recent and infamous cases?**

Answer: The sinister nature of white collar crimes and schemes that utilize the mail to defraud often requires intense behind-the-scenes efforts by Postal Inspectors to identify and prosecute criminals who hide behind false and misleading claims and solicitations. Additionally, investigations of employees have traditionally been "low-key" in regard to publicity. The image projected by these labor intensive, but low profile investigations has caused some members of the law enforcement community to refer to us as the "The Silent Service," and to refer to Postal Inspectors as "Silent Investigators."

Since 1772, Postal Inspectors – then known as surveyors – have been responsible for investigating crimes against our nation's mailing system. Each year, the Inspection Service provides a summary of investigative results and significant cases in its annual report. A copy of the 1999 Annual Report is attached to provide the Subcommittee with a sample of significant cases investigated during the past fiscal year. See attachment (D-1). Additional items provided for your review include the following:

A. Videotape produced by the Inspection Service on Identity Theft entitled, the "*Game of the Name*", attachment (D2).
B. Quarterly Reports, attachment (D3).
C. Law Enforcement Report, attachment (D4).
D. *The Inspectors 2* videotape, a Showtime produced movie based on identity theft investigations by the Postal Inspection Service, attachment (D5).
E. Copy of *Protecting With Distinction, A Postal Inspection Service History of the Mail Fraud Statute,* attachment (D6).
F. Copy of *Ensuring Confidence in the US Mail*, attachment (D7).

2. **How do you respond to those who would advocate taking the Service out from under the postal service and placing it with another federal agency, in order to help the postal service reduce costs? Would you support legislation transferring the Service out from the postal service? Why or why not? Would the Board of Governors support such a move?**

Answer: Many positive things can be said in favor of the current operating platform of the Postal Inspection Service, and its role as the primary law enforcement arm of the Postal Service. The partnership forged between the Inspection Service and its parent organization – realized in part by the presence of Postal Inspectors in over 180 postal facilities – has served the nation well, and continues to effectively support the universal delivery goals of the nations mailing system.

In recognition of our value to the customers, employees, and products of the Postal Service, the Inspection Service would not be in favor of legislation designed to transfer

NOTE.--The attachments referred to in 1. A-F above, may be found in subcommittee files.

the Inspection Service from out of the Postal Service. As the oversight body responsible for the strategic direction of the Postal Service, the Postal Service Board of Governors would be similarly opposed to legislation modifying the current structure and reporting relationship of the Inspection Service

3. **The FLEOA is quite concerned with the level of personnel resources at the Inspection Service. To what extent would you like to see these resources increased and at what cost?**

Answer: The Inspection Service continually evaluates trends to determine the proper distribution of resources and to assure that we are providing attention where needed. This is particularly emphasized each year during the budget process.

Since the creation of the Office of Inspector General of the U.S. Postal Service, the Inspection Service has experienced a reduction in complement due in part to the shifting of responsibilities and positions to the OIG. However, with the shift in responsibility, the Inspection Service has been able to direct more attention to areas not previously addressed, such as e-commerce and Internet-based fraud.

Due to the current economic climate at the Postal Service, the Inspection Service has worked hard to accomplish its mission with fewer resources. Toward that end, we will continue to monitor national trends, while remaining sensitive to the need for future change.

4. **Explain how the Inspection Service collects revenue**

Answer: As the primary law enforcement arm of the U.S. Postal Service, the Inspection Service is responsible for conducting investigations of crimes committed against our nation's mailing system. The results of revenue deficiency investigations are reported to the Postal Service.

The collection of revenue is not a function performed by Postal Inspectors. All revenue is collected by the Postal Service.

5. **Last year Congress passed, and the President signed into law the Deceptive Mail Prevention and Enforcement Act. How would you define your activities to date regarding the new law? How many subpoenas have been issued?**

Answer: The Postal Service and the Postal Inspection Service have implemented the new law in a number of ways. The Postal Service publicized information concerning the new requirements on its web page and in mailing industry-specific newsletters in an attempt to apprise our mailing customers of their new obligations. Our web page highlighted the consumer protection aspects of the new law, emphasizing the new rights gained by consumers. We have implemented regulations providing for the issuance of investigative and administrative subpoenas. The Inspection Service continues in its investigative capacity, and has joined with the Law Department to develop a monitoring and enforcement policy that ensures the even enforcement of the new law.

To date, the Law Department has received requests for 12 investigative subpoenas and 12 have been issued. As would be expected, there have not yet been any requests for administrative subpoenas to be issued in the context of an administrative proceeding.

6. **How do you define commercial activities and noncompetitive activities? To what extent does the Inspection Service provide law enforcement for these activities? Provide a break down - commercial vs. noncompetitive/monopoly.**

Answer: Neither the Postal Service nor the Inspection Service categorizes its activities as commercial versus non-competitive activities. For this reason, we cannot provide a breakdown of investigations into these categories. The Inspection Service has authority pursuant to 18 USC § 3061 to investigate all offenses regarding property in the custody of the Postal Service, property of the Postal Service, the use of the mails, and other postal offenses, plus when the Attorney General so determines, violations of such other laws as may have a detrimental effect on the operations of the Postal Service. By Memorandum of Understanding (MOU) with the Department of Justice, the Postal Inspection Service also has certain authority to investigate and enforce violations of 18 U.S.C. §§ 1029, 1030, 1343, 2701, and 2702 (relating respectively to: fraud and related activity in connection with access devices; fraud and related activity in connection with computers; fraud by wire, radio, or television; unlawful access to stored communications; and disclosure of the contents of stored communications.) The MOU requires that investigations by the Inspection Service under these statutes must relate to mail services, or any "electronic message conveyed, or intended to be conveyed, in whole or in part, by or through, the U.S. Postal Service or any data base utilized by the Postal Service."

7. **To what extent and for which products does the postal service use marketing initiatives that boast the Inspection Service as a security advantage unique to postal products and services, particularly with the new e-commerce ventures? Provide examples of your marketing initiatives.**

Answer: The new eCommerce ventures do not use marketing initiatives that boast the Inspection Service as a security advantage to our products and services. As requested, enclosed are some examples of our sales collateral material for our eCommerce Services, see attachments (E1 through E6).

The Postal Service is responsible for the nation's universal mail delivery system. As such, it is dependent upon the Postal Inspection Service and its security and investigative programs to safeguard its assets, products, and employees.

The Postal Service does not characterize or boast of the Inspection Service as a unique security advantage in its marketing initiatives. Rather, the Postal Service continues to offer a secure communications and delivery network for its customers, made possible by the quality of its products and the professionalism of its network of employees.

8. **To what extent does the postal service have a financial interest in the priorities of the Inspection Service? Does this raise the "conflict of interest flag" in that the priorities may not be driven solely by law enforcement concerns? Why or why not?**

Answer: The Postal Service and the Inspection Service both exist to serve the public interest in accordance with the laws enacted by Congress. A Board of Governors oversees their work. Nine of the 11 members of the Board are appointed by the President, with the advice and consent of the Senate, to represent the public interest.

The Postal Service is not required to make a profit, but must cover its costs, including those of the Inspection Service.

Since the Postal Inspection Service's budget is entirely funded by the Postal Service, it only stands to reason the Postal Service has a financial interest in the priorities of the Inspection Service. However, that interest has never led to the interference in the Inspection Service's goal-setting process or prioritization of programs. The Inspection Service's priorities are law enforcement and security oriented. They are not revenue generating, nor are they intended to be. The Postal Service's and Inspection Service's responsibilities are only those established by law. We do not believe there is any conflict.

9. How do you feel about those who wish to limit your role to only internal security and crimes directly related to the postal monopoly?

Answer: It would be extremely difficult to limit the law enforcement of the Inspection Service to only internal security and crimes directly related to the postal monopoly. Postal Inspectors investigate crimes involving the mail and those impacting the Postal Service without regard to "class" of mail or whether it is directly related to the "postal monopoly." To limit the role of the Inspection service would be detrimental to the protecting the American public with regards to their confidence in the mail.

10. How do you feel about those who wish to expand your role, beyond mail fraud?

Answer: The Inspection Service's mission encompasses far more than just mail fraud. Although their expertise could be used effectively to investigate other types of crimes, the resources, overlapping jurisdiction with other federal law enforcement agencies and budgetary constraints make the feasibility of such an expansion slim. Our response to a previous question outlines other duties and responsibilities currently held by the Inspection Service

11. What steps, if any, should this subcommittee take relative to whether market competition and law enforcement are in conflict?

Answer: We feel that there are no conflict relative to the Postal Service market competition and the law enforcement mission of the Inspection Service. Prior to September 28, 1996, Postal Inspectors pay, benefits and mission were associated to the success of the Postal Service. However, the legislation that created the Office of Inspector General also provided that inspectors receive compensation and benefits comparable to their federal counterparts. We believe that this change removed even the perception that the Inspection Service is a part of postal management. We feel that Congress should continue to monitor the activities of the Postal Service and hold oversight hearings to stay abreast of postal activities including the Inspection Service. A close working relationship between Congressional and postal staff will assure that Congress is aware of the changing marketplace and the Postal Service involvement in these new markets.

FOLLOW-UP QUESTIONS FOR DEPUTY POSTMASTER GENERAL NOLAN FROM CONGRESSMAN STEVEN C. LaTOURETTE

The purpose of the Postal Service's cooperative mail regulation is to ensure that a mail piece that is otherwise eligible to be mailed at the nonprofit mail rate contains only matter that belongs to the organization authorized to mail at the nonprofit rate. This regulation is necessary in order to enforce Congress' intent that an authorized organization uses the nonprofit mail rate solely for one of the eight purposes enumerated in the federal postal statute.

I understand that a key criteria that the Postal Service uses in order to determine if the authorized organization "owns" the mail piece is: Which party bears the risk of the "enterprise" that underlies or is supported by the mail piece?

In recent years, a number of states, including my own State of Ohio, have adopted rules that shift some risk from the authorized organization to its professional solicitor. These states require that a charity and its professional solicitor include a consumer protection provision in their contract.

The purpose of the contractual provision is to shift some risk for the expense of the fund-raising campaign to the professional solicitor in the event that the campaign fails to generate any net revenue that the charity may spend for the purpose for which it solicited the donation.

Thus, there is a classic conflict of law between a federal agency regulation and state law: the postal regulation requires that the authorized organization bear the risk for the entire fund-raising expense; while some states, like Ohio, require that the unauthorized entity bear a portion, albeit minimal, of the risk.

My questions are:

1. In this conflict situation, what evaluation does postal management conduct in order to determine which rule should prevail?

Answer: We believe it is incorrect to conclude that there is a "conflict of law" between these types of State consumer protection statutes and the Postal Service's cooperative mailing rule. The United States Postal Service is an independent establishment of the executive branch of the U.S. government. 39 U.S.C. sec. 201. As such, it is responsible for establishing mail classifications, rates and fees. 39 U.S.C. sec. 403(c). In so doing, it promulgates rules and regulations such as the cooperative mailing rule under its general authority to carry out its business and accomplish the objectives of the postal statutes. See 39 U.S.C. sec. 401(2). In this instance, the cooperative mailing rule is designed to prevent abuses of the reduced postage rates made available by statute to certain types of nonprofit mailers. Accordingly, the rule may restrict the uses that a nonprofit organization can make of its reduced-rate mailing privileges, or limit the types of mail it can send at preferred postage rates. Some or many of these activities may be acceptable under State law, but not necessarily in a postal context.

Where the use of nonprofit postage rates is not concerned, however, the Postal Service does not seek directly to regulate the relationship between nonprofit organizations and

professional fundraisers, which is more appropriately the function of State government, and the apparent purpose of the State statutes involved here. Indeed, it would seem clear that there are many aspects of the relationship between nonprofit organizations and professional fundraisers that do not implicate the mails. While we recognize that the Postal Service's administration of its statutory responsibilities may have a limited impact on some aspects of that relationship, it falls well short of the effect of State laws in this area.

2. What factors do postal management apply to resolve the conflict fairly?

Answer: As noted in the response to Question 1., we did not consider there to be a conflict of law in this area. A professional solicitor and its clients would be able to comply with both federal and State requirements by sending the solicitations at the regular commercial rates of postage.

3. In particular, does management apply the three-part test that the U.S. Supreme Court applied in *US v. Kimbell Foods, Inc.*, 440 US 715 (1979)?

Answer: In a true conflict of law situation, the Postal Service would seek to consider all relevant tests.

4. If not, please explain why not.

Answer: See response to Question 3.

5. Please list the conflict of law factors that postal headquarters took into account in its determination that the Postal Service's risk test should prevail vis-a-vis the requirements of Ohio and other states in the case of the professional solicitor, Reese Brothers Inc. (RBI), and its 35 charity-clients authorized to mail at the nonprofit rate.

Answer: We did not consider there to be a conflict of law in this area. A professional solicitor and its clients would be able to comply with both federal and State requirements by sending the solicitations at the regular commercial rates of postage. A conflict of law analysis was not considered necessary in this case.

6. Does the Postal Service acknowledge that the purpose of the Ohio and other state laws at issue in the RBI case is to protect consumers rather than to shift ownership of the mail piece from the authorized charity to the unauthorized professional solicitor?

Answer: The Postal Service played no part in the development of the State laws addressed in the question. Accordingly, we respectfully defer to the interpretation placed on those statutes by the responsible State authorities. The purpose of the Postal Service's cooperative mailing rule is to ensure that only authorized organizations use the Nonprofit Standard Mail rate, for purposes that are authorized under the applicable statutes. If matter is mailed at those rates in behalf of or for commercial entities or other unauthorized parties, those persons would receive the benefit of the rate, despite being ineligible for it. The cooperative mailing rule thus precludes mail produced for

cooperative enterprises between for-profit companies and nonprofit organizations from being mailed at the Nonprofit Standard Mail rate.

7. Does postal management acknowledge that these states are exercising the powers reserved to them under the Constitution to regulate charitable solicitations when they mandated a minimum guarantee provision in contracts between charities and their professional solicitors?

Answer: We respectfully submit that the determination of such issues is the province of State and Federal courts. Likewise, determinations concerning the validity of State statutes are the responsibility of courts, rather than the Postal Service. As explained above, the Postal Service is not seeking to regulate the relationship between professional fundraisers and nonprofit clients. Instead, our responsibility is to classify mail and assess the proper rate of postage in the circumstances presented to us.

8. In the past two and one-half years, the Postal Service has applied its risk test only to the contract between one professional solicitor (RBI) and its charity-clients. As a result, the Postal Service has disabled RBI from competing with other professional solicitors. It is my understanding that RBI lost the equivalent of 450 positions, and its relationships entered into under state law have been disrupted to the point that RBI now serves as a professional solicitor for only five of the 35 charity-clients it had in 1998. It is estimated that, by fall, only four of the 33 will remain. Some have alleged that this postal policy amounts to economic discrimination. What are your thoughts?

Answer: The cooperative mail rule has been applied to numerous mailings from time to time since it was promulgated in 1975, including the past two and one-half years, to preclude eligibility of mail matter for the Nonprofit Standard Mail rate.

RBI has made similar representations to the Postal Service concerning the status of its professional fundraising activities for nonprofit entities, however, no substantiation of its claims was ever provided. Furthermore, RBI has indicated to the Postal Service that it is withdrawing from the charitable solicitation activities that are the basis for its mail classification dispute.

The Postal Service has indicated to RBI that it will pursue investigation of other mailers who are allegedly claiming the Nonprofit Standard Mail rate for ineligible matter. RBI has declined to identify any.

Mr. LATOURETTE. I have one question.

Mr. MCHUGH. Go ahead.

Mr. LATOURETTE. Mr. Chairman, I will try to be expedient.

I wrote down some comments as you all were answering the chairman's questions. It began with you, Mr. Gallo, when you were talking about the utility of law enforcement to do its job costs what it costs, and you can't look at a crime and say, "We're going to spend $10,000 on this crime to follow the crime through to completion."

That, combined with—I believe Mr. Nolan made the observation that there had been a shift that was noticeable to revenue protection, and then Mr. Eager's observation that there was a 25 percent decrease in mail fraud activities within the department, and it comes from—and before I did this I was a county prosecutor, and we changed a lot of laws relative to drug enforcement. We had forfeiture laws. The deal was that if you went out and busted a guy that had a nice car, if you were the police agency you got to keep the car. Well, you didn't get to keep it, yourself; you got to take the assets and then file it into new stuff for the department or extra hires or things of that nature.

There was some criticism that we—nobody was doing anything to be funny, but any time there was a chance to get more stuff or more officers that we would take our resources and funnel them into chasing these guys with the nice cars—[laughter]—and not necessarily the guy that broke into the house or the guy that stole the ice cream from the convenience store sort of got more priority.

In this whole discussion that you were having with the chairman about moving these guys from the Postal Service over to Treasury Department—I understand completely that you'd have to change the statutes or you'd just be doing the same thing at a different place. But I wonder if the fact that, again, it takes as much as it takes, the direction was shifted in the direction to protect revenue, and the 25 percent reduction in mail fraud activities—is there a danger here that the Postal Inspection Service is compromised as a law enforcement agency because of its reliance on Postal Service revenues as opposed to the ability to take as much as it takes?

Mr. Eager, have you thought that through? And then anybody who has a comment.

Mr. EAGER. I think, because of our structure, that we are a law enforcement agency that's really quasi-business and quasi-Government agency, that it gives that perception whether it is true or not. I mean, we can go out and conduct crime prevention and competitors to the Postal Service might say that we are taking an unfair advantage when we're marketing when, in fact, the field Postal inspector is simply trying to reduce theft, but the perception I guess is what we're dealing with in that area.

I don't know of too many agencies, Federal law enforcement agencies, that are structured like we are. The more business-oriented the Postal Service gets, the more probably the level of accusations will, proportionately go up.

Mr. LATOURETTE. But that's specifically in response to my query, that there may be the perception but there's no truth to it?

Mr. EAGER. Well, Mr. Campbell used the term of inspectors going out and coercing. I mean, inspectors don't have any monetary—we go to investigate what we're sent to investigate.

I would think—I mean, if I was someone out there in the private sector and someone was coercing me, I'd take issue with it.

Mr. LATOURETTE. I think it was more going back to the drug dealer situation. And I wasn't talking about agents running rogue and trying to bother people. What I was talking about is a decision somewhere within the Postal Service that we're going to focus on things that protect revenue of the Postal Service, and therefore, because we don't have enough guys and gals, or because of resources, or whatever, you're going to have a corresponding drop in other things such as going out and taking a look at mail pledges because there aren't enough hours in the day and enough people to do it.

And my question is: is that just a potential perception, or is there some truth to that?

Mr. EAGER. That's FLEOA's perception in the past, as I stated earlier, that resources were diverted to revenue protection and they came from somewhere, and we assume they came from the mail fraud program, and we are dealing with a closed universe. We can quibble over number of how many inspectors in 1975 as opposed to the authorized complement, but we're not talking about thousands of people here. We're just talking about a couple of hundred here and there.

We've always dealt within a closed universe of personnel, and our priorities do change, but reduction in mail fraud of 25 percent over that period of time I think is significant.

Mr. LATOURETTE. Chief Weaver or Mr. Nolan.

Mr. NOLAN. I would say one thing that we may not have made clear is that the revenue protection responsibilities have now been removed from the Inspection Service. It's in the revenue assurance or revenue protection unit within our administrative function area.

In part, it was because it was a more productive way of dealing with our customers in solving problems, and in part because the Inspection Service now is focusing on criminal activities and on some of those audit-related things out of which grew the attempts to protect revenue from deficiencies.

So I think what may have been a potential diversion at times has cleared up significantly because it doesn't exist any more as a possible area of emphasis to the Inspection Service.

Mr. LATOURETTE. Mr. Weaver.

Mr. WEAVER. Yes, if I can just clarify a point here—and make no mistake about it, if there is a violation of the law involving our revenue systems or our revenue stream, we will conduct an investigation, and that is where there is criminal intent and intent to fraud. So what Mr. Nolan is talking about is the shift in moving out of the revenue assurance business to where we used to go out and identify revenue deficiencies and refer those to management. I know there is some question about whether we acted as a collection agency in that regard, and we did not. We would refer that to management for collection. We are out of that business altogether, now. We are strictly focused on upholding the laws that we are supposed to.

As far as your other point, as far as being compromised and directing your resources to one area or another, that's a valid concern, and we watch that very closely and make sure that we are addressing problems that have a serious impact on the operations of the organization and where we see problems occurring.

We utilize the forfeiture statute, and it is a valuable tool. And if we can hurt the bad guys, as you've seen many times, by taking their resources and their assets, we're going to do it. We put that money to good use as far as helping the organization move forward.

Mr. LATOURETTE. I appreciate that. The point in my experience was—and I happen to be a fan of forfeitures because they brought in extra dollars that you wouldn't get through tax revenue and limited budget allocation.

Sometimes if we were looking at two drug dealers and one guy had a Corvette and the other guy was driving a 1974 Old Cutlass, we would probably spend a little bit more time going for the Corvette. [Laughter.]

But I thank you, Mr. Chairman and yield back.

Mr. MCHUGH. I thank the gentleman.

With that, I want to thank you all—Mr. Deputy Postmaster General, Chief Weaver, Mr. Campbell, Mr. Gallo, Mr. Eager, thank you for your presence here today and your patience.

The hearing is adjourned.

[Whereupon, at 3:20 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

"Thinking Outside the Box"

Originally published in DM Newsletter, November 1999

Written by Cary Baer,

Principal of Cary H. Baer & Associates,
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The opinions expressed herein are solely those of the author.

On The Postal Service

Cary H. Baer

Thinking Outside The Box

We are coming upon trying times for users of the Postal Service. Apparently in deference to the staff at the Postal Rate Commission and all those who participate in the Commissions postal rate proceedings , the USPS is letting us all have a joyous New Year holiday. However, the Postal Service is now expected to file for higher postage rates sometime after the first of the year

In fact, rumors abound regarding the expected size of the rate increase. The current expectation is for an increase in the First Class stamp from 33 cents to 35 cents. Significant concerns exist among Periodical and Standard A mailers. For these classes there are rumors that the average increase will exceed 10%.

Increases of this size paint a curious picture given recent testimony concerning the future of mail volume growth.

At a recent congressional hearing the General Accounting Office issued a report utilizing USPS mail volume forecasts. That report stated that beginning in 2003 First Class Mail volume will begin to decline at a rate of 2.5 percent per year for the next five years. With First Class Mail accounting for almost 60 % of USPS revenue, a loss of the magnitude forecast, amounting to billions of dollars per year, would be disastrous.

Normally, facing the prospect of significant volume loss, the last thing one would want to do is accelerate that volume loss through a significant price increase.

Yet, we've not heard the Postal Service say that they will do all they can to prove wrong the forecast of volume losses. It might actually energize the postal system if the USPS said, that through improved service, new financial incentives, and other marketing ideas, for the foreseeable future they intend to keep First Class Mail growing.

Now back to the reason for the title of this piece, "thinking outside of the box". Perhaps it time to consider alternatives to current methods of operation. The balance of this article consists of a few thoughts on different ways operating that might provide savings for the Postal Service.

First, let's look at the forwarding of First Class Mail, something that clearly needs to be done. Several years ago the USPS, working with many of its customers, reclassified many categories of mail. That reclassification bundled together several automation requirements, including one related to address quality. One objective of reclassification was to provide more efficient mail for the USPS to process and then to reward, thru lower price, those mailers who would participate in the program.

While the program may be working in terms of more efficient mail, it has not reduced the volume of mail being forwarded. The Postal Service audited the system to determine if mailers are updating their mailing lists as often as the reclassification guidelines require. The audit revealed that compliance is a problem. However, it's not the only problem. More could be done to reduce mail forwarding costs, which according to the Postal Service are in excess of 1 billion dollars annually. To help capture savings I'd put a VP level officer in charge of reducing mail forwarding costs. He or she would get a significant bonus, if and only if, the volume of mail flowing through the mail forwarding sites was reduced. Secondly, I'd develop programs to reward mailers if they reduced their volume of forwarded mail. For example, since the forwarding system is capable of tracking the mail sender, a rebate system could be developed to reward mailers with a low percentage of mail requiring forwarding.

Now I'd like to shift the discussion to the Postal Service's Inspection Service. They do a fine job. However, I question whether the Postal Service and therefore it's customers should be paying for all that they do.

Let me explain. If someone steals a car and then uses that car to rob a bank, is it the responsibility of the of the automobile manufacturer or the bank to track down and arrest the perpetrator? Obviously not.

Therefore, why is it the responsibility(some or all) of the Postal Service to track down and arrest those who use the mail to commit crimes. I'm not suggesting that these crimes go unchallenged, rather I'm asking if the FBI and the Justice Department should be the responsible federal agencies? In my view the Inspection Service should stick to issues dealing with the operation of the Postal Service and let external crime fighting be the responsibility and cost of the appropriate governmental agency.

I don't want to appear to pick on the Inspection Service, but will raise another issue that occurred to me some time ago. Several years ago I visited a new postal facility near O'Hare Airport. I was quite impressed with the facility and with the internal movement of trayed mail via an elaborate conveyor system. While touring the facility I noticed a system of extremely large metal tubes, over six feet in diameter, hanging from the ceiling, and apparently circling much of the facility. Being somewhat curious, I asked the plant manager what they were. He responded that they were the system the Inspection Service used to monitor postal workers without there knowledge. I should note here that there were several sections with what appeared to be mirrors, but actually were one way glass, that permitted viewing by Postal Inspectors positioned inside. I asked the plant manager how much this monitoring system added to the plants cost. He had no idea, but made it clear that it was required as part of the plants construction.

This method of checking on employees fails in two areas; it's expensive and reinforces the poor labor relations image that's often associated with the Postal Service.

I have no idea how much the Postal Service spends on constructing these observation posts. However, we do know that over the last two years the Postal Service spent about $ 1.7 billion on "Construction and Building Purchase" and over $ 1.1 billion on "Building Improvements". It's a good bet that some of this money was spent on these posts. Perhaps these funds could have been more productively utilized. Ripping out these "observation posts" would go a long way to improving the relationship between labor and management. Better labor/management relationship might improve postal productivity.

In any case, while you may disagree with these ramblings, it seems clear that out of the box thinking is urgently necessary. I'd like to hear other similar productivity enhancing thoughts from our reader's.

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