15. A brief history of the United States postal monopoly law

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1. INTRODUCTION

The history of the postal monopoly law of the United States is a vast and remarkable story. The postal monopoly law is among the most ancient of legislative texts to be found in US statute books. Current law replicates the words of a proclamation by King Charles I of England in 1635, yet Congress was tinkering with the postal monopoly as recently as 2006. Despite the enormous economic and cultural significance of the national post office and long-running disputes about the scope of its monopoly, there exists no complete published account of the history and derivation of the monopoly.[1] This absence should soon be corrected by a comprehensive history which the Postal Regulatory Commission is preparing for submission to Congress and the President in December 2008.[2] While no short essay can give a full account of the postal monopoly, this chapter offers an introduction by summarizing the succession of legal instruments setting out the terms of the monopoly.

Today, the postal monopoly in the United States is created by sections 1693 to 1699 of the federal criminal law, Title 18, of the United States Code.[3] In brief, these laws make it a crime for anyone other than the United States Postal Service (USPS) to set up a collection and delivery service for the regular transmission of 'letters', although there are several exceptions to this rule. Criminal prohibitions are supplemented by sections 601 to 606 of the postal law, Title 39 of the United States Code.[4] In particular, section 601 creates important additional exceptions to the monopoly. These 13 statutory provisions are often referred to collectively as the 'private express statutes', although, as we shall see, only some of them deal with private expresses. In addition to the statutes, the Postal Service has issued lengthy regulations to implement the statutory monopoly.[5]

This chapter focuses on a few of the main threads of the postal monopoly story and some of the important links in the chain of laws stretching from its origin in 1635 to the present day. Section 2 begins with a review of the origin of the postal monopoly in English law. Section 3 describes how English precedents were reflected and modified in early American laws and then extended to private expresses and other aspects of postal service until codification in the postal act of 1872. Despite stylistic revisions during reenactments and minor amendments, the code of 1872 is essentially the current statute. Section 4 summarizes the development of the administrative interpretation of the monopoly statutes by

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the Attorney General, the Post Office Department, and the Postal Service over the next century, a process that culminated in the postal monopoly regulations of 1974. Section 5 points out the still incompletely realized implications of the Postal Accountability and Enhancement Act of 2006. Section 6 offers concluding observations.

2. ENGLISH PRECEDENTS, 1635–1775

The postal monopoly predates establishment of the Postal Service. Indeed, the Postal Service is only the most recent of five governmental post offices serving the territory of what is now the United States. The Postal Service was established in 1971 as an independent governmental agency to place the national post office on a more business-like basis, free from undue political influence.[6] The predecessor of the Postal Service was the Post Office Department, established in 1792 as the office of the Postmaster General. The Post Office Department, in turn, succeeded the Continental Post Office, founded by the Second Continental Congress in 1775, when the mounting revolution rendered the British Post Office unusable. The British Post Office had provided postal services between America and England and among the several colonies since 1707. Extension of the British postal service to America supplanted a rudimentary postal service organized under a 'patent' (an exclusive license) issued by the English crown in 1692 to a court favorite named Thomas Neale. Prior to Neale's post office, there was no regular postal service in the American colonies despite several attempts by authorities in New York and Boston.

From the Neale Post Office to the Postal Service, the governmental post office in America has been protected by variations of the *same* postal monopoly law. All prohibited private competition in the transmission of 'letters and packets'. These laws were, in turn, derived from still earlier English laws that first established the postal monopoly in England. To understand the American postal monopoly law, therefore, it is necessary to begin with a brief review of English antecedents.

The English postal monopoly was born amidst the seventeenth-century struggle between the King and Parliament. At this time the growing class of merchants, Protestant in faith and sternly rational in outlook, dominated Parliament. They resented the aristocratic ways of the Stuart kings, who were not only born in Scotland but also openly tolerant of Catholics. The second Stuart king, Charles I, refused to convene Parliament after 1629 because of continual parliamentary demands for restrictions on his royal prerogatives. To obtain money to operate the government, Charles I resorted to creative financing – forced loans, taxes unauthorized by Parliament, and a revival of commercial monopolies banned by Parliament during his father's reign.

Although English kings had maintained a royal post for official correspondence since 1516, letters of the public were not admitted. Merchants operated their own commercial posts. On July 31, 1635, Charles ordered the master of posts, Thomas Witherings, to open the royal post to private correspondence and forbade private postal services to and from Scotland, then threatening rebellion. The prohibitory provision stated:

> *noe other messenger or messengers foote post or foot posts shall take upp carry receive or deliver any lr̃e or lr̃es* [letter or letters] whatsoever other then the messengers appoynted by the saide Thomas Witherings to any such place or places as the saide Thomas Witherings shall settle the

> conveyance aforesaide Except com̄on knowne carriers or a pticuler messenger to be sent of purpose with a lr̄e by any man for his owne occasions or a lr̄e by a freind . . .[7]

The monopoly of Charles I thus prohibited private carriage of a 'letter or letters'. Charles's proclamation also used the term 'packet'. It set out postage rates for the carriage of a letter based on distance and noted 'if twoe three fower or five lr̄es in one packett or more then to pay according to the bignes of the saide packett'. It seems that a *letter* referred to a single sheet of paper and a *packet* to a bundle of letters. Because of the turbulent condition of society, the public postal service of Charles I lasted only two years; in 1637, he again closed the royal post to private letters.

Parliament, led by Oliver Cromwell, rebelled, and beheaded Charles I in 1649. There was prolonged debate about the future of the post office and advantages of competition, but in 1654 Cromwell appointed John Manley as postmaster and prohibited private carriage. Cromwell's motive was apparently one of security for the unstable government. Manley was instructed to keep careful track of all letters and unfamiliar post riders. Cromwell's death in 1658 led to a period of disorder, followed by the return of Charles II, son of the late king.

In 1660, Charles II was restored to the English crown, and Parliament approved a new postal law. The act of 1660 reenacted the postal monopoly in terms similar to the proclamation of 1635. It read in pertinent part:

> *no other Person or Persons whatsoever, shall from time to time have the receiving, taking up, ordering, dispatching, sending Post or with speed, and delivering of all Letters and Pacquets* whatsoever, which shall from time to time be sent to and from all and every the parts and places of England, Scotland, and Ireland, and other his Majesties Dominions, and to and from all and every the Kingdoms and Countries beyond the seas, where he shall settle or cause to be setled posts or running Messengers for that purpose . . .[8]

The postal act of 1660 gave the British Post Office its permanent charter. It also introduced the postal monopoly into English law on permanent basis, where it remained a fixture until it was effectively repealed by the Postal Services Act 2000. Put simply, the main purposes of the monopoly were to enable the king to enrich his friends and spy on his enemies. At the same time, however, many recognized that a public post would be a boon to society.[9]

In the American colonies, the New York legislature confirmed Neale's 1692 patent by repeating, word for word, the language of the 1660 British postal act; it forbade the 'receiving, taking up, ordering, dispatching, sending post or with speed and delivery of all letters and pacquets whatsoever'.[10] Massachusetts similarly confirmed Neale's monopoly but only on condition that the service was efficient. Pennsylvania, Connecticut, and New Hampshire agreed as well. Thus, the first postal monopoly law in America was, in essence, the English postal monopoly of 1660. Maryland and Virginia refused to recognize Neale's patent, and the Neale Post Office was limited to the northeastern colonies.[11] Service provided by the Neale Post Office was poor, and it was a commercial failure.

In 1707, the British Post Office replaced the Neale Post Office. Government purchased Neale's patent and turned over its management to the British Post Office. In 1711, during the reign of Queen Anne, Parliament enacted a new postal law, replacing the postal act of 1660. The 1711 law extended the British Post Office's operations to Scotland and the

American colonies. It also reenacted the postal monopoly of 1660 in similar terms: 'no other Person or Persons whatsoever, shall, from time to time, and at all Times, have the receiving, taking up, ordering, dispatching, sending Post, or with Speed, carrying and delivering of all Letters and Packets whatsoever'. Queen Anne's postal monopoly explicitly applied to letters 'sent to and from all and every the Parts and Places of Great Britain and Ireland, North America, the West Indies, and other her Majesty's Dominions'.[12] The postal act of 1711 remained the basic postal law of England and its colonies until well after the American revolution. Although applicable in the American colonies, the postal monopoly law was often evaded by colonists.

Postal service in eighteenth-century England and America was far different from what we think of as postal service in the twenty-first. It was not merely a difference in degree, but a difference in kind. The original idea of postal service is suggested by the phrase 'sending post or with speed'. To 'send post' was to transport by means of a series of posts, or relay stations, located every 10 to 15 miles along a 'post road'. Post houses for a 'horse post' stabled horses for riders carrying letters between towns. Letters were conveyed either by 'through post', that is, by means of a single rider who obtained fresh horses at each station, or by 'standing post', that is, by a series of riders each of whom handed the mail to a subsequent rider at the next station. A 'foot post' was similar in concept but relied upon walking messengers. The essence of postal service was extraordinary speed, hence to 'send post' was virtually synonymous with to send 'with speed'.

Much like the pony express in the western United States a century or two later, the function of a 'postal service' – that is, a conveyance service provided by a system of posts – was to provide transportation for letters that was more rapid and reliable than possible for general freight. The hoped-for rate of travel was about seven miles an hour in the summer and five in the winter. By its nature a postal system was an inter-city service. Letters and packets were transported from a public facility such as an inn, coffeehouse, or dedicated post office in one town to a similar facility in another town. In these uncertain times, postage was paid not by the sender in advance but by the addressee upon collection at the destination post office. There was no local collection or delivery service within a city or town.

As is evident from the 1635 proclamation, the term 'letter' originally referred to a message recorded by hand, usually, because of the high cost of paper, on a single scrap of paper just large enough for the message it contained. Envelopes, a French innovation, were not introduced in the United States until the mid-1800s. For privacy and protection, letters were originally folded and sealed with wax. Given the space limitations of a horseman's saddlebags, postage rates naturally depended on the number of sheets of paper sent. A correspondence containing a single sheet was called a 'single letter'. A correspondence extending to two sheets of paper – that is, two letters or a single letter with an enclosure (such as a deed or certificate) – was called a 'double letter'. Three sheets constituted a 'triple letter'. Since it was difficult to seal more than three sheets of paper with wax, a correspondence of several sheets or several correspondences sent at the same time to the same addressee (a common occurrence in times of infrequent sailings) were tied with twine into a bundle or 'packet'. This seventeenth-century terminology was used to specify postage rates in the United States until 1863; it is used to describe the postal monopoly to this day.

3. DEVELOPMENT OF US MONOPOLY STATUTES, 1775–1782

3.1 Early Postal Monopoly Laws, 1775–1845

Early American postal laws were derived from English precedents but soon assumed a more democratic and peculiarly American flavor. In the new Republic, facilitating distribution of newspapers became a primary goal of the national post office while surveillance of the citizenry was of little concern. Although the American post office was not used to raise general government revenues, high postage rates on letters generated substantial subsidies for low newspaper rates and, later, a national system of mail stagecoach services. With regard to the postal monopoly, the English proscription against the establishment of private postal systems was retained and extended to other forms of staged transportation, such as stagecoaches and packet boats, but the United States abandoned English rules prohibiting carriage of letters by individuals.

The American post office originated, naturally enough, in distrust of the British Post Office as a conduit for rebellious sentiments. In 1775, the Second Continental Congress established its own post office. On July 4, 1776, Congress declared independence from England and, in 1778, established a new government under the Articles of Confederation. The Articles vested the Congress with the 'sole and exclusive right [of] . . . establishing and regulating post offices'.[13]

When the revolution was secure, the Continental Congress reorganized the post office with the comprehensive but poorly drafted Ordinance of October 18, 1782. The 1782 ordinance included a postal monopoly provision modeled on that of the British postal act of 1711. Like the British act, it granted to the post office a monopoly as follows:

> no other person whatsoever, shall have the receiving, taking up, ordering, despatching, sending post or with speed, carrying and delivering of any *letters, packets or other despatches* from any place within these United States for hire, reward, or other profit or advantage for receiving, carrying or delivering such letters or packets respectively . . .[14]

The addition of the term 'despatches' (that is, dispatches) appears to signify nothing more than preoccupation with the recent war; 'despatches' referred to letters of an official or military nature.

The Articles of Confederation proved unequal to the task of unifying the colonies and was replaced by the current federal Constitution in 1789. The Constitution authorized the Congress to establish 'post offices and post roads',[15] but unlike the Articles, did not grant Congress the sole and exclusive power to do so. In its first three sessions, Congress continued in effect the Ordinance of 1782.

The first substantive postal law enacted by the new government was adopted in 1792.[16] In 1794, Congress replaced the 1792 law with a more mature version.[17] The postal law was refined again in 1799. In the 1799 act, the postal monopoly provision read as follows:

> That if any person, other than the Postmaster General, or his deputies . . . *shall be concerned in setting up or maintaining any foot or horse post*, stage wagon, or other stage carriage, on any established post road, or from one post town to another post town on any road adjacent or parallel to an established post road, or any packet boat or other vessel, to ply regularly from one place to another between which a regular communication by water shall be established by the United

> States, *and shall receive any letter or packet, other than newspapers, magazines, or pamphlets*, and carry the same by such foot or horse post, stage wagon, or other stage carriage, packet boat, or vessel . . . shall forfeit, for every such offence, the sum of 50 dollars.[18]

The 1799 act retains the phrase 'letters and packets' to define the basic scope of the monopoly. However, the statute as a whole indicates that the meaning of these terms was continuing to evolve. In specifying postage rates, the 1799 act refers to a 'letter composed of a single sheet' instead of the term 'single letter'. This phrasing suggests that 'letter', used alone, could refer to an entire written communication, and not just to a single sheet. On the other hand, the statute also states that a packet must contain 'four distinct letters' in order to qualify for quadruple postage, apparently using 'letter' in the sense of a single sheet of paper. In short, the term 'letter' is used in both old and new senses.

The 1799 act also reflected a subtle but fundamental change from the scope of activities proscribed under former British law. The British law prohibited both the carriage of letters or packets by individual persons for hire and the setting up of private postal systems, a concept later extended to common carriers. Since 1794, the American law has repeated the second prohibition ('setting up or maintaining any foot or horse post, [etc.]') but not the first. Hence, it was lawful in the United States for a private individual to carry letters for someone else even if he could not set up a postal system to compete with the government post office. As Postmaster General Return Meigs observed in 1822, with the introduction of steamboats more persons traveled by water than by land because of the 'greater economy and convenience' and 'most of the passengers are charged with letters' since 'there is no law prohibiting passengers from carrying letters'.[19]

In 1825, Congress repealed prior postal laws and enacted the first general codification of the postal laws. The monopoly provision of the 1825 act prohibited only the transmission of *letters*, suggesting, perhaps, a congressional understanding that the term 'letters' encompassed what used to be called 'packets'.[20] Although the 1825 act repeated the prohibition against carriage of letters by common carriers, it eliminated the prohibition against 'setting up' posts found in the 1792 act. Perhaps this omission was inadvertent, for in 1827 the prohibition against setting up competitive posts was reenacted. Moreover, the 1827 act referred again to a monopoly over the carriage of 'letters and packets'.[21]

3.2 Cheap Postage and Suppression of Private Expresses, 1845

The concept of a 'postal service' as a fast inter-city transport system operating by means of a series of relay stations remained essentially unchanged from 1635 to the mid-1830s. The Industrial Revolution, however, precipitated a 'transportation revolution' which fundamentally altered the concept of a post office. The steamboat was introduced in America in 1807 by Robert Fulton; the steam railroad by Peter Cooper in 1830. As these two new means of transportation became widespread, it was suddenly possible to transport large quantities of passengers and freight at the highest speed attainable. The essential characteristic of the pre-industrial post office, extraordinarily fast transportation of small quantities of letters and documents, was rendered obsolete along lines of travel where steam-powered vehicles were available. Any entrepreneur could board a railroad or steamboat with letters in his baggage and transport them between cities as fast as the post office. In fact, many did so. It was common for newspapers and other businesses to hire private

messengers to convey time-sensitive information. In the late 1830s, regular 'private express' companies were organized as the railroads and steamship lines developed into usable transportation systems. Private expresses operated first in the Boston area and on the routes between Boston, New York, and Washington.[22]

At first, the Post Office resisted implications of the new technology. In 1836, the Post Office started its own express mail service, making improved use of stage coaches and riders. By 1839, however, it was clear that there was no practical alternative to reliance upon railroads, and express mail was discontinued. The Post Office also launched prosecutions against private express companies under the traditional postal monopoly laws. These failed because the courts concluded that conveyance of letters by railroad passengers was not prohibited by a monopoly over the establishment of horse and foot posts.[23]

The Post Office then turned to Congress. Postmaster General Charles A. Wickliffe urged increased penalties against private express companies and postal control of railroad schedules. He also advised Congress to resist the popular demand for substantially reduced postage rates – inspired by the 'cheap postage' reforms adopted in England in 1840 – because this would jeopardize the policy of financial self-sufficiency that had guided the Post Office since the first days of the Republic. Wickliffe also claimed that the monopoly over the transmission of 'packets' already gave the Post Office a monopoly over the carriage of newspapers and miscellaneous printed matter. He wrote, 'The words "packets" or "letters" are not used in this connexion as synonymous. Packets, more properly, may be defined to mean printed matter, such as newspapers, prices current, slips, &c'.[24]

Congress responded with the postal act of 1845. The centerpiece of this act was a sharp reduction in postage rates. The act also added a new provision that prohibited inter-city transportation of letters by private express to supplement existing prohibitions against private postal systems. The 1845 act introduced a separate rate status for circulars and miscellaneous printed matter (there were no mail 'classes' at this time) and included such items in the postal monopoly. The key private express provision read as follows:

> *it shall not be lawful for any person or persons to establish any private express or expresses* for the conveyance, nor in any manner to cause to be conveyed, or provide for the conveyance or transportation by regular trips, or at stated periods or intervals, from one city, town, or other place, to any other city, town, or place in the United States, between and from and to which cities, towns, or other places the United States mail is regularly transported, under the authority of the Post Office Department, of *any letters, packets, or packages of letters, or other matter properly transmittable in the United States mail, except newspapers, pamphlets, magazines and periodicals . . .*[25]

The phrases 'mailable matter' and 'matter properly transmittable in the United States mail' were specifically defined in the act to include, in addition to letters, newspapers, magazines and pamphlets, and 'all other written or printed matter whereof each copy or number shall not exceed eight ounces in weight'. The practical effect of the 1845 monopoly was to add miscellaneous written and printed matter weighing eight ounces or less to the traditional monopoly over the carriage of 'letters and packets'.

3.3 Extension of the Monopoly to Local Services and the Postal Code of 1872

Until the Civil War, the Post Office remained essentially a contracting office for inter-city transportation services. Delivery of local, intra-city letters was pioneered by private

companies such as Boyd's Despatch in New York City and Blood's Despatch in Philadelphia. One authority has counted 147 private local postal companies.[26] The 'locals' introduced adhesive postage stamps at least as early as 1841. The Post Office did not introduce stamps until 1847 and did not require their use until 1851. Efforts by the Post Office to suppress the locals failed when, in 1860, a federal court ruled that the postal monopoly pertained only to the transportation of letters over 'post roads' between post offices and did not prohibit the delivery of letters within a single postal district.[27]

In 1861, Congress overturned this judicial decision by an obscurely worded, undebated rider to an appropriations bill that extended the postal monopoly to 'all post routes which have been, or may hereafter be, established in any town or city by the Postmaster General'.[28] As it turned out, this amendment was the key to the postal monopoly for the next 150 years as local delivery, rather than inter-city transport, gradually took over as the central function of the Post Office and later the Postal Service. In 1861, however, the Post Office did not provide local delivery services except by messengers who were paid separately by the addressee if mail delivery was desired. It was the postal act of 1863[29] that enlarged the mission of the Post Office by providing for 'free city delivery' in major cities, that is, delivery without charge to the addressee.

The 1863 act also introduced another concept that would become important in future discussion of the postal monopoly. It divided the mail into three 'classes' and defined letter postage by weight step instead of the number of sheets of paper. Only at this point did the original meaning of the key term 'letter' (a single sheet of paper) lose practical significance as far as postal rates were concerned.

While the 1863 postal act was still under consideration by Congress, the Post Office set in motion the events that led to the postal code of 1872. Postmaster General Montgomery Blair proposed a comprehensive bill to 'revise and codify' the postal laws, the first codification since 1825.[30] Congress did not enact the proposed code, but in 1866 it established a commission to codify all of the laws of the United States. In 1869, this commission produced a few specimen titles, including a new postal code which strongly resembled the legislation proposed by the Post Office in 1863.[31] The specimen postal title was enacted into law with minor revisions as the postal code of 1872.

Although congressional sponsors of the 1872 act portrayed their bill as essentially a codification of prior law, the new law in fact made fundamental but apparently unnoticed revisions in the scope of the monopoly. Most significantly, the 1872 act reverted to the phrase 'letters and packets' to define the scope of mail within the monopoly, thus eliminating the 1845 phrase 'other matter properly transmittable in the United States mail'. In the 1872 code, the private express provision read as follows:

> *That no person shall establish any private express for the conveyance of letters or packets*, or in any manner cause or provide for the conveyance of the same by regular trips or at stated periods, over any post-route which is or may be established by law, or from any city, town or place to any other city, town or place between which the mail is regularly carried.[32]

Reversion to the phrase 'letters and packets' to define the scope of the postal monopoly and the definition of first class mail as wholly or partially written documents left unclear the status of certain documents used in commerce and generally referred to as 'commercial papers' rather than letters. There was considerable debate about this matter.

In the summer of 1881, Postmaster General Thomas James asked Attorney General Wayne MacVeagh to rule upon the status of such items under the postal monopoly:

> I have the honor to request that you inform me whether . . . it is a violation of [the postal monopoly law] for an express company to carry for hire, regularly, in sealed or unsealed envelopes, *written matter which is by law subject to letter postage when sent by mail, such as manuscript for publication, deeds, transcripts of records, insurance policies, and other written or partly written documents used by insurance and other companies in the transaction of their business*.
>
> In other words, *will you define the limits of the monopoly of the Post Office Department in the carriage of first class matter*, that is, matter which is by law subject, when sent in the mail, to letter postage, and also the exact meaning of the words '*letter or packet*' as used in the sections of the Revised Statutes referred to. Questions involving these points are constantly presented to this Department for decision, and I greatly desire your decision thereon[33]

MacVeagh replied that such commercial documents were not within the *letter* monopoly and that the term 'letter' extended no further than common usage:

> *In my opinion, it is no violation of [the postal monopoly law] for an express company to transport the documents mentioned in yours of 15th instant.*, viz., manuscripts for publication, deeds, transcripts of record, insurance policies, &c.
>
> It is prohibited, and an offence, to carry 'letters or packets.' *What is a letter I can make no plainer than it is made by the idea which common usage attaches to that term*. From the connection in which it is used, I have no doubt that 'packets' means a package of letters.[34]

The statutory provisions defining the postal monopoly have not changed materially since the postal code of 1872. The 1872 act was reenacted in the 1874 Revised Statutes, a general codification of US law.[35] The penal postal monopoly provisions were incorporated into the Criminal Code of 1909.[36] Other than minor stylistic revisions, the 1909 code made only one significant change to the main postal monopoly provisions, adding an exemption for letters of the carrier. The postal monopoly portions of the 1909 code were reenacted without significant change as part of the Criminal Code of 1948.[37] From 1872 to 2006, the only significant changes in the legal measures defining the scope of the postal monopoly are found in administrative rulings issued by the Attorney General, the Post Office Department, and the Postal Service. While the Postal Accountability and Enhancement Act of 2006 did not change the core concepts of the statutory monopoly, it made several significant revisions.

Today, the most important remnant of the pre-industrial postal monopoly law is found in section 1694 of the criminal code. As noted, the pre-industrial postal monopoly banned establishment of foot posts, horse posts, and other staged transportation services to transmit letters and packets, a prohibition that was later extended to carriage of letters by common carriers established for other purposes. Section 1694 provided:

> Whoever, having charge or control of any conveyance operating by land, air, or water, which regularly performs trips at stated periods on any post route, or from one place to another between which the mail is regularly carried, carries, otherwise than in the mail, any letters or packets, except such as relate to some part of the cargo of such conveyance, or to the current business of the carrier, or to some article carried at the same time by the same conveyance, shall, except as otherwise provided by law, be fined under this title.[38]

The most significant of the private express provisions adopted in 1845 is now found in subsection 1896(a) of the criminal code:

> (a) Whoever establishes any private express for the conveyance of letters or packets, or in any manner causes or provides for the conveyance of the same by regular trips or at stated periods over any post route which is or may be established by law, or from any city, town, or place to any other city, town, or place, between which the mail is regularly carried, shall be fined not more than $500 or imprisoned not more than six months, or both.[39]

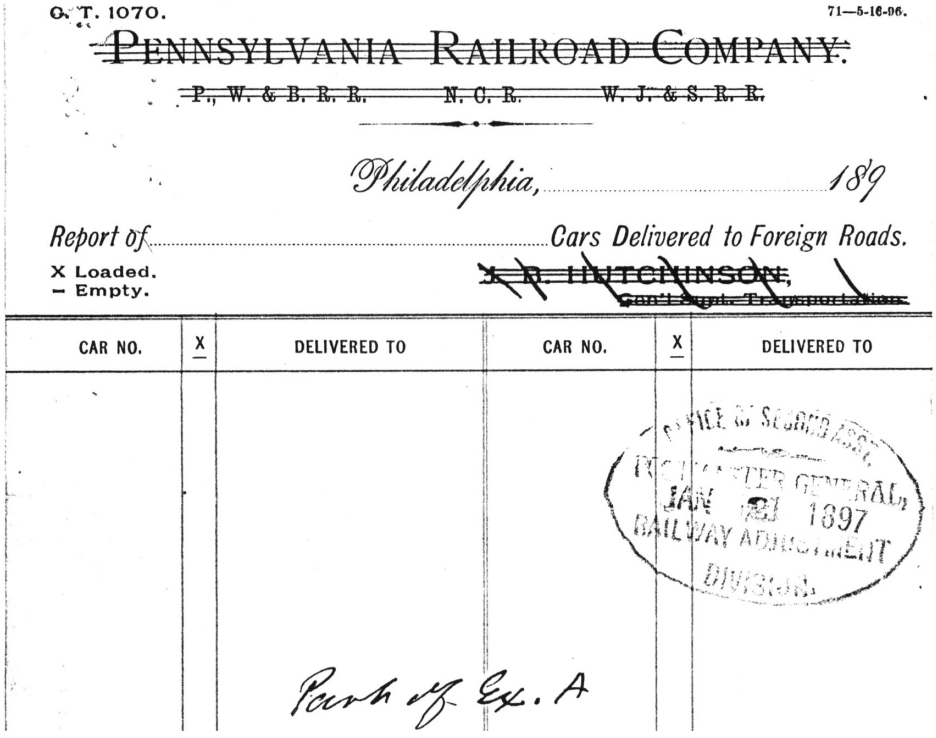
4. DEVELOPMENT OF ADMINISTRATIVE INTERPRETATION

4.1 The Post Office versus the Railroads (1890s)

While the postal monopoly statute remained relatively fixed after 1872, interpretation of the statute evolved under pressure of events. Relations between the Post Office and the railroads were contentious ever since the earliest railroads gave rise to the development of private expresses. By the 1890s, large railroads were coalescing into great national systems of roads with interlocking directorates and cross-stock ownership. Railroads represented a different order of organizational complexity from that employed in earlier commercial and manufacturing activities. They depended upon the smooth integration of a host of smaller and simpler companies.[40] Railroad operations therefore generated a constant flow of documents between companies with closely related activities. A railroad train typically included not only cars belonging to the railroad company that owned the locomotive and the tracks but also freight cars operated by express companies, freight cars owned by other railroads, and passenger cars operated by companies such as Pullman. A railroad company might operate trains over not only its own tracks but also tracks belonging to other companies. Railroads were also closely integrated with other types of companies. Telegraph companies used railroad rights of way for their lines and provided services for both the railroad and general public, often using joint employees and sharing both costs and profits. Similarly, hotels and restaurants were built along railroad rights of way and were integrated with, or alternatives to, dining and sleeping car services.

The Post Office had traditionally acquiesced in the railroads' carriage of letters and documents relating to these interrelated operations. But beginning in about 1896, the Post Office decided that railroad transmission of such documents violated its monopoly. The Post Office declared that a railroad violated the postal monopoly if it transported its own mail to or from other companies or transported another company's mail in connection with joint services provided with the railroad. Further, the Post Office held that a railroad could not send mail by special messenger over the lines of another railroad.

To apply these new rulings, the Post Office had to decide whether various documents unique to railroad operations were to be considered 'letters and packets'. On January 7, 1897, the Assistant Attorney General for the Post Office, John L. Thomas, advised that 'car tracers' and 'junction reports' were 'letters'. These documents were standard forms listing movements of railroad cars; they were completed in writing but unsigned and addressed impersonally to a position such as 'car accountant' at a given station. Using exhibits such as shown in Figure 15.1 (the deletions of printed matter were proposed by


G. T. 1070. 71—5-16-06.

PENNSYLVANIA RAILROAD COMPANY.

P., W. & B. R. R. N. C. R. W. J. & S. R. R.

Philadelphia, 189

Report of Cars Delivered to Foreign Roads.

X Loaded.
– Empty.

J. R. HUTCHINSON,
Gen'l Supt. Transportation.

CAR NO.	X	DELIVERED TO	CAR NO.	X	DELIVERED TO

Point of Ex. A

Figure 15.1 Railroad 'car tracer' form reviewed by J.L. Thomas

the railroad), Thomas reasoned that to constitute a letter a document 'must be wholly or partly in writing and there must be a sender and an addressee'. Thomas dealt with the absence of a sender's name by noting 'some *person* made out the reports and tracers, and that person, whether known or unknown, must be held to be the sender' (emphasis original). In regard to the impersonal address by title and station, Thomas stated: 'this, in my opinion, is sufficiently explicit to make the inclosure a matter for personal attention of the person holding the position of car accountant of the road at the point designated, and so far as he is concerned such inclosure has the characteristics of a personal correspondence and is therefore a letter'.[41]

In applying the postal monopoly to railroad mail, the Post Office for the first time employed an administrative definition of the term 'letter' that was not rooted in the statutory distinction between letters and other types of documents. Rather than asking, for example, whether a particular type of document was more like the traditional concept of a letter or more like the traditional concept of a commercial paper, the Post Office based its approach upon an abstract definition of 'letter' and asked whether the mail in question could fit within that definition. In effect, Thomas held that a 'letter' was any communication wholly or partly in writing that was composed for the attention of an identifiable person or office.

A month after Thomas's opinion on car tracers, the Post Office published a pamphlet reprinting a selection of postal monopoly rulings relating to application of the monopoly to railroad mail.[42] Most of the rulings purporting to limit the right of a railroad to

carry mail related to its business or to use special messengers were later reversed or limited by the Attorney General, the courts, or the Post Office itself.[43] As noted above, Congress amended the postal monopoly law in 1909 to make explicit what the Attorney General had already declared, that a railroad (or any other company) could transport its own letters. Nonetheless, Thomas's approach to defining the term 'letter' initiated a new, more flexible administrative approach to defining it for purposes of postal monopoly. The pamphlet on railroad mail remained the standard summary of the Post Office's position on the postal monopoly for the next decade. In 1901, the Second Assistant Postmaster General cited this pamphlet as authority for the proposition that 'tissue copies' of waybills were considered to be 'letters',[44] even though waybills were undoubtedly within the traditional concept of commercial papers relied upon by Attorney General MacVeagh in 1881.

4.2 Opinions of Post Office Solicitor Lamar (1910s)

In 1913, William H. Lamar was appointed Assistant Attorney General for the Post Office Department, a title that was changed to Solicitor in 1914. Lamar was 54 at the time of his appointment, a veteran of the Spanish American War and the Justice Department and the son-in-law of a US Supreme Court Justice. In early 1916, Lamar issued a series of opinions which substantially expanded upon the postal monopoly approach adopted in the railroad mail cases.

On March 10, 1916, Lamar considered the lawfulness of a messenger system established for the carriage of 'fire insurance policies, bills of debits and credits, and other insurance data' between insurance companies, agents, brokers, and a common clearing house called the Chicago Board of Underwriters. The clearing house and insurance agents were all located within a single office building. Lamar ruled first that the corridors of a public building served by letter carriers were 'postal routes'. He then considered whether the documents in question were 'letters', quoting with approval a dictionary definition ('a written message, usually on paper, folded up and sealed, sent by one person to another') and brief discussions of the term 'letter' culled from three federal cases. The first case dealt with postal fraud and discussed the meaning of 'letter' in a context wholly different from the postal monopoly.[45] The second case concerned the mailability of obscene 'letters'; it not only bore no relation to the postal monopoly but suffered from the added defect of having been overruled.[46] The third case was an 1851 Supreme Court opinion holding that an order for goods was 'clearly mailable matter' and thus within the postal monopoly law of 1845.[47] The principle that Lamar derived from these sources was that 'a letter is a message in writing'. On this basis, Lamar seems to have reasoned that all writings could be deemed 'letters' and that therefore the monopoly included all first class matter:

> Insurance policies as documents and bills, receipts, etc., as such, are acceptable in the mails and acceptable only as first-class matter. If deposited for handling by the Postal Service they become 'letters,' and when they are handled by private concerns or parties they are none the less so within the meaning of [the postal monopoly law].[48]

On May 5, 1916, Lamar went beyond first class mail and addressed wholly printed matter. He held that the postal monopoly also forbade a railroad from transporting

printed circulars that were being distributed to members of a railroad union. Lamar concedes that circulars were third class rather than first class matter, but states,

> While for some purposes a distinction is observed between 'letters' and 'circulars,' for example, the act of March 3, 1879 (20 Stat. 260), placing *written* letters in matter of the first-class and 'circulars' in the third-class as 'miscellaneous printed matter,' yet as respects the postal monopoly the term 'letters' has a broader signification and embraces 'circulars'.[49]

To support this ruling, Lamar cites, in addition to the sources noted above, phrases from post-1872 laws which refer to circulars as 'printed letters' which can be posted at third class rates.

Notwithstanding this broad rationale, when later questioned by Congress about the status of third class matter under the postal monopoly, the Post Office fell back on the dubious argument that the term 'packet' could be interpreted to include not only multi-sheet letters but also pamphlets, magazines, newspapers and the like. In 1919, the chairman of the House postal committee asked Postmaster General John Koons directly, 'Does [the postal monopoly] include any of the mailable matter now mailable as third-class matter, such as letters and circulars?'. In a reply drafted by Lamar, Koons wrote, 'This Department has not attempted to assert a monopoly in the carriage of mail matter other than that of the first class, included unquestionably in the phrase "letters and packets" '.[50] Koons, however, continues 'there is a species of third class matter, however, the status of which with respect to the "private express" statute is not so clearly settled as would be desirable; that is to say, pamphlets, magazines, newspapers and the like'. Koons suggests that such documents might be considered 'packets'. He acknowledges, however, that nine years earlier, a federal court held that 'packet', as used in the postal monopoly law, referred to a packet of letters,[51] but he suggests that the court's finding might be considered mere 'obiter dicta', that is, general observations not intended to have legal effect. Koons's suggestion, notwithstanding, it seems that no one else since 1919 has questioned the proposition that, as the court concluded, in the postal monopoly law the word 'packet' is merely an old-fashioned term for a multi-sheet letter.

Lamar left the Post Office Solicitor's post in June 1921 after seven years of service. Between June 1921 and November 1951, postal solicitors issued approximately 166 opinions dealing with the postal monopoly. Most claim a monopoly over the carriage of various items; some disclaim a monopoly. Almost all are devoid of legal citations. Disregarding a handful of opinions dealing with the scope of exceptions to the monopoly and mere repetitions of the postal monopoly statutes, the Lamar opinions comprise the basic body of legal reasoning presented by Post Office solicitors in support of an enlarged administrative interpretation of the postal monopoly after 1916.

4.3 Postal Monopoly Regulations of the Postal Service (1974–2006)

The Postal Reorganization Act of 1970 abolished the Post Office Department and established the US Postal Service as an independent federal agency. In 1974, the Postal Service adopted comprehensive postal monopoly regulations that substantially revised the previous administrative definition of 'letter'.[52] The new definition was 'a message directed to a specific person or address and recorded in or on a physical object'. A 'message' is defined

as 'any information or intelligence that can be recorded' where 'recorded' is explained as follows:

> Methods by which messages are recorded on tangible objects include, but are not limited to, the use of written or printed characters, drawing, holes, or orientations of magnetic particles in a manner having a predetermined significance.[53]

This definition apparently included within the postal monopoly all physical communications of a textual nature, whether recorded by means of writing, printing, images, or electromagnetic process. In response to criticism that the proposed definition of 'letter' incorrectly extended the monopoly to commercial papers long held to be outside the monopoly, the Postal Service cited the authority of 'original general definitions':

> [Checks and other commercial papers] were declared not to be letters on the theory that they are evidence of rights of the holder rather than written messages. Such a theory is inconsistent with *the original general definitions of* '*letter*' because such documents are in fact messages, conveying information of several kinds.[54]

Similarly, the Postal Service responded to objections to the inclusion of newspapers in the definition of 'letter' by explaining 'newspapers and periodicals also meet the tests in past guidelines for determining what are letters . . . an exclusion of newspapers and periodicals seems of doubtful validity'.[55]

Nonetheless, the Postal Service mitigated opposition to its new definition of 'letter' including provisions in the regulations which 'suspended' the postal monopoly. These suspensions created administrative exceptions from the postal monopoly for newspapers, magazines, and checks (when sent between banks). As statutory authority for these suspensions, the Postal Service cited a statutory provision, then section 601(b) of title 39, which originated in an 1864 postal act.[56] It is at least open to question, however, whether this provision was ever intended by Congress to confer authority to suspend the postal monopoly.[57] Nonetheless, suspensions were part and parcel of the Postal Service's new administrative definition of the 'letter' monopoly. The suspension power allowed the Postal Service to maintain a broad definition of the monopoly because it could be used to deflate the efforts of anyone petitioning Congress to review the monopoly statute. Whenever protests against the monopoly were gaining ground in Congress, the Postal Service would adopt a narrowly drawn suspension that was sufficiently inclusive to satisfy most of the agitators.

This most notable example of this strategic use of suspension authority was the development of a suspension for urgent letters. In the mid-1970s – in a virtual replay of the rise of the private express companies in the 1840s – small 'courier' companies such as DHL, Federal Express, Gelco, and Purolator began to offer especially rapid transmission services for 'time-sensitive' documents such as checks, bills of lading, engineering drawings, and so forth. When the Postal Service claimed that such activities were violating the postal monopoly, these companies and their far larger customers made a strong case to Congress to reconsider the monopoly statutes. The Senate committee approved a bill to revise the monopoly and the House committee was nearing the same decision, when the Postal Service adopted a new suspension for 'urgent letters'.[58] Additional suspensions were added for data-processing materials (under certain circumstances) and international remail, among other things.[59]

The only major federal case to consider the meaning of the key term 'letters and packets' since 1970, indeed since 1872, upheld the Postal Service's 1974 administrative definition of 'letter'. In the *ACTMU* case,[60] decided in 1979, a divided D.C. Circuit Court of Appeals held that printed advertisements were within the postal monopoly over 'letters and packets'. The court's judgment was based substantially upon the 1974 Postal Service regulations and the 1916 opinions of Solicitor Lamar. Although the *ACTMU* case relied heavily on historical analysis, the court was uninformed about key elements of the history of the postal monopoly law, including the 1881 opinion by Attorney General McVeagh and the 1919 Post Office Department letter to Congress resting a claim of monopoly over third class matter on an expansive definition of 'packet'. No court has ever considered the Postal Service's claimed authority to suspend the postal monopoly.

5. POSTAL ACCOUNTABILITY AND ENHANCEMENT ACT, 2006

The Postal Accountability and Enhancement Act of 2006 (PAEA) modified the scope of the statutory monopoly in certain respects and, perhaps more importantly, made significant changes in its administration.

Substantively, the PAEA added two new exceptions to the postal monopoly. The act exempts from the postal monopoly both (i) letters that weigh 12.5 ounces or more and (ii) letters for which the amount paid for private carriage is at least six times the current charge for the first ounce of a single-piece first class letter (that is, meeting either condition is sufficient to escape the postal monopoly). The PAEA provided a statutory basis for private carriage of letters in circumstances in which the Postal Service purportedly suspended the postal monopoly by administrative regulation.[61]

In terms of administration, the PAEA apparently repealed the authority of the Postal Service to issue regulations to define the scope of its monopoly.[62] The PAEA changed the scope of the Postal Service's rulemaking authority from 'to adopt, amend, and repeal such rules and regulations as it deems necessary *to accomplish the objectives of this title*' to 'to adopt, amend, and repeal such rules and regulations, not inconsistent with this title, *as may be necessary in the execution of its functions under this title* and such other functions as may be assigned to the Postal Service under provisions of law outside of this title'.[63] Since the main provisions of the postal monopoly law appear in title 18 of the United States Code, their definition or administration does not appear to be 'functions under this title', that is, title 39. The only significant postal monopoly provision appearing in title 39 is section 601, but authority to administer this provision was explicitly vested in the Postal Regulatory Commission.[64] Moreover, the PAEA added a provision that explicitly forbids the Postal Service from establishing any rule or regulation 'the effect of which is to preclude competition or establish the terms of competition unless the Postal Service demonstrates that the regulation does not create an unfair competitive advantage for itself or any entity funded (in whole or in part) by the Postal Service'.[65] This ban would seem to include postal monopoly regulations. Finally, the PAEA explicitly repealed the statutory provision upon which the Postal Service relied as its authority to suspend postal monopoly.[66]

Given the substantial role of administrative interpretation in the history of the postal monopoly law since 1872, these changes could have an important effect on the practical

implications of the postal monopoly law, but these implications have yet to be clarified. Neither the Postal Regulatory Commission nor the courts have yet had occasion to address postal monopoly provisions of the PAEA.

6. SUMMARY AND CONCLUSIONS

The English postal monopoly originated in the political turmoil of seventeenth-century England and represented the first attempt by government to exert control over the mass communications systems of society. To this day, the postal monopoly law bears traces of this original purpose in its prohibition against private carriage of 'letters and packets'. Later English monarchs took further advantage of the postal monopoly to raise general revenue by taxing communications. It was precisely such uses of governmental authority that prompted the Americans to revolt at the end of the eighteenth century. With the benefit of three centuries of hindsight, one can plausibly question the wisdom of ever transplanting the English postal monopoly law to American soil.

As it turned out, however, the new American democracy retained the concept of a postal monopoly but fundamentally changed its purpose and the role of the national post office. In the hands of early American legislators, the national post office was used neither to spy on the people nor raise general revenues, but rather became a public service for 'spreading the news', as historian Richard John (1986) has put it. In this new world, the postal monopoly allowed high prices on letters to underwrite low prices on newspapers. At the same time, English rules prohibiting carriage of letters by individuals were abandoned and the monopoly pared back to a rule against the establishment of private 'postal' systems. The new postal paradigm lasted for about half a century. Then, between the 1840s and the 1870s, the national post office and postal monopoly law evolved again under the transforming and pervasive influences of the Industrial Revolution. In a series of ad hoc steps, Congress added intra-city delivery to the Post Office's original mission of inter-city transmission and extended the postal monopoly law to prevent private provision of both private inter-city express services and local intra-city penny posts. In 1872, Congress sorted out and codified this piecemeal collage of postal laws for the first time since 1825 and the last time until 1960. The postal monopoly statutes, last debated by Congress in 1845, assumed essentially their current form in the postal code of 1872.

Since 1872, in the absence of further guidance from Congress, the Attorney General, the Post Office Department, the Postal Service, and the federal courts have struggled, successively and intermittently, to adapt the nineteenth-century postal monopoly laws to changing circumstances by promulgating increasingly elaborate administrative 'interpretations'. Since the postal world of the early twenty-first century bears almost no resemblance to the postal world of the late nineteenth century, it is unsurprising that one may reasonably question whether the postal monopoly regulations of today are entirely congruent with the intent of Congress 135 years ago. Yet, however understandable this may be, given the constitutional primacy of Congress, it is not acceptable that the administration of law has been allowed to drift so far from its statutory moorings.

In the Postal Accountability and Enhancement Act of 2006, Congress has created a timely and long overdue opportunity to bring clarity and logic to the American concept

of the postal monopoly. Congress has codified the liberal portions of past administrative rulings (the 'suspensions') and repealed (apparently) the authority of the now business-like Postal Service to issue further regulations defining its own monopoly. At the same time, Congress has given the independent Postal Regulatory Commission new authority to adopt clarifying regulations as needed. More fundamentally, Congress has directed the Postal Regulatory Commission to prepare a comprehensive study of the history and future need for the postal monopoly and submit a report by December 2008.

NOTES

1. The best historical review of the US postal monopoly as governmental policy is G.L. Priest, 'The history of the postal monopoly in the United States' (1975). Priest's article focuses upon motivations underlying monopoly legislation but does not offer detailed analysis of specific provisions of the monopoly or describe the evolution of administrative implementation after 1872. The best general historical review of the legal concepts of the monopoly is J.F. Johnston Jr., 'The United States postal monopoly' (1968). See also Craig and Alvis (1977) and Donnici et al. (1976).
2. This report is required by the Postal Accountability and Enhancement Act, Pub. L. No. 109–435, § 702, 120 Stat. 3198, 3243 ('a comprehensive history of the monopoly on the delivery of mail'). The history of the postal monopoly is only part of the Commission's study. The Postal Regulatory Commission has retained George Mason University to assist in the preparation of this report. The author is assisting George Mason University in this project. The views expressed in this chapter are the personal views of the author only and should not be construed to represent the views of Postal Regulatory Commission or George Mason University. Moreover, it should be noted that the history of the postal monopoly is complex and in some cases controversial; the views of the author expressed in this chapter reflect his present understanding and could be modified by further research.
3. 18 U.S.C. §§ 1693–99 (2000 & Supp. V 2006).
4. 39 U.S.C. §§ 601–06 (2000 & Supp. V 2006) and Postal Accountability and Enhancement Act, Pub. L. No. 109–435, § 503(a), 120 Stat. 3198, 3234, amending 39 U.S.C. § 601.
5. 39 C.F.R. Parts 310 and 320 (2007).
6. Postal Reorganization Act of 1970, P.L. 91–375, 84 Stat. 727.
7. Proclamation of July 31, 1635, Patent Roll (Chancery) 11 Car I, Pt 30, No. 11 (emphasis added).
8. Post Office Act of 1660, 12 Charles II, c. 35 (1660) (emphasis added).
9. See generally, Robinson (1948 [1970], 48–55).
10. Woolsey (1894 [1969], 9).
11. Fuller (1972 [1980], 18–19).
12. Post Office Act of 1711, 9 Anne, c. 10 (1711).
13. Articles of Confederation, art. IX.
14. Ordinance of October 18, 1782, 23 J. Cont. Cong. 670 (emphasis added).
15. Constitution, Art. I, sec. 8.
16. Act of February 20, 1792, ch 7, §14, 1 Stat. 232, 236.
17. Act of March 8, 1794, ch. 23, § 14, 1 Stat. 354, 360.
18. Act of March 2, 1799, ch. 43, § 12, 1 Stat. 733, 735 (emphasis added).
19. 'Compensation to Deputies and Mail Agents – Effect of Steamboats on the Revenue of Post Office' (February 1822) in *American State Papers: Post Office* 92.
20. Act of March 3, 1825, ch. 64, § 19, 4 Stat. 102, 107.
21. Act of March 2, 1827, ch. 61, § 3, 4 Stat. 238.
22. The effects of the transportation revolution on postal service and the US economy generally were widespread and fundamental. See generally, Taylor (1951 [1977]) and Harlow (1934 [1976]).
23. See, for example, *United States v. Thompson*, 28 F.Cas. 97 (D. Mass. 1846); *United States v. Adams*, 24 F.Cas. 761 (S.D.N.Y. Nov. 1844); *United States v. Kimball*, 26 F.Cas. 732 (D. Mass. April 1844).
24. *Report of the Postmaster General in relation to the establishment of a private express between New York and New Orleans*, S. Doc. No. 66, 28th Cong., 2d Sess., at 3 (January 21, 1845). In arguing that 'packet' was used broadly in the postal monopoly provision, Wickliffe was likely relying upon an 1843 opinion by Attorney General Nelson which declared that the term 'packet' included 'newspapers, magazines, or pamphlets', 4 Ops AG 276 (1843).

25. Act of March 3, 1845, ch. 43, § 9, 2 Stat. 732, 735, (emphasis added).
26. Perry, (1966, 1).
27. *United States v. Kochersperger*, 26 F.Cas. 803 (E.D. Pa. 1860).
28. Act of March 2, 1861, ch. 73, § 4, 12 Stat. 204, 205.
29. Act of March 3, 1863, ch. 71, 12 Stat. 701.
30. House Comm. on the Post Office and Post Roads, 37th Cong., 2d Sess., 'The Post Office Department, Prepared by the Post Office Department for the Committee on the Post Office and Post Roads' (Comm. Print 1863).
31. 'Report of the Commissioners to Revise the Statutes of the United States', H.R. Misc. Doc. 31, 40th Cong., 3d Sess. (1869).
32. Act of June 8, 1872, ch. 335, § 228, 17 Stat. 283, 331 (emphasis added).
33. Letter from T.L. James, Postmaster General, to W. MacVeagh, Attorney General, 15 June 1881, in National Archives (POD), Entry 2 (emphasis added).
34. Letter from W. MacVeagh, Attorney General, to T.L. James, Postmaster General, 29 June 1881, in National Archives (POD), Entry 136, Box 1, Case 9 (emphasis added).
35. The provisions corresponding to current 18 U.S.C. § 1696(a) and (b) were R.S. §§ 3982 and 3984, 18 Stat. 770, respectively.
36. Act of March 4, 1909, ch. 321, 35 Stat. 1088. The provisions corresponding to current 18 U.S.C. § 1696(a) and (b) were then sections 181 and 183, 35 Stat. 1123–24, respectively.
37. Act of June 25, 1948, ch. 654, 62 Stat. 683. Section 1696 appears at 62 Stat. 777.
38. 18 U.S.C. § 1694 (2000 & Supp. V 2006).
39. 18 U.S.C. § 1696(a) (2000 & Supp. V 2006).
40. Chandler (1977, 171–87).
41. Post Office Department, 'Orders and Decisions relative to Railroad Mail Matter compiled by the Second Assistant Postmaster General', 6 February 1897 at 11.
42. Post Office Department, 'Orders and Decisions relative to Railroad Mail Matter compiled by the Second Assistant Postmaster General', 6 February 1897.
43. Although Thomas's approach to defining the term 'letter' initiated a practice using a flexible administrative definition for the purposes of defining the postal monopoly, most of the rulings purporting to limit the right of a railroad to carry mail related to its business or to use special messengers were later reversed or limited by the Attorney General, the courts, or the Post Office itself. Compare 3 AAG POD 132 (June 3, 1895) (Op. No. 1107) (letter to railroad) and 3 AAG POD 140 (June 26, 1896) (Op. No. 1111) ('carrying by railroads of their own letters') with 21 Ops AG 394 (Aug. 12, 1896) (railroad may transport its own mail but not mail of connecting lines). Compare 2 AAG POD 877 (Op. No. 956) (1890) (telegraph company mail); 3 AAG POD 140 (Op. No. 1111) (1896) (hotel company mail) with *United States v. Eire Railroad Co*., 235 U.S. 513 (1915) (railroad may transport telegraph company mail with whom railroad has joint venture). See 3 AAG POD 146 (1896) (railroad may not regularly send mail by its messenger over another line), reversed by 6 Ops Sol POD 293 (1915) (public utility may regularly deliver invoices by its employees to customers).
44. Letter from the Second Assistant Postmaster General to J.D.B. DeBox, Assistant General Counsel, Nashville, Chattanooga & St. Louis Ry., dated July 13, 1901, in National Archives (POD), Entry 136, Case 61.
45. *United States v. Denicke*, 35 F.407 (C.C.S.D. Ga. 1888).
46. *United States v. Gaylord*, 17 F.438 (C.C.S.D. Ill., 1883). Gaylord held that an obscene 'letter' was within the scope of a postal law provision that made obscene 'writings' nonmailable, but the Supreme Court upheld another line of cases holding the opposite. *United States v. Chase*, 135 U.S. 255 (1890). *Gaylord* was thus overruled *sub silentio*.
47. *United States. v. Bromley*, 53 U.S. (12 How.) 88 (1851).
48. 6 Op. Sol. P.O.D. 373, 380–81 (1916).
49. 6 Op. Sol. P.O.D. 397, 398 (1916). Original emphasis.
50. Letter from Acting Postmaster General J.C. Koons to Halver Steenerson, chairman, House Comm. on Post Office and Post Roads, dated August 18, 1919.
51. *Williams v. Wells Fargo & Co. Express*, 177 F. 352 (8th Cir. 1910).
52. The first notice of proposed rulemaking was published on June 29, 1973. 38 Fed. Reg. 17512 (1973). A revised version of proposed regulations was the subject of a second notice of proposed rulemaking issued on January 30, 1974. 39 Fed. Reg. 3968 (1974). The regulations were adopted in a third notice on September 13, 1974. 39 Fed. Reg. 33209 (1974).
53. 39 Fed. Reg. 33209, 33211 (1974) (§ 310.1(a)).
54. 38 Fed. Reg. at 17513 (emphasis added).
55. 39 Fed. Reg. 3969.
56. Act of March 25, 1864, ch. 40, 13 Stat. 37, codified at 39 U.S.C. § 601(b).

57. See Priest (1975, 79–80).
58. 44 Fed. Reg. 61178 (September 11, 1979), codified at 39 C.F.R. 320.6 (2006) ('suspension for extremely urgent letters'). See generally, *Postal Service Amendments of 1978: Hearings Before the Subcommittee on Energy, Nuclear Proliferation, and Federal Services of the Senate Committee on Governmental Affairs*, 95th Cong, 2d Sess. (1978); S Rep No 95–1191, 95th Cong., 2d Sess. (1978); *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).
59. The suspensions are set out in 39 C.F.R. 320 (2006). International remail is mail which is prepared in one country and transported to a second country for tender to the national post office. The mail may be destined for addresses in the country where it is posted or in a third country.
60. *Associated Third Class Mail Users v. U.S. Postal Service*, 440 F.Supp. 1211 (D.D.C. 1977), *aff'd* 600 F.2d 824 (1979), *cert. den.* 444 U.S. 837 (1979).
61. Postal Accountability and Enhancement Act, Pub. L. No. 109–435, § 503(a), 120 Stat. 3198, 3234, adding 39 U.S.C. § 601(b). The grandfather provision refers to 'such carriage is within the scope of services described by regulations of the United States Postal Service . . . that purport to permit private carriage by suspension of the operation of [former 39 U.S.C. § 601(a)]'.
62. See Federal Trade Commission (2007), 'Accounting for Laws That Apply Differently to the United States Postal Service and Its Private Competitors' 16 ('The PAEA also repealed the administrative authority for the USPS to issue regulations to define the scope of the monopoly').
63. See 39 U.S.C. § 401(2) (2000) and Postal Accountability and Enhancement Act, Pub. L. No. 109–435, § 504, 120 Stat. 3198, 3235, amending 39 U.S.C. § 401(2) (emphasis added).
64. Postal Accountability and Enhancement Act, Pub. L. No. 109–435, § 503(a), 120 Stat. 3198, 3234, adding 39 U.S.C. § 601(c) (2000).
65. Postal Accountability and Enhancement Act, Pub. L. No. 109–435, § 403, 120 Stat. 3198, 3226, adding 39 U.S.C. § 404a(a)(1).
66. Postal Accountability and Enhancement Act, Pub. L. No. 109–435, § 503(a), 120 Stat. 3198, 3234, repealing 39 U.S.C. § 601(b) (2000).

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Handbook of Worldwide Postal Reform

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Contents