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The Star Route Frauds

John C. McKinnon

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THE STAR ROUTE
FRAUDS

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Fulfillment of the requirements
for the Degree of Master of Arts

by

John C. McKinnon

University of North Dakota

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This thesis, submitted by John C. McKinnon in partial fulfillment of the requirements for the Degree of Master of Arts, is hereby approved by the Committee of Instruction in charge of his work.

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Chapter I

THE DEVELOPMENT OF THE UNITED STATES POSTAL POLICY 1782-1883

The United States postal policy has always been a liberal one. It has always emphasized the social and political, rather than the revenue producing possibilities of a government postal service. Even in Great Britian, long recognized for its liberal political institutions, the profit produced by its postal system remained the chief concern of the government until 1840.¹ Such a policy has not been an unmixed blessing. It facilitated the settling of new territories by making stage lines through sparsely settled regions possible; it was an important factor in the rapid expansion of railroad and steamship lines; and in our own time it has fostered air transportation. Such a generous open-handed policy on the part of Congress has quite naturally been accompanied by abuses and frauds.

The basis of the American postal policy was first laid down in the Articles of Confederation. There Congress was given the power "...of establishing and regulating post-offices from one state to another, throughout the United States, and exacting such postages on the papers passing through the same as may be requisite to defray the expenses of the said office."²

The first comprehensive law in pursuance of this power was enacted on October 18, 1782. It was an elaborate statute, and its enactment marked the birth of the present United States postal system. This law provided that:

"Whereas the communication of intelligence with regularity and dispatch from one part to another of these United States is essentially requisite to the safety as well as the commercial interest thereof, and the United States in Congress assembled being by the

Articles of Confederation vested with the sole and exclusive right and power of establishing and regulating postoffices throughout all these United States; and whereas it became necessary to revise the several regulations heretofore made relating to the postoffice and reduce to one act:

"Be it therefore ordained by the United States in Congress assembled, and it is hereby ordained by the authority of the same, that a continued communication of posts throughout these United States shall be established and maintained by and under the direction of the postmaster general of these United States to extend to and from the State of New Hampshire to the State of Georgia inclusive, and to and from such other parts of the United States as from time to time he shall judge necessary, or Congress shall direct."³

The Postmaster General under this act, was given the power to superintend and direct all the various activities of the postoffice department; to appoint an assistant and deputies; to station the deputies and to fix their compensation within the maximum limit of twenty percent of the amounts of postage collected in their various departments. He was also given the power to employ postriders, messengers, and expresses, who were to carry the mail over each route at least once a week. The law provided exclusively for a horseback service, and it made no provision for contracting for the carrying of the mail. These defects were remedied by an act passed in 1784, which authorized the Postmaster General, if he believed that the mails might be more economically carried, to contract for the carrying of the mails either by stage or horseback in the states of New Jersey, Pennsylvania, Delaware, Maryland, and Virginia.⁴ The object of the provision was to encourage the establishment of stage lines in the states so designated.

With the adoption of the Constitution, Congress was again delegated the power to establish post-offices and post-roads.⁵ This

time there was no specific injunction that postages must be exacted requisite to defray the expenses of the service. It is merely a general grant of power which Congress may exercise at its discretion.

The press of more urgent matters prevented the first Congress from enacting any postal legislation. It merely, by a resolution, made the legislation of the Continental Congress effective until the second Congress should convene.⁶

President Washington, in his third annual message, called the attention of Congress to the need for postal legislation.

"The importance of the post-office and post-roads on a plan sufficiently liberal and comprehensive as they respect the expedition, safety, and facility of communication, is increased by their instrumentality in diffusing a knowledge of the laws and proceedings of the Government, which, while it contributes to the security of the people, serves also to guard them against the effects of misrepresentation and misconception. The establishment of additional cross posts, especially to some of the important points in the western and northern parts of the union, cannot fail to be of material utility."⁷

The second Congress, on February 20, 1782, passed an act to establish the postoffice and post roads within the United States.⁸ The act was largely an elaboration of the acts of 1782 and 1784. It established routes from Wiscasset, Maine, to Savannah, Georgia, with forty-four cross routes, one extending as far west as Danville, Kentucky. The service could be performed on horseback or by stages at the discretion of the Postmaster General. The routes were to be advertised for six months in one or more papers in the state or states where the contract was to be performed, and the contract was to be let to the lowest bidder for a term not to exceed eight years. The Postmaster General was empowered to

extend any route, but the compensation for carrying the mail on any extension was not to exceed the postage on the letters and papers carried. He was further empowered to contract for the carrying of the mail on any new road on which a stage line was to be established, but here also the compensation could not exceed the postage on the mail to be carried, nor could a contract be made which would result in a diminution of postal revenue. The act further provided that all contracts were to be recorded within thirty days with the controller, who was to disburse the funds of the department.

The postage rates prescribed by the act were high. The charge for each single letter (one page) was six cents for thirty miles, eight cents for sixty miles, ten cents for one hundred miles, and so on, with a maximum charge of twenty-five cents for any distance greater than four hundred and fifty miles. The rates were doubled for a double letter, tripled for a triple letter, and any letter more voluminous was to be charged at the rate of four single letters per ounce.⁹ Newspapers were charged one cent for any distance up to one hundred miles, and one and one half cents for any greater distance. It also provided that exchange copies could circulate free of charge.¹⁰

Although the early postal policy was a liberal one, Congress did not intend that public funds should be squandered on unproductive routes. In 1799 an act was passed requiring the Postmaster General to report annually to Congress every post road which, after the second year of its establishment, had failed to produce one-third of the cost of carrying the mail on it.¹¹

In 1825 Congress authorized the Postmaster General to discontinue the service on all routes which, after being established three years, had failed to produce one-fourth of their cost.¹²

Samuel Osgood of Massachusetts was appointed by President Washington to be the first Postmaster General. He was not a member of the cabinet, and he submitted his annual report through the Secretary of the Treasury.¹³ It was not until 1829, when President Jackson appointed William T. Barry, that the Postmaster General became a member of the cabinet.

Until 1838, with a few exceptions, the post office department was self-supporting. From 1838 to 1846, with one exception, an annual deficit occurred.¹⁴ There were several factors which account for the deficit. In the first place, railroad companies and private expresses were doing a thriving business in carrying the mail in spite of the fact that the act of 1792 made such an offense a crime.¹⁵ A second factor is found in the careless manner in which the annual post route bill was compiled and passed by Congress. It had grown so bulky that it was no longer printed, but it lay on the clerk's desk for examination by every member "in so far as his own district or state was concerned."¹⁶ Under such a practice it would be surprising if extravagances did not occur. This procedure was continued until after the establishment of the United States Printing Office following the civil war.

In 1840 the British Parliament adopted penny postage. That reform created a demand for cheaper postage in this country, and led to the enactment of a law in 1845 which reduced postage and made several other reforms.¹⁷ Under this act, postage was reduced

to five cents for each half ounce for any distance under three hundred miles, and ten cents for any greater distance. Weekly newspapers were to circulate free of charge for a distance of not greater than thirty miles from the place of publication. For any greater distance, or for daily or monthly publications, the rate remained unchanged. The act further stipulated that:

"It shall be the duty of the Postmaster General in all future lettings of contracts for the transportation of the mail, to let the same, in every case, to the lowest bidder tendering sufficient guarantees for faithful performance, without other reference to the mode of transportation than may be necessary to provide for the due celerity, certainty, and security of such transportation."¹⁸

Following the enactment of this law the service was classified in the annual reports under the headings of railway, steamboat, and "celerity, certainty, and security." The clerks in the department used three astericks to denote the last phrase. Thus it became known as the star route service.

The Act of 1845 also increased the penalties for carrying the mail in competition with the government postal service, and they made all corporations liable within the meaning of the law. It was hoped that this, with the cheaper postage prescribed by the bill, would put an end to competition, as it seemingly did.

The first year of operation under the reduced postage rates left a deficit of \$597,098, but each year following until 1851 produced a surplus which not only quieted the opposition to the cheap postage, but created a demand for still lower rates which culminated in the Act of 1851.¹⁹

The Act of 1851 established a postage of three cents for every single letter going not over three thousand miles, with double

that amount for any greater distance. The postage on newspapers remained practically the same.²⁰ In one other respect the act established a new precedent. It provided that:

"No post office now in existence shall be discontinued, nor shall the mail service on any mail route in any of the states or territories be discontinued or diminished in any consequence of any diminution of the revenues that may result from this act; and it shall be the duty of the Postmaster General to establish new post offices, and place the mail service on any new mail routes established, in the same manner as though this act had not been passed."²¹

The year 1851 marked the end of a sound postal policy for some years. Annual deficits occurred in the succeeding years with monotonous regularity passing the six million mark in 1860.²² The great territorial expansion of the forties was in a large way responsible for this. Texas had been annexed, our claims to the Oregon territory had been adjudicated, and California and the New Mexican territories had been brought into the union as a result of the Mexican war. In addition to this the northwest territories were filling up rapidly, and the Mormons had made their trek to Utah. All these territories required postal facilities, which, on account of the vast areas of unsettled territory which any postal route must traverse to reach them, cost far more than they could produce.

It is not practicable to present a detailed account of the expansion of the postal system which occurred in the years following 1851 in this paper, but the increase in the postal service to California affords a striking example. In 1847 Congress provided for a monthly ocean service by way of Panama to San Francisco and Astoria at a cost not to exceed \$290,000 per annum.²³ Three years

later, in 1850, a monthly service from Independence, Missouri, to Salt Lake City, Utah, was provided at a cost of \$19,500.²⁴ The year following this route was extended to San Francisco, and California was thus provided with an overland mail.²⁵ Another route was established from Independence, Missouri, to Santa Fe, New Mexican Territory, in 1850.²⁶ This line connected with private expresses from California, so in reality it formed a third route. These routes must have been expedited and the service increased, for in February 1857, according to testimony in the United States Senate, the California mail was costing \$1,300,000 annually.²⁷ Nevertheless, Congress in that year authorized a new overland route by an amendment to the annual post office appropriation bill. It read:

"And be it further enacted, that the Postmaster -general be, and he is hereby, authorized to contract for the conveyance of the entire letter mail from such points on the Mississippi River as the contractors may select, to San Francisco, in the State of California, for six years, at a cost not exceeding \$300,000 per annum for semi-monthly, \$450,000 for weekly, or \$600,000 for semi-weekly, at the option of the Postmaster-general.²⁸

While the law stated that the contractor shall select the eastern terminus of the route, the power of the Postmaster General to select the contractor virtually gave him that power. Aaron V. Brown, a native of Virginia and a resident of Tennessee, was Postmaster General at that time, so the result was that a southern route was selected which started at St. Louis and passed through Little Rock, Arkansas, Preston, Texas, Fort Yuma, New Mexican Territory, and thence to California. The action raised a storm of protest from the north and west. One of the important questions which had been before the preceding Congresses was the establish-

ment of a railroad to the Pacific. No action had thus far been taken because the north and south could not agree on its location. Thus the vociferous protest was not surprising since Postmaster General Brown, in the annual report of that year, termed the route "the pioneer route for the first great railway that may be constructed to the Pacific."²⁹

The following years, 1858 to 1859, brought still more expansion in the service to California. The route by way of Salt Lake City was provided with four horse stage service; a middle route from Kansas City by way of Alberquerque to Stockton, California, was established; and a southern route from New Orleans, by way of San Antonio, to San Diego was provided. Thus six mail routes to California were provided. The annual report of 1859 shows that the cost of the routes was \$2,184,697, while they were producing a revenue of only \$339,749.³⁰

In 1860 there was a strong sentiment in Congress for postal reform. Postmaster General Hall, who succeeded Brown, suspended service on a number of routes and curtailed it on others during the recess of Congress in that year. When Congress convened the supporters of a generous postal policy attempted to nullify these economies by a resolution which, if it had passed, would have directed the Postmaster General to restore the service on all the routes. The resolution did pass the House but it was defeated in the Senate so some retrenchment was accomplished.³¹

The Civil War brought to an end the period of postal deficits for a time. However, when the war ended Congress again gave some attention to the establishment of new routes, and deficits re-

appeared and grew. It was not until the disclosures of fraud were made in the administration of star and steamboat routes that economies were effected, and these economies were only temporary.

Frauds have played an important part in the evolution of the United States postal laws. Frauds occurred pretty generally during prosperous periods when Congress was most liberal in granting postal appropriations. The first of the major postal scandals had its inception during the administration of John Quincy Adams, and it extended into the early years of Jackson's administration. The act which organized the United States postal system made no provision for additional compensation for increased service beyond the fact that it authorized the Postmaster General to extend routes at his discretion, but it provided that the compensation for such extensions should not exceed the revenue produced by the extension. At times the lack of provision for increased service during the contract term delayed needed postal expansion, so in 1825 Congress authorized pro rata compensation for increased trips or mileage.³² No provision was made, however, for expedited service. To meet this deficiency the Postmaster General began the practice of asking for optional bids on improved service at the regular lettings. The low bid for the minimum service was the bid that was accepted, but in the event that the improved service became necessary, the bid on the improved service determined the compensation the contractor would receive. It was through this practice that the first great postal fraud originated.

The letting of the contract for the Philadelphia-Pittsburg mail is a good example of the way in which the frauds were accomplished.

The minimum specifications called for a seventy-two hour week day mail between the two cities. The specifications for the improved service called for a letter mail on a sixty hour schedule with a seventy-two hour mail for newspapers. The low bid for the minimum service was \$7,000, and the bid that accompanied it for the improved service was for \$25,000. The bid of \$25,000 for the improved service was not low, but in spite of that the low bid of \$7,000 was accepted, but the improved service was put on.³³ The Senate Committee on Post Offices and Post Roads, which conducted an investigation of the department in 1835, estimated that the United States was being defrauded of \$157,000 annually through this practice.³⁴ In order to correct this abuse a law was passed in 1836 which provided for an increased compensation for expedition in proportion to the increased expense incurred by the contractor. The same act required the Postmaster General to accept the lowest bid for the service to be put on.³⁵

Unfortunately the intent of Congress with respect to increased compensation for expedition was expressed in ambiguous terms, so that this act, which was passed to correct abuses in the Post Office Department, became the means which made the most nefarious of all postal frauds possible.

In 1872 another postal scandal was uncovered which led to more legislation. It was discovered that many contractors were using straw bids as a means of securing lucrative contracts. At that time no bond was required to be filed with the bid, so anyone could submit one. As a result unscrupulous contractors would file very low bids for their hostlers and drivers, and they would file

a bid for themselves at an amount that would admit of considerable profit. When the bids were opened, the low bid would be tendered the contract. In the case of straw bids the contract would be refused, and the Department would offer it to the next low bidder. In the meantime this unscrupulous contractor would attempt to buy off intermediate bids, with the result that eventually he might be awarded the contract.³⁶ This practice resulted in the passage of an act which required the filing of a bond with all bids.³⁷

Chapter II

THE ORIGIN OF THE STAR ROUTE FRAUDS.

It is important, in order to understand the star route frauds, to have a knowledge of the organization of the Post Office Department as it was in 1879, and to be familiar with the laws which had been established for its conduct. The Act of 1792 had provided for the Postmaster General and one assistant. Two more assistants had been added in 1836.¹ Very early in the history of the department the Postmaster General had to entrust the details of administration to his three subordinates because of the very large amount of detail connected with the service, and because of the inroads which political duties made upon his time. The first assistant postmaster general had in his charge the supervision of post offices including such details as postmasters and their bonds, money orders, and depredations against the mail. The second assistant was in charge of all the contracts for mail service. It was his duty to prepare advertisements of routes to be let, to file the bids, and to make fines and deductions for failure, or partial failure, to perform the service according to the conditions in the contract. The third assistant had charge of the revenue of the department, contracted for supplies, and was the custodian of the dead letters.²

The sixth auditor, officially designated as the auditor for the Post Office Department, was also an important postal official. Originally his duties had belonged to the controller but the Act of 1836 had transferred them. The Post Office Department was

directed by law to record all contracts and to deposit all bonds with the sixth auditor, who upon certification of service rendered, would order the compensation paid. In the event of failure to fulfill a contract, the auditor was to direct the Attorney General to bring suit on the bonds for any loss the government incurred through the failure.³ In addition, the sixth auditor issued a quarterly statement of the financial condition of the Post Office Department.

Contracts for carrying the mail on star routes were let for a period of four years to the lowest bidder tendering a sufficient guaranty of faithful performance. Before a contract could be awarded it must be advertised for six weeks in one or more papers in the state or states where the service was to be performed. The advertisement contained a statement of the bond required, and a description of the route, the length, the speed required, and the frequency of the trips. A certified check or draft equal to five percent of the compensation at the last letting, or in the case of new routes, five percent of the amount bid, was to be filed with the bid. After the contract was let a new bond was required, the practice being to require a bond of ten dollars per mile. If the low bidder failed to provide an acceptable bond the Postmaster General could enter into a contract with the next lowest bidder, or if he deemed the other bids too high, he could re-advertise the service. The only persons ineligible by law in the awarding of contracts were the employees of the department, or any person known to be a member of any combination or ring formed for the purpose of securing mail contracts.⁴ Star routes were usually

advertised in the fall of the year, and the new contracts usually went into effect at the beginning of the fiscal year.

The law permitted the employment of temporary service for a period not exceeding twelve months without advertisement.⁵ This was the type of service usually employed on routes where the contractor had failed, and it was frequently employed upon new routes pending, in either case, the outcome of the annual letting. Temporary service was more expensive than ordinary service especially on the longer routes, since no one could afford to stock a route for a few months service except for a high return.

The Postmaster General was authorized by law "to provide for carrying the mail on all post-roads established by law as often as he, having due regard for the productiveness and other circumstances, may think proper."⁶ In order that it would not be necessary to cancel the contracts for each alteration in the route or schedule, the law provided that:

"Compensation for additional service in carrying the mail shall not be in excess of the exact proportion which the original compensation bears to the original service; and when any additional service is ordered, the sum to be allowed therefore shall be expressed in the order... and no compensation shall be paid for any additional service rendered before the issuing of such an order."⁷

"No extra allowance shall be made for any increase of expedition in carrying the mail unless thereby the employment of additional stock and carriers is made necessary, and in such case the additional compensation shall bear no greater proportion to the additional stock and carriers necessarily employed than the compensation in the original contract bears to the stock and carriers necessarily employed in its execution."⁸

The pro rata system of additional allowances was incorporated into the postal laws by the acts of 1825 and 1836, respectively. At that time it was understood in Congress that the increase in

expense to the contractor would determine the extra allowance that was to be made, not any mere ratio based upon the number of men and horses employed.⁹ It was expected that the same prudence and common sense which men use in their own private enterprise would be employed in public service.

Allowance for additional mileage was frequently made. Residents living along a route have always been ready to petition for additional trips on the mail route which serves them. Senators and Congressmen have always been easily persuaded that great public good will result from increased mail service in their respective districts; and the second assistant postmaster generals under political pressure, usually granted the increases, sometimes upon very slight pretext. However, prior to 1876 the practice was usually to give less than the pro rata allowance in computing the additional compensation.¹⁰

Orders expediting a route were issued much less frequently than those increasing the number of trips or mileage on a route. The first instance of the former may be found in Buchanan's administration when postal efficiency was at its lowest ebb. In 1872 there were six cases of expedition, but the total allowance on the six routes was only \$21,738. Again during the years 1875 and 1876 there were seven cases with allowances totalling \$60,976.60.¹¹ In none of these instances, however, was the full pro rata compensation granted.

On July 23, 1876, Thomas J. Brady was sworn in as Second Assistant Postmaster General, in charge of the transportation of mails. With the induction of Brady into office the golden era for the

contractors began. During the first year there were sixteen orders issued expediting the service on sixteen routes. The original contract price on these sixteen routes aggregated \$184,544.24 per annum. The increased annual pay for expedited service totalled \$197,946.16 bringing the total annual cost of the routes to \$382,490.40.¹²

In addition to this, in the same year, additional trips were ordered on a large number of routes, bringing the total number of routes upon which extra allowances were made to two hundred and fifty. The aggregate cost of the increased trips to the government was \$604,336.09. The original cost of the service on these routes was \$1,090,620.92. The additional number of trips required averaged only 33 1/3 percent, while the additional cost amounted to 58 1/6 percent.¹³ Furthermore, although the law specifically states that no compensation shall be paid for service rendered before the issuing of an order, of the orders issued that year by Brady granting increased allowances twenty-four were made retroactive.¹⁴

One of the first routes to be expedited by Brady was located in Texas. The contractor sent in a sworn statement of the additional number of men and horses necessary to perform the expedited service. The statement was referred to the clerk in charge of the Texas routes, who immediately noted its insufficiency. He took the statement to Brady and showed him that such a statement could not serve as a reliable basis for computing the additional compensation. He called Brady's attention to the fact that the time honored usage of the department was to base the computation on a

sworn statement of the increased cost to the contractor so that the contractor's profit would be no greater on the additional service than it was on the original service. Brady promised to give the matter his consideration, and in a few days he issued the ruling that the sworn statement of the contractor setting forth the number of additional men and horses necessary to perform any additional service would be the basis for computing additional compensation.¹⁵

The quadrennial letting of the star service in the states and territories of Arkansas, California, Colorado, Kansas, Louisiana, Nebraska, Nevada, Oregon, Texas, Arizona, Dakota, Idaho, New Mexico, Montana, Utah, Washington, Wyoming and the Indian Territory occurred under the advertisement of November 1, 1877, with the service on the contracts thus awarded beginning July 1, 1878. Probably because of this there were fewer orders authorizing additional service during that year. However there were sixty-three orders issued authorizing additional trips, fifty-one of which applied to routes in the Pacific section. The increased allowances on these routes aggregated \$119,929.39. As the original aggregate contract price on these routes was \$188,745.80, the cost of operating them was increased sixty-four per cent.¹⁶

The star routes upon which bids were asked in the advertisement of November 1, 1877 comprised about sixty per cent of the entire star service. In view of Brady's record during the first year and a half of his incumbency, one would expect to find the specifications of the routes advertised providing for a more generous service than that provided under the previous contracts. Brady had

proved himself to be very liberal in providing postal service in the west. The whole region west of the Mississippi was experiencing a wonderful expansion. There had been a great migration to the west following the Civil War which had not yet ceased. Much of the great plains region had already been homesteaded. Herds of cattle already dotted the range land so recently vacated by the buffalo. Such mining camps as Leadville, Deadwood, and Central City were already booming. The events of the past certainly indicated an active four years in the west. Brady himself expected an expansion. In his annual report under the date of November 1, the same day that the advertising of routes was begun, he said:

"The demand for increased mail facilities is probably greater at this time than ever before in the history of the department, and particularly is this true of service other than railway. It has, therefore, been deemed best to make a liberal estimate for this branch of the service, and the sum of \$7,090,673 is asked for."¹⁷

The estimate provided for an increase of \$523,247 for star route service.

Furthermore, Brady was charged by the law "to form the best judgement practicable as to the mode, time and frequency of transporting the mail" and to advertise accordingly. Had this been done millions of dollars would have been saved. However, the new specifications provided for very little improved service, and the improved service was offset by diminished service on other routes. The great mass of the routes remained unchanged. From a financial standpoint the letting appeared to be a great success. The star route service in all the territory west of the Mississippi had cost \$3,124,187 for the fiscal year ending June 30, 1878. The

service under the new contracts was begun July 1, 1878 for the sum of \$2,009,280.¹⁸ The saving, however, was very temporary for at the end of the fiscal year the cost had been \$3,706,977.

The increased cost during the year 1878-1879 was due largely to extra allowances for expedited and increased service on the routes controlled by thirteen men. These allowances amounted to \$1,399,876.93. In addition to this, temporary contracts were awarded to these same thirteen men totalling \$168,395.68. On May 10, bids were asked on new service to begin October 1, in this same territory. The contracts thus let totalled \$47,248.59 which is chargeable to the increase. The balance of the increase, \$80,468.41, represents the extra allowances and the temporary contracts awarded to other parties than the favored few.¹⁹ The cost of the entire star route service for the year ending June 30, 1878 was \$5,714,943 as compared with \$5,663,970 the previous year. Such service in the sections east of the Mississippi was decreasing each year due to the rapid expansion of railroads in that section, and it was this fact that served to shield the department.²⁰

A comparison of the old and new contract provisions for some of the routes studied in the light of the subsequent history of these routes produces some interesting facts. A route from Fort Worth, Texas, to Yuma, Arizona, which formerly comprised three routes, was let at a specified distance of 1,560 miles while the distance given for the route in the register for 1874-1878 was 1,467 miles. Under the old contract the mail was carried from Fort Worth to Yuma in 433.40 hours, but the routes had been expedited by Brady, so that in 1877 the time required was 358.90 hours. By the new contract a

schedule of 408 hours was provided, and the speed was specified at $3\frac{101}{204}$ miles per hour. The specified rate of speed was higher than necessary, since the fictitious distance would give the contractor 24.35 hours more time to cover the route. The contract was awarded to John T. Chidester for the sum of \$134,000 per annum. The average bid was \$225,000, and two of the ten bids submitted were in excess of \$300,000.²¹

On August 15, 1878, six weeks after the new contract went into force, Brady issued an order reducing the running time to 312 hours, and granting an additional compensation of \$165,000 per annum. The expedited schedule, according to the sworn statement of Chidester, would require the services of 180 carries and 986 horses, whereby the original schedule had required only 92 carriers and 378 horses. Two days after filing this affidavit Chidester wrote the department offering to carry the mail on the expedited schedule for \$165,000, that being much less than pro rata.²² For approximately a twenty-five per cent increase in speed on this route, the compensation was raised 123 per cent.

The route from Fargo to Pembina, in the Dakota Territory, had been let first in 1874 on the running time of 36 hours for the 156 miles. The speed specified was 4.27 miles per hour, and three trips a week were to be made. In 1875 the service was increased to six trips a week. The new contract put the route on a slower schedule, 79 hours being specified. This required a speed of less than two miles per hour. The contract was awarded to Luke Voorhees for the sum of \$17,000 per annum, a saving over the previous contract of \$806.60 a year. On July 30, 1878 an order was

issued reducing the running time to 46½ hours with seven mails a week. For this increase in service the contractor was paid \$13,000 per annum.

The route from Prescott, Arizona Territory, to Santa Fe, New Mexican Territory, was, according to the specifications of 1874, 485 miles long. The time allowed in that year was 168 hours, at a specified rate of speed of 2.89 miles per hour. The service originally provided for but one mail a week, but a second mail had been added in 1875. The new contracts provided for a more liberal service. The running time was reduced to 150 hours and three trips a week were provided for, but the distance was specified to be 529½ miles. The contract was awarded to George L. McDonough for the sum of \$13,313. The old contract price on the basis of two trips a week was \$42,033 so a considerable saving was seemingly effected.

The old contract on this route was allowed to run on till September 30. During October the running time was reduced to 90 hours and four trips a week were added. For this an additional compensation of \$73,000 was allowed.²³ About the first of August John A. Walsh was given a subcontract which was filed with the department according to custom, so it was he who performed the service and received the compensation from that time on. On March 11, 1879, by reason of complaints about the service, so it was alleged, George McDonough was declared to be a failing contractor, and on that same day the service was reduced to its original status, i.e., three trips a week with a running time of 150 hours. The men who had signed McDonough's bond, Gleason and Kirk by name, were

offered the contract. This was the usual procedure of the department in order that the bondsmen might protect themselves against the loss which they would be liable for if the contract was re-let for a higher figure. In this case the bondsmen refused to assume the contract unless they were assured that the service would be restored, and the former compensation of \$73,000 per annum granted. Walsh then offered to perform the service for \$18,500, and since that offer was \$500 less than the second lowest bid, it was accepted. On July 10 Brady issued an order restoring a daily service on a 96 hour schedule, and granting an additional allowance of \$117,475.²⁴ So Walsh, who in reality was the man who had failed to perform a satisfactory service under the old contract, became the contractor on a schedule which was six hours slower, but with the compensation increased \$62,975 over the sum allowed him on the original contract.

The route from Red River Landing to Shreveport, in Louisiana, was let in 1874 at a distance of 278½ miles on a 56 hour schedule six days a week. In 1878 the route was listed as being 261 miles long, but it was reduced to a 60 hour schedule three times a week. Thus a much poorer service was provided. The contract was let to B. H. Peterson for the sum of \$11,700 per annum. Peterson had also been the contractor for the term 1874-1878 at the rate of \$15,000 per annum, so according to his bids he valued the difference of three trips at \$3,300 per year. Yet in July 1879 Brady expedited the route to a 48 hour schedule six times a week, and granted an additional compensation of \$40,261 per annum.²⁵

The route from Vinita, Indian Territory, to Las Vegas, New

Mexico, was a new one. It was first advertised May 10, 1878 as being 725 miles in length, and bids were asked on a service once a week on a schedule of 240 hours. The contract was let to V. W. Parket for \$6,330 per annum. He in turn sublet to his brother J. W. Parker. After the contract was let it was discovered that the true length of the route was 638 miles, and the distance was changed. Three days before the commencement of the service, on October 1, 1878, 85 miles were added to the route and an additional compensation of \$843.34 was added to the compensation. On October 8, 69 miles more were added and the compensation was increased \$684.59. On November 9, the service was ordered increased to three trips a week and an additional compensation of \$15,716.86 was granted. This brought the annual compensation to \$23,573.79. On March 19, a retractive order was issued granting compensation for eighteen additional miles at \$535.77, the order being made effective January 1st. On December 23, an order was issued reducing the running time to 168 hours and granting an additional compensation of \$31,846.59, effective January 1st. Finally, with the beginning of the next fiscal year, the service was made a daily one with an additional compensation of \$86,052.59. Thus the total compensation in one year was raised from \$6,330 to \$150,592.02.²⁶

These cases are related as typical of over four hundred other cases. The information regarding them was published annually in the Postmaster General's Report, and also in the Annual Register which was published by the Department of Interior. The records clearly showed that the routes on which the big increases had

occurred were generally let for a ridiculously low figure - - a price which in many instances would be ruinous to a contractor if he were forced to carry it out. The names of certain men appeared as contractors very frequently on routes where large increases had been given. Several of these routes on which large increases were given after July 1, 1878 had had the service reduced by the contracts which went into effect on that date. The distances of the routes were manipulated to the advantage of the contractor. In some instances exaggerated distances were cut down after the award had been made, when the true distance would work to the advantage of the contractor in the determination of the compensation for additional mileage. In other instances the routes were advertised at less than their true distance, and after the award had been made a claim would be filed for a pro rata adjustment in compensation based upon the true mileage.²⁷ Expedition was granted on the sworn statements of the contractors without any effort being made to determine the truth of the statements. Finally, forty-eight of the orders for additional compensation, which were issued were between July 1, 1878 and December 31, 1879, were made retroactive.²⁸

During the first half of the fiscal year 1879-1880 the same reckless spending continued. The appropriation for that year was \$5,900,000. The **commitments** of the department for star service on July 1, equalled the appropriation. The contracts awarded in the spring of 1879 for new service on 1,300 of the 2,000 new routes established by the preceding Congress, service on which was to begin on October 1, totalled \$434,000. Thus the appropriation

was more than consumed, but in spite of that other commitments were made. Orders further expediting the service were issued totalling \$362,205, and the service was increased to such an extent that the department was committed for \$897,110 more. This in addition to commitments for temporary service created a deficit of \$1,694,095.²⁹ The cost of the service throughout the eighteen western states, which eighteen months earlier had been \$2,009,280, had now swollen to \$4,468,532.30.³⁰

The forty-sixth Congress was called into extra session in March 1879 and they did not adjourn until July 1, yet no message concerning a deficit was sent to it by Postmaster General Brady. In October the annual report was prepared but no mention was made in the report of a deficit by either the Postmaster General or the Second Assistant although this had been done in the past. Furthermore, the law directed that a report should be made to each Congress of all allowances made to contractors over and above the sums originally stipulated in the contracts. But the United States Register, in which this report was supposed to be published was published in November with the following note:

"It has been found impossible on the part of those having the matter in charge to supply the statistics relating to the postal service of the United States in time to admit of the publication of the Official Register in its usual form earlier than March or April 1880. It is therefore deemed expedient to issue the work in two volumes, in order that such portion of it as could be prepared might be available for the use of Congress at its convening in December."³¹

On December 10 Congress was notified of a probable deficiency in the appropriation for the star route service in a letter from the Postmaster General. In it he asked that \$2,000,000 be appropriated from the unexpended balances of former years. This

communication was referred to the Committee on Appropriations.³² On January 8 the Committee reported a resolution authorizing an investigation by a subcommittee of the Committee of Appropriations into the causes of the deficiency. The subcommittee was to have power to subpoena persons and records and to administer oaths.³³ It is doubtful if any investigation would have been undertaken by the House had it not been that the press of the nation, following the lead of A.M. Gibson in the New York Sun, demanded an investigation.³⁴

Brady was the first witness to be summoned before the committee. His testimony brought out the fact that there had been a surplus of appropriated funds turned back to the treasury since he took office totalling \$3,965,468.27. That of the \$5,900,00 appropriated for the current year, \$3,800,000 had been expended during the first half of the year. He always believed, he said, in a generous postal policy "which will give a maximum of service under liberal appropriations," and he believed that that was the policy which Congress wanted him to follow.³⁵ That was the reason why, on the receipt of petitions or at the request of a member of Congress, such large increases had been made. He stated further that there was no deficiency, and that none would be created. If a deficiency appropriation was not forthcoming service would be reduced so that the expenditure would come within the appropriation.³⁶

His testimony, or the questions of his inquisitors, failed to reveal the fact that a deficiency had occurred for the inland transportation of mails other than railway appropriations for the years 1877 and 1879, or that much of the \$3,965,468 surplus, which

Brady took such pride in, was largely the unexpended surplus of deficiency appropriations of other years.³⁷ They did establish the fact, however, that in order to bring the expenditures within the appropriation, star route service would have to be curtailed to such an extent that weekly service would likely be the result. The department in order to curtail service had to pay the contractor a month's allowance. Since the funds would be all expended on April 10, it would be necessary to stop all the service on March 10, in order to pay the allowances. That meant that there was an appropriation enough to provide for the star route service on its present basis for just two months and ten days. Half the month of January had elapsed before the hearing had begun, and there would be no hope of action before February. By that time there would be just one month's appropriation to be spread over five months.³⁸

The committee undertook a study of the data relating to the routes on which the largest allowances had been made. They examined several contractors in an effort to determine whether or not there had been any collusion in the bidding or whether any assurance had been given that extra allowance would be made, but they failed to discover any direct evidence. Some of the contractors admitted that their bids were below cost, but they stated that the rapid development of the country, they felt sure, would make an increase in service necessary. Others explained that they carried the mail as a sideline to a profitable passenger and express business.³⁹ The books of none of the contractors were examined to verify their statements.

Only one large contractor, Monroe Salisbury, was summoned. He testified that he had an interest in about seventy-five mail routes. On seventeen of these mail routes he had been granted increased allowances in excess of \$5,000. The aggregate compensation of these contracts, according to their original terms, was \$147,700. The increased compensation for additional trips aggregated \$189,278.20, and for expedition \$217,005.24.⁴⁰ Salisbury was summoned by the committee because he had asserted that the investigation was being undertaken because of the charges in the press made by certain newspaper men who had failed in an attempt to blackmail him. The committee failed to discover any evidence that Gibson had attempted to blackmail any of the contractors, but his subsequent conduct indicates that Salisbury's charges were probably true.⁴¹

Evidence of certain irregularities were, however, discovered. John A. Walsh was indebted to the government for failure on several routes, but no attempt was being made to collect the indebtedness, and the Sixth Auditor continued to pay him all that was due on his other contracts.⁴² It was discovered that on the Vinita-Las Vegas route, of which Parker was the contractor, charges had been made by the Postmaster at Red River Springs that mail deliveries were made no further east than that point, He charged that the mailman would ride a few miles past that point only to return the next day with the same mail pouch, although five hundred miles of the route lay to the east. Special Agent Charles Adams was ordered to investigate the route, but his duties were so heavy at that time that the case was withdrawn from him

and assigned to another agent. However, the complaint by the Postmaster was filed in the fall of 1878, and Adams was not assigned the case until July 1789, and it was not until September of that year that the case was investigated. Throughout the months when those charges were lying on Brady's desk the compensation on that route had been increased from \$6,330 to \$150,592.⁴³ Adams, in giving this testimony, also stated that on the portion of the route from Vinita to Red River Springs there was no need for any mail service since there were only two posts along that intervening five hundred odd miles, and these post were supplied from the Santa Fe line in Kansas.⁴⁴

The committee attempted to determine the reason for the failure to make a complete report, but they could get no satisfactory answer. Brady attempted to shift the responsibility to the Sixth Auditor, but he was forced to admit that the Sixth Auditor would merely be reporting back figures which Brady had originally submitted to him. Laurie, the department statistician, testified that the reports of extra allowances were made out weekly, so that all that was required was a tabulation of the weekly reports. Laurie, however, substantiated Brady's assertion that it was the Sixth Auditor's duty to make out that report.⁴⁵

The investigation by the sub-committee of the Committee of Appropriations was not a success, possibly because there was no real sentiment in the house for postal reform. Early in February before the investigation was completed the committee reported a deficiency appropriation bill providing funds to meet the deficiency after all increases in excess of \$5,000 had been stricken

off, and the one hundred and seven routes on which those increases had been made were reduced to the terms of the original contract.⁴⁶ This measure raised such a storm of protest in the House that the next day the Committee reported a substitute bill providing for the appropriation of \$970,000 or as much as may be needed to meet the deficiency after all expedited service which cost over \$2,500 had been cut off. The bill also provided \$100,000 for new service. This bill was adopted by the house without a division.⁴⁷ In the Senate the friends of the contractors were even stronger. The text of the senate bill follows:

"That the sum of eleven hundred thousand dollars, or as much thereof as may be necessary, be, and the same is hereby appropriated out of any money in the Treasury not otherwise appropriated to meet the expenses of inland mail transportation on star routes for the remainder of the current fiscal year. During the remainder of the year no further expediting of service on any postal star route shall be made."

Sec. 2. That the sum of one hundred thousand dollars be, and the same is hereby appropriated as aforesaid, to enable the Postmaster General to place new service as authorized by law; Provided, that the Postmaster General shall not hereafter have the power to expedite the service under any contract either now or hereafter given to a rate of pay exceeding fifty per cent upon the contract as originally let.

Sec. 4. Nothing in this act contained shall be deemed or construed to affect the validity or legality of the acts or omissions of any officer of the United States or to affect any proceedings thereof!⁴⁸

The act was passed by the Senate without a division. The conference committee remained deadlocked for about three weeks before the House yielded to the Senate.⁴⁹ After the passage of this act the House only summoned one more witness, and with that they seemed to think their work was done. The only other reference to the investigation to be found was in the annual report of the Committee on Appropriations for the Post Office Department. There they re-

ferred to the remedial legislation which was adopted; i.e. the provision prohibiting additional allowances beyond fifty per cent, as being a sufficient safeguard against the abuses which had existed.⁵⁰

Chapter III
THE STAR ROUTE INVESTIGATION.

Following the close of the hearings conducted by the Appropriations Committee of the House there was no serious attempt on the part of any government official to discover any fraud in connection with the star route service before the inauguration of Garfield. Corkhill, the United States District Attorney for the district, seems to have conducted a grand jury investigation, but he was so friendly with the leading mail contractors that any investigation which he would direct would be no more than a pretension.¹ The party platforms of 1880 all remained silent on the question. Nevertheless, a section of the press kept the question constantly before the public, and, although the mail contractors were ably supported by a strong press, it became almost mandatory upon the incoming president to conduct a thorough investigation.

Garfield was inaugurated on March 4, 1881. He was elected by a plurality of less than ten thousand votes. The narrow margin of victory would no doubt impress upon Garfield the need for a change in policy on the part of the Republican party if they were to continue in control of the government. On March 3, Garfield invited Thomas L. James to come into the cabinet as Postmaster General, and at that time he expressed himself as having grave suspicions concerning the conduct of affairs in the Post Office Department. He said to James that if he accepted the office he would be expected to conduct a thorough investigation.² The choice of a Postmaster General was a happy one, for James had, during his tenure as post-

master, purged the postoffice of New York City of the spoils system. This work had been accomplished in the face of the bitter opposition of the machine politicians so it had won James a national reputation as a fearless and incorruptible man. While James was supposed to be a Conkling man the political ties which bound him to the Stalwart group were not very strong. This is indicated by the fact that Conkling was indifferent as to his appointment.³

James, soon after he took office, had a second conference with Garfield relative to the star routes. At this time the President expressed himself to James as being satisfied that there had been willful waste and gross corruption in the department. He ordered an investigation in order that all extravagant and unnecessary mail service might be cut off, and that any person who was found guilty of fraud should be turned over to the Department of Justice for prosecution.⁴ James then recommended the re-appointment of P. H. Woodward who had been the chief special agent of the Post Office Department, but who had recently retired. Garfield concurred in this recommendation, and Woodward was summoned and sworn in. A day or so later Garfield requested that Woodward, in view of his years of experience and because of his trustworthiness, be detailed to investigate the applicants for postmasters in certain southern cities before undertaking the star route investigation. The investigation was therefore postponed until early in April.⁵

On his return from the south Woodward began a survey of the papers in connection with some of the routes on which large increases had been granted. In this preliminary work he was assisted by A. M. Gibson of the New York Sun who had been active in exposing

star route conditions in the press. Gibson had drawn up a table of ninety-three routes which had been conspicuously increased. This table gave the provisions of the contract for term 1874-78 together with the terms of the contract which became effective in 1878 and the orders increasing the service or expedition.⁶ This table, and Gibson's knowledge of the contractors and their methods, was of great help to Woodward. In a few days time he was able to collect enough data from the files, which, while it was not conclusive evidence, was certainly indicative of fraud. James, accompanied by Woodward, took this material to Garfield, who expressed his amazement at the disclosures. He requested that the findings of this preliminary survey should be laid before Attorney General MacVeagh, and that the three of them should return at an early date and consult with him.⁷

On the following afternoon a lengthy consultation was held in Garfield's study. Garfield, James, MacVeagh, and Woodward were present. On this occasion, in connection with the policy that the government should pursue, James suggested that it might be wise to resort to civil suits for the recovery of money obtained through fraud rather than to bring criminal actions. To this the President replied at once, "No". "One moment, Mr. President," said the Attorney General, "consider whether or not the Postmaster General is not right. Before a final decision remember that these proceedings may strike men in high places; that they may result in changing a Republican majority (of one) in the United States Senate into a Democratic majority; that it may effect persons who claim that you are under personal obligations to them for services

rendered during the last campaign - - and one person in particular who asserts that without his management you could never have been elected. Look these facts squarely in the face before taking a final stand, for neither the Postmaster General nor myself will know friend or foe in this matter." The President paced the floor for a moment and then replied, "No; I have sworn to execute the laws. Go ahead regardless of where or whom you hit. I direct you both not only to probe the ulcer to the bottom, but to cut it out!"⁸

At that time it was definitely known that the investigation would involve S.W. Dorsey, who was an ex-Senator and secretary of the National Republican Committee, and who had been one of Garfield's closest political advisors during the recent campaign. It was also suspected that it might involve William Pitt Kellogg, a Republican of considerable power in Louisiana who at that time was United States Senator from that state. In retaliation Kellogg could reveal the facts about the disputed election of 1876. Brady was a third party leader who was involved. He had collected money from the employees and officials in the Post Office Department, and had thus materially aided in financing the recent campaign. This fact, if it was known, would be sure to hurt Garfield since it was contrary to the spirit of the platform upon which he ran. Garfield was well aware that the situation was laden with political dangers and his decision was a thoroughly creditable one for him as leader of his party.

Following the conference with Garfield the investigation got underway in earnest. Woodward requested that Gibson be appointed to aid him, which was done with Garfield's consent. Reliable

postal inspectors were called in to receive special instructions before beginning a survey of all doubtful routes. Special instructions were prepared for each agent outlining the information that was desired on each route. In cases where fraud appeared likely the agents were to collect what evidence they could in the form of depositions, letters, and telegrams. In all cases they were asked to make recommendations concerning the continuance of the service. MacVeagh attended the conference and cautioned the agents against prejudgment. He told them that the government would rather find that the service was necessary and not corrupt, but that they wanted the facts.⁹

During the spring, as disclosures warranted, the precaution was taken to remove all men from the department who might be involved, or whose sympathies were with the contractors under suspicion. Thus the resignations of Brady, and of Eaton, the Superintendent of the Railway Mail service with whom all complaints concerning the transportation of mail were filed, were secured, and several of the clerks in the department were removed. The President also directed the Secretary of the Treasury to remove J. M. McGraw, the Sixth Auditor, and Fred B. Lilley, his deputy.¹⁰

Early in May, when the scope of the investigation began to widen it was thought necessary to employ another counsel. Gibson recommended that William A. Cook be retained, and he prevailed upon James and Woodward to recommend him to MacVeagh. MacVeagh summoned Cook to a conference on May 10, and on June 1 he publicly announced the addition of Cook to the staff.¹¹ Cook was a criminal lawyer of dubious character but considerable ability. The Evening

Star, remarking about his appointment editorially, said:

"The selection of William A. Cook, concededly at the head of the criminal bar of the District, as a special assistant attorney-general to take charge of the star route investigation, shows that the government means business in the prosecution of these cases."¹²

Garfield was not so sure of the wisdom of this appointment. On June 1 he wrote in his journal, "I learned some things about the employment of Gibson and Cook by the Attorney General, in connection with the Post Office investigation which trouble me. The latter has long been my defamer, the former has an unsavory reputation."¹³ Garfield must have been confused as to the identity of these men. Gibson was a Democratic newspaper man, and it is very probable that he had written some bitter attacks on Garfield. When Woodward expressed a desire to have Gibson associated with him in the investigation, Gibson stipulated that it must be with the consent of Garfield, and MacVeagh testified that Garfield's consent was obtained. It was likely that when Garfield gave his consent he was not familiar with the fact that Gibson had undertaken the study of the star route administration on behalf of Tilden, who helped to finance the expense in the expectation of using the findings in the campaign of 1880. While he might not object to the appointment of a newspaperman who had opposed him in 1880, he certainly would not wish to employ one of Tilden's confidants.¹⁴

There is no evidence to show that Gibson had an unsavory reputation at that time. He was the Washington correspondent of one of the leading New York papers and he possessed the confidence of many prominent men in Washington, both Republicans and Democrats.

There is no evidence to show that he was consulted about Cook,

and it is probably the reputation of that man that concerned him him most. On June 6 the following entry appeared in his journal: "I sent for Mr. Woodward, Post Office inspector, to find what was being done in the star route investigation, and to know why Gibson and Cook had been employed..... I find there is much feeling among my friends that such men should have been employed without first consulting me." 15

Woodward testified, three years later that he found Garfield greatly perturbed particularly about the appointment of Cook. The day before a judge of the Supreme Court had told the President that Cook was one of the most disreputable members of the Washington bar, and that the selection was a disgrace to the administration. Woodward justified the appointment on the grounds that it was advantageous to have some one connected with the investigation who was familiar with the darker elements in the life of the district, and he believed that he successfully allayed Garfield's apprehensions.¹⁶ At any rate Garfield subsequently held a conference with Cook relative to the investigation.¹⁷

The reports of the postal inspectors which were made during the summer and fall of 1881 disclosed conditions to be even worse than was supposed. They verified the extravagance of the increased and expedited service, but they also disclosed the fact, supported by depositions from drivers and postmaster along the various routes, that much of the service which was being paid for at extravagant prices was not being performed.¹⁸ In some instances where increased service was justified it had not been granted until the contract had been assumed by a contractor connected with one of the

"rings." Frequently the new and increased service granted by the department was more generous than the petitions coming from the route had requested. In other instances expedited service was shown to have been granted by Brady over the remonstrances of the postmasters and subcontractors along the routes.¹⁹ In another instance the postmaster confessed that she had recommended the expedited service against her better judgement after being threatened with losing her position.²⁰ In other instances the postmasters were shown to have been influenced or bribed by the contractors so that the truth about the service on the routes would not be reported, and no fines or deductions could then be made.²¹ Instances of justifiable expedition were rare. In most instances the expedited schedule did not provide any better connections with railway terminals than were had under the old schedules.²²

It was further established from the reports of the inspectors, that the affidavits upon which the increased compensation was granted were, without exception, false. Generally the number of men and horses necessary to perform the original contract was stated to be less than the number actually used, while the number given as necessary to perform the increased or expedited service was always more than the number actually employed. Thus the pro rata increases granted were absurd, even when figured according to Brady's interpretation of the law.

As the reports from the inspectors came in, service on each route was curtailed to meet the recommendations of the inspectors who had gone over it. Thus in the period from March 4, 1881 to December 31, 1881, \$1,713,541 of star route service was cut off.²²

Further reductions were made in 1882, the total saving to the department being estimated at \$2,172,132 per annum by the committee of the House which conducted the hearings in 1884.²⁴

On the basis of the inspectors' reports, Gibson compiled a table of 419 routes which bore evidence of fraud.²⁵ This table was intended to serve as a part of the preliminary report on the investigation, but it contains most of the routes which were bad. The contracts on these routes were held by a small group of men. This group however, was organized into rings or combinations, so that the actual control rested with some dozen men. The Salisbury combination held the largest interest, controlling about thirty-five per cent of the routes. The Parker combination was next controlling about thirty per cent. The Dorsey combination was third controlling about twelve per cent. However, the Dorsey routes were longer so they received about twenty per cent of the amounts paid by the government on the routes listed in the table. Barlow and Sanderson, Hearn and Roots, J.D. Colegrove, and J. B. Price also controlled routes which were immensely profitable since their profits did not have to be divided among so many.

The problem of bringing these men to justice was a difficult one. It was early discovered that an action charging perjury would probably not be sustained since the postal laws failed to prescribe a penalty for making a false affidavit. It was also ascertained that individuals could not be prosecuted for fraud against the United States unless the fraud was committed against the revenue department. There remained no alternative, except in a few cases where evidence of bribery could be obtained, or in instances where

false bonds had been sworn to, but to bring charges against the contractors and government officials for conspiracy to defraud. The law was explicit in regard to that charge. Section 5440 of the Revised Statutes provided that:

"...If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more persons do any act to effect the object of the conspiracy, all parties to such a conspiracy shall be liable to a penalty of not less than \$1,000 nor more than \$10,000, and imprisonment....."²⁶

It was thus not only necessary to prove fraud, but it was necessary to prove a conscious and willful effort on the part of each individual cited in the indictment to commit the fraud. For an action of this kind there was little direct evidence available. The fact that the United States was paying enormous sums for insignificant service, or for service that was not being performed, was conclusive evidence of fraud, but it was not evidence of conspiracy. In order to secure evidence of that it was necessary to offer immunity to some of the lesser violators in return for their testimony.

The first important confession was received from Montford C. Rerdell. He had acted as secretary and bookkeeper for Dorsey, and he was interested personally in several of the routes, so that he was thoroughly familiar with the conduct of the Dorsey business. Early in June ex-Senator Clayton of Arkansas brought word to James that Rerdell was willing to testify, so an appointment was made with MacVeagh and a sworn statement was taken.²⁷ The statement revealed in detail all the practices of the corrupt contractors, and it constituted direct evidence against ex-Senator S. W. Dorsey, J. W. Dorsey, Miner, Peck, and Vaile of the Dorsey ring, and Brady

and Turner of the Post Office Department. It described how the bids were sworn to in blank before a notary, and how the amounts were later filled in with figures supplied by Dorsey or Miner shortly before the bids became due, and presumably after the information had been received from someone in the department concerning the amounts of the bids already filed. After a contract was secured petitions for the increase or expedition of the service, or for the establishment of new postoffices which would result in additional mileage, were drawn up in Washington and forwarded to some agent along the route for circulation. Occasionally these petitions were altered after they had been circulated. He cited, as an example, a petition for increased service on route number 40104 in which the words "on a schedule of 60 hours instead of 84 hours" were interpolated after the petition had been returned to Washington. Many of the affidavits upon which increased compensation was granted were signed by the subcontractor or foremen in blank, and the figures were filled in after they had been forwarded to Washington. The statement cited a number of instances in which Dorsey had filled in the numbers in his own hand. Brady, represented on the Dorsey books as William Smith, was paid thirty-three and one third per cent of all allowances for increased service, and fifty per cent of all deductions and fines which were remitted. William H. Turner, a clerk in the contract office, was also paid lesser amounts under the name of Samuel Jones.

When Dorsey heard about his betrayal by Rerdell he was considerably shaken. Ex-Senator Spencer testified to James that Dorsey came into his room in the Everett Hotel in New York City on the

night of June 12 in a highly demoralized state. He told Spencer that Rerdell had betrayed him, and he begged Spencer and the Hon. S. B. Elkins, who was also present, to help him.²⁸ Following that interview Dorsey made a hurried trip to Washington, and, in company with a senator whose name has been deleted from the report, saw Rerdell and induced him to repudiate his confession.²⁹

Although the confession, after its repudiation, was of doubtful value in the actual prosecution of the case, it was nevertheless a valuable acquisition in that it served as a guide to the vulnerable spots in the Dorsey system. Rerdell had called the attention of the officers to the hand writing on the petitions and affidavits. Without the confession they still had a strong case against the Dorsey ring.

Nineteen routes were selected on which to base the indictment of the Dorsey group. It is doubtful if any of the Dorsey routes were exempt from fraud, but the nineteen selected to be presented to the grand jury were so well evidenced that there should have been no doubt in the mind of any reasonable man concerning the guilt of Dorsey and his associates. The fraudulent practices on the routes did not vary a great deal, so two routes will be cited here to illustrate them.

The route from Canyon City to Camp MacDermitt, in Oregon, had been let to Peck in 1878 for \$2,888.³⁰ One trip a week was to have been performed on a schedule of 130 hours. The contract was to become effective July 1 of that year but Indian troubles along the line prevented the service from being performed on the Canyon City end before November, and on the other end before December. How-

ever, Indian troubles did not delay the efforts of the contractor to have the service increased, for on September 18, 1878, Peck filed an affidavit setting forth the number of men and horses then performing the service together with the number that would be necessary to perform the service three times a week on a ninety-six hour schedule. The affidavit was sworn to and filed before any service had been performed. The petitions which were filed with it were in the hands of Miner. On December 23, 1878, Brady ordered the trips increased to three per week on a schedule of ninety-six hours, thus raising the compensation to \$18,612. Later, in July 1880, the service was made a daily one on a schedule of forty-eight hours, and the compensation was raised to \$50,166.

In July 1881 two inspectors were sent over the route. They reported that, except for the first twenty miles out of Canyon City, there was not a residence or cabin of any kind except the stations that had been built for the accomodation of the mail carriers. The gross revenue from the line was found to be \$473.69 in 1880, and \$108.58 in 1881.³¹ After the report was submitted a study of the petitions was undertaken. It was found that many names were signed by a few persons. The bulk of the names were, however, secured by clipping the names from a petition asking for an increase in service on a route a thousand miles distant and pasting them on to a Canyon City petition. Woodward recognized the signature of Nephi Johnson, whom he knew to be in the city, so he summoned him to the department offices. Johnson then was able to identify his own signature and the signature of many of his neighbors who lived in Colorado.³²

Another of these particularly incriminating routes was the one from Mineral Park, Arizona, to Pioche, Nevada. It had been let to John W. Dorsey in 1878. The route was 252 miles in length and one trip a week was to have been performed on a schedule of eighty-four hours. The original compensation was \$2,982, but by July 1879 it had been raised to \$52,033.³³ In order to secure this increase petitions were circulated on a route from Mineral Park to Ehrenberg and later altered. It was on this petition that Rerdell testified that he had interpolated the words "on a schedule of sixty hours instead of eighty-four", but he failed to recall that the number 40105, which was the number of the Mineral Park to Ehrenberg route, had been changed to 40104, the number of the Mineral Park to Pioche route. However, the erasures on the petition were quite evident, and it was also evident that all the signers lived upon the former route.³⁴

In the fall of 1879, a few months after the increase had been granted time bills were sent through in the pouches on thirty-nine consecutive days for the purpose of securing an accurate record of the time consumed in transporting the mail. The postmaster at Mineral Park, under a misconception of his instructions, made an inventory of the contents of each pouch on the time bills. On nineteen of the thirty-nine days there was not a single letter or Paper in the pouch, and the average for the thirty-nine days was about one letter per day.³⁵ The inspectors who went over the route in 1881 testified that not one person lived along the route between the two settlements.³⁶

Issac Jennings of St. Thomas, Nevada, took a subcontract on this

route. His contract was graduated upward depending upon the number of trips a week performed, but no mention was made of the speed the mail was to be carried. On the basis of six trips per week he was to receive \$28,000. This left a profit of \$24,000 to be divided in Washington. Jennings did not see the sense in rushing an empty mail pouch through on time so deductions ate up most of his \$28,000. The last quarter he carried the mail the deductions amounted to \$28,789, which left him indebted to Dorsey for \$789. Dorsey refused to give him any financial assistance and he was ruined financially. He came to Washington in 1881 in an endeavor to find some recourse against Dorsey, and he became an available witness against the combination.³⁷

The other Dorsey routes were just as bad. The fraud and deception employed on the Mineral Park-Pioche route, and the Canyon City-Camp MacDermitt route are merely examples of the practices on most of the routes. The nineteen routes selected to be submitted to the grand jury had been let originally for the aggregate sum of \$41,135 per annum, and they had been increased to \$448,670, while the receipts of the post offices along these routes which were not already being served by railroads aggregated \$11,622 per annum.³⁸ Over half of the increase in compensation was due to the expedition of the routes, and in many instances the expedition was patently fraudulent. The reports of the postmasters and the time bills sent through at frequent intervals showed conclusively that many of the subcontractors, for their own convenience, had always carried the mail through at as great a speed as they did after the order expediting the service became effective.³⁹ It was also discovered

that many new post offices authorized by the department after petitions had been presented by Dorsey agents could not be found, although pro rata increases for carrying the mail to them had been received by Dorsey.

In preparing the case against Dorsey the government was guided by the experience of New York state in prosecuting Tweed. Tweed was indicted and tried several times on charges of fraud covering single transactions, but the state was not able to secure his conviction. Finally an indictment was sought and secured charging many acts of fraud and he was convicted. A reasonable doubt of his guilt existed when an isolated instance was presented to the jury, but when the jury was given a broader view of his practices the doubt was removed. For that reason the case against Dorsey was purposely complicated.⁴⁰ Unfortunately such a complicated case had several inherent weaknesses. The possibility of delays and procrastination in the prosecution of the case was enhanced by its complexity, and that would mitigate in favor of the defendants. Then too, it would be necessary to summon witnesses from most of the routes cited in the indictment, and not all of the testimony would prove to be valuable to the prosecution. The credibility of some of the witnesses would be impeached, and others would have lapses of memory which would appreciably weaken the case. The defendants in this case had too much influence and power to hope that the case could be concluded without some slips of that kind.

Another strong case was developed against Senator William Pitt Kellogg, Brady, and J. B. Price. J. B. Price was the contractor on the routes from Monroe to Shreveport, and from San Antonio to

to Corpus Christi. The San Antonio-Corpus Christi route had been let to Price in 1878 for \$2,733 per annum. The route was 148 miles in length, and two trips a week were to be performed on a forty-eight hour schedule. Price never performed any of the service himself, but he sublet the route immediately to J. J. Ellis for \$8,199 per annum. Thus it appeared that Price would suffer a loss of \$5,466 a year. However, on August 26, before the route had been in operation two months, the service was increased to six trips a week and the compensation was raised to \$8,199. There was still no profit in the route for Price at that figure, but he was no longer losing anything. It was not until July 15, 1879, when the running time was reduced to twenty-nine and a half hours and the pay increased to \$28,403, that the route became profitable. Walsh, who was a Washington banker as well as a mail contractor, testified that about July 16 or 17 Senator William Pitt Kellogg gave him five drafts for \$3,000 each on the sixth auditor of the United States against the compensation on the San Antonio-Corpus Christi route, and also a note for \$5,000 drawn by Hugh White and endorsed by Monroe Salisbury - - in all \$20,000. The drafts were to be collected by Walsh, one at the end of each of the five subsequent quarters, and the note was to be collected at maturity. The proceeds were to be divided by Walsh, half going to Kellogg and half to Brady. Later, in December, 1882, Price, on being accepted as a government witness corroborated Walsh's testimony, definitely admitting that the payments were authorized in order to secure the expedition of the service on that route. Unfortunately Walsh was known to have quarreled with both Kellogg and Brady so his testi-

mony was not given much weight until it was corroborated.⁴¹

The route from Monroe to Shreveport showed very conclusively the presence of graft. The route had been let to Price in 1878 for \$9,380. The length of the route was given as 122½ miles, but the true length was somewhat less. Seven trips a week were to be performed on a schedule of thirty-six hours. On July 8, 1879 the time was expedited to twenty-nine hours and the compensation was increased to \$22,367. Thus the mail was expedited less than a mile an hour for the exorbitant sum of \$12,987. While no evidence to show that money had been paid to secure the expedition was ever obtained, the absurdity of the affidavit upon which the increased compensation was granted constituted it as prima facia evidence of fraud. At that day when everyone was familiar with horse travel, it must have seemed unreasonable that over twice as many men and horses were required to transport the mail at four miles an hour than were required to transport it at three and a fifth miles an hour.⁴²

Another relatively simple and well evidenced case was developed from the transactions connected with the Santa Fe-Prescott route. George McDonough was the nominal contractor on that route but Fisher, Kirk, and Hinds were partners in the venture. In order to stock the route, and to procure money with which to secure an increase, they borrowed \$36,000 from Walsh. \$8,000 of this sum was paid to S.P. Brown, a friend and an associate of Brady's, by a draft drawn upon Walsh, and another \$8,000 had to be assured by a draft drawn upon the sixth auditor against the future pay of the route. By an increase thus procured, the compensation was

raised from \$13,313 to \$73,000.⁴³

The route did not prove to be such a bonanza as the partners expected, since they found it impossible to pay Walsh. None of the partners were experienced in the work, and the interest charges and the necessity of amortizing the debt over a four year period, together with having to meet the Brady draft cooled McDonough's enthusiasm for the project. McDonough tentatively arranged for the transfer of the route to Parker and Cluggage in consideration of their assuming the obligations against the route. Hinds opposed the transfer and threatened to reveal the fraudulent practices of the department if the deal was consummated. As a result of Hinds' threats the deal fell through. McDonough then assigned a subcontract to Walsh. Hinds immediately carried out his threat with the result that the attention of the newspapers, and ultimately the attention of Congress, was directed toward this route. This occurred in the fall of 1878. In March 1879 Brady declared McDonough to be a failing contractor, and concurrently he reduced the service to its original status. McDonough's sureties, Kirk and Gleason, were then offered the contract ostensibly that they might protect themselves. However it was admitted that they could not perform the service for \$13,313, so they refused the contract, since they felt certain that Brady would not restore the service if they assumed it because Kirk had sided with Hinds against McDonough. Walsh was then awarded the contract at \$18,500, a figure just below the second lowest bid at the last letting. Hinds kept up the quarrel with Walsh, and this quarrel deterred Brady from restoring the service. After several months of

operation, during which time Walsh had circulated petitions asking for an increase in service, Brady finally informed Walsh, through Elkins, that he need not expect an increase until Hinds was placated. As a result Walsh sent for Hinds, and they signed an agreement whereby Walsh agreed to pay Mrs. Hinds \$20,000 in the event that the compensation on the route was raised to \$100,000 or over.⁴⁴ Shortly after this agreement was reached the service on the route was increased and the schedule expedited so that Walsh was to receive \$135,000 per annum.⁴⁵

During 1879 Walsh made several payments on his account with Hinds, but in 1880 Walsh quarreled with Brady and the route ceased to be profitable. The quarrel, according to Walsh's testimony, originated through a call from Andrews, a clerk in the sixth auditor's office, for a subscription of \$8,000 for what he termed "congressional business". Walsh refused to pay the sum and a short time later he was summoned to Brady's office. Brady there explained to him that the \$8,000 was to be contributed to a congressional fund to secure the passage of the deficiency appropriation then before Congress. In addition to the \$8,000, \$36,000 was declared to be due for raising the compensation on the route from \$73,000 to \$135,000, and that in addition he would be assessed fifty per cent of all fines and deductions which were remitted. Walsh refused to pay anything, and he remonstrated with Brady over what he held to be unfair and unjustified fines and deductions which had been levied against him. Walsh asserted that his only aim was to recover the \$36,000 he had advanced to McDonough, and that he would gladly surrender the route to anyone who would assume

this obligation and reimburse him for the additional sums spent in stocking the route.

A few days later, Lilley arranged with Walsh to meet George F. Brott, who was considering the purchase of the route. Brott offered Walsh \$25,000 for an assignment of the contract, but Walsh refused to sell unless he would receive \$50,000. Brady advised Brott against the purchase of the route at that price, saying that if he did not take that price which was offered "he will wind up by taking nothing".⁴⁶ On this point the testimony of Walsh is corroborated by the affidavit of Brott. So there can be no doubt concerning Walsh's willingness to dispose of the route at a fair price, nor of Brady's attitude toward the transaction. Shortly after the offer to Brott was made, Brady ordered a one trip a week reduction in the service on the route, which automatically carried with it a pro rata reduction in the compensation amounting to approximately \$20,000 per annum. A few days later the terminus of the route was moved from Santa Fe to Albuquerque, cutting off, according to the order, eighty miles and reducing the pay pro rata. The animus in this action is clearly indicated by the fact that the postal register showed the distance between Santa Fe and Albuquerque to be thirty-five miles.⁴⁷ In addition, many fines and deductions were ordered which were not justified by the reports of the postmasters. Finally, in February 1881 Walsh was declared to be a failing contractor.

After James became postmaster general and Elmer became the second assistant, the papers and reports on the route were examined at Walsh's request. As a result he was re-instated and awarded

\$15,000 in back pay, and \$9,500 in fines and deductions was remitted. However, the same order discontinued the service on the route since it was deemed unnecessary by the inspectors, and Walsh agreed to waive the customary thirty days pay that is usually granted on the cancellation of a contract. Later Walsh attempted to collect the thirty days pay on the grounds that he understood that he was merely waiving his claim to additional back compensation for which he had put in a claim.⁴⁸ Walsh and Hinds were both eager to testify against Brady. Walsh signed an affidavit which implicated Brady, Andrews, Brown, and Lilley.⁴⁹ The vulnerable point in the testimony of these men was that they were testifying out of revenge.

Another valuable witness who agreed to testify was George F. Brett. He had secured two steamboat contracts through the payment of money to William Lilley, the father of the deputy sixth auditor, after ordinary methods had failed to secure him a contract. He was also interested in the star route from Santa Fe to Messila, New Mexico, and he explained how that had been expedited through payments to Lilley. He signed and swore to an affidavit to that effect, and the truth of his statement was corroborated by letters from Lilley which he turned over to Woodward.⁵⁰ His testimony implicated only the two Lilleys.

In the course of the investigation it was discovered that fraudulent bonds were frequently filed with bids and contracts in the department. A number of so called "straw bonds" cases were also prepared for trial. No culpability for any of the straw bonds rested on any government official, but the cases have been

popularly included in the star route frauds. Usually the investigation of the bonds was conducted by the district attorney in the district where the offense occurred, so the facts concerning the cases or the outcome of most of them is not available. However, in Philadelphia the post office inspectors discovered a ring of star route contractors who had secured numerous bids and contracts with straw bonds. One of the members of this ring owned a few acres of land in Virginia. He qualified as a surety for one of the other members of the ring on the strength of owning this land. He then transferred this land to another member for the nominal price of \$76,000, and the new owner qualified as a surety on another contract. This procedure was repeated several times until these few acres worth a few hundred dollars was used as security on contracts totalling several hundred thousand dollars. The ring did not operate any routes but sold their contracts as soon as possible. In a few instances large increases in the compensation were effected before a transfer could be made. Woodward persuaded McDevitt, one of the members of the ring, to testify for the government against Brady, since he had made payments to Brady on several occasions.⁵¹

During the summer of 1881 as the investigation progressed, certain newspapers became more vitriolic in their attacks on the President and those officers of his administration in immediate charge of the star route cases. The National Republican of Washington and the Commercial Advertiser of New York appear to have been the most abusive. These papers tried to make it appear that the mail contractors were being persecuted for political reasons, and after

the confession and subsequent repudiation by Rerdell, they charged the administration with attempting to suborn witnesses.⁵² Dorsey and Ingersoll, his attorney, had the effrontery to call on Garfield and demand the dismissal of MacVeagh on those grounds.⁵³ Garfield seems not to have considered the charges, but he did suffer from the attacks of the newspapers. On June 27 he met James and showed him a particularly bitter attack in the National Republican relative to the star route investigation. Garfield then requested that James and MacVeagh come to the White House that evening and consult with him about the cases.⁵⁴

MacVeagh was out of the city so the consultation had to be postponed. On Wednesday, two days later, Garfield became impatient at the continued absence of MacVeagh so he asked James to call that evening and to bring Cook if MacVeagh had not returned. That evening, June 29, he expressed his dissatisfaction with the progress of the cases, and he ordered that some indictments be secured and tried at an early date.⁵⁵

On July 2 Garfield was shot and government business, except for routine matters, was practically paralyzed. In August Garfield was moved to Elberon, on the Jersey coast, in the hope that the sea air might be beneficial to him, and MacVeagh accompanied him there. On the day that MacVeagh was leaving he met Corkhill on the steps of the Department of Justice building. Corkhill informed him that the grand jury was being convened on September 12, and he asked MacVeagh if he would have any star route cases to submit. MacVeagh replied that he would have to consult Assistant District Attorney Cook about that.

Throughout August and the early part of September Cook, Gibson, and Woodward were at work on cases, one of which they expected to submit to the September grand jury. About September 10 Cook took the briefs of several cases to Elberon for a final consultation with MacVeagh. At that conference it was decided to submit the Santa Fe-Prescott case to the grand jury at once, and to follow it with the other cases in October. Cook returned to Washington on the morning of September 14 and was greeted with the news that the grand jury had adjourned. The grand jury had been in session only two days and had been adjourned without any warning being given to the government attorneys who were working on the star route cases. Corkhill later claimed that MacVeagh had told him that if there were any star route cases to be submitted he would be notified, but the government attorneys unanimously expressed the opinion that the precipitous adjournment of the grand jury was ordered because of Corkhill's sympathy for the mail contractors.⁵⁶ Both MacVeagh and James, for some reason which is not clear today, distrusted Corkhill, and they had persuaded Garfield of the need for his removal. At the time of the fatal shooting Garfield had tendered the position to another attorney, and was waiting a favorable reply before asking for Corkhill's resignation.⁵⁷

After it became apparent that Garfield would not recover, MacVeagh determined to appoint someone to take charge of the prosecution who was in political harmony with Arthur. Benjamin Harris Brewster of Philadelphia became his choice. As James was unacquainted with Brewster, MacVeagh offered to appoint another attorney whom James would recommend. As a result George Bliss, ex-United States Dis-

trict Attorney of New York, was appointed to assist Brewster. Both the appointments were made a few days before Garfield's death.⁵⁸

After the appointment of Bliss and Brewster the connection of Gibson with the cases, for all practical purposes, ceased. Bliss and Brewster distrusted both Gibson and Cook, but Cook was allowed to remain active in the cases for some time. It was on Cook's recommendation that the government counsel decided to proceed with a case on information. At first Bliss opposed the suggestion, but upon further reflection he decided that it was feasible and practical. However, he selected the case against Lilley, based upon Brott's testimony, as the case to be tried instead of the case arising out of the testimony concerning the Prescott-Santa Fe route which Cook wanted to try.⁵⁹ Cook was allowed to conduct the hearing on the information for the prosecution. During the course of the hearing Woodward was the only witness put on the stand, so in reality Cook was trying to establish the basic facts in the case by hearsay evidence. Of course such evidence was not admissible and the case was literally laughed out of court.⁶⁰

When the grand jury re-convened in November Cook was again allowed to direct the presentation of the evidence against Lilley to the grand jury. Although Brott was in the city at that time he was not called to testify, but a subpoena was issued for Mrs. Brott. The testimony she gave incriminated her husband, and indictments were returned against both Brott and Lilley. To Brott it appeared that he had been deliberately double crossed by the government counsel, so he refused to cooperate any further with them. The result was that there was no witness available to the government who could

convict Lilley on this indictment.⁶¹

After Arthur became president several changes were made in the staff of attorneys. Brewster became the attorney general upon the resignation of MacVeagh, and Richard T. Merrick, a Democratic attorney of Washington was retained to take Brewster's place. In addition, William W. Kerr, a Democratic member of the Philadelphia bar, was retained to draw up the indictments. Thus Bliss, Merrick, and Kerr represented the government in the prosecution of the frauds. Cook and Gibson were nominally associated with the counsel until March 1882 but they were no longer active.

If the progress of the investigation could be measured by the number of indictments which were secured a fair measure of success could be accorded to it. The first indictment was against Brott and Lilley to which previous reference has been made. In March 1882 several indictments were returned against the Dorsey combination, including Brady and Turner. These indictments charged conspiracy to defraud on nineteen specified routes.⁶² In June of that same year indictments were returned against Price and Brady charging conspiracy to defraud in connection with the route from San Antonio to Corpus Christi, and from Monroe to Shreveport. Although the evidence implicated Kellogg he was not indicted at that time, probably because the grand jury was cautioned by Bliss that "It is a serious matter to indict a member of the United States Senate."⁶³ However, several months later, after Price had been accepted as a government witness, Kellogg was indicted. Brady and A. H. Brown were indicted for conspiracy in connection with the letting of the route from Monument to River Bend, Colorado.

Many other indictments against lesser offenders were likewise obtained, the total number of indictments being somewhat over forty.⁶⁴ Most of them charged conspiracy to defraud, but some charged bribery, the receiving of bribes, or perjury. Most of the perjury indictments were secured against contractors who had filed fraudulent bonds, but three were returned against contractors who had made false affidavits. Those three were intended to serve as test cases so that a judicial interpretation of the law could be obtained.⁶⁵ The government failed only in securing indictments against the Parker and Salisbury combinations, and against Luke Voorhees, the contractor on the Fargo Pembina route.⁶⁶

Only three of the indictments secured as a result of the investigation were ever tried. The "straw bond" ring which had been uncovered in Philadelphia was tried and all the defendants were convicted and sentenced. Even MacDevitt, who had been accepted as a government witness by Woodward, with the acquiescence of MacVeagh and James, was forced to serve a year in the federal prison, Brewster having declined to interfere with the sentence.⁶⁷

The next case to be tried was the one against the Dorsey combination. The indictments in this case charged S. W. Dorsey, J. W. Dorsey, Brady, Peck, Vaile, Miner, Rerdell, and Turner with conspiracy to defraud the government on nineteen counts. This case was the most important of all since the conviction of Dorsey and Brady would make it much easier to secure other convictions. Moreover, Dorsey and Brady symbolized either graft or persecution to the American public, so their conviction was necessary to make the investigation a success.

The probabilities of the successful prosecution of the case were lessened by legal technicalities and delays from the very outset. The first indictment, which had been secured in March 1882, was faulty in that it named Rerdell by his initials only and cited Vaile by the name of Henry instead of Harvey which was his Christian name.⁶⁸ A new indictment was secured in May, and three weeks of argument over the legality of the instrument ensued. Finally Judge Wylie preemptorily ended the argument and set the date of the trial for June 1.⁶⁹ After the trial was begun the arguments over the admissibility of the evidence were so frequent and so protracted that the trial consumed the whole summer.⁷⁰

The case as it was presented in court was strongly indicative of the guilt of the defendants, but to the legal mind it may have appeared a little weak on evidence to establish conspiracy to defraud. Twice during the trial Judge Wylie called for evidence with which to substantiate the conspiracy charge.⁷¹ Finally, as a last resort, Walsh was summoned to the stand. He could not testify to any of the overt acts cited in the indictment, but he could testify that he had been assessed by Brady and that Brady had assured him that all contractors paid for any increased which were ordered. This testimony seems to have fulfilled all the legal requirements for in the charge to the jury the Judge practically ordered that a verdict of guilty be returned. However, on September 11, the jury returned a verdict which found Rerdell and Miner guilty, but they failed to agree on the other defendants.⁷²

The verdict was a gross miscarriage of justice. Rerdell was secretary to Dorsey, and all the profits he derived from the Dorsey routes, with the exception of one or two small routes upon which he became the contractor, was through the salary which Dorsey paid him. Miner was a member of the ring but his interest in it was not large, nor did he have much voice in the policies or management of its interests. The personnel of the ring and the interest which each held was admitted, so it was known to the jury that S. W. Dorsey and Vaile held the controlling interest. Miner and Rerdell, therefore, could not conceivably have been guilty if the others were innocent. The verdict was so absurd that Merrick requested that it be set aside and the date for a new trial set.⁷³

The second trial began December 7, and it continued till June 4, 1883. At this trial the government presented a much stronger case. Following his conviction at the first trial Rerdell again agreed to become a witness. The sixty-six page confession which he signed preceding the second trial was a much more elaborate and incriminating document than the one he had signed previously. The force of his testimony was weakened during the trial, however, when the attorneys were suddenly confronted with a second repudiation, the existence of which they had never suspected until it was presented in court. Rerdell subsequently repudiated this repudiation, but the credibility of his testimony was somewhat impeached.⁷⁴ The force of his testimony, though, so well authenticated by letters and documents, and corroborated in almost every detail by thirty-three witnesses, was so strong that it could not be ignored or

destroyed altogether. In addition the case of the prosecution was strengthened by the testimony of Price, which was particularly damning to Brady. In all, the evidence presented at the second trial seemed even more conclusive than at the first. However, on June 4, 1883, after over six months of listening to evidence, the jury brought in a verdict of not guilty for each of the defendants.⁷⁵

The acceptance of Price as a witness resulted in the indictment of Kellogg on a charge of receiving pay for practicing before a department while he was an officer of the United States.⁷⁶ Walsh had testified before two grand juries in 1882 but neither jury had indicted Kellogg. Now that Price was a government witness who could and would substantiate Walsh's testimony in regard to the \$20,000 paid Kellogg for securing the increase on the San Antonio-Corpus Christi route, there was no alternative but to re-open the case.

Unfortunately the statute of limitations terminated on this charge in July 1882 if the date upon which the drafts were handed to Kellogg was held to be the date upon which Kellogg was paid. However, since the drafts were not negotiable instruments, and since the last draft was not paid until September 30, 1880, it was hoped, and confidently expected that the court would sustain the indictment.⁷⁷ The trial of the case was begun in October, the Judge overruling a motion to quash the indictment. Later in the trial he practically reversed himself by ruling that the payment must be considered as having been made in July, and thus Kellogg escaped punishment.⁷⁸

Chapter IV

THE FAILURE OF THE INVESTIGATION

Many factors enter into the failure to secure conviction in the prosecution of the star route frauds. It is certain that many who escaped punishment were guilty, but the reasons why and how they escaped have never been made clear. In 1884 a special committee was appointed by the House to investigate the expenditures of the Department of Justice and the failure of the star route cases. It was successful in bringing some facts to light. In its report the committee acknowledged, however, that the investigation was not a thorough one. The thirty-eight witnesses who testified before it suggested numerous reasons for the failure of the prosecution, but the committee did not go very deeply into any of them. The evidence supporting many of the points was strong, and a more thorough investigation should have been made. The report of the majority suggested that had the committee more time, they would have made an investigation into the charges that the Dorsey jury was bribed. As it stood their report effectively white-washed several more pertinent leads which they had uncovered.¹ The minority report which ascribed the failure to the "magnitude of interests and to defects in the criminal statutes," came much nearer the truth if the emphasis is placed on the former cause.²

The most important factor in the failure of the case was the pervasiveness of the fraud. Many men in high places were involved. S. W. Dorsey was an ex-Senator from Arkansas and secretary of the National Republican Committee. He seemed to be on intimate terms

with most of the leading Republicans in the country, and Garfield had consulted him concerning the formation of his cabinet.³ Kellogg was a Republican Senator from Louisiana at the time of his indictment, and his party had a majority of but one in the Senate. Brady was also prominent in party councils. It is probable that a number of other prominent men were involved although they never publicly been implicated. We know that S. B. Elkins, a Congressional Delegate from New Mexico, seemed unduly interested in star route affairs. Walsh testified that Elkins called on him in 1879 and suggested that it would be wise to placate Hinds if he wanted his route expedited.⁴ Dorsey also stated that it was Elkins who warned him of Rerdell's first confession.⁵ Another Senator, whose name has been deleted from the published confession, called Rerdell in an effort to induce him to repudiate his affidavit and later, after Dorsey had arrived from New York, he called on Rerdell in company with Dorsey and succeeded in persuading Rerdell to do so.⁶ Merrick volunteered the information to the committee that when he first became associated with the government counsel he was shown a list of congressmen and senators who were supposed to have profited by the star route legislation.⁷ The fact that neither he, nor anyone else, were questioned about this list suggests the fact that this list was well known.

The testimony of others point to the fact that the contractors were assessed and a fund raised to secure liberal appropriations for star route service. While the evidence on this point was by no means conclusive, it was known that one such fund was subscribed in 1879 to secure the passage of the deficiency appropriation bill.

Walsh testified that he had been assessed \$8,000 by Brady for such a fund in that year.⁸ Price in his sworn statement testified that he had been assessed for the fund, and that he had paid his assessment. Woodward testified that there was such a fund, but that he only knew about it in a general way.⁹

The testimony of Walsh and Price might conceivably be impeached. Walsh's motives in testifying may not have been altogether unselfish. Price was a close friend of Walsh, and he was testifying to prevent the indictment against himself from being tried. However, the assertion of Woodward's cannot be lightly dismissed. He was an experienced investigator, and he understood the significance of his assertion. All his associates spoke highly of his work, and he was the only one who emerged from the investigation without being charged with a share in the responsibility for the failure of the cases.

The political preferment shown at least two persons involved in the frauds further indicates that they had the support or acquiescence of a powerful political group. Ray P. Eaton, who had been the assistant railway mail superintendent in immediate charge of all star routes, had been removed by James for "negligence if not worse".¹⁰ Shortly after his removal he was appointed collector of customs in Maine. Such an important political appointment could not have been made in that state without the endorsement of James G. Blaine. A similar case may be found in the appointment of Charles H. Dickson to a position in the Department of Interior. Previous to his appointment he had been indicted for perjury which he committed when he became the surety on several hundred thousand

dollars worth of mail contracts. This indictment, which was well evidenced, was never tried.¹¹

Another indication that the frauds had the support of a powerful group is found in the fact that most of the Washington papers, and many powerful papers in other cities, opposed the investigation. At times they ridiculed it, but more often they roundly abused the officers who were conducting it. Among the charges made by those papers against the prosecution may be mentioned political persecution, suborning witnesses, and plotting to steal private papers and records. The National Republican, in which Brady owned considerable stock, and which was supposed to be the administration organ, was one of the most abusive of the Washington papers. The position of this paper was so pronounced before the first Dorsey trial, that Bliss bought an interest in it in an endeavor to change its policy.¹² This attitude of the local press succeeded in creating an adverse public opinion in Washington which was a major factor in the failure of the prosecution.¹³

Still another evidence of the "magnitude of interests" was the number of government officers and employees who attempted to obstruct the investigation. The work of Corkhill, the United States district attorney in Washington, has already been cited. He was slated for removal at the time Garfield was shot, but Arthur determined to make no change in the office until the prosecution of Giteau was concluded, so he was allowed to complete his term.¹⁴ The United States marshal for the District, the postmaster and assistant postmaster of Washington, the foreman of the Congressional Record, and several lesser employees of the various departments

were removed from office because they expressed themselves publicly, in rash and abusive terms, as being in sympathy with the defendants.¹⁵ Kerr testified that the counsel for the prosecution could not trust the marshals of the various states to serve subpoenas on witnesses, and they were forced to employ special agents for that work.¹⁶ It does not seem reasonable that Dorsey, Brady, and Kellogg could alone have commanded the support of such a large section of the press, to say nothing of the known sympathy of so many government officials.

A second factor in the failure of the investigation was the generally accepted theory that the administration did not want to convict.¹⁷ The Congressional committee sifted this charge pretty thoroughly but they failed to discover that there was any ground for the rumor. As far as Garfield, James, MacVeagh and Brewster were concerned no act or utterance of theirs gave any basis for such a charge. MacVeagh testified in regard to Garfield as follows:

"Of course it would not be telling the whole truth to be silent upon the fact that those prosecutions were a source of very great anxiety, and I might also say, at certain stages of them, of distress to President Garfield. It would have been very strange if it had been otherwise; and I have no doubt at times gentlemen may have felt that there were other methods of correcting these wrongs than the methods General James and I were pursuing."¹⁸

His reference here was to an incident which occurred early in the investigation when Dorsey and Ingersoll had called on Garfield to persuade him to order a non-judicial investigation for Dorsey. Garfield referred the matter to James who declined to make an exception in the Dorsey case, but there is some evidence that considerations of friendship, and political obligations, may have induced Garfield to waver.¹⁹ However, he accepted the decision of

James, and as far as the public was concerned, he never gave any indication of wanting to spare anyone.

Brewster, although he was the attorney general at the time of the trials, took an active part in the first Dorsey trial, because he thought that his presence in the courtroom might convince the public of the sincerity of the prosecution. He made the final plea to the jury, and in that plea he condemned Dorsey in no uncertain terms.²⁰ Brewster was also responsible for the indictment of Kellogg, which, of course, hinged upon the acceptance of Price as a government witness. Bliss opposed the testimony of Price, but Merrick favored it, and it was referred to Brewster.²¹

But there were several considerations that seemed to support the theory that the administration did not wish to convict Dorsey and Kellogg. Dorsey had co-operated in the campaign to elect Garfield. He always claimed that without his help Garfield could not have been elected.²² This was probably an exaggerated claim, but at the conclusion of the campaign a dinner was tendered Dorsey in New York by prominent Republicans, and at this dinner Arthur made a speech eulogizing Dorsey.²³ When Dorsey became involved in the investigation the papers gave wide publicity to the dinner and to Arthur's speech. It was made to appear that neither Garfield or Arthur could seriously wish for the conviction of Dorsey, or believe that he was guilty. In a city as politically minded as Washington this public opinion placed the prosecution at a considerable disadvantage in securing indictments and convictions.

The blunders of Bliss, if we accept a charitable view of them, greatly aggravated the situation. There was considerable testi-

mony purporting to show that Bliss did not desire to convict either Dorsey or Kellogg. Regarding Bliss' attitude toward Dorsey, Ker testified that Merrick had informed him during the progress of the first trial that Bliss had requested that Dorsey be let off. "He says we can convict the rest, but he wants to let Dorsey go", Merrick was quoted as saying.²⁴ Merrick on the stand censured Ker for revealing professional confidences, but, while he denied any such conversation as Ker attributed to him, he said: "While I do not believe that Bliss would be delinquent in his duty, yet I believed that in his heart he did desire that Dorsey might not be convicted."²⁵

The closing arguments for the prosecution in the first Dorsey trial were made by Ker, Bliss, Merrick, and Brewster in the order named. Bliss in his summary failed to mention Dorsey by name.²⁶ At the conclusion of his argument he left for New York, and upon his arrival there, the following dispatch appeared, quoting Bliss:

"Mr. Ingersoll, I think will find out before the trials are over that the cases contained a good deal of meat for the government. The one against Mr. Dorsey, defended by the brilliant Colonel, is admitted to be the weakest of the lot, but in all others a verdict for the prosecution is confidently looked for, and even that may be decided in the same way."²⁷

The defendants' counsel, of course adverted to the fact that Bliss had failed to stress Dorsey's guilt in his closing argument as evidence that the government did not wish to convict him.

Wilson is quoted from the court record as saying:

"My brother Merrick has a great deal to say about newspapers.... Well the newspapers as it happened saw the very wide difference that existed between Mr. Merrick and Mr. Bliss upon this subject, and one of them went so far as to say that they were going to watch and see whether the learned Attorney-General was going to side with Bliss in saying that there was not much of a sprinkle so far as

Dorsey was concerned, or whether he was going to side with Merrick, and say that it was a flood so far as Dorsey was concerned. And that brought out this (taking up a newspaper clipping) - -

At that point he was interrupted by an objection from Brewster which was sustained.²⁸ He failed in his attempt to get the Bliss interview before the jury, but it was in the papers and the jurors may have seen it.

Bliss, in testifying before the Congressional committee, claimed that he had been misquoted. He admitted saying that the case against Dorsey had been weakened by the exclusion of testimony in court.²⁹ He added, also, that when he had made the statement he did not know he was being interviewed. It is quite probable that the blunder may have been unintentional on his part, but intentional or unintentional, it placed the prosecution at a considerable disadvantage.

Bliss fostered the impression that the government did not wish to convict Dorsey in still another way. He had attended the Dorsey dinner in New York. MacSweeney, another member of the dependants' counsel, alluded to the dinner in his plea to show the good character and standing of Dorsey before the investigation was begun. He then showed the jury a souvenir menu of the dinner with the name George Bliss written conspicuously on it. The objection of the prosecution to this exhibit was sustained since it had not been offered in evidence before, but the idea was conveyed to the jury regardless of the record.³⁰

Bliss later admitted that the menu was his. He said that McSweeney had told him that he intended to refer to the Dorsey dinner and to his presence at it. Bliss had brought the menu into

court intending to explain the incident in his closing remarks, but in the rush of closing he forgot to do so. When he left the court room he claimed to have left the menu with other papers on his table, but he did not explain how it came into McSweeney's possession.³¹

Both Brewster and Merrick in their closing remarks neglected the other defendants in order to stress Dorsey's relationship to the conspiracy. Brewster cited the fact that Dorsey's name appeared in the evidence ninety-six times in connection with the nineteen routes. He argued that Dorsey more than anyone else was the head and front of the whole conspiracy, but his argument failed to secure a verdict from the jury.³² It is perhaps too much to say that the failure of the jury to convict was due to the blunders of Bliss, but in a close case such as this his conduct might materially affect the outcome.

The record of the part Bliss played in the indictment of Kellogg is even less creditable than his record against Dorsey. The Brady, Price, Kellogg case was first submitted to the grand jury in 1882. Ker testified that he had prepared an indictment for the three parties, but the jury indicted only Price and Brady at that time, although Walsh testified before the jury against Kellogg. During the summer of that year, when the government was in need of a witness who could testify to the fraudulent practices of Brady, Woodward suggested that Walsh be put on the stand. Merrick later testified that up to that time no person had told him about the Walsh testimony or affidavit, and he was greatly surprised that such valuable testimony had not been used. Merrick immediately got

in touch with Walsh, but he found that Walsh did not feel disposed to testify because he claimed that Bliss had cast reflections on his character before the grand jury and in newspaper interviews. However, Merrick prevailed on him to testify on the condition that the grand jury should be re-convened and the Kellogg evidence again submitted to them. Bliss readily assented to this agreement, and he requested the judge to re-convene the grand jury.³³

Accordingly, the grand jury met in the middle of July 1882. It was imperative that the indictment should be returned immediately since by the statute of limitations no action could be taken after the following Monday. When Bliss examined Walsh before the grand Jury one of the jurors asked Walsh several pointed questions. He appealed to Bliss as to whether or not he should answer one of the questions. Bliss replied: "I think you should It is a serious matter to indict a Senator of the United States."³⁴ At the conclusion of Walsh's testimony Bliss announced that he understood that Price would be in the city on the following day, and that he would appear for the government. Just what he did say to the jury cannot now be known. He claimed that he had said that the government would like to have Price for a witness, but the jurors testifying before the Congressional committee two years later, were positive that he had said that Price would appear. For that reason they adjourned for another day instead of deciding the case immediately, and adjourning sine die.³⁵ Hutchinson, the foreman of the jury, testified that he was under the impression, that Bliss believed that Price's testimony would be necessary if the jury was to indict Kellogg. However, he could not be sure of just what

Bliss had said beyond the fact that Price would be there.³⁶ His testimony was corroborated by five members of the jury.

On the following day Price did not appear, and, as no explanation was given, they thereupon adjourned without returning an indictment. At that time no one of the investigators had been in touch with Price, although some effort had been made to locate him. In December of the same year Price requested to be accepted as a government witness, but Bliss opposed it. The question was then referred to Brewster who decided that Woodward should be directed to take Price's statement, and if the statement was satisfactory, he should be accepted as a witness.³⁷ A few days later Woodward notified the counsel that Price had been accepted. Bliss declared himself offended that Price had been accepted against his advice, and he gave notice that he would immediately withdraw from the cases.³⁸ He did remain away from the courtroom one day, but the following day Merrick prevailed on him to return.

No satisfactory explanation has been offered to show why Bliss desired to have Price for a witness in July, but opposed it in December. In December Price's testimony would have been a valuable acquisition to the second Dorsey trial, and it would still be valuable against Kellogg if a reasonable interpretation of the law would be sustained. It seems fair to conclude that Bliss did not want to convict either Dorsey or Kellogg. He only used Price as a means of conveying to the grand jury that Walsh's testimony, unless supported by that of Price, was not adequate.

Bliss was also responsible for the selection of the Dorsey case as the one to be tried first.³⁹ This was an important matter since

a failure in this case would mitigate against the success of all the other cases. Other cases were at least as well supported, and certainly less complicated than the Dorsey case. For instance, no less than five affidavits were on file at the beginning of the Dorsey case which would have constituted direct evidence against Brady or Lilley on charges of receiving bribes. A case against either of these two men could have been disposed of in a short time with very probable success, and it would have created a public opinion which would have made convictions on the Dorsey indictment far easier to obtain.

Bliss defended his choice of cases by pointing out that the Dorsey case was a strong one, which it admittedly was. The records of the department supplied conclusive evidence of fraud which made the case less dependent upon the testimony of such witnesses as were testifying out of revenge or to escape prosecution, for that type of a witness might be bought at any time.⁴⁰ Bliss manifested a distrust, especially of Walsh, but generally speaking, of all such witnesses, which he publicly acknowledged on several occasions.⁴¹ His distrust of such testimony rendered it less creditable to the public. Later Bliss attempted to justify his view by pointing out that it was only after great difficulty that Walsh was finally served with a subpoena to testify during the second Dorsey trial.

The opinion Bliss expressed with respect to his reliance on witnesses did not originate in the caution of a successful district attorney, which Bliss was reputed to be. State witnesses play far too important a part in the successful careers of prosecuting attorneys for any such deep seated prejudices to prevail. No one

of his associates shared this distrust with him. In the case of Walsh all testified that he told a frank, straightforward story, and that he always seemed ready to help.⁴² It is true that he did attempt to avoid being subpoenaed during the second trial, but in the light of the treatment he received after he testified in the first trial he can hardly be censured for that. For that testimony he had been libelously attacked in the editorial columns of the National Republican and in the Critic.⁴³ Such epithets as ghoul and liar were freely applied to him. He felt that it was incumbent upon the government to protect their witnesses from criminal libel, and Merrick agreed with him. Evidence was collected and Corkhill was requested to prosecute the papers that had attacked him, but no action was ever begun.⁴⁴ As a result Walsh refused to cooperate any further in the government cases.

The testimony taken by the committee carries the implied charge that Bliss may have been responsible, in a measure at least, for the Salisburys and Parkers escaping prosecution. The reports of the postal inspectors show their routes to be as fraudulent as any. The department files pertaining to the Salisbury routes had been stripped of many important papers, and both Woodward and Bliss charged that it was Gibson who was responsible for this.⁴⁵ The loss of these papers would have handicapped the prosecution of the case before a petty jury, but there was still ample evidence with which to secure an indictment. Before the case was submitted to the grand jury, Ingersoll, on behalf of the Salisbury and Parker interests, suggested that a board be appointed to arbitrate the government claims against those parties in lieu of criminal prose-

cution. At that time the proposal was refused. Bliss then took the cases before the grand jury. On the evening before the grand jury was to adjourn Bliss claimed that he was informed that it would not return indictments in these cases. In order to salvage what he could from the Salisburys, as the statute of limitations would run out before another grand jury convened, he got in touch with Ingersoll immediately and signed an agreement whereby a board of three, consisting of Lyman, the second assistant postmaster general, Ingersoll, and Bliss, should determine the amount which the Salisburys should refund to the government.⁴⁶ Later a similar agreement was made with the Parkers. The board never met to determine the amount which the government should receive because Brewster was never convinced of the legality of the arbitration. Brewster was no doubt correct in his interpretation of the law, since section 3469 of the revised statutes explicitly states that suits pertaining to matters of the post office department cannot be compromised.⁴⁷ On the other hand, the good faith of the contractors cannot be questioned since they, sometime after the agreement had been signed, offered to put up bond to secure the payment of any amount which the board should determine.⁴⁸

The part that Bliss played in the failure of the trials is hard to appraise. Ker, aside from Cook and Gibson, whose testimonies are not given much weight, was the only member of the counsel who tried to shift much of the responsibility to Bliss. He testified however, that:

"Colonel Bliss is a shrewd, sharp, keen lawyer of great ability and untiring energy, and he handled the papers and the testimony in the case in a manner that was simply wonderful. I do not pretend that

I could have mastered the cases and the papers as he mastered them. I think that his services in that respect were invaluable."⁴⁹

The testimony of both Merrick and Brewster substantiated Ker in that estimate. No one intimated that Bliss' influence had been bought, but the inference appears repeatedly in the testimony of Merrick and Ker that they considered that his judgement was influenced by political considerations, and by friendships. Bliss was a stalwart, and so was Dorsey, and each had been active in party politics, and it is those political considerations which no doubt unconsciously influenced Bliss. In most cases such an attitude would be disastrous, but in this case so many other circumstances conspired to defeat justice that the part Bliss played was negligible.

Colonel Cook must also be charged with a share in the responsibility for the failure of the cases. The apprehensions of Garfield's friends over the appointment of Cook seem to have been amply justified. Rerdell in his first affidavit confessed that Cook, who at that time was still an active member of the government counsel, had had close connections with Dorsey for some time, and that Dorsey showed great elation when it was announced that Cook had been retained by the government.⁵⁰

At the time Cook left the government service he had in his possession papers and testimony relative to sixteen of the nineteen routes upon which the Dorsey indictment was based. On March 7, the day Cook formally retired, Bliss wrote to him asking for the return of the papers. Cook denied having them. Finally, after several more letters had been written, the papers were returned on March 28.⁵¹ They were held by Cook, no doubt, to be copied.

This was indicated several times during the trial when the cross examination of the defense counsel showed that they had had access to the papers of the prosecution.⁵² It was further substantiated by an affidavit from Mrs. Gregg, who testified that she had copied a large number of papers relative to the star routes for Cook, and Cook had cautioned her not to let Woodward or any other member of the counsel know anything about it.⁵³

The indications are that Cook's perfidy extended beyond the Dorsey cases. Woodward testified that the elder Lilley had informed him that Cook and Gibson were selling government papers. He also stated that his son had purchased immunity from Cook for \$1,000, and that on the morning that Cook conducted Lilley's preliminary hearing he was paid \$200 of that amount.⁵⁴ Of course this was just hearsay testimony, and the elder Lilley was no longer living at the time of the Congressional hearings, but it offers the only logical explanation for Cook's conduct of the case against Lilley. Cook was conceded to be the most successful criminal lawyer in Washington, yet he attempted to proceed against Lilley on an information based upon the hearsay testimony of Woodward, and later, when the case was submitted to the grand jury, he neglected to use Brott's testimony, who had been accepted as a government witness for this case. Instead of using his testimony, he had him indicted with Lilley, thus offending Brott so that he later refused to testify at all.

A large contractor, J. D. Colegrove, testified that he had retained C. C. Cole, Cook's partner, for the expressed purpose of preventing an indictment from being returned against himself.⁵⁵

Colgrove's testimony did not implicate Cook, but the testimony of Coleman did so, and he was Colgrove's friend and legal advisor. He testified that it was he who had suggested the retention of Cole, and that Colgrove had commissioned him to approach Cole relative to the matter. Coleman called on Cole, and after he had stated the purpose of his call, Cole retired to Cook's office. He returned in a few minutes and said that it could be arranged. As a result Cole was retained for a fee of \$500, and Colegrove was never indicted.⁵⁶

Gibson, like Cook, also seems to have been faithless. Rerdell in his affidavits said that in 1880 Dorsey had made Gibson a present of 1,500 shares of mining stock valued at \$2,000. When Rerdell expressed surprise that such a gift should be made to the man so largely responsible for the Congressional investigation of 1879, Dorsey acknowledged Gibson's responsibility but added, "He's all right now, and a good friend of mine."⁵⁷

It was not until the fall of 1881 that Gibson's associates began to suspect that he and Cook were selling government papers, but actual proof was never obtained. The case against Gibson, too, remained an entirely circumstantial one. During the early part of the investigation Gibson advocated building up a case against the Salisbury combination. In the fall his attitude seems to have undergone a change, and this was so pronounced that it was noticed by his associates.⁵⁸ Soon after Woodward and Bliss both noticed that the files on the Salisbury routes were greatly diminished, and many papers valuable to the prosecution were missing.⁵⁹ Gibson also seemed unduly interested in preventing the prosecution

of the contractors on the Phoenix-Prescott route. Woodward testified that the elder Lilley told him that Gibson had received a sum of money to prevent the prosecution of the fraud on that route. With his suspicions thus aroused he went to the files for that route and found the following recommendation under Gibson's signature:

"There is no proof of fraud in this case. There are suspicious circumstances such as the advertisement of the route as 140 miles long when in reality it is only 108 miles, and the bid of \$680, and the subsequent raising to \$32,640; but in the first instance, the advertisement of the distance as greater than it really is, the contractor cannot be held responsible for the laches of the Post Office Department; and in the second place, while the enormous increase of price is suspicious, still the department cannot base its action on mere suspicion....."⁶⁰

The Phoenix-Prescott route was as odious as any route. It had been let at a price so low that the contractor could not hope to perform the service without a loss. The route ran through a desert country so the contractor could not intelligently expect that the country would be built up thus requiring an increased service. However, the service was increased to a daily one, and the running time was expedited so that the compensation was increased to \$32,640. \$27,880 of the total compensation was paid for expediting the route from 1.08 miles per hour to 3.25 miles per hour. No horse could walk as slow as the originally stipulated speed, and few horses would have any trouble walking 3.25 miles per hour, yet Gibson reported that there was no proof of fraud on this route.⁶¹

No accurate estimate can be made of the extent of the crooked operations of either Cook or Gibson, or their responsibility for the failure of the investigation. Each of them played an import-

ant part in the preliminary work, especially Gibson. In the early stages they had ample opportunity to betray the government. In the fall of 1881, after Woodward began to suspect them, the combination of the vault in which the files were stored was changed so that neither could have access to any of the papers without first applying to Woodward.⁶² Gibson's opportunity to be of any further aid to the defendants ceased at that time, but it was after that that Cook handled the Lilley case. Brewster was reluctant to dismiss either of them, and it was not until MacVeagh dropped a hint to Gibson that his services were no longer desired that their resignations were submitted.⁶³

Regardless of the lack of enthusiasm displayed by Bliss in attempting to convict Dorsey and Kellogg, and in spite of the perfidy of Gibson and Cook, the Dorsey case as it was twice presented to the juries pointed clearly at the guilt of the defendants. Merrick testified that he had never presented a more convincing case to a jury.⁶⁴ Woodward asserted that the case, in spite of its failure, would stand as a monument to the efficiency and thoroughness of the postal inspectors.⁶⁵ Brewster and Ker were just as positive of the conclusiveness of the testimony.⁶⁶ Bliss, as has been previously mentioned, believed that the exclusion of testimony by the court had weakened the case against Dorsey, but he believed that the evidence against the others demonstrated their guilt. Judge Wylie must also have thought so, for, according to comment in the Nation, which has already been cited, he came as close to directing a verdict of guilty as he could without exceeding his prerogatives. In view of this testi-

mony the jury must be charged with a measure of responsibility for the outcome. The charge was made in the press that the foreman of the first jury had been approached by an agent of the Department of Justice, and an attempt made to bribe him. The facts are not clearly stated in the testimony, but they seemed to be familiar to everyone at that time. Brewster testified that he had caused an investigation to be made of the charges and that he had found them entirely groundless.⁶⁷ Bliss, on the other hand, intimated that a further investigation of the charge might show that there was some truth in it.⁶⁸

No conclusion is justified in view of the meagre testimony regarding the bribery charge. It seems that this particular charge was groundless, but certainly the situation was pregnant with the possibility of bribery. The calibre of both juries was low, and this is especially true of the second one.⁶⁹ The defendants had ample financial resources, and they had many friends, even in the government service, who might have been willing to undertake the work of reaching some member of the jury for them. The forming of a contact with a member of the jury would not have been difficult since neither jury was kept in confinement during the trial.

The failure of the government to push other cases after the Dorsey or Kellogg cases were disposed of, or to begin civil suits for the recovery of money expended under the fraudulent orders of Brady, has been laid to the pending investigation of the House into the expenditures of the Department of Justice.⁷⁰ Brewster testified that the regular staff was already taxed to its capacity, and that he did not feel justified at that time in retaining any

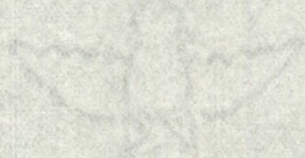
special attorneys.⁷¹ He also stated that he did not believe that civil suits would be practicable so far as re-imbursing the government was concerned since judgements against most of the contractors would be valueless, and the bonds, since they were determined by the amount of the original contract, would produce relatively small amounts.

No investigation has been made into the fees paid by the Department of Justice beyond those paid in the star route cases by the writer, but certainly these were large enough to excite the suspicion that the lawyers also were plundering the government. The fees paid to the attorneys prosecuting the star route cases totalled \$144,846. Of that amount Bliss received \$57,732, Merrick \$37,500, Ker \$31,914, Cook \$7699, Gibson \$5,000 and Brewster \$5,000.⁷² At least one of the attorneys, Bliss, received additional fees for service in other government cases during that same period.

One other factor played a large part in the failure of the investigation. The government was handicapped by legal technicalities. Because of these the cases could not be presented in their simplest form. It was impossible to bring action charging perjury in the making of affidavits because it was thought by all the staff that such an action would not be sustained by the court, the making of a false affidavit never having been defined as perjury.⁷³ Likewise there was no basis in law for bringing an action charging fraud.⁷⁴ As a result the indictments had to charge conspiracy to defraud, or the giving or receiving of bribes. It is a well known fact that cases charging conspiracy to defraud are very difficult

to prove, since not only the fraud but the collusion must be proved. The charge of giving or receiving bribes provedes a relatively simple case, but it was necessary to have evidence of the actual financial transactions involved. To sustain an action of this kind it was usually necessary to grant immunity to one party in order to secure testimony against the other. Had Bliss been more disposed to accept and use government witnesses, actions of this type, had they been tried, might have proved more successful.

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CHINESE NATIONAL BOND

Appendix

Table I

Postal Statistics by Five Year Averages.

| <u>Year</u> | <u>No. of Post- Offices</u> | <u>Length of Post Roads</u> | <u>Receipts</u> | <u>Expen- ditures</u> |
|-------------|---------------------------------|---------------------------------|-----------------|---------------------------|
| 1790 | 75 | 1,875 | 37,935 | 32,140 |
| 1795 | 453 | 13,207 | 160,520 | 117,893 |
| 1800 | 903 | 20,817 | 280,804 | 213,994 |
| 1805 | 1,558 | 31,076 | 421,373 | 377,367 |
| 1810 | 2,300 | 36,406 | 551,684 | 495,969 |
| 1815 | 3,000 | 43,748 | 1,043,065 | 748,121 |
| 1820 | 4,500 | 72,492 | 1,111,927 | 1,160,926 |
| 1825 | 5,677 | 94,052 | 1,306,525 | 1,229,043 |
| 1830 | 8,450 | 115,176 | 1,919,300 | 1,959,109 |
| 1835 | 10,770 | 112,774 | 3,152,376 | 2,585,108 |
| 1840 | 13,468 | 155,739 | 4,543,521 | 4,718,235 |
| 1845 | 14,183 | 143,930 | 4,439,841 | 4,320,731 |
| 1850 | 18,417 | 178,672 | 5,499,984 | 5,212,953 |

The above table was compiled by Postmaster General Hall and included in the annual report of 1851. Cong. Globe, 32 Cong., 1 sess., appendix, 25.

Table II
Postal Statistics 1851 - 1884

| <u>Year</u> | <u>No. of Post- Offices</u> | <u>Receipts</u> | <u>Expenditures</u> |
|-------------|---------------------------------|-----------------|---------------------|
| 1851 | 19,796 | 6,410,604 | 6,278,402 |
| 1852 | 20,901 | 5,184,527 | 7,108,450 |
| 1853 | 22,320 | 5,240,725 | 7,982,757 |
| 1854 | 23,548 | 6,255,586 | 8,577,424 |
| 1855 | 24,410 | 6,642,136 | 9,968,342 |
| 1856 | 25,565 | 6,920,822 | 10,405,286 |
| 1857 | 26,586 | 7,353,952 | 11,508,058 |
| 1858 | 27,977 | 7,486,793 | 12,722,470 |
| 1859 | 28,539 | 7,968,484 | 11,458,084 |
| 1860 | 28,498 | 8,518,067 | 14,874,773 |
| 1861 | 28,586 | 8,349,296 | 13,706,759 |
| 1862 | 28,875 | 8,299,821 | 11,125,364 |
| 1863 | 29,047 | 11,163,790 | 11,314,206 |
| 1864 | 28,878 | 12,438,254 | 12,644,786 |
| 1865 | 20,550 | 14,556,159 | 13,694,728 |
| 1866 | 23,828 | 14,386,986 | 15,352,079 |
| 1867 | 25,163 | 15,237,027 | 19,235,483 |
| 1868 | 26,481 | 16,292,601 | 22,730,593 |
| 1869 | 27,106 | 18,344,511 | 23,698,132 |
| 1870 | 28,492 | 19,772,221 | 23,998,838 |
| 1871 | 30,045 | 20,037,045 | 24,390,104 |
| 1872 | 31,863 | 21,915,426 | 26,658,192 |
| 1873 | 33,244 | 22,996,742 | 29,084,946 |
| 1874 | 34,294 | 26,471,072 | 32,126,415 |
| 1875 | 35,547 | 26,791,361 | 33,611,309 |
| 1876 | 36,383 | 28,644,198 | 33,263,488 |
| 1877 | 37,345 | 27,531,585 | 33,486,322 |
| 1878 | 39,258 | 29,277,517 | 34,165,084 |
| 1879 | 40,855 | 30,041,983 | 33,419,899 |
| 1880 | 42,989 | 33,315,479 | 36,542,804 |
| 1881 | 44,521 | 36,785,398 | 39,593,566 |
| 1882 | 46,231 | 41,876,410 | 40,482,021 |
| 1883 | 47,858 | 45,508,693 | 43,282,944 |

Compiled from the annual reports of the Postmaster General.

Table III

The following table shows the cost of the star service in the states and territories west of the Mississippi on June 30, 1878, on July 1, 1878, and on June 30, 1879.

| State | June 30, 1878 | July 1, 1878 | June 30, 1879 | Increase from July 1, 1878 |
|-------------|------------------|-----------------|------------------|-------------------------------|
| Ark. | \$ 180,158 | \$ 113,324 | \$ 171,431 | \$ 58,107 |
| Cal. | 391,361 | 218,432 | 436,853 | 218,421 |
| Colo. | 186,861 | 113,163 | 291,055 | 177,892 |
| Kans. | 183,144 | 136,471 | 169,069 | 32,598 |
| La. | 107,279 | 72,580 | 101,785 | 29,204 |
| Nebr. | 133,214 | 93,908 | 131,719 | 37,811 |
| Nev. | 179,851 | 104,014 | 182,822 | 78,808 |
| Ore. | 109,693 | 73,960 | 169,577 | 95,627 |
| Texas | 486,735 | 359,045 | 638,039 | 278,994 |
| Ariz. | 134,462 | 60,007 | 196,467 | 136,460 |
| Dakota | 137,380 | 101,602 | 168,173 | 66,571 |
| Idaho | 69,496 | 70,216 | 154,042 | 83,826 |
| N.M. | 141,794 | 52,937 | 223,529 | 170,592 |
| Montana | 153,138 | 65,964 | 136,327 | 70,390 |
| Utah | 301,570 | 196,502 | 224,016 | 27,514 |
| Washington | 50,782 | 39,081 | 37,316 | *1,765 |
| Wyoming | 123,286 | 90,912 | 134,326 | 93,279 |
| Indian Ter. | <u>53,983</u> | <u>47,172</u> | <u>140,451</u> | <u>43,414</u> |
| Total | 3,124,187 | 2,009,280 | 3,706,997 | 1,699,509 |

* Decrease

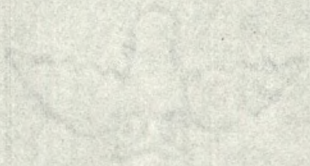
Table IV.

- Estimates, appropriations, and cost of the inland transportation of mail other than railway under Thomas J. Brady.

| | <u>1877</u> | <u>1878</u> | <u>1879</u> | <u>1880</u> |
|---------------|-------------|-------------|-------------|-------------|
| Estimate | | \$6,237,973 | \$7,090,673 | \$6,800,000 |
| Appropriation | \$6,737,851 | 6,237,974 | 7,090,673 | 6,800,000 |
| Cost | 6,658,006 | 6,467,426 | 7,156,220 | 8,208,927 |

Compiled from the annual reports of the Post Office Department. Prior to 1879 the appropriation for and steamboat service was made together so they are combined here.

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