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Judgment Calls Ruling on Gays Is in Keeping With Bold Stands

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Abstract (Abstract): In recent years, [Terry J. Hatter Jr.] said, he has found it increasingly difficult to abide by sentencing mandates enacted by Congress. Like many federal judges, Hatter believes that federal sentencing guidelines and mandatory minimum sentencing laws have stripped jurists of their rightful authority and reduced them to clerks when it comes to meting out prison terms. "The discretion has been taken away from us and given to young prosecutors," he said, referring to the ability of assistant U.S. attorneys to have tremendous impact on sentences simply by the kind of charges they file. "It really troubles me the way Congress gave these lethal weapons to young prosecutors, with particularly heinous results for young black and brown males" charged with drug crimes.

Hatter soon garnered a reputation as one of the most liberal federal trial judges in Los Angeles and is widely known for running the most formal courtroom in the federal courthouse here. Many lawyers and other courthouse observers have stories about Hatter ordering people to stop reading newspapers, chewing gum or chatting, even in a whisper.

* A sweeping 1991 injunction ordering the Los Angeles County Sheriff's Department to abide by its own use-of-force policies. The order, issued in response to a suit by minority residents who accused Lynwood deputies of routinely violating civil rights and using "terrorist-type tactics," also directed the Sheriff's Department to send him every brutality complaint lodged against its deputies. The U.S. 9th Circuit Court of Appeals overturned the decision a year later, saying it was too broad. A trial on the underlying issues in the case is still pending. Hatter said he does not like being reversed, but quickly added: "I don't carry these things with me." Rather, Hatter said, he takes some comfort in knowing that a higher court will occasionally review his work.

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Full text: Let others worry about making history. Terry J. Hatter Jr., quoting the words of movie maker Spike Lee, says he just wants to do the right thing.

A Los Angeles federal judge for 13 years, Hatter has frequently shown a willingness to make bold decisions on a wide range of topics-most recently ruling that the Navy's ban on gays and lesbians is unconstitutional.

Over the years, the 59-year-old jurist also has sought to broaden the rights of immigrants, limit the severity of sentences for low-level drug couriers, questioned the conduct of law enforcement officials and expanded civil servants' rights of free speech.

He has taken on the Bureau of Prisons, the Drug Enforcement Administration, the Immigration and Naturalization Service, the Justice Department, the Los Angeles Police Department and the Los Angeles County Sheriff's Department.

So attorneys who have followed the judge's career were not in the least surprised when Hatter ordered the Navy on Jan. 28 to reinstate Petty Officer Keith Meinhold, who had been kicked out of the service last year after declaring on television that he is gay.

"He has a tremendous sensitivity to the rights of individuals when they are faced with the awesome power of the government," said North Hollywood criminal defense lawyer Mary Gibbons.

"He'll take a risk if there's no clear case against him. There are a lot of judges who won't," said American Civil Liberties Union lawyer Carol Sobel, who has won and lost cases before Hatter. "I don't think the fear of being overturned by a higher court shapes the way he evaluates a case."

Hatter scoffs at the idea that he is a particularly courageous judge, as one of Meinhold's attorneys described

him.

"I'm flabbergasted when I receive compliments about a decision. Many of the decisions that are contentious bring out hate mail," Hatter said in an interview in his downtown Los Angeles chambers a few days after issuing the Meinhold decision. The ruling was released just hours before the Clinton Administration, military leaders and Senate Armed Services Committee Chairman Sam Nunn (D-Ga.) reached an agreement on a new policy to suspend most restrictions on military service by homosexuals.

Hatter declined to discuss his order, which declared that Defense Department justifications for its policy banning gays and lesbians from military service were "based on cultural myths and false stereotypes." He did, however, offer this insight into his judicial philosophy.

"To use the words of Spike Lee, I see myself doing the right thing," Hatter said. "When the law is murky, I try to do what's just. When the law is clear, I have to follow it."

But in recent years, Hatter said, he has found it increasingly difficult to abide by sentencing mandates enacted by Congress. Like many federal judges, Hatter believes that federal sentencing guidelines and mandatory minimum sentencing laws have stripped jurists of their rightful authority and reduced them to clerks when it comes to meting out prison terms. "The discretion has been taken away from us and given to young prosecutors," he said, referring to the ability of assistant U.S. attorneys to have tremendous impact on sentences simply by the kind of charges they file. "It really troubles me the way Congress gave these lethal weapons to young prosecutors, with particularly heinous results for young black and brown males" charged with drug crimes.

He is especially critical of federal sentencing laws that equate each gram of crack cocaine with 100 grams of powder cocaine. More than 90% of federal crack defendants are black and serve much longer prison terms than whites convicted of powder cocaine offenses, even though powder is easily convertible into crack.

"The black kid wouldn't have the crack," Hatter said, "unless the powder had been brought into the country."

In another swipe at federal drug-sentencing laws in 1991, Hatter and U.S. Judge Mariana R. Pfaelzer ordered the U.S. attorney's office and the Los Angeles Police Department to provide a sweeping amount of material to defense lawyers who contended that blacks and Latinos were being selectively prosecuted under a statute requiring stiffer sentences for people selling narcotics near a school.

After the defense attorneys demonstrated that 96% of the defendants prosecuted in federal court here under the law were blacks or Latinos, Hatter asked government attorneys why they had prosecuted so few whites under the law and appeared unsatisfied with the responses. On the eve of the critical hearing in the case-in which police and federal officials, including the head of the DEA, were expected to be grilled-the government allowed the remaining defendants to plead guilty in return for shorter prison terms than they had originally faced.

Loyola University law professor Laurie Levenson, a former federal prosecutor, said the U.S. attorney's office was upset by the judges' handling of the case. "Race has become a real issue for Hatter," she said. "I think he is tougher with the prosecution now. He's concerned about the way prosecutors use their discretion," particularly in drug cases. Denying that federal prosecutors are abusing that discretion, U.S. Attorney Terree Bowers in Los Angeles said: "We play it strictly by the book. We're bound to follow the law and statutes enacted by Congress."

Although acknowledging that his office has had its share of disagreements with Hatter, Bowers praised the judge's stern sentences for white-collar offenders. "He appreciates the trauma inflicted on people by white-collar crime," Bowers said.

Hatter also has not generally been soft on drug dealers. He has issued several sentences that were stiffer than those recommended by federal probation officers and prosecutors in major drug cases.

In April, 1991, for example, he sentenced Jose Ignacio Monroy to a 35-year term for his role in a drug-trafficking ring that amassed a record-breaking 21 tons of cocaine at a Sylmar warehouse.

Hatter said the enormity of the operation, which had an "impact not only on the Los Angeles area but on the

nation as a whole," justified a sentence more than double that recommended by probation authorities. The judge, who is black, readily acknowledged that his ethnicity and his experiences have shaped his views on the bench: "I'm not going to leave my life's experiences behind."

Among those experiences was having to go to another city to get a haircut as a college freshman in 1950, when he was the only black student at Wesleyan, a small, prestigious liberal arts college in Middletown, Conn. Another was being refused service at a lunch counter in East St. Louis, Ill., five years later-while he was wearing his Army uniform.

And, Hatter said, "I didn't have a black teacher after grammar school," including at prestigious Hyde Park High School in Chicago, Wesleyan and the University of Chicago Law School. After graduating with honors from law school, Hatter was in private practice briefly and spent a year as a Cook County Public Defender. Then, he and his wife, Trudy, a teacher, headed west.

Hatter was a federal prosecutor in San Francisco from 1962 to 1966. He served as chief counsel of the San Francisco Neighborhood Legal Assistance Foundation, regional legal services director for the Office of Economic Opportunity and headed the Western Center on Law and Poverty, a federally funded public interest organization frequently criticized by then-Gov. Ronald Reagan because of its numerous suits against the government on behalf of the poor. The judge said he was especially proud of a case that successfully challenged California's system of school finance, which had resulted in schools in wealthier neighborhoods having considerably larger budgets than those in low-income areas.

In 1974, Hatter was chosen by Mayor Tom Bradley to be his first director of criminal justice planning and was a Los Angeles County Superior Court judge for three years before President Jimmy Carter nominated him for the federal bench in 1979.

Hatter soon garnered a reputation as one of the most liberal federal trial judges in Los Angeles and is widely known for running the most formal courtroom in the federal courthouse here. Many lawyers and other courthouse observers have stories about Hatter ordering people to stop reading newspapers, chewing gum or chatting, even in a whisper.

"When I say no talking or chewing gum, it's to tell people they're somewhere different," Hatter said, referring to why he runs such a tight ship. "If we don't show reverence for the law, people get the idea they can take it or leave it."

Among his noteworthy decisions:

- * A 1982 ruling that the federal government selectively prosecuted David A. Wayte for refusing to register for the draft, saying that the government only acted against vocal opponents of draft registration. The decision was overturned on appeal, and Hatter sentenced Wayte to six months house arrest, denying the government's request that he be sent to prison and Wayte's request that he be given community service. "That was the hardest sentence I've ever issued. Community service was his life . . . and I wanted him to remember he was violating the law and there had to be some cost for that."
- * A 1984 nationwide ruling halting the deportation of foreign juveniles traveling without guardians after a 14-year-old legal resident, Mario Moreno Lopez, was mistakenly deported by the INS. Five years later, after a change in INS policy, Moreno settled his case against the government for \$110,000.
- * A sweeping 1991 injunction ordering the Los Angeles County Sheriff's Department to abide by its own use-of-force policies. The order, issued in response to a suit by minority residents who accused Lynwood deputies of routinely violating civil rights and using "terrorist-type tactics," also directed the Sheriff's Department to send him every brutality complaint lodged against its deputies. The U.S. 9th Circuit Court of Appeals overturned the decision a year later, saying it was too broad. A trial on the underlying issues in the case is still pending. Hatter said he does not like being reversed, but quickly added: "I don't carry these things with me." Rather, Hatter said, he takes some comfort in knowing that a higher court will occasionally review his work.

"I'm not trying to protect the record to prevent reversals, but to provide a fair trial," Hatter said. "I've seen a lot of

judges who are concerned about appeals. Maybe they have a sense of perfection. I know I'm not a perfectionist."

Profile: Terry J. Hatter Jr.

As the Clinton Administration reached an agreement to suspend most restrictions on military service by homosexuals, U.S. District Judge Terry Hatter Jr. ruled that the Navy had unconstitutionally discriminated against Navy Petty Officer Keith Meinhold. The ruling marked the first time the government had been forced by a court to reinstate a gay service member. Age: 59 Residence: Los Angeles County Education: Wesleyan University, bachelor of arts, 1954; University of Chicago, jurist doctorate, 1960. Career highlights: Los Angeles federal judge; Cook County public defender; San Francisco federal prosecutor; Los Angeles Regional Criminal Justice Planning Board. Interests: Tennis and basketball. Family: Married, with four children. Quote: "To use the words of Spike Lee, I see myself doing the right thing. When the law is murky, I try to do what's just. When the law is clear, I have to follow it."

Illustration

PHOTO: COLOR, Judge Terry J. Hatter Jr., in a 1989 photo, sometimes gets hate mail.; PHOTO: Terry J. Hatter Jr. scoffs at descriptions of being a courageous judge. / ANACLETO RAPPING / Los Angeles Times

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