

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

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DALLAS DIVISION

YVETTE LEWIS, KATERI BEAR-
HEELS, BETTY JO WATSON and
ELIZABETH PECINA

PLAINTIFFS

VS.

CITY OF DALLAS, ET AL

DEFENDANTS

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May 13, 1987

CIVIL NO. CA3-85-0606-T
(Consolidated with Civil
Action No. CA3-85-1572-T)

CONSENT DECREE

Plaintiffs and Defendants, through their counsel, have announced to the Court that all matters in controversy raised by these consolidated lawsuits have been settled and request the Court to enter the following Consent Decree (hereinafter referred to as this Decree).

Plaintiffs enter into this Decree because they believe that entry and implementation of the terms and provisions of this Decree will afford Plaintiffs the greatest amount of protection and enforcement of the law allowable in situations where family violence has been alleged.

Defendants enter into this Decree because they believe resolving the issues in an amicable manner is in the best interests of its Defendants, the City of Dallas and its residents and that the entry and implementation of this Decree will provide the citizens of Dallas with the greatest amount of protection and enforcement of the law allowable in situations where family violence has been alleged.

Plaintiffs have alleged in their complaints that Defendants have violated their rights under the due process and equal protection clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States; and under 42 U.S.C. §§1981, 1983, 1985(c), 1986 as well as state claims of negligence in the manner set forth in the allegations of their complaints. Yvette Lewis, et al., v. City of Dallas, et al., Civil Action No. CA3-85-0606-T was filed as a class action on March 26, 1985 and Betty Jo Watson, et al, vs. City of Dallas, Civil Action No. CA3-85-1572-T was filed on August 13, 1985 and later consolidated with Civil Action No. CA3-85-0606 by this Court on July 23, 1986, for purposes of discovery and pretrial. Class action allegations were withdrawn by joint motion. The withdrawal of those allegations was subsequently approved by the Court. Defendants have denied the allegations of those complaints relating to all alleged violations, and the agreements and stipulations herein do not constitute an agreement, stipulation or admission that the alleged acts did or did not occur.

Defendants specifically aver that the alleged violations do not reflect the past, present, or future policies, procedures, performance or conduct of the Defendants, or any of them or of their agents, or employees.

The parties have agreed to resolve this matter on the terms set forth below and have agreed to the entry and implementation of this Decree.

Violence in Dallas families continues to be reported at an increasing rate, creating a growing demand for an effective response from social service agencies and from the criminal justice system.

In recognition of the fact that family violence is a complex problem of great concern, the parties to this Consent Decree have engaged in extensive discussion wherein the myriad problems unique to family violence were reviewed. These discussions have been mutually beneficial and have provided the parties with a fuller understanding of the special problems attendant to victims of family violence and to police response to family violence. The parties believe that the policies and procedures which have been developed as a result of these discussions will effect a better resolution of problems arising from family violence incidents.

No statement contained in this Consent Decree shall in any way be interpreted to constitute an admission of liability or wrongdoing in the past or present on the part of any Defendant. The policies and procedures articulated in this Consent Decree shall supersede and replace, where applicable, the policies and procedures previously employed by the Dallas Police Department with regard to family violence, as that term is herein defined. The Dallas Police Department (DPD) will not employ an arrest avoidance policy in dealing with incidents of alleged family violence.

IT IS HEREBY STIPULATED, ORDERED, AND AGREED:

This Consent Decree shall be binding on all Defendants, subsidiaries, successors of each and every Defendant, all officers, agents, servants and employees of each and every Defendant, and all persons in active concert or participation with them for as long as the Court retains jurisdiction of this matter.

I.

DEFINITIONS

The following definitions shall apply with reference to family violence:

A. "Family violence" means the intentional use or threat of physical force by a member of a family or household against another member of the family or household, but does not include the reasonable discipline of a child by a person having that duty.

B. "Family" includes individuals related by consanguinity or affinity, individuals who are former spouses of each other, individuals who are the biological parents of the same child, without regard to marriage or legitimacy, and a foster child and foster parent, whether or not those individuals reside together.

C. "Household" means a unit composed of persons living together in the same dwelling, whether or not they are related to each other.

D. "Member of a Household" includes a former member of a household who has filed an application or for whom protection is sought as provided by Subsection (c) of Section 71.04 of the Texas Family Code.

E. "Arrest Avoidance Policy" is that conduct or written or unwritten policy, which by characterizing family violence situations as civil or family matters and presuming that arrest is not an appropriate or desirable response to family violence situations, has the effect of discouraging arrests.

II.

TASK FORCE

A. A task force on family violence will be created within ninety (90) days by the Public Safety Committee of the Dallas City Council. The purpose of the task force will be to research, explore, develop and monitor the City of Dallas' response to the problem of family violence in Dallas and the Dallas Police Department's enforcement of laws relating to family violence.

B. The membership of the task force will be determined by the members of the Public Safety Committee of the Dallas City Council; however, representatives from local family shelters, including, but not limited to, Family Place, Genesis Women's Shelter and New Beginnings, groups involved in family violence intervention and prevention, and one representative from the Dallas Police Department shall be included as task force members.

C. The task force shall meet no less than quarterly for a period of two (2) years.

D. The task force shall review, evaluate and recommend new City of Dallas training materials and programs regarding the enforcement of laws relating to family violence and its prevention. Task force members will be allowed to monitor all training conducted by the Dallas Police Department relevant to family violence.

E. The task force will submit an annual report of its recommendations to the Dallas City Council.

III.

PROCEDURES

A. The Dallas Police Department has the duty to protect victims of family violence without regard to the relationship between the alleged offender and victim. The Dallas Police Department's duty to prevent the commission of criminal offenses, including acts of family violence, is not waived or excepted because of a family or household relationship between the potential violator and victim:

B. The Dallas Police Department's primary duties when investigating family violence allegations or responding to family violence disturbance calls are to protect the victims or potential victims of family violence, enforce the law and make lawful arrests of violators. In family violence incidents where probable cause for arrest exists, Dallas police officers shall arrest the alleged offender.

C. The following provisions apply in all family situations, regardless of the existence of any court orders.

1. DISPATCH PROCEDURE:

(a) The Dallas Police Department shall give calls from battered spouses or other victims of family violence Type 1 dispatch priority.

(b) Dispatchers receiving a call regarding family violence shall elicit from the caller, and communicate to field units, the following information whenever possible: type of incident; address of the incident or complainant; name of business or apartment number; determine whether an ambulance is needed; whether weapons are involved; whether the suspect is present or not; if the suspect is not present, direction and mode of travel; name of complainant or caller; complainant's telephone number; whether any type of protective order is in effect; and any other necessary information which shall be requested and used by Dallas Police Department personnel to determine the appropriate nature of police response.

(c) The Dallas Police Department will ensure that bilingual Spanish-speaking persons are on duty in the Communications Division or otherwise available.

2. FAMILY VIOLENCE IS CRIMINAL CONDUCT:

(a) Arrest is the most appropriate response to family violence crimes which involve: (1) an alleged felony; or (2) alleged breach of the peace or offense against the public peace; or (3) any criminal offense committed, threatened or about to be committed in the officer's presence or within his/her view; or (4) an alleged assault resulting in bodily injury to another person where there exists probable cause to believe that there is danger of further bodily injury to that person; or (5) probable cause to believe there has been a violation of a court order, as defined by section 25.08 of the Texas Penal Code, whether or not the offense is committed in the presence of the peace officer.

(b) The Dallas Police Department will not adopt or employ an arrest avoidance policy in response to incidents of alleged family violence.

(c) The Dallas Police Department shall treat all reported family violence as alleged criminal conduct. The Dallas Police Department shall treat requests for police assistance and/or criminal investigation from victims of family violence as it does all other requests for assistance in cases where there has been alleged

physical violence inflicted upon a person. The Dallas Police Department shall not respond to requests for assistance from victims of family violence any less diligently than they respond to requests for assistance from other persons who have been victims of violent crime arising in a non-domestic context.

(d) The following factors shall not be used as a basis for determining whether or not to effect an arrest in family violence incidents: that the suspect lives on the premises with the victim; that the suspect and the victim are or are not married or have or have not had a prior or existing cohabiting relationship; whether or not a court order against the suspect is presently in effect; that the victim has made prior calls to the Dallas Police Department; that there may be adverse financial consequences caused by the arrest; that the alleged injury is not visually apparent or verifiable to the police officer without further investigation if there is a permanent protective order in effect; or that the victim indicates that he/she may be hesitant or unwilling to participate in subsequent criminal proceedings or that prosecution and conviction may not occur despite the existence of probable cause to arrest.

(e) When determining whether probable cause exists for an arrest for family violence, a police officer, when appropriate, shall consider the following factors: whether the suspect has a prior history of arrests or citations involving family violence; whether the suspect has previously violated court orders pertaining to family violence; whether the suspect has a prior history of assaultive behavior; statements obtained from a complainant; and statements obtained from the victim expressing fear of retaliation or further violence should the suspect be released.

3. CRIMINAL INVESTIGATION:

The following provisions apply in all alleged family violence situations regardless of the existence of any court orders:

(a) The responding officer shall interview the complainant and any witnesses as fully as possible under the circumstances and investigate to determine if a crime has been committed.

(b) If the suspect is not on the premises, reasonable efforts shall be made to locate the suspect and take follow-up steps appropriate under the circumstances.

(c) Dallas police officers, when investigating or responding to family violence calls, agree to give written and oral notice to the victim of his/her legal rights and remedies and of the availability of shelter or other community services for family violence victims. This notice will be written in English and Spanish and shall comply with the provisions of Article 5.04(c) of the Texas Code of Criminal Procedure.

(d) A copy of the notice is attached and is incorporated as fully set out herein.

(e) Dallas police officers will also inform victims of family violence that they may file a criminal complaint against the person committing family violence, pursuant to relevant provisions of the Texas Code of Criminal Procedure, and provide written notices advising them of the locations where charges can be filed and the procedures to be followed in filing charges.

(f) The responding officer shall inquire whether there are any existing court orders. If the officer is informed there is, but there is no copy available at the scene, the officer shall radio dispatch to verify if a protective order is on file and inquire as to the terms of the protective order, if appropriate. If the officer is informed there is no existing court order, then the responding officer will determine whether there is probable cause to arrest. In family violence incidents where probable cause for arrest exists, Dallas police officers shall arrest the alleged offender.

(g) If the offender is not on the premises at the time the police officers arrive, reasonable efforts will be made to locate the offender. When probable cause exists for an arrest, charges will be expeditiously filed, regardless of the police officers' immediate success in apprehending the offender.

(h) When an arrest is effected or charges filed, the Dallas Police Department will collect and preserve all evidence, pursuant to Dallas Police Department policies and procedures and Texas law, reasonably necessary to support prosecution.

(i) Dallas Police officers shall inform all victims of their rights to file a criminal complaint against family violence offenders. If an offender is arrested by the Dallas Police Department and criminal charges relative to family violence are filed, no criminal charges against the family violence offender will be dismissed within seventy-two (72) hours of the date and time of arrest, even if an affidavit of non-prosecution is filed by the family violence victim. No criminal charges against any family violence offender shall be dismissed without due consideration being given to the seriousness of the offense and the State's interest in prosecuting criminal offenders.

(j) The responding officer shall prepare an offense or incident report regarding the incident. A description of the injuries shall be made in the offense or incident report by the responding officer. All initial reports filed by the responding officer shall indicate whether family violence has occurred or was alleged. The notation of family violence will be made on all initial reports filed whether offense/incident reports and or arrest reports.

(k) If an officer does not make an arrest in response to a family violence assault or a violation of §25.08 of the Texas Penal Code, a written statement of the reasons for no arrest shall be included in the offense or incident report.

4. PROTECTIVE ORDERS PROCEDURES:

(a) The immediate arrest of the offender or the filing of criminal charges against the offender is the appropriate response to a violation of a permanent protective order. It is not necessary for the suspect to be present for an arrest to be made subsequent to the reported incident of family violence or for criminal charges to be filed.

(b) Each law enforcement officer shall accept a certified copy of the protective order as proof of the validity of the order, and it is presumed the order remains valid unless the order contains a termination date that is past or is more than one year old from its entry date. The age of the order shall be determined starting with the date on which the order was signed.

(c) When necessary to verify the existence of a protective order, in those circumstances where the victim does not have a copy of a protective order or the copy is not certified, Dallas police officers, while on the scene, shall radio the appropriate division of the Dallas Police Department to determine if a protective order is on file.

5. FELONIES:

(a) When a family violence incident involves an alleged felony, the police officer shall presume that arrest is appropriate. When probable cause exists to believe that a felony has been committed and there is probable cause to believe that a particular person committed the felony, the responding officer shall arrest that person without a warrant, consistent with Dallas Police Department arrest policies and Texas law in regard to felony cases arising in a non-domestic context. Where the suspect is no longer present at the scene, the police shall exercise due diligence to effect his/her arrest, consistent with Texas law and Dallas Police Department policies regarding felony cases arising in a non-domestic context.

6. MISDEMEANORS:

Arrest shall be presumed to be the appropriate response to family violence incidents which involve an act of physical violence or criminal conduct directed toward the complainant.

7. CRIMINAL TRESPASS:

In addition, but not in lieu of arrest for violation of a protective order and/or assault, arrests shall also be made for criminal trespass or attempted criminal trespass, pursuant to relevant provisions of the Texas Penal Code, §30.05.

INFORMATION AND REPORTING SYSTEMS

A. When a police officer has reason to believe that an offense involving family violence has occurred, the officer shall make a written report which shall include the information prescribed in Art. 5.05 of the Texas Code of Criminal Procedure, and

- (1) a written statement of the reason for not arresting, if no arrest is made, unless the report indicates the suspect is at-large;
- (2) a description of the suspect, when necessary;
- (3) A narrative of the incident;
- (4) a departmental code identifying the incident as one involving family violence;
- (5) information on witnesses; and
- (6) notations regarding other family violence reports if there is personal knowledge of those reports by the responding police officer.

B. The Dallas Police Department shall establish a departmental code for identifying and retrieving family violence reports as previously outlined within no later than thirty (30) days from the signing of this Consent Decree.

C. In order to ensure that officers responding to calls are aware of the existence and terms of permanent protective orders, the Dallas Police Department shall, within no later than thirty (30) days after the effective date of this Consent Decree, establish procedures to provide adequate information or access to information for law enforcement officers of the names of persons protected by a protective order and of persons to whom protective orders are directed. A written outline of those procedures will be provided to Plaintiffs' counsel by the Dallas City Attorney's Office no later than sixty (60) days after the effective date of this Consent Decree.

D. The City of Dallas and Plaintiffs' counsel shall contact the Dallas County Family District Court Clerk's Office within thirty (30) days after the effective date of this Decree to set up a meeting for the purpose of developing a system whereby protective orders issued by the Family District Court Clerk's Office will be expeditiously transmitted to the Dallas Chief of Police.

Protective Orders received by the Dallas Chief of Police shall be disseminated to the appropriate divisions of the Dallas Police Department where they will be processed as soon as is practical, in any event not to exceed three (3) working days. In the event that a protective order substantially lacks essential information, the Dallas Police Department shall attempt to remedy the situation as soon as is reasonable under the circumstances.

E. The following protective order information shall be entered on the Communications Division computer upon receipt by the Dallas Police Chief:

- (1) names of the persons protected by the order;
- (2) address (residential and business) of the persons protected by the orders;
- (3) names of the persons to whom the protective orders is directed;
- (4) expiration date of the protective order (either specified or by operation of law).

However, the lack of any information (except identity of the protected person and person to whom the order is directed) shall not excuse the Dallas Police Department from filing, recording and enforcing the protective order.

V.

IMPLEMENTATION AND TRAINING

A. Within sixty (60) days of the effective date of this Consent Decree, the Dallas Police Department will disseminate and sponsor one or more public service announcements via television and radio informing the public of the criminal nature of family violence and the Dallas Police Department's enforcement power. Video cassettes of the announcements will be made available to the local media for broadcast, as stipulated by Defendants' letter to Plaintiffs' counsel, dated January 12, 1987, with a transmittal letter from Defendants' counsel requesting that the announcement be broadcast for one year. Copies of the transmittal letters will be provided to Plaintiffs' counsel. Plaintiffs' counsel will be notified in advance of the dates when such public service announcements will be aired, if known to Defendants' counsel. Plaintiffs' counsel will be allowed to review all public service announcements prepared by the Dallas Police Department prior to submission to the local media for the purpose of providing input and making recommendations. Plaintiffs and Defendants also agree to issue a joint press release regarding the settlement of this lawsuit. Plaintiffs' attorneys will be invited to address the Dallas City Council on this settlement.

B. The Dallas Police Department will immediately apprise all uniformed departmental personnel of the provisions of this Consent Decree through appropriate means.

C. All Dallas Police Department uniformed personnel will be given a copy of this Consent Decree and be responsible for knowing, understanding and complying with the provisions of this Consent Decree. The City of Dallas will verify in writing to Plaintiffs' counsel that all Dallas Police Department uniformed personnel have received a copy of this Consent Decree (without damages information) no later than ninety (90) days after the effective date of this Decree.

D. The Dallas Police Department will afford its personnel such training as may be necessary to ensure compliance with the provisions of this decree. Present and future Dallas Police Department personnel will receive training relevant to the provisions of this Consent Decree.

E. Training materials and school curriculum for recruits and advanced officers of the Dallas Police Department will be changed and/or modified to inform all uniformed personnel of the existence of this Decree and as may be necessary to ensure compliance with the provisions of this Decree. Copies of all such changes and/or modifications will be forwarded to Plaintiff's counsel no later than sixty (60) days after the effective date of this Consent Decree.

F. The Dallas Police Department agrees to change and/or modify, where necessary or appropriate, relevant provisions of all General Orders, Standard Operating Procedures and Special Orders relating to family violence in order to ensure compliance with the provisions of this Consent Decree and state law. Copies of all changes and/or modifications will be forwarded to Plaintiffs' counsel no later than sixty (60) days after the effective date of this Decree.

VI.

ENFORCEMENT AND MODIFICATION

A. This Consent Decree is a final judgment and is effective as of the date it is signed by the Court. The Court shall retain jurisdiction of this action to ensure compliance with the provisions of this Consent Decree for a period of two (2) years.

B. The parties to this Consent Decree hereby agree that any party may apply to the Court for an order modifying any provisions of this Decree.

C. If Plaintiffs or their counsel become aware of any violations of this Consent Decree, Plaintiffs will notify the City Attorney of the violations in writing. Defendants shall be allowed a reasonable period of time to correct any alleged violations. If the alleged violations involve any individual police officers and are not corrected, the complainant may thereafter file a written complaint with the Chief of Police. After investigation, should the violation not be corrected and/or appropriate discipline imposed or other corrective action taken, when applicable, Plaintiffs may thereafter apply to the court for relief. Plaintiffs' counsel, upon reasonable written notice shall be entitled to pursue discovery of all information relevant to the alleged violation of this Consent Decree. Plaintiffs' counsel may resort to the formal discovery procedures set forth in the Federal Rules of Civil Procedure if the request for discovery has not been satisfactorily resolved.

VII.

DAMAGES

The provisions regarding Damages and attorney's fees are contained in a separate document.

VIII.

A. The Court will retain jurisdiction of this matter as provided herein.

B. All costs of this matter will be borne by the party which incurred same.

C. The effective date is the date on which the judge signs this Consent Decree.

IT IS SO ORDERED:

ROBERT MALONEY
United States District Judge