

The letter represents itself as complaining that “employees of the District of Columbia have received the attached flyer with their paychecks.” The flyer to which Director Gess refers proves to be one issued by friends of mine, announcing a musical concert to be given in the context of the “Million Man March.” The evidence gathered in investigation of that claim by Director Gess shows that, barring a single alleged instance of hearsay evidence, the statement is false; the evidence is, that no such stuffing of paycheck envelopes of employees actually occurred.

There is a strong indication that the DOJ allegation is not merely a mistake, but is a typical, politically motivated DOJ fraud upon the public. Most of the letter is devoted to Director Gess’s presenting a strong DOJ political motive for circulating such a false allegation against the authors of the flyer in question. As part of that argument, he lies outrightly. He states that “the allegations” of DOJ misconduct, “contained in the flyer are false.” That statement by the DOJ is a lie.

The matter of Director Gess’s expressed concern is a hearing held on Aug. 31 and Sept. 1, 1995, in which a panel of elected officials heard evidence on misconduct by the Department of Justice in four cases: 1) The Demjanjuk case, in which the Federal Sixth Circuit found, in 1993, that the Department of Justice had perpetrated fraud upon the court, over a period of more than 14 years; 2) the DOJ’s continued support for a racist targeting of elected African-American officials, a matter of official record; 3) the most massive case of fraud, the DOJ fraudulent prosecution of Lyndon H. LaRouche, Jr., et al. during a period of more than 20 years; and 4) the DOJ’s gross misconduct in the case of false charges placed against Austria’s President Kurt Waldheim. The facts referenced in the subject flyer are all true.

There is a crucial issue of policy in this matter.

After the 1992 revelations of the Sixth Circuit, on the massive fraud on the court by the DOJ, after it had been shown that the DOJ knew, since 1978, that John Demjanjuk was not the “Ivan the Terrible” the DOJ accused him of being, the DOJ still attempted to support its fraudulent case against Demjanjuk. Even when the Sixth Circuit ruled formally, in 1993, that the DOJ had perpetrated fraud on the court for more than 11 years, even fraudulently attempting to send Demjanjuk to his death on charges which the DOJ had known to be false at that time, the DOJ still attempted to appeal the Sixth Circuit’s freeing of Demjanjuk to the Supreme Court. The Court declined to consider the appeal; the Sixth Circuit decision stands, and Nicholas Gess’s letter is a lie.

The issue of policy so posed is this. The fact that the DOJ was caught red-handed in a massive fraud upon the court, in that case, should have compelled the DOJ to act at the highest level, to set a new standard of review for past and ongoing DOJ investigations and prosecutions, to purge the Department of those wicked past practices of the Criminal Division’s permanent civil-service bureaucracy. To the present date, the Justice Department continues to refuse to clean up its act. Its behavior would be called, in the language of the

Watergate era, “stonewalling,” or, one might prefer to say, “piling one coverup on top of another.”

## The anatomy of a DOJ dirty trick

by Edward Spannaus

The pretext used by the U.S. Department of Justice to attempt to intimidate potential supporters and attendees at the Schiller Institute-sponsored “Musical Tribute to Justice” concert, was that support for the concert was political activity prohibited under the Hatch Act. This claim is completely false, and was simply a subterfuge to mask the Justice Department’s alarm over wide circulation of exposure of the corruption of significant elements of the Justice Department.

The Justice Department’s letter to District of Columbia Mayor Marion Barry, excerpted below, expressed the department’s alarm about the “false” allegations contained in the concert announcement, and warned Mayor Barry that the D.C. city government should do nothing to “lend official credence” to these allegations.

The Justice Department letter to Mayor Barry was straight political thuggery, and made no mention of the Hatch Act. However, when the *Washington Post* went public with the DOJ complaint, they framed it in terms of the Hatch Act, attributing to Justice Department spokesman Carl Stern the claim that “such a mailing could be a violation of the federal Hatch Act, which regulates political activities by government workers.”

Contacted by *EIR*, and asked why the concert leaflet could possibly fall under the Hatch Act, Stern said that political activity can come under the Hatch Act, and that the concert announcement “has a political message,” and that “it is not just an announcement of a concert.”

“These are false allegations about the Justice Department,” Stern said, and then, quoting the leaflet, he asked this writer: “Do you really think that ‘corrupt elements of the Justice Department have targeted and harassed American political leaders because of their political ideas’?”

Under further questioning, Stern disclosed that the Justice Department has no jurisdiction over the Hatch Act, which he said is administered by the Office of Personnel Management. And indeed, the letter to Mayor Marion Barry makes no mention of the Hatch Act. Stern also said in a later conversation that it was the *Washington Post* reporter who had brought up the issue of the Hatch Act, and he could not cite any legal or statutory basis for the Justice Department’s action—other than the fact that the leaflet criticized the department!

*EIR* contacted the U.S. Office of Special Counsel (OSC),

the federal agency which actually administers and oversees the Hatch Act. Michael Lawrence, the director of Congressional and Public Affairs for that office, told *EIR* that no referral has been made to OSC, either by the Justice Department or anyone else, claiming a Hatch Act violation. Lawrence further stated that the leaflet in question would not fall under the Hatch Act's definition of prohibited political activity—which he confirmed in a letter to *EIR* (see text below).

Lawrence also expressed surprise that the Justice Department would be making pronouncements about the Hatch Act without even knowing what it covers, or which agency administers it. The Office of Special Counsel has been administering the Hatch Act for many years.

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## Documentation

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The *Washington Post* on Oct. 11 published an article by staff writer DeNeed L. Brown, headlined "Justice Dept. Asks Barry to Investigate Fliers." It reported that the Department of Justice had asked Washington, D.C. Mayor Marion Barry to investigate whether leaflets printed by the Schiller Institute were sent out with some D.C. government workers' paychecks.

The leaflet, Brown reported, "complains about harassment of political leaders and demands that Justice Department files on the Rev. Martin Luther King, Jr., Malcolm X, Nation of Islam leader Louis Farrakhan and LaRouche be opened."

Justice Department spokesman Carl Stern told the *Post* that a D.C. teacher gave the leaflet to a high-ranking department employee, saying she had received it with her paycheck. Stern reportedly said that such a mailing could be a violation of the federal Hatch Act, which regulates political activities by government workers.

The *Post* quoted Warren Graves, a spokesman for the mayor's office: "I have talked to everybody I can talk to—to personnel, payroll, the treasurer, the comptroller and disbursing. None of the people I talked to have any knowledge of a flier being included in any mailing or paycheck envelopes, and I didn't get it. I've never seen it."

Beverly Lofton, a spokeswoman for the D.C. schools, said she had not heard about the flier arriving with teachers' paychecks. Lofton said those checks are cut by the city twice a month. "I'm an employee," Lofton said. "There wasn't anything like that in my last paycheck."

Lynne Speed, a concert coordinator for the Schiller Institute, was quoted by the *Post* saying that she had not heard anything about the leaflets being included in paycheck envelopes. "We from the Schiller Institute, weren't involved in that," she said.

### Gess's letter to Barry

*The following is the text of the Oct. 4 letter sent from Nicholas M. Gess, director of Public Liaison and Intergov-*

*ernmental Affairs, Office of Legislative Affairs, U.S. Department of Justice, to District of Columbia Mayor Marion Barry:*

Dear Mayor Barry,

We have been advised that employees of the District of Columbia have received the attached flyer with their paychecks in a recent official mailing of the District of Columbia government.

First, the allegations contained in the letter are false. Second, it is wholly inappropriate for the District government, or for that matter any governmental entity to lend official credence to such a document by enclosing it in an official mailing. Third, as you are aware, the Attorney General has been praised for the tough stand which she has taken in assuring that the Freedom of Information Act is used to make government documents available to the public rather than as an excuse to hide them.

We would appreciate it if you would assure that the circumstances which led to this mailing are thoroughly investigated and that appropriate action is taken.

### Hatch Act is irrelevant

*The following is the text of the letter dated Oct. 12, from Michael Lawrence of the U.S. Office of Special Counsel, to Edward Spannaus of EIR:*

Dear Mr. Spannaus:

On October 11, 1995, in response to an article in the *Washington Post* titled "Justice Dept. Asks Barry to Investigate Fliers," you faxed a series of questions to our office concerning the Hatch Act. Your questions and our answers follow:

Question 1: Has any referral of this matter been made to your office, either by the Justice Department, or any other agency or person?

Answer: No.

Question 2: Would the leaflet that announced the "Musical Tribute to Justice" fall under the provisions of the Hatch Act? If so, why?

Answer: No, it does not violate the provisions of the Hatch Act. "Political Activity," as defined in the Office of Personnel Management (OPM) Interim Regulations, 59 Fed. Reg. 48765 (1994) (to be codified at 5 CFR Pt. 734), is "an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group." Promoting the "Musical Tribute" is not "political activity" under this definition.

Question 3: If the leaflet contained praise for the Justice Department, instead of criticism of the Department, would it fall under the provisions of the Hatch Act? Would this matter be treated any differently?

Answer: No. If the leaflet promoting the "Musical Tribute" praised the Department of Justice rather than criticizing it, it still would not be political activity as defined in the OPM regulations. Thus, in either event, it would not violate the provisions of the Hatch Act.