

England vs. The City of Dallas, Mack Vines, and the State of Texas

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Mike Anglin

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THE DALLASWAY *an LGBTQ history project*

by Mica England and Paul J. Williams

I grew up in a small town in Oklahoma. I was working and living in Tulsa when I first applied to the Dallas Police Department. I had always wanted to be a police officer. My major at NSU was Criminal Justice. I really wanted to live in Dallas because of the gay and lesbian community. I felt a sense of welcome and freedom there. I wanted to be open about my sexuality and not worry about being discriminated against.

The first time I applied for the DPD was in 1987. I stayed with my brother Guy during the testing process. He lived in Dallas at the time. To be a DPD officer, you have to take a written exam, a psychological exam, physical test, and the polygraph. I took all of the required tests and passed all of them except the polygraph. On the application in 1987 for the DPD there was a question about deviant sex. Question number 14 was "have you ever committed a deviant sex act." I know being gay or lesbian is not deviant so I answered no. When I was taking the polygraph the officer asked me about being deviant and gay. I lied, so I did not pass the polygraph and was disqualified. If you are disqualified you can

reapply in one year. I waited two years. During those two years, I kept in touch with the



Mica England

recruiters. I still remember their names. It was 1989. I called to speak with the recruiter and she informed me that they would be in Tulsa to take applications for the DPD. I told the recruiter I would see her in Tulsa and I would reapply, which I did. When I was asked why I was disqualified the first time I told them. I asked if I was wasting my time. I asked

"am I going to be discriminated against?" I did not want to take off work if I was going to be wasting my time. I really liked my job. I was a chef in a nice restaurant and about to get a promotion. The recruiters went out in the hallway to discuss the matter. I waited in the room. They came back in and said "no, you will not be discriminated against." I asked several more times if they were certain that I would not be discriminated against. I was assured that I would not be and that I should come to Dallas and finish my testing. She told me to call three weeks in advance to make the reservation and that the interviews were held on Mondays at 8:00 am. I remember being so excited. I had passed all the tests before so I thought this was going to be easy.

I gave the requisite notice and arrived in Dallas on July 9, 1989. My appointment was for July 10. I went to the police station to start the application process at 8:00 am. I was very nervous and excited. I saw the same recruiter that I spoke with in Tulsa, so you can imagine my relief. I signed waivers for the background check, and continued to fill out the questionnaire. When I asked about the deviant sex question, the recruiter said that being gay is deviant. I disagreed. She took me into a room, and we began a very personal conversation. The recruiter asked me when I had my first relationship with a woman. I responded in high school. The recruiter noted the information. Then I felt as if I was being taunted. The recruiter asked me "what do you do, oral sex?" She said I was lesser of a person because I was lesbian. The recruiter also had tried to get me to say that I had just experimented and I wasn't gay, but I was not comfortable with that, and I did not want to be dishonest or live a lie. The recruiter had left the room and came back with a folder – the type that looks like a report folder. She said in the folder was a DPD policy document I asked to see the document, and she did not let me. She left the room again and returned with a police sergeant. He said that it was the policy of the police department to not hire homosexuals and that there was no deviation from its rules and regulations. I asked to see the policy, but he refused to show it to me. I said that I wanted to speak with someone of higher authority and turn in a complaint. The sergeant said I would have to make an appointment to make a complaint. After having been denied repeated requests to file a complaint, I left the room. The sergeant followed me out into the lobby. When I asked for my file back and the Sergeant said I had signed waivers and he would not give it to me. It was 9:30 am and my dream of becoming a Dallas Police officer was over. I left the DPD Headquarters building crying, feeling I had been rejected and humiliated to such an extreme. It is hard to explain the deep emotions I felt. I was confused, extremely angry, and felt emotionally assaulted.

I returned to my friend's apartment. I cried for a while and felt devastated. Then I decided to make some calls. I picked up the phone book and went to the government pages. I called the Equal Employment Commission, Women's Bureau, and many other organizations, including the Dallas Gay Alliance. (In 1989 the name had not yet been changed to the Dallas Gay and Lesbian Alliance.) I left a message for William Waybourn.

All of that night, I did not sleep, paced, and was thinking about what was I going to do. I kept thinking this is wrong; I have rights; I am an American citizen; this can't be happening. So many thoughts and feelings and I just couldn't let it go. So I returned to the DPD headquarters the next morning, and went to the Personnel department pressing to turn in a formal complaint against the recruiting officers and the department. I also went to the Internal Affairs Department, where I spoke with someone who displayed a very negative attitude. I continued to try to turn in a complaint. The employee in Internal Affairs wanted to take me to the Sergeant in Recruiting whom I had spoken with the day before, and I assured him it would be a waste of time. I was able to speak with a Lieutenant who said that I was disqualified from completing the application process because I will continue to break the 21.06 Statute, since I admitted that I was an open homosexual. "We don't hire gays," he stated. I asked to speak with Captain Ferguson, and was told that he was busy and that I would have to call back and make an appointment.

I left again, angry, frustrated and emotionally upset. I called the Dallas Gay Alliance again. I had been told that William would be interested. Indeed he was. He met me that same day, Tuesday, July 11, 1989 at DPD headquarters at 11:15 am. We went up to Chief Stafford's office and made an appointment with Captain Ferguson who was head of Personnel. We spoke with Captain Ferguson and all he wanted to know was whom the recruiters were that met with me in Tulsa. I did not tell him because he refused to take my written complaint or show me the policy. William and I then went to the office of Mr. Gonzales. Gonzales was the Assistant City Manager. He was also concerned with who the recruiters were in Tulsa. He also said the DPD doesn't discriminate. Clearly he was wrong. So William and I pursued my desire to turn in a written complaint. We went to Sergeant Ward who made an appointment with Chief Chappelle for that day at 4:00 pm. At that time, attorney Bill Nelson, William Waybourn, and I met with Chief Chappelle. Finally, someone accepted my complaint of discrimination. Chief Chappelle said he would look over the situation and give us his opinion, but he also said we were beating our heads against a wall.

On Wednesday, July 12, William Waybourn put me on the list to speak at city hall at the meeting. Since I had not previously been on the agenda to address a separate topic, when I spoke, the topic that the council was taking comments about was the Tiananmen Square incident and what was going on in China. I stated, "I think the lack of democracy is awful in China and what is happening there to the students is horrific, but I am here to discuss the lack of democracy here in your city." I held up an Equal Opportunity poster that I removed from DPD headquarters and told the Mayor and the city council members that they are not equal opportunity employers. The city government stopped. The Mayor got up and called for an Executive session and city council members and Mayor Strauss went into a meeting room. They were gone for only a few minutes because the rules would not allow them to have the executive session since my issue was not on the agenda.

In late 1989, I moved to Dallas to pursue a lawsuit against the DPD. I participated in lots of fund-raising events and political events in the gay community. I did various radio and television shows to promote the issue and my lawsuit. I sent a package to the White House to help personalize gay and lesbian discrimination. I received correspondence from President Clinton.

In January of 1990, I spoke to the city council one more time to give them the opportunity to change the police hiring policy, and stated I would continue with my lawsuit if it was not changed. I was on the agenda this time. It was a record-breaking city council meeting. People were speaking well into the early morning, after 2:00 am. The gay community had filled buses and drove people to city hall to support their cause and me as well. The religious right people were wearing stickers that said "No Homo Cops". I was always so thankful that John Thomas was by my side, as I felt safe with him near. The city council kept the policed hiring policy in place.

I filed my lawsuit in May of 1990. *England vs. The City of Dallas, Mack Vines, and the State of Texas*. The State's argument was that my hiring would be in direct conflict with Tex. Penal Code Ann. § 21.06, which makes sodomy a crime in the State of Texas. My case challenged the constitutionality of the Texas statute criminalizing private sexual relations between consenting adults of the same sex, Tex. Penal Code Ann. § 21.06 (West 1989), and sought to enjoin the Dallas Police Department's policy of not hiring lesbians and gay men because that violates this criminal statute.

In February of 1992, the 200th Judicial District Court, Travis County, Judge Lawrence L. Fuller, granted state's plea to jurisdiction but held the 21.06 statute unconstitutional and enjoined city and police chief from enforcing statute and from denying employment in police department to lesbians and gay men solely because they violate the statute. The City of Dallas, the police chief and I as the plaintiff all appealed.

The State appealed on three grounds: (1) that the trial court erred in holding section 21.06 unconstitutional; (2) that the trial court erred in enjoining appellants from enforcing the statute and that portion of the police department's hiring policy based on the statute; and (3) that the trial court erred in denying Vines' motion for summary judgment based on his assertion of qualified immunity. I appealed complaining that the court erred in dismissing the State.

Although my appeal was found to be without merit, the Appeals Court affirmed the trial court's judgment on all other counts, my case was a success and all of this was instrumental in changing the hiring policies of the Dallas Police Department.

Interestingly, Dallas later filed a motion for rehearing, but it was filed a day or two late and was denied as untimely. Dallas then filed a petition for review with the Texas Supreme Court but, since a timely motion for rehearing is jurisdictional for Supreme Court review,

the Texas Supreme Court denied the writ ending the case and meaning that the Austin Court of Appeals ruling that 21.06 was unconstitutional was the law at least within the jurisdiction of that Court.

There was some speculation that Dallas had intentionally missed the deadline for rehearing in order to avoid Supreme Court review. My case could have been appealed all the way to the Texas Supreme Court. However, it had addressed 21.06 a few years before in the Morales case and had held that, in that case, the plaintiffs lacked standing to challenge 21.06 because none had been prosecuted under 21.06 and none had suffered any cognizable harm from the statute. My case clearly was not subject to that argument: I had qualified for a job with the Dallas police, and "but for" my admission of conduct in violation of 21.06, I would have been hired. Thus, I suffered direct and material injury as a result of the statute. The Texas Supreme court could not have avoided the issue the way it did in Morales, but Dallas' convenient delay in filing the petition for rehearing provided a simple way for the Court to avoid addressing the issue. It wasn't until Lawrence v. Texas that 21.06 was officially and finally struck down.



[Front row] Sheriff Lupe Valdez, Mica England, Dallas Police Major Barbara Hobbs
[Back row] Various member of The Dallas Way board of directors.

Lambda Legal Defense Fund refers to my case as an iconic lawsuit. It freed up municipal employment statewide because the hiring policy was ruled unconstitutional, even though Dallas had been the only major city actively discriminating against homosexuals via 21.06 in police hiring practices.