

What Constitutes Real Postal Reform?

by Murray Comarow

(This is an edited and updated transcript of remarks on October 10, 1999
at EMA's convention in San Diego, CA)

Robert Muma: Every once in a while we get a chance to meet with someone who has truly been part of a truly significant event in our nation's history. Our speaker is acknowledged by many to be one of the great contributors to postal reform in this nation. Let me tell you more about him. A lawyer in private practice, Murray Comarow was a Distinguished Adjunct Professor in Residence at American University from 1975 to 1996. In 1987, he served as Acting Dean of the College of Public and International Affairs. He was previously a professor of law at Antioch Law School. I'll let you in on a little secret. Jay Freitas, our postal liaison, was a student of Professor Comarow's. Jay said it was the toughest grade he ever earned.

Murray was Executive Director of President's Nixon's Advisory Council on Executive Organization, and most relevant to us, he was Executive Director of President Johnson's Commission on Postal Organization--the Kappel Commission. He served as a Senior Assistant Postmaster General of the United States. Earlier, he was a partner at Booz, Allen and Hamilton, Executive Director of the Federal Power Commission, Acting Deputy General Counsel of the Air Force, and a consultant to the Brookings Institution.

Among his many awards are two presidential commendations, distinguished service awards from the Air Force and the Federal Power Commission, and a teaching award from American University. Murray is a member of the District of Columbia Bar, a member of the bar of the Supreme Court, a Fellow of the National Academy of Public Administration, and a member of the Cosmos Club of Washington, D.C. Ladies and gentlemen, please welcome

Murray Comarow. (Applause)

Murray Comarow: Thank you very much, Bob, for an extremely generous introduction. When I tell you that it is a pleasure to be here, I am not just using the rote language that speakers ordinarily employ on such occasions. This is a classy outfit. It has an impact in Washington well beyond what one would expect from an organization of this size and budget. I compliment Maynard Benjamin and the people who stand behind him and give him leadership and support.

Maynard asked me to begin with a postal history lesson. Incidentally, whoever is dimming the lights, I don't have any audio-visual aids, so you may want more light. If you don't want light from above, I will try to cast some from this podium. (Laughter)

In 1967, I was innocently going about my job as executive director of what was then called the Federal Power Commission. I had only been there a year, and learning the intricacies of regulating interstate electric power and natural gas, then our second and fourth largest industries. One day in June, Lee White, the Commission's chairman, received a call from the White House, asking me to accept appointment as executive director of a presidential commission to reform the Post Office Department. I had never heard of the commission nor of its chairman, Frederick R. Kappel, head of AT&T. I politely declined for no reason other than I had no interest in the assignment. President Johnson personally intervened and persuaded me--is that the right word?--to accept.

The commission consisted of 10 men. Six were CEOs of corporations like General Electric, Bank of America, and Federated Department Stores. The seventh was George Baker, Dean of the Harvard Business School. There were two prominent Democrats, David Ginsburg

and David Bell, and finally, AFL-CIO President, George Meany. Meany never attended a meeting. President Johnson wanted him on the commission so that we could brief him from time to time, which we did, and he was not a serious obstacle. Johnson was a master politician. Meany aside, there was full attendance at almost every meeting. They had agreed that they could not send substitutes, a disciplined self-inducement to attend.

Their principal finding after a year's study was that the Post Office Department was "not capable of meeting the demands of our growing economy and our expanding population." The primary problem was political management, and they asserted (with a mild, one sentence dissent by Meany) that political management had to go. Allow me to describe "political management."

The Postmaster General was appointed by the President. By custom, he was the chairman of the political party which had won the previous election. His top executives were frequently chosen from the party faithful. Postmasters and rural carriers--60,000 in all--were selected by the majority party's members of Congress. That's 60,000 patronage jobs, openly and legally. Many more were subject to behind-the-scenes influence.

True story. A certain Speaker of the House of Representatives called a Postmaster General and asked that a constituent be given a job as an accountant in his district. The PMG said that he would have his aide, Jamison Cain, look into it. It turned out that the man the speaker was "recommending" was an automobile mechanic. So Jamie Cain called the Speaker. "Mr. Speaker," he said, "give us a break. This guy is an automobile mechanic!" As Jamie tells the story, the Speaker said, "Now, Jamie, I know that, but this is a *good* young man. I know the family. It's a *fine* family. Tell the PMG that this man should have the job." The man was hired.

Congress set postal rates. Congress set postal wages. They were lobbied hard by mailers,

some of whom went too far. One was indicted and convicted. They were lobbied just as hard by the unions. Congress set the location of post offices and sometimes the location of individual mailboxes. "Postmaster, I have a constituent. She's an old lady and she's two blocks from the nearest mailbox. Take care of that, would you?" "Yes, sir." After all, the postmaster was appointed by and loyal to the Congressman. Shouldn't he show some appreciation?

Congress heavily influenced contract awards. Congress appropriated an annual subsidy to make up for the money that the Department lost almost every year, often about 20 percent. [In the 160 years before postal reform, they ran at a loss 131 years.] What does that mean? Once there was an eight cent stamp. At least the stamp said "Eight Cents." But Congress appropriated more money so that the actual cost of that stamp was ten cents. Not one American in a thousand knew that. We were just happy that there was an eight cent stamp and were unaware that customers were paying eight cents, and taxpayers two cents more. Customers and taxpayers are not identical groups. Newspapers and magazines, for example, whose subscribers are more affluent than the average citizen, were highly subsidized. ✓

In 1984, the Kennedy School of Government at Harvard did a case study on postal reform. They did good research and multiple interviews. Here's one paragraph from their study:

No department of the Federal government was so shackled by vested interests, by stultifying personnel practices, by archaic regulations and equipment, by an absence of elementary management practices, and last but not least, nowhere was the sauce of political patronage thicker than at the heart of the lavish office of the Postmaster General. |||

Against that background, the Kappel Commission recommended:

- That the Post Office Department be transformed into a self-supporting government corporation.
- That a Board of Directors, appointed by the President and confirmed by the Senate, appoint the Postmaster General and thereby insulate that individual from direct political influence.
- That patronage be totally eliminated.
- That postage rates be set by a three person panel of expert administrative law judges, with experience in setting rates, who would hold full due process hearings and then make recommendations to the Directors; the Directors could change, accept, or reject recommendations provided that there was a substantial legal basis for their action in the record.
- That wages be established by collective bargaining; if that failed, mediation--not arbitration--should be sought; and if that failed, the President should deal with the impasse.

The President could choose to do nothing, a powerful option. He could appoint an ad hoc task force to make recommendations. He could do what Lyndon Johnson did from time to time: Get the parties together, lock the doors, and say, "You blankety-blanks aren't getting out of here until you reach some kind of agreement!"

President Johnson and PMG Larry O'Brien approved the Commission's recommendations, but LBJ was almost paralyzed by the Vietnam situation and domestic turmoil. When Richard Nixon was elected president, he offered the PMG appointment to Winton R. Blount. "Red" Blount was CEO of a huge construction company and later President of the U.S.

Chamber of Commerce. He said to the President he'd like to think about it. He talked to a number of people, including Fred Kappel. Kappel sent him to me; I guess I had become the institutional memory of postal reform, and he talked to others. He went back to Nixon and said, "Mr. President, I'll accept the appointment if you promise to back me up on postal reform." The President said he'd back him up.

Whatever you may think of Nixon, let the record show he kept his word, with one possible exception I'll get to in a minute. Republican leadership in Congress hammered Blount hard to give them patronage opportunities before shutting the door, but he stood firm, and Nixon supported him. Section 1002 of the Postal Reorganization Act of 1970 provides that members of Congress and other public and party officials are prohibited from intervening in appointments or promotions. If they do, the law requires that the postal service send it back appropriately marked as "in violation of this section." It's an amazing provision.

Blount developed a reform legislative package which included pay increases. The unions regarded reform as an absolute horror--and the pay increases as inadequate. When he went forward, there was a furious union reaction. Letter Carriers Branch 36, which covered Manhattan and the Bronx, took a strike vote on St. Patrick's Day of 1970, and walked out. Other unions followed. By March 21, one-third of the work force, more than a quarter of a million employees, were on strike. They shut down 671 post offices, including all but one of the ten biggest. The impact was immediate and crushing; huge parts of the business sector ground to a halt. Administration lawyers got a number of back-to-work court orders. Postal Inspectors went to the homes of union leaders, told them they were in violation of the no-strike law and might be subject to arrest and prosecution. The union leaders claimed that they lost control of their

members.

Blount demanded that troops be called out. The Secretary of Labor was George Schulz. He had a good reputation, and successfully served in other high government positions. Schulz fought Blount tooth and nail. Blount said he would resign if the President didn't support him. Nixon declared a national emergency and said that he would send the Army; within two days, the strike was over.

There's a superficially appealing myth about the strike and postal reform. It runs like this. We had a strike and then we had postal reform. If it were not for the strike, we would not have had postal reform. There's an axiom in science, however, that equally applies to all human affairs: "Sequence is not causation." The fact that two events occur sequentially does not mean that Event A was the proximate cause of Event B, or even a contributing factor.

Some believe that the strike may even have been a setback. On March 25, when the strike ended, George Meany said, "We are not even going to talk about postal reform. We're back at work, but all we want to bargain about is wages. We intend to get a lot more money." Blount dug his heels in.

Now for the White House end run around Red Blount, with or without Nixon's knowledge, I don't know. Chuck Colson was one of Nixon's hatchet men. He later went to prison with other Watergate malefactors, got religion, and now he is running a group that rehabilitates prisoners, I believe. He was not doing that at the time. (Laughter) Colson called Jimmy Rademacher, the NALC President. Rademacher was one of the few union presidents in the country to support the Nixon campaign, and the only postal union president to do so. Colson and Rademacher drafted a new bill, which would give postal workers binding arbitration, plus a

six percent increase retroactive to December 27 of the prior year, plus an eight percent increase when the bill became law. Rademacher then publicly reversed his position and was picketed by his own members, who called him a traitor. Let me be clear about this. Binding arbitration was not in the original bill. It has been a boon for the unions and a burden to customers. That is how binding arbitration was born. It has no precedent in American history with respect to federal employees.

There is a roughly analogous story about the Postal Rate Commission. The Kappel Commission's concept, as I've said, was to have rates set by judges trained in setting rates who understand this hideously complex business, subject to review by presidentially appointed directors. Judicial review would also be authorized, and of course the Congress could step in if the system produced a bizarre outcome.

The Harvard study I referred to earlier said "the House presented relatively few problems . . . but several special interest groups, particularly the airlines, managed to work provisions into the Senate bill that modestly [sic!] diminished the rate-making autonomy of the postal corporation. . . . About the only major concession Blount was forced to make by Senator McGee was the addition of an independent Postal Rate Commission." This was said to protect the public interest. Well, if the public interest is protected by layering a bureaucracy to review the actions of another bureaucracy, I have some dandy ideas along those lines. For example, the Federal Reserve Board is the most powerful government bureaucracy in the country and, arguably, in the world. Alan Greenspan and company make decisions which affect us profoundly. Why should we trust their decisions? Let's create another bureaucracy to which the Feds would give their recommendations and then they'd have another review. Will you vote for that? What about

another level of review of Defense contracting decisions? Department of Agriculture land use? SEC decisions? But you're used to the Postal Rate Commission. It's been around for 28 years, so most folk think that's the way government works. It is not. Nowhere else in our entire history have we had a government agency whose primary job it is to tell another government agency how much to charge. That's how the PRC was born.

Let's hit the "Rewind" button and take you back to 1967. Larry O'Brien was the Postmaster General sitting before the Postal Subcommittee of the House Appropriations Committee. The chairman was Congressman Steed of Oklahoma. In the course of O'Brien's testimony, Steed asked the following question:

Mr. Steed: Would this be a fair summary? That at the present time, as the manager of the Post Office Department, you have no control over your workload, you have no control over the rates of revenue, you have no control over the pay rates of the employees that you employ, you have very little control over the conditions of the service of these employees, you have virtually no control, by the nature of it, of your physical facilities, and you have only limited control, at best, over the transportation facilities that you are compelled to use--all of which adds up to a staggering amount of "no control" in terms of the duties you have to perform.

Mr. O'Brien: Mr. Chairman, I would have to generally agree with your premise . . . that's a staggering list of "no control." I don't know that it has ever been put that succinctly to me. If it had been, at an appropriate time, perhaps I wouldn't be sitting here.

Here's where we are 28 years after postal reform.

- The postal service still has virtually no control over its prices. (The Governors can overrule the PRC, but only if they are unanimous, a very rare occurrence.)
- It still has no control over its wages.
- It has only limited control over its work rules, because many are subject to arbitration.
- After billions of dollars invested in technology, it is still 79 percent labor intensive, as compared to 80 percent in 1968. The average postal clerk or carrier today, without the big raises that are going to come about as sure as I'm standing here, makes over \$50,000 a year including retirement and health benefits. Their take home pay is in the neighborhood of \$35,000-\$36,000 a year. That's what binding arbitration has brought about.

Some postal service officials like to refer to the organization as a "business." You hear them say, "Our company," or "Our business." When regulators and arbitrators tell you how much to charge, how much to pay your people, and what their work rules should be, it's not a "business." It's an "independent establishment of the executive branch," to quote the statute.

Am I saying that postal reform was a failure? I am not. Forcing the USPS to be self-supporting has had enormous impact. Now postal managers must live on their revenues and in recent years they have done a fine job, and improved service levels as well. Eliminating patronage has been a huge benefit to the thousands of men and women in the postal service, the achievers who worked hard but never were able to get the top jobs because the cream was skimmed by the politicians. Women in particular have benefited. It used to be next to impossible for a woman to get beyond a post office in East Pitchfork. Look around your home

towns today, you'll see progress.

Yet the truth must be told: The Congress has created a contradiction. The law and its legislative history requires the Postal Service to run efficiently, effectively, and in a businesslike way. Senator McGee said during the debates, "Delivering mail is an essential business-oriented service." But then he, and others, removed from this "essential business-oriented service" the basic management tools, pricing and wages.

The law requires the Postal Service to provide universal service, a concept I favor. I think it's a vital component of our culture and our economy. No Postal Service competitor is bound by such a mandate. The law requires the Postal Service to send non-profit mail at lower rates than similar business mail. No competitor does this. A few hundred letters from your local hardware store cost 13 cents apiece. Similar letters from a non-profit soliciting money cost 7.2 cents each. Non-profits include the AARP; the National Rifle Association; the National Education Association (the nation's biggest union); and Harvard University. Probably the richest university in the world, Harvard's endowment is 14.2 billion dollars and their annual budget is 1.8 billion dollars. We send their mail at less cost and you pick up the difference. Does that sit well with you?

People say, "What about the small non-profits?" My answer is, if the Congress wants to give them money, they can do that. Or reimburse the Postal Service from tax revenues. They don't do that. The law gives the non-profits your money. The same law puts managers through a complex, lengthy procedure before they can close a post office. I'm not in favor of closing a lot of small post offices. Their value goes beyond economics, but it is a fact that most post offices lose money and there are ways to give better service at less cost to customers. Sometimes a post

office can be replaced by a "contract postal unit" in a drug store or a supermarket which stays open commercial hours and handles everything customers need except bulk mail. There are over 6,000 such units nation-wide. But the law is clear: "No small post office shall be closed solely for operating at a deficit."

We turn now to a recent event with grave consequences. Three weeks ago, on September 19, an arbitrator named George Fleischli promoted city letter carriers to Level 6. The NALC carriers and the APWU clerks have had parity at Level 5, since 1907. Fleischli fractured that pattern. He said that city carriers' work is more difficult than clerks'. There is no appeal from Fleischli's award. The Postal Reorganization Act says it is final. An arbitrator is not driven by the same values, the same dynamics, that drive a manager. The last paragraph of Fleischli's award is going to play particular hell with postal wages:

While the length of the agreement may put negotiations with the NALC "out of sync" with the negotiations with the APWU and Mail Handlers, that ought not prevent the USPS from continuing to pursue its goal of negotiating identical and moderate wage increases with its major unions.

Within hours after the award was announced, the clerks, the rural carriers, and the mail handlers were banging on Henderson's door demanding parity.

Negotiations with the rural carriers are under way. The clerks start bargaining this coming August, and their contract expires on November 20, 2000. Do you think for a minute that they are going to take less than the carriers? Moe Biller came out swinging. "APWU will accept nothing less than full equality. We will leave no stone unturned and no tactic overlooked--whether lawful or otherwise--to secure economic justice for our members." "Identical and

moderate" indeed. This award has destroyed collective bargaining for the foreseeable future. Whatever the next arbitrators may do, you will pay for it.

I've heard grumbling that the Postal Service must have done a poor job in the hearings. I wasn't there and I don't know. They apparently employed arguments similar to those they used in the past with reasonable success. But if they had done a better job, does it follow that Fleischli's award would have been different? It's a very human thing. Lawyer loses a case, he did a lousy job. Well, maybe, but good lawyers also lose cases.

I did read the briefs, and I was struck by NALC's comparisons of their letter carriers to UPS and FedEx drivers and couriers. But the Postal Service claimed that its letter carriers' average hourly rate is 24.1 percent higher than FedEx couriers. UPS drivers do make a little more than postal carriers, but the work is different. Again according to the Postal Service, UPS drivers are primarily package deliverers: 280 a day, on average, and 220-230 pickups, up to 150 pounds a package. They perform no inside work. There have been frequent layoffs. In contrast, the average city carrier delivers 11 packages a day, maximum weight 70 pounds, and works inside several hours a day. There have been no layoffs.

The binding arbitration provision has been a ticking bomb. The USPS is lucky that since 1984 arbitrators have recognized that postal wages are high, and have ruled for "moderate restraint," or ECI minus one. I have no theory to explain Fleischli's award, but it is a done deal, so let's move on.

Suppose the next arbitrator restores parity. He caves in and says, "Okay, the clerks are now level 6." Now comes the NALC back to the table. They're likely to say, "Fleischli ruled that our work is harder, so if the clerks got level 6, we want level 7." Who will pay to watch this

exciting new sport of leapfrogging? If arbitration is sound public policy, if that's the way government wages ought to be set, we should do that across the board. Not a chance. No other federal agency has its employees' pay set by an arbitrator today, yesterday, or back to 1787.

I've heard people say, "If the unions don't have binding arbitration, they would have the right to strike, right?" Wrong. No federal employee has the right to strike, as the air traffic controllers found out. How should wages be set? As I said earlier, you bargain in good faith, you mediate. If that doesn't work, it goes to the President. What will the President do? Don't know, might not be good, but better than binding arbitration. And if the Congress concluded that the USPS and the President were unreasonable, it could always legislate an increase.

There's another reason why postal employees should not have the right to strike, beyond historical precedent. Consider the nature of a strike. In the private sector, it is an economic struggle between labor and management. Workers have the right to withhold their labor. Management has the right to close its doors, as UPS did some years ago in Philadelphia, and generally can hire replacements. So both sides have potent weapons. But if postal employees had the right to walk off the job, would management close the doors to post offices? Unimaginable.

I am hardly alone in believing that there should be a fresh look at the Postal Reorganization Act. Robert Taub, Staff Director of the House Postal Affairs Subcommittee, will tell you later today that a bill, H.R. 22, has been in the mill for about four years. It has some good provisions, like negotiated service agreements, and some bad. But all in all, I think it's a rather odd jumble; here's why. Ordinarily, when legislation is drafted, those with common interests get together to oppose it, support it, or change it. Political Science 101. What happened

with H.R. 22? This page of my notes has two columns. On the left are the organizations which favor the bill, and on the right those opposed. The subcommittee's press releases, I've noted, emphasize the pro side.

Here's what I've got.

<u>Pro</u>	<u>Con</u>
FedEx	UPS
NNA (small papers)	NAA (big papers)
NALC	APWU
NAPUS	National League of Postmasters
Parcel Shippers	Teamsters
R. R. Donnelley	Main Street Coalition
Pitney Bowes	American Business Press
Time Warner	Mail Boxes, Etc.
DMA/AMMA	Mail Advertising Services Association
American Express	American Bankers Association

The Mailers Council, which ought to be the 600 lb. gorilla in this zoo because they are responsible for about 80 percent of the mail has carefully taken no position. It reminds me of an old vaudeville joke. The judge says to the jury foreman, "Mr. Foreman, has the jury reached a verdict?" He replies, "We have, your honor." "And what is the jury's verdict, Mr. Foreman?" "We, the jury, have decided not to get involved." (Laughter) I should have been a little more careful a minute ago. Technically, the NALC and NAPUS did not come out clearly and say that

they supported H.R. 22. They say, "We're working with the subcommittee." To me, they appear to be supportive.

I thought about where the Postal Service itself should go on my bifurcated list, but that only adds to the confusion. PMG Henderson, having negotiated many changes in the bill, publicly said--surprising some subordinates--that "postal management" supports it. The following day, Board Chairman Einar Dyhrkopp informed the press that Henderson was not speaking for the Governors.

H.R. 22 is not a true reform bill. It studiously avoids dealing with the major issues, and contains some extraordinarily risky provisions. It would permit the USPS to organize a private corporation with no restrictions on what it could do. It would increase the PRC's regulatory power, which would further undercut the organizing principle of postal reform, to let managers manage.

For real reform, the President should appoint a commission of distinguished men and women who are not joined at the hip to the Postal Service. No big mailers. No postal union leaders. With all respect, not your outstanding President, Maynard Benjamin. Get current or retired CEOs, get a non-postal union leader, get a business school dean. The recommendations of eminent men and women could carry a lot of weight.

The postal world has changed since 1970, so everything should be on the table. They should look at privatization, employee ownership, the monopoly, universal service, non-profits, restructuring the Board of Governors, the works. But the pressing problem at the moment is binding arbitration and I now direct my remarks to Bill Henderson, to whom I gave a heads-up on what I would say this morning. Bill, you can't escape the consequences of this NALC award.

From "What Constitutes Real Postal Reform?"
Speech at ENA convention in San Diego
Oct 10, 1999

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No attack on the arbitrator or the union can succeed. You must attack the design flaw in the Postal Reorganization Act, binding arbitration.

You and Einar Dyhrkopp should go public along these lines: The root of the problem is binding arbitration. Our labor costs are 79 percent of revenues, almost what they were in 1970. Postal employees are paid from 17 to 30 percent more than comparable workers, including benefits. Arbitration constricts our ability to manage, since work rules are also involved. This NALC award, unless arbitration is eliminated, will trigger higher wages for the other crafts, and will be devastating to our costs. The real winners are those who have been lobbying for a high cost, tightly regulated Postal Service.

If H.R. 22 dies, as I think it will, and if no genuine reform efforts are undertaken, Lord knows what will happen. On September 16, three days before the NALC award, the PMG testified before a Senate subcommittee that "nearly \$17 billion is at risk" as a result of changing technology. That's a big chunk of \$60 billion. If costs go up steeply and mailers seek alternatives, volume and revenues will drop even more. I strongly urge that groups like yours suit up and become active players, not observers. Genuine postal reform is very much in your interests.

You will be told, as Marvin Runyon used to say, that real postal reform would be Dead on Arrival. That may be, but I heard the same thing in 1947 when some argued for a Department of Defense and a separate Air Force. Wise old heads said, "Out of the question! West Point and Annapolis have the old bulls, the committee chairman locked in."

The smart money said the same thing about the Environmental Protection Agency, created during the Nixon administration, and I had something to do with that. We were told that

the Administration didn't want to create new agencies, it wanted to eliminate them. We said, "Fine, but pollutions are inter-related, and six agencies are working at cross purposes on air pollution, water pollution, radiation, pesticides, animal wastes, and so on. Let's put the idea on the table and see what happens." It became a law.

The same thing was true with postal reform. Friends said to me, "The Post Office is locked into the political process. You're wasting your time." But we did get postal reform. A sound idea is dead only when it is throttled at birth. Don't necessarily believe the naysayers. Too much is at stake for you and for the American people. Unlike the foreman of the jury, you should get involved.

Moderator: I want to thank Murray for sharing his insights with us. We have some gold cufflinks for him. We hope you'll wear 'em and remember the time you shared with us. Murray, thank you.

M.C.: Thank you, Bob. I appreciate it very much.