



EXCERPTS FROM PLAINTIFFS' APPELLATE OPENING BRIEF

B. Operation Valkyrie

Chavez, Lee, and Jimenez were all stopped by officers assigned to Operation Valkyrie, the ISP's highway drug interdiction program. Since 1990, the ISP has assigned more than 100 officers to dedicated Valkyrie teams in 11 of the ISP's 21 Districts.

(R.152, ¶247; R.154, Exh.25, p.45; Supp.App.112, 168-70)

1. Basic Valkyrie procedures

Defendant Master Sergeant Michael Snyders, the former statewide Valkyrie coordinator, testified that the Valkyrie program "is based on traffic violations and traffic safety, and we do not teach each other or train each other who to stop." (R.154, Exh.25, p.45) Instead, the ISP trained Valkyrie officers to watch for "indicators" of drug trafficking during "all" traffic stops. (*Id.*) The indicators listed in ISP training materials include cellular telephones, religious paraphernalia, either "too little" or "too much" luggage, maps, and motorist body language such as "frowns." (R.499, Exh.6, pp.13-18) Plaintiffs' police practices expert concluded that these indicators are "overly broad, general and can be made to fit any person on the highway at any hour of the day."

(Supp.App.86)

Snyders testified that when Valkyrie officers observe such indicators, they are trained to request consent to search the vehicle. (R.154, Exh.25, pp.135-36, 144) ISP data for 1992 show that consent searches represent nearly 80% of all Valkyrie searches, and that more than 95% of motorists grant consent when asked. (Supp.App.107)

Snyders testified that Valkyrie officers should seek consent to search in fewer than 5% of all stops. (R.154, Exh.25, p.144) However, ISP data for 1992 show that every Valkyrie

team but one at least doubled that rate; indeed, Valkyrie troopers in District 4 searched one-half of the vehicles they stopped, but found contraband only once in every 21 searches. (Supp.App.107)

2. Unguided and unreviewed discretion

Operation Valkyrie grants troopers absolute discretion to decide which motorists to stop and search, and neither guides nor reviews this discretion. (R.367, Exh.5, ¶3; R.226, Exh.34, pp.102-03) ISP training materials acknowledge that “discretion can deteriorate into abusive practices,” including racial discrimination. (R.367, Exh.5, ¶3; R.226, Exh.39) Nevertheless, no ISP policy prohibits troopers from using race as a factor in determining which motorists to stop, detain, or search. (R.367, Exh.5, ¶3; R.226, Exh.11, pp.75-76; R.226, Exh.28, p.38)

During the early years of the Valkyrie program, a few ISP Districts attempted to monitor trooper discretion by collecting data on the race of motorists searched by Valkyrie troopers. One reason for this, according to Snyders, was the “potential for people to question what we’re doing,” including whether officers were “targeting race.” (R.499, Exh.39, pp. 49-50, 73) This racial data was also used as “a supervisory tool to ensure that team members do not concentrate on certain ethnic groups.” (R.499, Exh.10, ISP0021221) Between 1990 and 1994, monthly statistics in District 6 repeatedly demonstrated that African-Americans and Hispanics comprised over 60% of the motorists searched. (R.367, Exh.5, ¶16) This data was never collected on a statewide basis. (R.499, Exh.39, p.133)

Today, the ISP will not even “open a case” when a citizen complains that he did not commit any offense but was stopped on the basis of race. (R.367, Exh.5, ¶17; R.226,

Exh.18, pp. 87, 91) Similarly, the ISP Office of Inspection and Audits does not investigate the issue of race in trooper enforcement activity. (R.367, Exh.5, ¶68; R.226, Exh.50, pp. 33, 67)

3. Training that race is an indicator

Valkyrie training materials emphasize the alleged predominance of Hispanics among highway travelers carrying illegal drugs. (R.367, Exh.5, ¶15; R.226, Exh.39) The ISP trains its troopers that a motorist's race may be a permissible factor to consider in deciding to stop a vehicle. (R.367, Exh.5, ¶14; R.226, Exh.37, pp.34-35)

Valkyrie troopers carry this training into the field. Trooper Cessna, who searched plaintiff Chavez, was trained that a motorist's race is one "indicator" that "you've got to keep in mind." (R.367, Exh.5, ¶9; R.154, Exh.19, pp. 65, 74-76) Trooper Jennings, who stopped and searched putative plaintiff Jimenez and his fiancée, searched their car because "in the past we had made drug seizures from mixed race couples." (R.367, Exh.5, ¶10; R.443, Exh.1, p.76) Trooper Fraher, who stopped and searched African-American plaintiff Lee, explained his request to search Lee's car by stating, "You never can tell with you people." (R.367, Exh.5, ¶ 8)

C. Statistical proof

Plaintiffs submitted statistical proof demonstrating that Hispanics and African-Americans are grossly over-represented in stops and searches conducted by Valkyrie officers.

Plaintiffs' statistical proof is based largely on two computer databases created and maintained by the ISP. First, plaintiffs relied on the database of citations and warnings written by ISP troopers for motorist violations of traffic laws. This database contains no

motorist race information. However, Hispanic motorists may reliably be estimated with a database of Spanish surnames from the U.S. Census Bureau. (Supp.App.111-12)

Second, plaintiffs relied on the database of “field reports” written by ISP troopers. The ISP instructs its troopers to complete a field report when they use Valkyrie skills or obtain information of interest to the Valkyrie program, and to mark such reports with a “V”. (R.226, Exh.51, p.88; R.499, Exh.7) Vehicle searches comprise 88% of these Valkyrie field reports. (Supp.App. 120, 186, 198) The ISP at one time used the field report database to monitor whether motorists were stopped based on race. (R.152, ¶248)

The over-representation of motorists of color within these databases cannot be explained by differences in driving behavior among the races. ISP defendant officials and officers testified without contradiction that African-American and Hispanic motorists are no more likely than white motorists to violate the traffic laws. See R.499, Exh.27, pp.28-30 (Director Gainer); id., Exh.31, p.124 (Trooper Jennings); id., Exh.33, pp.122-24 (Trooper Lauterbach); id., Exh.20, pp.65-67 (Trooper Butler). See also R.431, p.4 (defendants defined “‘normal’ driving behavior” as “not flagrantly bad but not necessarily perfect”). These admissions are consistent with government studies in other states. See, e.g., R.499, Exh.17, p.95 (report of the New Jersey Attorney General regarding racial profiling, concluding: “we are aware of no study that supports the hypothesis that minority motorists are more likely to violate motor vehicle laws than non-minority motorists”). See also id., Exh.16, pp. 2, 6; id., Exh.18.

Similarly, every ISP employee to address the issue testified that African-American and Hispanic motorists are no more likely than white motorists to have illegal

drugs or weapons in their vehicles. See R.499, Exh.27, p.30 (Director Gainer); id., Exh.38, pp.42-43 (Valkyrie coordinator Snyders); id., Exh.43, p.65 (Trooper Van Buren).

1. Data on stops and searches of African-American motorists

On a statewide basis, African-Americans comprise 22.7% of the stops and searches in the Valkyrie field reports, but only 14.8% of the Illinois population (a difference of 55.8 standard deviations), 10.3% of Illinois personal vehicle trips, and 7.8% of Illinois personal vehicle miles. (Supp.App.121-22; R.367, Exh.5, ¶53)

Moreover, compared to local driving-age populations, African-Americans are over-represented in the Valkyrie field report data in all Valkyrie Districts. For example, in District 4, African-Americans comprise 61.4% of the Valkyrie field reports, but only 23.85% of the local driving-age population (a difference of 20.0 standard deviations). (Supp.App.191; Supp.App.123-42; R.367, Exh.5, ¶¶ 54, 57-60)

Finally, African-Americans are over-represented in the field report data for all officers involved in the Chavez and Lee incidents. For example, Trooper Fraher (who stopped and searched Lee and addressed him with the phrase “you people”) wrote one-third of his field reports (29 out of 89) for incidents involving African-Americans, although African-Americans comprise only 8.4% of the driving-age population of his district. (Supp.App.125-26; Supp.App.136-40; R.367, Exh.5, ¶¶ 55-56, 61-62)

2. Data on stops and searches of Hispanic motorists

(a) Statewide

Hispanics comprise 21% of the stops and searches in the Valkyrie field reports, but only 7.9% of the Illinois population (a difference of 53.7 standard deviations), 2.7%

of Illinois personal vehicle trips, and 1.0% of Illinois personal vehicle miles.

(Supp.App.121-22; R.367, Exh.5, ¶53)

Moreover, individual officers issue citations and warnings to Hispanic motorists two or three times more frequently after they receive Valkyrie training. Thus, Valkyrie officers are two or three times more likely than non-Valkyrie officers to issue citations and warnings to Hispanics. (Supp.App.113-15, 165-66)

(b) Discretionary law enforcement actions

A random sample of Valkyrie field reports from 1992 demonstrates that Hispanic motorists are over-represented in consent search requests. Hispanic motorists are more likely than white motorists to be subjected to consent searches (as opposed to probable cause searches): the rate of consent searches per all searches is 93% for Hispanics, but only 75% for whites. This is true even though Hispanic motorists subjected to consent searches are less likely than white motorists to possess contraband: the rate of seizures per consent searches is some 30% lower for Hispanics than for whites. (Supp.App. 120, 186, 198-99)

Hispanic motorists comprise 30.3% of the stops and searches in the Valkyrie field reports for discretionary traffic offenses (e.g., improper license plate display, improper lane use, improper signal, and obstructed windshield), but only 7.7% of the Valkyrie field reports for non-discretionary offenses (e.g., DUI, theft, and unlawful use of a weapon), 8.7% of the non-Valkyrie field reports for discretionary offenses, and 7.9% of the Illinois population. (Supp.App.194-96)

Moreover, in most Valkyrie Districts (particularly Districts 11, 12, 13, and 17), Hispanic motorists are over-represented in citations and warnings issued by Valkyrie

officers for discretionary offenses, compared both to citations and warnings issued by Valkyrie officers for non-discretionary offenses, and to citations and warnings issued by non-Valkyrie officers for discretionary offenses. For example, in District 12, Hispanics comprise 27% of the citations and warnings issued by Valkyrie officers for improper lane use (a discretionary offense), but only 3% of the citations and warnings issued by non-Valkyrie officers for the same offense. (Supp.App.118-19, 184)

Similarly, in several Valkyrie Districts (particularly Districts 9, 12, and 13), the rate of Hispanics in Valkyrie citations and warnings for speeding is greatest for motorists driving within 5 m.p.h. over the speed limit. For example, for those speeding in 65 m.p.h. zones in District 13, Hispanics comprise 29% of the stops for speeding within 5 m.p.h. over the speed limit, but only 15% of all speeding stops. (Supp.App.118, 183)

(c) Time of day

Hispanics comprise 25.1% of the stops and searches in the Valkyrie field reports for daytime contacts (when ethnicity is apparent), but only 12.1% for nighttime contacts (when it is not). The rate of Hispanics in the stops in the non-Valkyrie field reports did not change with the light (6.4% by day, and 6.2% by night). (Supp.App.197-98)

(d) District-by-district

Hispanics are over-represented in the Valkyrie field report data in ten of the eleven Valkyrie Districts, compared to the local driving-age population. For example, in ISP District 11, Hispanics comprise only 1.09% of the local driving-age population, but 28.4% of the Valkyrie field reports (a difference of 73.0 standard deviations) and 40.5% of the Valkyrie field reports written by Valkyrie officers. (Supp.App.123-42, 191; R.367, Exh.5, ¶¶ 54, 57-60)

(e) Individual officers

Dozens of individual Valkyrie troopers – including officers involved in the Chavez and Lee incidents – issue citations and warnings to Hispanic motorists far more frequently than the non-Valkyrie officers in the same District. For example, officer 3789 of District 13 issued 35% of his warnings and 22% of his citations to Hispanic motorists, while the non-Valkyrie officers in the same District issued 2% of their warnings and 2% of their citations to Hispanic motorists. (Supp.App.115-17, 167-82)

Finally, Hispanics are over-represented in the field reports of all four officers involved in the Chavez incident, and in the Valkyrie field reports of all three officers with sufficient reports to analyze. For example, Trooper Thomas (who stopped Chavez) wrote 35% of his Valkyrie field reports (47 of 135) for incidents involving Hispanics, although Hispanics comprise only 2.4% of the driving-age population of his District. (Supp.App.136-40; R.367, Exh.5, ¶¶ 55-56, 61-62)