

QueerSpace: Fight For Your Right

Music up and under

Sofia Soto Sugar: Hello! Happy Pride Month and welcome to a special episode of QueerSpace, a project from the Smithsonian's National Air and Space Museum, from the people who usually bring you AirSpace.

I'm Sofia from the National Air and Space Museum and my pronouns are she/her

Erin Barker: And I'm Erin from the Story Collider and my pronouns are she/they.

QueerSpace features people and stories that have been historically and intentionally ignored at the intersection of aviation, space, and queer history and culture. We dropped four episodes in the spring, and we're revisiting the project for a special Pride episode.

Music up and out

Sofia: One of the most well known wins for LGBTQ+ rights came during Pride month 2015 with the ruling in Obergefell v Hodges which guarantees same-sex couples the fundamental right to marry under the constitution.

Throughout history, LGBTQ+ people have had to fight to be afforded the fundamental rights that straight and cisgender people are automatically granted — it's about being recognized as equals in the eyes of the law.

Obergefell means so much to so many people, and has social and legal implications beyond weddings, but marriage equality doesn't mean there's nothing left for the queer liberation movement to address. Not all LGBTQ+ people are married or want to be married, but most people work.

Erin: And the right to not be fired— and protection from discrimination by employers — was not always guaranteed to LGBTQ+ Americans.

If you dig into an amicus brief for Obergefell, you'll see mention of another case, Norton v Macy. This case set the first precedent ruling that the federal government can't fire an employee for being gay.

Sofia: We talk a lot about pilots and astronauts who've made history, but today's aerospace trailblazer was a humble civil servant and petitioner named Clifford Norton.

Paul Thompson: So Clifford Norton comes along, he's a budget analyst for NASA, he had been a veteran...

Sofia: Helping us tell the story today is Paul Thompson

Paul: Paul Thompson, he/him pronouns. I'm a partner at McDermott, Will and Emery, which is an international law firm. For the past decade I have worked as outside council to the Mattachine Society which is the oldest gay rights organization in Washington D.C.

Erin: And before we get to Norton, we have to go back a bit to the practices and history of a government office.

Paul: It really goes back to the Civil Service Commission that's created in 1883 with the idea of adding some kind of fairness and uniformity to federal hiring instead of just political corruption. And it had some language in it which allowed, basically, the Civil Service Commission to determine the suitability for federal employment, that was the phrase 'suitability for federal employment.' And any individual that engaged in quote 'any criminal, infamous, dishonest, immoral or notoriously disgraceful conduct' could be essentially fired, or deemed not suitable. So you fast forward many, many decades and people aren't really paying attention to that word immoral that much until in 1945 when the CSC, the Civil Service Commission comes out and basically says that homosexuality is a flat out, persay, bar to federal employment. If you are gay or suspected of being gay, you can't work for the federal government.

Sofia: A few years later the CSC's decision is compounded by an executive order from President Eisenhower which specifically adds the words 'sexual perversion' to the list of bars for federal employment.

Then J. Edgar Hoover, head of the FBI, sends out a memo that enlists all government offices and local law enforcement agencies in the task of proactively seeking out and firing anyone in the government that is accused or suspected of being gay.

Erin: And then the CSC puts out a manual that lays out ways to interrogate suspected 'sexual perverts' in the government and gets them to confess enough to be fired.

This part of history, when gay workers were systematically run out of the government, is called the Lavender Scare.

Sofia: Getting back to Clifford Norton, he wasn't out to his family and he certainly wasn't out to NASA. But he was known to a group called the Mattachine Society, D.C.'s first gay rights organization. It was founded by a Harvard trained astronomer named Frank Kameny. The Mattachine still exists today as a group that is fighting to bring LGBTQ+ history to light.

Norton had friends among the Mattachine, though he wasn't a member at the time.

Paul: In October, October 22, 1963 he went to Lafayette Park at two in the morning. And those from Washington will know that Lafayette Park is the park across from the White House. It was also a place in the 50s and 60s at times people would go to meet people, particularly people who had no other means of meeting people because you couldn't be open or public about who you are. And so at two a.m. he goes to Lafayette Park and he picks up a man named Madison Monroe Procter and they drive around the block, Norton then drops off Procter, Procter gets in his car and follows Norton back to his apartment.

Little did they know that the D.C. morals squad was watching the whole time.

Erin: The Morals Squad was the D.C Police Department's version of heeding Hoover's call for local law enforcement to find and out people.

Norton and Proctor were taken in, on a traffic charge, and interrogated at length by the police.

Paul: During the middle of this interrogation of Norton, who is denying that he's homosexual, they call NASA. The moral's squad finds out he works at NASA, they call NASA. And they call a guy who is named Bartley Fugler who is the NASA security chief and he arrives on the scene. It's now just after 3 a.m. Norton keeps denying things. They finally release him. Give him a traffic ticket. And Fugler kind of introduces himself and invites Norton back to NASA for a talk. It's 4 a.m. Fugler proceeds to interrogate Norton for two hours at NASA and Norton admits to some homosexual conduct. He says he would drink and black out at times and he admits to some conduct that Fugler was really interested in finding out from him. And the interrogation ends around 6 or 6:30 in the morning and NASA promptly dismisses Norton for immoral, indecent and disgraceful conduct.

Sofia: Before Norton there had been many, many government employees that had been fired for either admitting to being gay or being suspected of being gay. One of them was Frank Kameny.

Kameny had been working for the Army Maps Service in 1957 when he was fired for similar reasons to Norton.

He had contested his own firing, fought for his job in several courts, helped others fight for their jobs, founded the Washington D.C. Mattachine Society, and had been active in several other gay rights organizations.

Paul: So Norton goes to Frank. Frank lines Norton up with two lawyers who file suit about a year later and Norton is going to challenge this case and his termination.

Erin: Norton's case started in lower courts and worked its way up in the judicial system for five years.

Paul: He loses, basically every step of the way. Eventually his case gets to the United States Court of Appeals for the District of Columbia which has often been called the second highest court in the land, right under the Supreme Court of the United States. And Norton draws the perfect panel. Decisions in these courts are three judges, he draws two of the most progressive judges in the country. A guy named David Bazalon and a guy named Skelly Wright. And in a two to one opinion they rule in Norton's favor.

Erin: When the court ruled for Norton, NASA was less than a month away from the first moon landing—and outside the Stonewall Inn, New York City's queer community was mobilizing.

Paul: So here we are right in the middle of the Stonewall Riots and the case comes down for Norton. The opinion comes down July 1, 1969. And they essentially take the case and they say, 'look, Norton's been fired for infamous, immoral, notoriously disgraceful conduct' but they say 'that's not really the real issue in the case, the real issue in the case is whether the government has shown that there's any connection between his conduct and his job.'

Sofia: The CSC had several other cases like Norton's working their way through the courts at the time, but now this very important court had told the CSC that just being gay was *not* a defacto bar to federal employment.

Erin: From now on they would have to prove that the employee or applicant's life or behavior was directly relevant to them not being able to perform their job.

Basically the court said--

Paul: Civil Service Commission, it is not your job to enforce the morals of society. You are not the morals cops. So, period. If you think something's immoral, you just can't fire people for that.

Sofia: Other cases worked their way through the system and it was in 1973 after the decision in the Society for Individual Rights, Inc v Hampton in the United States District Court for Northern

California that the Civil Service Commission removed their policy that all employees found to be gay would be automatically fired.

Two years later the CSC took the word ‘immoral’ out of their policies. And over the next three years the CSC and Congress removed all references to immorality and sexual perversion from their policies and literature.

Erin: That was in 1978, nearly ten years after the Norton decision and 15 years after Norton had been arrested, interrogated and summarily fired for being gay.

Discrimination in employment is still a problem LGBTQ+ people face everyday. It wasn’t until 2020, that’s only two years ago, that the Supreme Court weighed in and said that such discrimination is illegal in *private* employment.

Paul: And it wasn’t until the Bostock decision, which is actually a series of three decisions, where we get a decision from the court in Bostock, written by Justice Gorsuch which basically says that title VII, the federal anti-discrimination in employment law, bars discrimination on the basis of sexual orientation and transgender status in private employment. And so we now have you can’t discriminate in federal employment and you can’t discriminate in private employment.

Sofia: The nuance of the Bostock decisions are still being litigated today. There are religious exemptions that allow for churches not to hire queer clergy or to fire them if they’re outed, but does that apply to the church cleaner? Parochial schools don’t have to hire a gay theology teacher but does that mean they could fire the trans instructor who’s teaching math?

Erin: And that amicus brief we mentioned in the beginning? Paul and the Mattachine wrote that for Obergefell in 2015, bringing in the precedent that Norton set, that the government cannot be the morals cops.

Music up and under

Sofia: Some additional information on LGBTQ+ discrimination in federal employment can be found in the books *The Deviant’s War* by Eric Cervini, *The Lavender Scare* by David K. Johnson and the Mattachine Society’s Amicus Brief in Support of Marriage Equality which is found on their website.

QueerSpace is brought to you by the people behind AirSpace at the Smithsonian’s National Air and Space Museum.

It is produced by Katie Moyer, Jennifer Weingart, Nick Partridge, Amy Stamm and me, Sofia Soto Sugar.

Mix by Tarek Fouda. Our theme music is by the team at Story Mechanics. QueerSpace is presented by Olay and distributed by PRX.

Do you like personal stories about science? As told by the people who experienced them? Then you might like Erin's podcast, The Story Collider!

Erin: On The Story Collider podcast, we share true, personal stories about science, from scientists, journalists, comedians, and more. Some hilarious, some heartbreak, and everything in between. Find it wherever you listen to QueerSpace.

Sofia: Did you know there's also a monthly AirSpace newsletter?! You can sign up through the link in the show notes. And follow us on Instagram and Twitter @airspacepod.