

Uniform Treatment for Gays

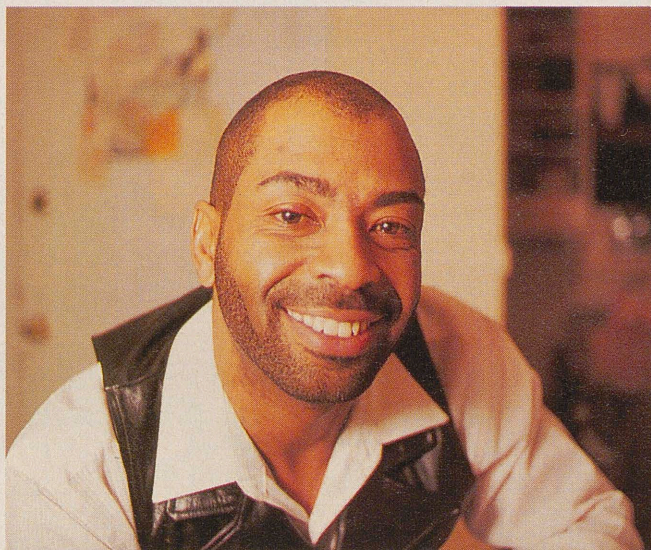
The Army's ban is struck down, but an appeal is likely

Civil rights cases are among the thorniest faced by courts because they so often involve competing principles of social justice: protecting affirmative action for blacks vs. honoring seniority in the workplace; providing equal job access for women vs. giving civil service preference to veterans, who are mostly male. Striving for balance, while zigzagging through such moral thickets, often leads to apparently contradictory precedents. Having ruled for one side, the same court may find for the other the next time an issue comes up.

Last week a three-judge panel of the U.S. Ninth Circuit Court of Appeals in California dismayed the Reagan Administration by doing just that in the nettlesome debate of the military vs. homosexuals. In 1980 the court upheld the Navy's discharge of three people accused of homosexual conduct. In 1981 it ruled against a soldier who charged the Army with selective prosecution because the military antisodomy law was not being enforced in heterosexual cases. This time, however, Judges William Norris and William Canby sided with openly gay Sergeant Perry Watkins, 39. They said the Army had improperly refused to re-enlist him and marshaled constitutional reasoning that could, if upheld, enable gays to win pleas against all levels of government.

What made Watkins' case different, said the judges, was that he was charged only with being gay, not with a specific act of sodomy. Wrote Norris: "Any attempt to criminalize the status of an individual's sexual orientation would present grave constitutional problems." Watkins has never denied his orientation. The son of a career Army man, he admitted "homosexual tendencies" when he enlisted in 1967, at 19. Later he worked during off-duty hours, with his commander's permission, as a female impersonator. In his job rating, he was regularly praised for spit-shined professionalism. Although previous investigations had upheld Watkins' right to stay in the Army, regulations were tightened in 1981. Since Watkins' 1984 discharge three years short of retirement, he has had trouble finding work and has filed for bankruptcy.

Judges Norris and Canby refuted some commonly cited reasons for excluding gays, including hostility from other soldiers and a threat to morale. Wrote Norris: "Even granting special deference



Watkins at his Tacoma home: basing gay rights on equal protection

to the policy choices of the military, we must reject many of the Army's asserted justifications because they illegitimately cater to private biases." Judge Stephen Reinhardt dissented, arguing that he was bound by earlier cases, but denounced antigay laws and regulations and predicted some precedents would one day be overturned. "Were I free to apply my own view" of the Constitution, he wrote, "I too would conclude that the Army may not refuse to enlist homosexuals."

Gay activists hailed the words of the three judges, all appointed by President Carter. "This opinion is thrilling in its

breadth," said Executive Director Jeff Levi of the National Gay and Lesbian Task Force. "It says that government conduct can't be based on reflexive dislike of a group of people." For gays the legal

terrain of late has been mostly bleak. During the 1970s and early '80s, homosexuals sometimes won legislative repeal or judicial invalidation of sodomy laws, which remain in force in about half the states and the District of Columbia, and also persuaded some jurisdictions to enact bans on discrimination in housing and employment. But the gay-rights movement lost steam politically after June 1986, when the U.S. Supreme Court by a 5-to-4 vote upheld a Georgia sodomy law, ruling that the constitutional right to privacy does not extend to homosexual sodomy. The new case offers an alternative argument: the judges focused on the concept of equal protection and held that homosexuals have been unjustly discriminated against as a class.

The Reagan Administration is expected to appeal the Watkins case either to the full Ninth Circuit or to the Supreme Court, where deference to military authority is relatively high and sympathy for gay causes is not. The court's newest and ideologically least-known member, Justice Anthony Kennedy, wrote the Ninth Circuit's 1980 opinion upholding the Navy's dismissal of homosexuals. Last week's action by his former colleagues suggests he may have to thrash through the issue again.

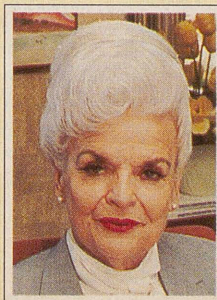
—By William A. Henry III.
Reported by Anne Constable/Washington and Dennis Wyss/San Francisco

Student Counsel

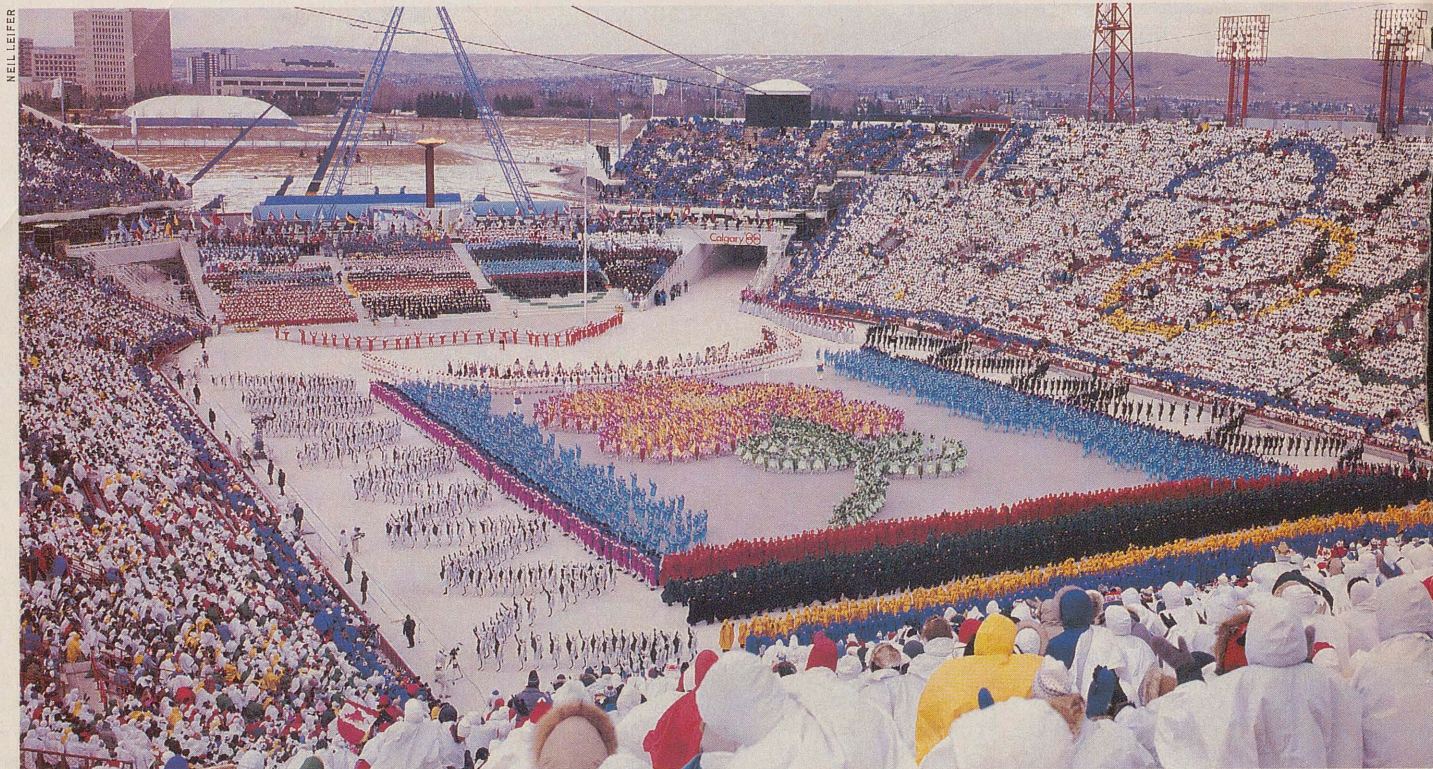
When Arizona State Representative Jim Green visited his son's junior high class in Tucson last year, he offered a civics lesson in the form of a challenge: if the students could find something "unfair" in the state constitution, Green would endeavor to have it changed. Little did he imagine that the young sleuths would track down a startling inequity. As 100 students pointed out last week in an appearance before an Arizona house committee, the document states that only a "male person" may occupy the offices of Governor, sec-

retary of state, treasurer, attorney general or superintendent of public instruction. The finding was all the more remarkable since Rose Mofford had taken office as acting Governor only one day earlier, following the impeachment of Governor Evan Mecham. "It seems that most people in Arizona are unaware that our constitution does not permit a

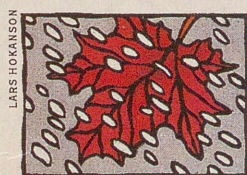
woman to be Governor," testified Eighth Grader Justin Prahar, 13. "I feel it is essential that this be changed before someone decides to use it for political reasons." The lawmakers promptly voted to eliminate the ban against women. If passed by both the house and senate, a resolution to amend the constitution accordingly will appear on the November ballot.



Mofford: Illegal?



NEIL LEIFER



LARS HOKANSON

With a minimum of gimmicks and a scramble of happy children, the opening pageant sends the Games off to a bright start

Wonderful Whoop Of Good Will

In a climate of overpowering good will, but with temperatures fluctuating almost 60°, the XVth Winter Olympics began last week brilliantly. A crowd of 60,000 people glowing from the cheeks and hearts brimmed Calgary's McMahon Stadium for the opening ceremonies, donning colored ponchos that formed a lot of little symbols across the stands and one large display across the world.

Twice every four years, in the winter and summer, the earth's youth come together in one emotional place, and the effect always astonishes. As easy as a change of costumes, even the most professional and venal of the athletes is transformed during the Olympic procession to an ebullient amateur again, to a waving child.

Owing to a simple wisdom and a gust of wind, the Canadians stuck to human sentiments: happy children were the heart of the show. Kept to a blessed minimum were gimmicks like an inflatable mountain that wouldn't inflate and obligingly blew away. Folk dances prevailed, so much sweeter than production numbers, and the prancing horses of the Mounties outdid the screeching jets. Lasses twirled, cowboys strummed guitars, and a twelve-year-old girl lighted the candle.

A momentary thaw (one of Calgary's snow-eating chinooks) melted the town three days before fledgling Figure Skater Robyn Perry got up on her toes to reach the Olympic cauldron. Two years short of

the competitors' minimum age, the local whiz kid represented youth's considerable promise; also, bravery. A week earlier, before the thermometer shot from 11° below to 45° and back to 21° again, the Olympic torch blew up spectacularly. Engineers called it a "minor malfunction," but Perry may have wished for a longer handle.

Melting in a warmth toastier than a chinook was a child-labor flap ignited by cross parents of the gala's youngest stars. In rehearsal, the youngsters worked up to twelve-hour days on short rations (sometimes just hot chocolate, a ham sandwich and a butter tart), although David Roberts, 12, reacted cheerfully: "Practice makes perfect. What I'll remember is the glory."

Among the lovely effects that the children of Calgary kept secret for weeks, even from their folks, were the moving pictures they formed on the stadium floor, first a snowflake, then a hockey game, a luge run, a dove. Scrambling to their stations, the ice blue snowsuits skipped and danced and punched the air with their sleeves. Meanwhile, the audience of athletes swayed and clapped, and laughed along.

The Greeks, the original Olympians, who never have won a winter medal, led the parade as always. In the 57-nation caravan there was the normal quota of Christmas elves and bright-parkaed snowmen, but a new theme emerged: intrigue. Fedoras and spy-length overcoats were the fashion of France, Italy, Bulgaria and others, including, in a gasping surprise, the Americans. Abandoning their