

THANK THEM FOR THEIR SERVICE

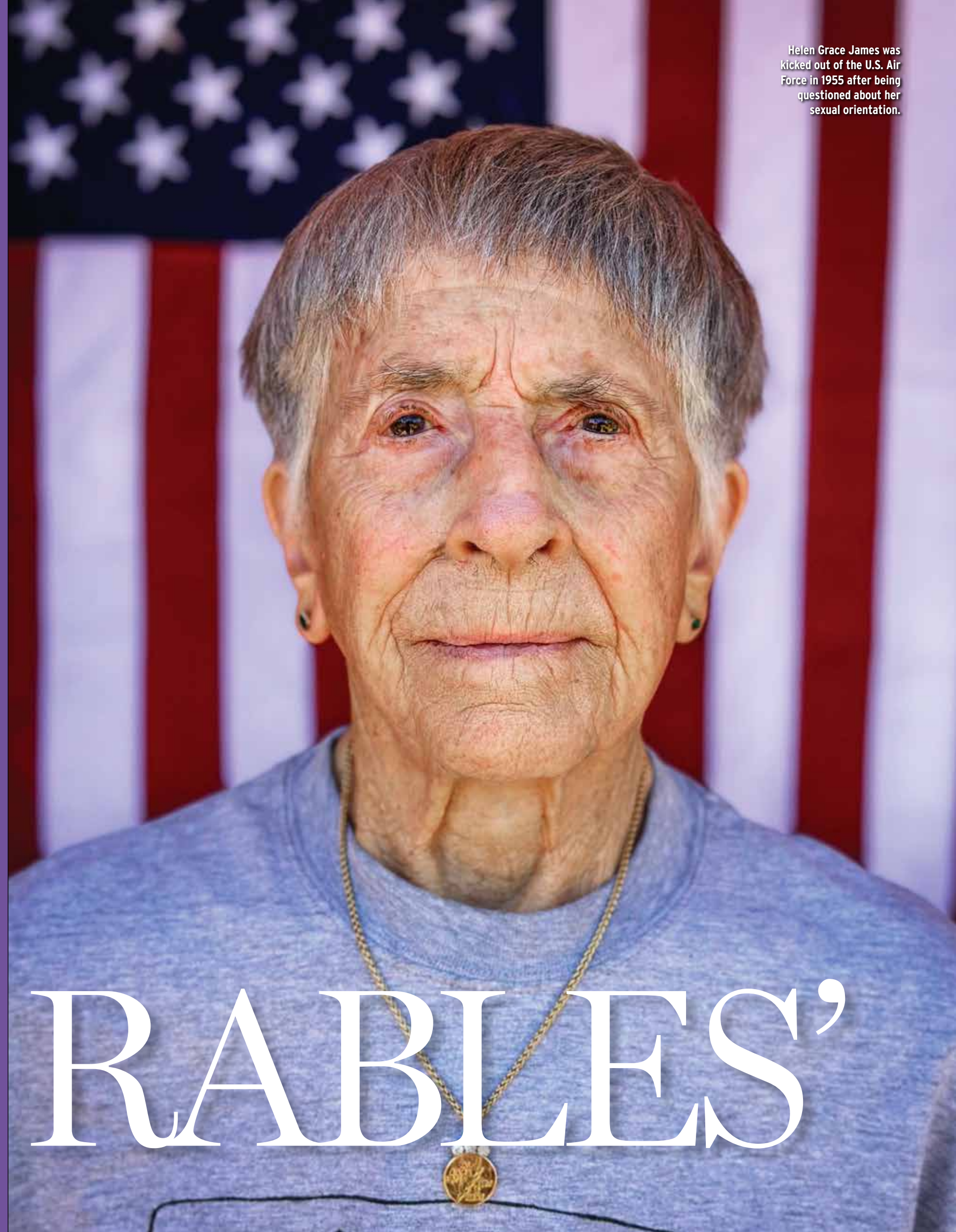
By NICOLE GARCIA and DAVID WOLMAN • Photos by PENNI GLADSTONE

Beginning in the McCarthy era, more than 30,000 men and women were kicked out of the military on charges of homosexuality. Among them was Helen Grace James, who some six decades later began the fight for an honorable discharge for herself—and other affected veterans.

The

‘UNDESIRABLES’

Helen Grace James was kicked out of the U.S. Air Force in 1955 after being questioned about her sexual orientation.



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ne afternoon in the fall of 2016, attorney Elizabeth Kristen took a seat outside Scoop, Soup, & More, a combo ice cream and soup shop in Clovis, California. She was there to meet an octogenarian who was locked in a dispute with the U.S. Department of Defense. Kristen kept glancing up from her newspaper to see if the old woman was coming down the sidewalk.

After about 10 minutes, she finally realized that Helen Grace James

had been there all along, at a neighboring table. She looked far younger than her 89 years; growing up on a farm and spending more than 50 years working as a physical therapist will do that to a person. The two women shared a laugh, ordered lunch, and began discussing James's legal case.

Their connection was almost instantaneous. "She's a heart stealer," Kristen says. "As soon as I met her, I thought: I want to help her." Before leaving, they posed together for a photograph. In the storefront window behind them, as if placed by an unobtrusive set designer, was a piece of wood painted with the Pledge of Allegiance.

LEGAL LIMBO

More than 60 years earlier, a single word had upended James's life. *Undesirable*. In 1955, James, then an airman second class in the U.S. Air Force, was detained by the branch's Office of Special Investigations. For hours, she was interrogated about her sexual orientation; then, she was expelled from the armed forces. She was 27 years old, and after just three years of serving her country, her military career was abruptly over.

In addition to the humiliation and trauma of that ordeal, there were significant long-term consequences. The word "undesirable" on her discharge papers would limit her employment opportunities. She would forever be denied the typical benefits provided to veterans: no GI Bill to assist with education, no loan for a house, no medical care. Upon her death, she would not be allowed full military funeral honors, and she could not be buried in a national cemetery.

James was heartbroken, but she was determined not to be defined by that episode. As she told an interviewer at a conference last spring, "I guess I just put one foot in front of the other and began my journey to find myself and prove that I was a good person." She went on to earn degrees from both Stanford and the University of Pennsylvania, and in the early 1970s, she began teaching anatomy in Cal State Fresno's physical therapy program. She later had her own PT practice in Clovis and was highly respected in her field.

In the late 1960s, James had successfully appealed for a discharge upgrade from undesirable to general under honorable conditions, which sounds better but still doesn't include standard benefits. It was not until 2016 that a colleague and fellow veteran learned about James's record and encouraged her to reopen the matter. She contacted the Fresno County Veterans Service Office, where a counselor helped her submit a petition for an upgraded discharge.

The Department of Defense took nearly a year to respond. When James finally heard back, she was told that her record had not been found and had probably burned in a fire in 1973. Without the official paperwork, the Air Force Review Boards Agency had no way to

verify what had or had not led to James's discharge and was therefore unable to assess the validity of her upgrade request. After additional correspondence with the Pentagon yielded no progress, James took the advice of the veterans service counselor and contacted a lawyer.

Kristen, a witty and bespectacled civil rights attorney with Legal Aid at Work in San Francisco, tried to press the Department of Defense to address James's petition. When those requests yielded no progress, Kristen, together with J. Cacilia Kim of Legal Aid at Work in Los Angeles, filed a federal lawsuit, claiming that the Pentagon had violated the Administrative Procedure Act by keeping James in limbo.

"The idea that in her 90s she decided to pick this up is so impressive to me," Kristen says. To this day, so many Americans are unaware "that there was such blatant exclusion from the military. They don't know there was this Lavender Scare witch hunt. And they don't know that it wasn't fixed."

LAVENDER SCARE

In the year 1950, a not-yet-famous Republican senator by the name of Joseph R. McCarthy warned the American public that members of the Communist Party had apparently infiltrated the U.S. State Department. Inflamed by McCarthy's rhetoric and nationwide anxiety over the Cold War, the Red Scare grew into a bigotry- and rumor-fueled purge targeting everyone from Hollywood executives to J. Robert Oppenheimer.

Leaders in Washington, D.C., and at the Pentagon used anti-Communist fervor to also target anyone they deemed "morally corrupt," especially anyone who might be gay. The subsequent crusade to rid the government and the armed forces of any person who might not be a card-carrying heterosexual came to be known as the Lavender Scare.

The Republican claim that both the Roosevelt and the Truman administrations were filled with homosexuals became a potent political device. The accusations appealed to conservatives who had already grown discontent with New Deal and Fair Deal reforms. Republicans managed to link antigay sentiment to a broader commentary of government overreach, portraying Washington as a hub of bureaucratic control that threatened "traditional" American values. They branded Eisenhower and Nixon as "regular guys" who stood for morality, while opponent Adlai E. Stevenson was effeminate and out of touch.

On April 27, 1953, President Eisenhower issued Executive Order 10450, which essentially banned LGBTQ people from working for the government. The practice extended to the military, and over the next 40 years, thousands of men and women were barred from serving or kicked out of the armed services because of their sexual orientation or suspicion about it. The 1993 passage of Don't Ask, Don't Tell, a policy contortion masquerading as progress, didn't help.

Many people today are under the false impression that these injustices, at least in the legal sense, ended when Don't Ask, Don't Tell was repealed in 2011. The repeal was indeed a shift in policy, allowing LGBTQ individuals to serve openly, but it did not automatically correct the wrongs faced by those affected during its enforcement, let alone before it. "We're in the same place we were in 2011 when Don't Ask, Don't Tell was repealed," Kristen says. "They [the government] said, 'OK. We recognize we did all this discriminatory stuff.'" But instead of amending harm done to anyone discharged under those discriminatory practices, the Pentagon has put the onus on veterans to individually petition for a change. That process can take years and may not always prove successful, particularly when records are lost to fire.

JUNK-SCIENCE ARTICLES

Helen Grace James grew up on a farm in rural Pennsylvania. Her father was a World War I veteran, and from a young age, James was determined to join the armed forces. In 1952, she enlisted in the air force, and she was soon sent to Texas and then Mississippi for training. She became a radio operator and was stationed at Roslyn Air National Guard Base on Long Island. This was during the Korean War, and if there had been a threat to the Atlantic seaboard, James's unit would have been critical in sounding the alarm.

On occasion, James and one or two friends would visit a bar in Greenwich Village called the Bagatelle. Although later identified by scholars as one of the safe spaces for lesbians to congregate in the Vil-

lage, for James it wasn't about being part of a particular scene. It was about being with friends.

By the mid-1950s, after Eisenhower's executive order and with the Red and Lavender Scares at a fever pitch, there were probably more people assigned to investigate possible "deviant sexual behavior" than there were LGBTQ service members. In a newly uncovered collection of investigation records from the Women's Army Corps, the cruelty and absurdity of this campaign are on full display. One report has the word "OBSCENE" stamped in red across the top. In it are clippings of early-1950s junk-science articles about the poison of homosexuality as well as a glossary of terms—"69 queen," "browning queen," "dog's lunch," the latter defined as "a normal person or a gay person whose looks and actions are unattractive to the point of non-association." Another Women's Army Corps investigation report describes a woman under suspicion for "wearing male-type shoes with her uniform."

Precisely how the question of James's sexuality was brought to the attention of investigators is unknown. It may be that Office of Special Investigations agents followed her to the Bagatelle. Or perhaps the air force had an informant there. Or maybe someone in James's unit didn't like the way James talked about sports. "They threaten you with



Attorney Elizabeth Kristen (left) is seeking honorable discharges for as many as 30,000 veterans and removal of the word "homosexual" from their records after successfully doing so for James (right).



James has held on to her dog tags despite her military career being cut short by the air force's Office of Special Investigations.

anything they can to get you to say something against somebody else,” recalled Dorothy Frassmann, a Women’s Army Corps veteran, speaking to a Las Vegas Gay Archives oral historian in 1997.

However it happened, James was apprehended and accused of being a threat to national security. For hours, she was interrogated—verbally abused, really—about her friends and interests. That wasn’t the worst of it. How did she feel about her sister, her mother? the agents asked suggestively. At a certain point, James just needed it to end. “Give me whatever and I’ll sign it,” she finally told the investigators. With the paperwork completed, Helen Grace James was sent packing.

She couldn’t go home. Few people she knew were openly gay, especially in rural America. Throughout her childhood, James had never even heard words like “gay” or “lesbian.” “I had no one to talk to,” she says. “I was alone.”

INCHING TOWARD JUSTICE

Elizabeth Kristen was practically born into activism. Her mother was a lawyer, working on Title IX issues in the early 1970s. When Kristen was in the third grade, she traveled with her mother on a lobbying trip to Washington, D.C. When they returned home to Nebraska, Kristen was confused to see flyers at her school for a boys’ basketball team but nothing for girls. “Wasn’t I supposed to play?” she recalls asking herself.

Immediately after law school at UC Berkeley, Kristen became involved in employment law, working on sexual harassment, race discrimination, LGBTQ discrimination, and disability discrimination cases. She then steered her career toward Title IX litigation. When she learned of James’s story, and the stories of other veterans dealing with the stigma and long-term consequences of the undesirable discharge, she found the situation galling. She remembers thinking that someone should do something about it. “And then I thought: Who is that person? I guess it’s me.”

When multiple attempts to expedite James’s upgrade petition had been exhausted, Kristen’s only reasonable move was to file a complaint on James’s behalf. “Anything she starts out to do, she finishes,” James says of her friend Kristen. “She will bird-dog them. She will find a way to get it done.”

In January 2018, just weeks after that public filing, James’s discharge was upgraded to honorable—“miraculously,” Kristen quips. James would finally receive some of those long-overdue benefits, as well as a measure of vindication.

It took more than 60 years to correct that injustice, but it took only a few weeks for James to become something of a civil rights rock star. She was featured in the *Washington Post* and *Newsday* and on CNN, *Megyn Kelly Today*, podcasts, and more. She served as a grand marshal of the Rainbow Pride Parade in Fresno. James also learned that her story and relevant records would be featured at the Smithsonian Institution.

James’s pursuit of justice had far-reaching effects, inspiring scores of other people to come forward with their own stories or those of family members. One of the latter involved the so-called Philadelphia 15: a group of Black sailors who served during World War II and were wrongfully discharged after speaking up about segregation and abuse they had experienced during their service. With Kristen’s help, they were finally exonerated in 2023 and posthumously granted honorable discharges.

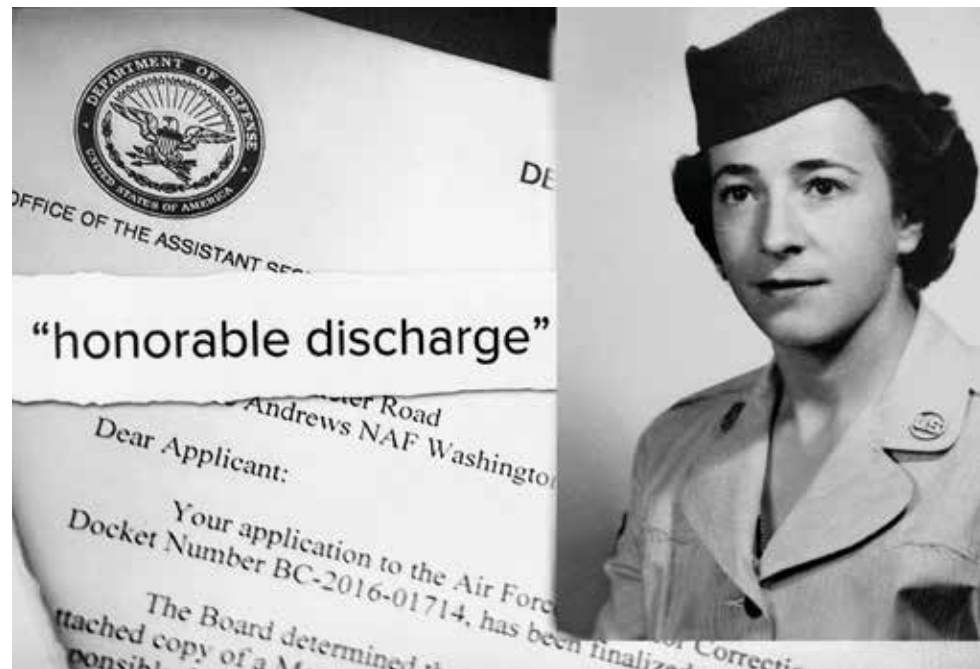
“It just shows me that the military can fix it,” Kristen says. “There are attempts being made to right these wrongs. But why the Philadelphia 15 and not others? Why are veterans who were discharged for being LGBTQ+ still required to petition individually?” Kristen felt that there must be a better way than going about these petitions one by one, making veterans wait a year, sometimes two to remedy a situation that the government had already admitted it had gotten wrong when it repealed Don’t Ask, Don’t Tell.

A year after James’s victory, Kristen attended a conference in San Francisco on class action lawsuits. During a panel discussion, a lawyer from Toronto recounted how a suit in Canada had been brought, and won, on behalf of veterans who had faced discrimination for their sexual orientation. Kristen wondered whether something similar could be done in the United States.

She wasn’t sure. One issue, as she explains, was that, historically, “discrimination on the basis of sexual orientation wasn’t considered to be as ‘bad’ or on par with other kinds of discrimination.” Cases



Clockwise from top: James (far left) horsing around with fellow airmen during basic training; James standing in the doorway of an airplane wearing a parachute; with the help of Kristen, James eventually received an honorable discharge from the Department of Defense in 2018.



involving the government and alleging discrimination based on sexual orientation required the plaintiff to prove not just the harm they suffered but that their constitutional rights had been violated. Courts had long favored the government in these cases, which meant that a class action lawsuit on behalf of veterans seeking discharge upgrades was a long shot.

That changed in 2020 with the U.S. Supreme Court ruling in *Bostock v. Clayton County*. The court concluded that protection against sex discrimination extends to discrimination based on gender identity or sexual orientation. The pressure is now on the U.S. government to, in effect, prove the necessity of prejudicial treatment of LGBTQ+ people. “Suddenly, a constitutional claim on the part of LGBTQ+ veterans is stronger,” Kristen says. After the *Bostock* decision, she was finally ready to move forward with her “creative idea.”

But first, she needed clients—former members of the armed forces who had suffered the stigma of discharges based on sexual orientation and who would be willing to add their names to a lawsuit, to speak openly about intimate matters and revisit traumatic experiences, all for exactly \$0. The suit would not seek remuneration, only rectification: upgraded discharges and the removal of the word “homosexual” from their paperwork. Through networks of clients, other nonprofits, veterans’ groups, and even community publications, Kristen found five veterans willing to sign on. In August 2023, working alongside the nonprofit Impact Fund and the international law firm King & Spalding LLP, she filed *Farrell v. U.S. Department of Defense*. The class action suit zeroes in on the fact that these veterans’ discharge papers, known as DD214 forms, contained information about the individual’s sexual orientation. The plaintiffs seek to represent a nationwide class of similarly situated veterans. According to the Department of Defense’s own figures, that is more than 30,000 people.

Almost immediately, the Pentagon filed a motion to dismiss, saying that the lawsuit filing was too late, past the six-year statute of limitations that goes into effect when a service member’s discharge is finalized. “It’s never the right time to do this, from the military’s perspective—there was never the right time,” Kristen says. Even if the lawsuit had been filed on the day of the repeal of Don’t Ask, Don’t Tell, thousands of people, like James, would have been excluded from any remedy because their discharge dated back decades.

The Department of Defense’s motion to dismiss was undermined by the fact that the military board responsible for handling individual appeals has the authority to waive the time limit “in the interest of justice.” U.S. District Court magistrate judge Joseph C. Spero agreed. Recognizing the difficulties veterans face, and have faced, he allowed the case to go forward. The delay tactic was doubly frustrating for Kristen, James, and others, though, because so many of the veterans are elderly. “It’s wonderful what they [the government] did for the Philadelphia 15,” Kristen says, “but most, if not all, of them were deceased.”

Since then, the case has inched along. The Pentagon’s foot-dragging may finally be over. “Since the motion was denied in June,” says Kristen, “they [the Department of Defense] have shown interest in moving the case forward and genuinely trying to resolve it.” She is cautiously optimistic, primarily because the solution is simple. “The military, with all its vast resources, could search the DD214s for the word ‘homosexual,’ and they could just fix all of it,” she says. “Maybe there would even be a letter of apology.”

Regardless of what comes next, none of this progress ever would have happened without James. Her story galvanized interest in the issue and inspired people to come forward despite the difficulty of doing so. As for James, she is grateful that so many people care about what happened to her, and support her today, and she is thankful for the friendships that have developed as a result of this late-in-life quest for justice.

But she refuses to be too upbeat about everything she has been through, and understandably so. None of this is easy. “Inside of me, there’s still a tremendous resistance to being out there, because for all those years I hid it,” she says. Now, at least, the world knows, and will always know, that she is a patriot. And there is nothing more patriotic than standing up for liberty and justice. ■

Nicole Garcia is the director of the Honoka’a Heritage Center in Hawaii, where she specializes in historical-preservation programs and amplifying underrepresented voices.

David Wolman is a journalist and the author of five books, including Aloha Rodeo (with Julian Smith) and The End of Money.