



PP-IL-001-011

Preliminary Report
James D. Ginger, Ph.D.
Peso Chavez, et al. v. Illinois State Police, et al.

JAMES D. GINGER, PH.D., pursuant to the penalty of perjury under 28 USC Section 1746, does hereby state the following: -

1. My name is James D. Ginger, Jr. I am more than twenty-one years of age, and am under no legal disability of any kind. This declaration is given in connection with the above-styled action.
2. I currently hold the position of associate professor and director, Center for Justice Policy, St. Mary's University in San Antonio, Texas. I have advised numerous agencies in the United States regarding race and racial bias as reflected in the operations of American law enforcement agencies, including the Supreme Court of the State of Florida; the United States Department of Justice, Civil Rights Division; and numerous police agencies, including the Pittsburgh, Pennsylvania Bureau of Police; the Tampa, Florida Police Department; the Clearwater, Florida Police Department; the Lexington-Fayette County, Kentucky Police Department; and the Albuquerque, New Mexico Police Department. I have taught courses in police administration, research methods in criminal justice and statistical applications in criminal justice at the graduate and undergraduate levels. I earned a Ph.D. in Public Administration from Virginia Polytechnic Institute and State University in 1984. I have served as the Director of the Southern Police Institute at the University of Louisville, as Deputy Director of the Washington, DC-based Police Foundation, as a management services administrator with the San Antonio, Texas Police Department, and as a sworn police officer with the Evansville, Indiana Police Department. I currently serve the Federal District Court for the Western District of Pennsylvania as the compliance auditor for a consent decree entered into between the United States Department of Justice, Civil Rights Division and the City of Pittsburgh. My position as consent decree auditor requires me to assess, among other processes, aspects of potential racial bias in the operation of the Pittsburgh law enforcement function.
3. I have testified as an expert witness in federal and state courts in Texas, Louisiana, New Mexico and Indiana. A copy of my vita is attached as Appendix A of this preliminary report. My hourly rate for non-profit organizations is \$175 per hour.
4. I have reviewed the electronic "field report" database of 1.4 million field report records of the Illinois State Police (ISP) activity for the years 1987-1995, written reports prepared from samples of ISP field reports, as well as the deposition of Sgt. Michael Snyders, reports generated from the ISP electronic

Valkyrie Activity database, reports generated from a sample of 300 dedicated Valkyrie officers' Field Reports, a summary of data from a Maryland drug interdiction program, and other documents provided by plaintiffs' counsel in the above-styled matter.

5. Based on my review of ISP field reports, I have formed several opinions related to the ISP's operation of the "Valkyrie" drug interdiction program during the years 1990-1995. I base these opinions, as well, on my experience in the area of police operations and management. My specific opinions developed as part of the review of the ISP data and operations are as follows.

The Illinois State Police have allowed a law enforcement program, the Valkyrie drug interdiction program, to function without developing adequate supervisory control over the personnel assigned to the program to insure that the operations of the program do not disproportionately affect specific segments of the driving population in Illinois. This is reflected in the following ways:

- Implementation of the Valkyrie drug interdiction program in the State of Illinois was designed and effected so as to allow or encourage police personnel to use highly discretionary processes of law enforcement to control the flow of drugs into the state of Illinois. Developing and training police personnel to use discretionary policing tactics often leads to the abuse of the process. This abuse, often, ultimately leads to law enforcement tactics which disproportionately affect specific classes of persons, in this case those of Hispanic extraction who use the state's highways;
- Areas of ISP enforcement characterized as "discretionary enforcement," as a result of decisions made concerning the functioning of the Valkyrie program, have higher levels of representation of Hispanic subjects included in the ISP drug enforcement effort than do areas of enforcement characterized as "non-discretionary"; and
- Officers engaging in ISP drug enforcement efforts select a significantly higher percentage of Hispanic drivers for discretionary enforcement efforts (based on their distribution in the population) than do ISP officers not engaging in drug interdiction efforts.

Each of these conclusions is discussed in some detail below.

5.1 Failure to Develop Adequate Supervisory Controls for Valkyrie Program

The Illinois State Police, when they developed and implemented the Valkyrie drug interdiction program, had the ability and in fact for a brief period of time did implement, a statistical control and assessment process designed to assess the

numbers and percentages of minority drivers searched by officers of the Valkyrie program (e.g., Internal ISP Memo, March 21, 1990, "Area III Valkyrie Reporting Form" and attachments). This process was eventually terminated, however, and the ISP stopped monitoring race-based data related to its drug interdiction searches. While the capacity existed to report on stops, searches and seizures under the Valkyrie program by race and ethnicity, the ISP chose not to monitor this critical aspect of the program

5.2 Data Acquisition and Analysis

Data for the following sections of this preliminary report were developed using the Illinois State Police field report database provided by plaintiffs' counsel. This database consists of 1.4 million records, many of them multiple "pages" of ISP field report data. These data are collected by the ISP on various incidents, and include, generally, reports of incidents in which arrests were made, property was seized, or crimes were reported. This database was searched using several "filters" to ensure that statistics reported focused on those who were being processed by the ISP as defendants, drivers, passengers, or suspects. In addition, only reports where the field "how ISP notified" was coded as "on view" were analyzed. Assessments of data were conducted with the knowledge that large numbers of individuals are processed—in one way or another—by the ISP without being entered into the field report database. These individuals include those given written warnings or citations by the ISP, and represent contact rates far greater than those represented by the field report data base.

The field report database, however, tracks ISP activity which is not available from the citations or warnings databases. The field report database includes activity extraneous to the current issues regarding police activity, e.g., information concerning victims, juveniles, and others not directly involved in the issues addressed by this case. Filtering methods were used to remove these data from the database, so that the analyses conducted dealt with enforcement activities of ISP officers engaged in Valkyrie-related and non-Valkyrie-related activities. Data were kept active in the database which related to Valkyrie status, race of the individual, offense activity represented in the database, and time of day. With one exception, all data assessed were readily available to the ISP and manipulable by ISP data processing resources.

5.3 Allowing Discretionary Law Enforcement to Disproportionately Impact Minority Motorists

Those who study, manage and assess law enforcement practices are keenly aware of the difference between discretionary and non-discretionary law enforcement activity. Discretionary activity is generally defined as those activities which give the officer the largest amounts of latitude in determining the

appropriate course of action to take. Discretionary activity is often found to be the source of behavior of concern to police managers as it often leads to abuse of the policing power, pretextual traffic stops, or harassment of specific classes of citizens. In a state police setting, discretionary activity can be empirically defined as enforcement of minor traffic and criminal regulations.

In the case of the Illinois State Police Valkyrie drug interdiction process, a quantitative analysis indicates that minorities, particularly Hispanics, are over-represented in drug-related discretionary enforcement activities. For example, Hispanics comprise, according to the latest US Bureau of Census data, approximately 7.9 percent of the Illinois population. According to the US Department of Transportation's Nationwide Personal Transportation Survey, Hispanics complete approximately 2.7 percent of all personal vehicle trips in the state of Illinois. A review of ISP Valkyrie-related field report activity for the years 1990-1995, however, indicates that Hispanics comprise 30.3 percent of drivers processed by the ISP for "discretionary" offenses (such as improper display of license plates; improper lane usage; improper signal; and improper, damaged or obstructed windshield or other windows) and entered into the ISP field report database. Hispanics are over-represented, nearly by a factor of four, among drivers processed for discretionary infractions by ISP Valkyrie-related enforcement activities during the years 1990-1995.

Officers conducting Valkyrie program-related activities also process Hispanic motorists for discretionary enforcement violations at a rate more than three times higher than officers not conducting Valkyrie program-related activities. Between 1987 and 1995, 8.7 percent of non-Valkyrie program field reports resulted from discretionary enforcement involving Hispanic drivers. This compares with 30.3 percent of Valkyrie program-related discretionary enforcement. A statistical analysis indicates that these differences are statistically significant at the .001 level or greater, indicating that the differences between Valkyrie and non-Valkyrie discretionary enforcement rates are not attributable to chance.

5.3.1 Non-Discretionary Arrest Activity

Non-discretionary arrest activity is perhaps among the best indicators of officers' tendency to abuse the police power. Non-discretionary activity involves activity which, if encountered, virtually requires a formal police response. In the state police environment, these offenses include infractions such as Driving under the Influence, theft, unlawful use of a weapon, etc. An analysis of officers engaged in Valkyrie-related enforcement activities indicates that the disproportionate representation of Hispanics noted in discretionary activity disappears as discretionary latitude reduces. Hispanics comprise 7.7 percent of suspects encountered for non-discretionary offenses, a figure virtually identical to the

distribution of Hispanics in the state population. Officers not engaged in Valkyrie enforcement activities encounter Hispanics at a nearly identical rate, 7.2 percent.

A review of these two data pools indicates that, when given discretion, officers engaged in Valkyrie-related activities disproportionately stop, detain and process Hispanic drivers, compared to non-Hispanic drivers, and compared to their non-Valkyrie engaged peers. This disparity is high, at nearly four times the normal distribution of Hispanics in the Illinois population and at more than three times the non-Valkyrie rate. The difference between discretionary and non-discretionary activity, based on my experience, indicates a *de facto* enforcement of laws against Hispanic drivers that are not routinely enforced against white drivers.

5.3.2 Minor Drug Seizures

The Illinois State Police Field Reporting system data indicate that Valkyrie-related enforcement activity has about the same rate of intervention with Hispanic suspects in making drug seizures for what could be characterized as "minor" as do their non-Valkyrie-related counterparts. These offenses, again, fall into the "non-discretionary" category, i.e., they virtually require an official police response. Offenses in the ISP database that could be characterized as "minor" drug offenses include possession of less than 30 grams of *cannabis* and possession of drug paraphernalia. The rate at which officers fulfilling Valkyrie functions make arrests and seizures for these minor offenses which involve Hispanic suspects is lower than the distribution of Hispanics in the population: 4.8 percent or slightly more than half the rate of Hispanic distribution in the population. Non-Valkyrie-involved officers are involved in "minor" drug seizures involving Hispanic suspects at a rate of substantially lower than Valkyrie-involved officers (2.8 percent) and substantially lower than the distribution of Hispanics in the Illinois population.

Again, these data show that, when discretion is removed, the over-representation of Hispanics, among those formally processed into the field report database by the Illinois State Police officers involved in Valkyrie-related activity, disappears. These data indicate to me, based on my experience, that Hispanics are given extra focus—for initial stops and detentions for discretionary offenses—by officers working Valkyrie-related duty.

5.3.3 Major Drug Seizures

Data relating to "major" drug seizures, i.e., possession of more than 30 grams of *cannabis*, delivery of controlled substances, possession and transportation of controlled substances, etc. indicate that Valkyrie-involved officers arrest and seize drugs from Hispanic suspects at a rate of 20.6 percent for major drug

seizures between 1990 and 1995. Non-Valkyrie-involved officers arrest and seize drugs from Hispanic suspects at a rate of 6.0 percent of all major drug seizures between 1987 and 1995. The Valkyrie Hispanic involvement rate is 2.6 times higher than the distribution of Hispanics in the population. This overrepresentation of Hispanics in major drug seizures may or may not be attributable to the "over sampling" created by the increased focus on Hispanics as potential traffickers—and exposure to increased discretionary enforcement—by Valkyrie-involved officers.

5.3.4 Daytime v. Nighttime Traffic Stops

One considering whether or not Valkyrie-involved officers may be singling out Hispanics for differential treatment could review an additional source of data to determine if this may be the case. The rate at which officers conduct daytime traffic stops—when the race and ethnicity of drivers is apparent—compared to the rate at which they conduct nighttime traffic stops—when the race and ethnicity of drivers is not apparent—could shed some light on the question of deliberate differential impact. A review of the ISP field reporting database indicates that there is a substantial and significant difference in the rate at which Valkyrie and non-Valkyrie officers conduct daytime and nighttime stops of Hispanic drivers.

From 1987 to 1995, according to ISP data, non-Valkyrie-involved officers conducted more than 57,000 daytime contacts which resulted in some type of drug seizure or other incident resulting in a field report. These non-Valkyrie daytime contacts consisted of 6.4 percent Hispanic occupants, 28.8 percent African-American occupants, and 61.8 percent white occupants. These numbers for non-Valkyrie-involved officers did not change substantially when compared to nighttime contacts, where the race and ethnicity of the occupant is not generally known until the contact is effected. Nighttime ISP contacts resulting in seizures or other incidents requiring a field report, for non-Valkyrie-involved officers, yielded processing rates of 6.2 percent for Hispanics, 20.5 percent for African-Americans and 72.6 percent for whites. Hispanics are under represented in the non-Valkyrie enforcement rates for both day and night contacts, compared to their distribution in the population.

Valkyrie-involved officers show a different pattern regarding daytime and nighttime contacts. During the daylight hours, when Valkyrie-involved officers can see the race or ethnicity of vehicles' occupants, the rate at which they contact and process Hispanic occupants increases by more than 400 percent over the rate at which their non-Valkyrie peers contact and process Hispanic occupants, from 6.4 percent of all non-Valkyrie daytime contacts resulting in a field report entry for Hispanic drivers or suspects to 25.1 percent of all Valkyrie-involved daytime contacts with Hispanic drivers. These data are for ISP contacts

and processing that result in a drug seizure or other incident requiring a field report. By contrast, at night, when the race or ethnicity of the occupant is not readily apparent, the rate at which Valkyrie-involved officers contact and process Hispanic occupants drops by over 50 percent to 12.1 percent of all occupants, a figure closer to the 7.9 percent distribution of Hispanics in Illinois' population. The differences between Valkyrie-involved officers' daytime and nighttime contact and processing rates for Hispanics v. whites and blacks is statistically significant at the .001 level, indicating that the differences are not attributable to chance.

These data indicate, based on my experience, that Valkyrie-involved officers, from 1990 through 1995, disproportionately intervened against Hispanic drivers—often using discretionary violations which are not routinely enforced against white drivers. The result of this focus was a disproportionate impact on Hispanic motorists in terms of the number of detentions they encountered as they drove Illinois highways, the number of detentions experienced by Hispanic motorists during the process of driving from one point to another in Illinois, and the number of searches conducted of vehicles driven by Hispanics on Illinois highways.

5.3.5 Searches and Seizures

Since available ISP electronic data do not reflect, by race, the nature of searches conducted by ISP Valkyrie officers, e.g., consent, probable cause, inventory, etc., a stratified random sample of Valkyrie field reports by dedicated Valkyrie officers was taken, pulling every fourth record from the 373 1992 Valkyrie field reports concerning persons identified as African-American. Every fifth record was pulled from the same database for the 577 persons identified as Hispanic who were the subject of such reports in 1992. Every ninth record was pulled from the database for the 893 persons identified as white who were the subject of such reports in 1992. The survey indicated that there were searches performed in 88% of the reports. Comparing the results of the sample to officially reported data (in the Valkyrie Activity electronic database) for all 1992 Valkyrie searches validated these data. The sample was found to be reliable and predictive of the complete 1992 Valkyrie database.

The sample yielded 93 records regarding searches of vehicles driven by persons identified as African-American, 114 records regarding searches of vehicles driven by persons identified as Hispanic, and 99 records regarding searches of vehicles driven by persons identified as white. Hispanic drivers suffered the largest number of searches, with 93 percent of their vehicles being searched. Further, according to the field reports of these searches, Hispanics had their vehicles searched through "consent" searches at a rate much higher than that for African-Americans or whites (93 percent for Hispanics, 75 percent for whites, and 71

percent for African Americans). Based on my experience, this indicates a tendency for ISP officers to request consent to search more frequently from Hispanics, as drivers tend to consent to search upon request at the same rate regardless of race or ethnicity.

Evaluating the justification for a request for consent to search is best accomplished by assessing the effectiveness of the search, i.e., did it yield positive results. The higher the "success rate" of the search, the better one can assume the factors were which were used as a basis for requesting the search. Requesting higher numbers of consent searches, if the requests are made using empirical indicators rather than racial indicators, should result in higher percentages of seizures. Using this method of analysis, in the drawn sample ISP Valkyrie-related enforcement officers had the lowest level of support for requesting consent from Hispanic drivers, as the success rate for consent searches for Hispanics was 21 percent, compared to 35 and 32 percent for African-Americans and whites, respectively.

Comparative rates among the racial populations should be the same for the larger population of all Valkyrie dedicated officer searches for 1992; however, the rates themselves would be lower based on a larger number of searches not recorded in the Field Report database. The Valkyrie Activity database reports 5,109 searches for 1992 while the Field Report database contains only 1,843 reports for the same period for this activity. Thus the overall seizure rate for Valkyrie dedicated officers for 1992 was reported by ISP as being 12.1% of all searches.

Probable cause-based searches of vehicles stopped by Valkyrie officers showed similar disparities. Only seven percent of all 1992 Valkyrie-related searches of vehicles driven by Hispanics were based on probable cause. Success rates for 1992 Valkyrie probable cause searches were also the lowest for Hispanics, at only 57 percent. Rates for African-Americans and whites were 90 percent and 87 percent, respectively.

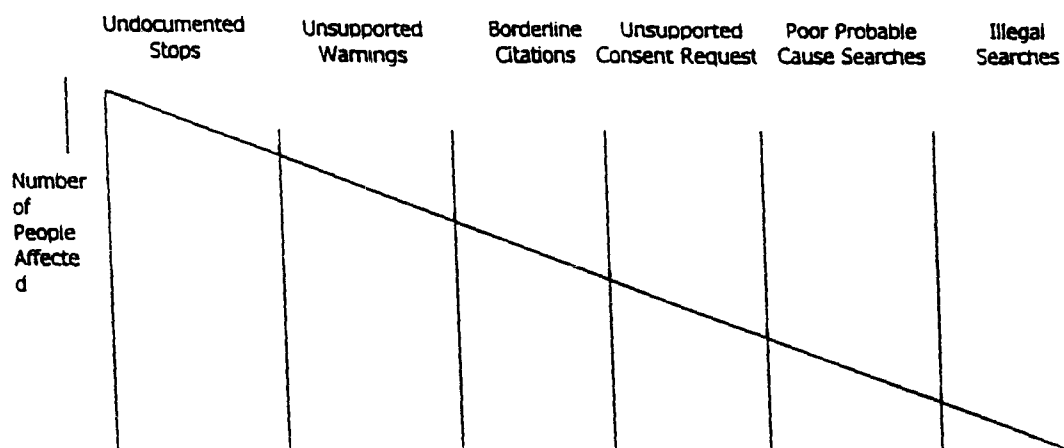
It is also of note that 13 of the 99 reports in which persons were identified as White had Hispanic surnames. If those persons are reclassified as Hispanic in the sample, the percentage of probable cause searches of Hispanics increases from 7% to 9%, but the seizure rate declines from 57% to 40% (and the probable cause seizure of whites increases from 87% to 100%).

Data from Maryland establishes a clearer understanding of what a well-monitored drug interdiction program would yield in search rates and seizure rates. Comparing ISP and Maryland data validates the hypothesis that the Valkyrie program as run here results in an unnecessary disproportionate impact.

6. Summary

Based on the best data available, the Illinois State Police Valkyrie program has had a documentable negative effect on Hispanic motorists. Abuse of discretion, if it exists, is problematic for the very reason that makes it possible: lack of adequate (required) documentation. A diagram of the points of police discretion, Figure One, below, aids in the understanding of the impact of abuse of police discretion.

Figure One: Relationship between Police Abuse of Discretion and Impact



The goal of effective police management is to reduce or eliminate these abuses of police discretion. To the extent that the programs implemented by police agencies have an avoidable disparate impact on members of the community, as the ISP Valkyrie program undoubtedly does, police managers are duty-bound to eliminate as much of the unwarranted impact as possible.

The largest impact, in terms of numbers of individuals affected, comes from undocumented stops which fail to meet the "reason to suspect" standard required for a vehicle stop. Since these stops are undocumented, there is no way to assess the impact of this process on the driving public. The second largest impact, in terms of numbers of individuals affected, is the unsupported warning. Data do exist with which to calculate the impact of the Valkyrie program in this area, as well as in the third area (borderline citations). Unsupported consent searches can be assessed using the methodology available with the 1992 Valkyrie field report sample conducted for the purposes of this report.

It is clear from the data available that the Valkyrie program has had a disproportionate impact on Hispanic motorists in the state of Illinois. This disproportionate impact is relatively easy to cure. It simply requires a focused and effective monitoring system for unsupported warnings, borderline citations, unsupported consent requests, and poor probable cause searches. In my opinion, based on other practices in the field of law enforcement, such a system is worth the effort.

It is my understanding that the plaintiffs in this case have continued to pursue additional discovery, and I request that this report be considered a preliminary report, subject to supplemental development, as new information becomes available and materially affects these opinions.

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