IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PESO CHAVEZ, et al.,	)	
	)	
Plaintiffs,	)	
	)	No. 94 C 5307
v.	)	
	)	Judge Blanche M. Manning
THE ILLINOIS STATE POLICE, et al.,	)	Magistrate Judge Edward A. Bobrick
	)	
Defendants.	)	

DECLARATION OF JAMES D. GINGER

James D. Ginger, pursuant to 28 U.S.C. § 1746, declares as follows:

1. My name is James D. Ginger, Jr. I am the same James D. Ginger who has previously filed a "Preliminary Report" in the above-captioned case.

2. I am currently employed as associate professor and executive director of the center for justice policy at St. Mary's University in San Antonio, Texas. In that capacity, I routinely teach classes at the graduate level in topics such as research methods, data analysis, and program evaluation. As part of my education for my Ph.D. in public administration, I received training in statistical methodologies, and empirical methodologies for program evaluation and policy analysis.

3. I have 29 years' experience in applying empirical methods to police operations, and, over the past 25 years, have written, submitted and had accepted empirically oriented evaluative and project management reports accepted by federal, state and local government. In 1975, I was applying regression analysis and other statistical analysis techniques to assess law enforcement program effectiveness for reports submitted to the Law Enforcement Assistance Administration in Washington, DC, as part of an innovative national program to improve delivery of police patrol services. Currently, I routinely use statistical analysis procedures to assess law enforcement operations data similar to the data I have analyzed in the Illinois State Police databases used in the above-captioned case.

4. During the past 29 years, I have proposed, and been awarded, more than $1,000,000 in funding from federal, state and local agencies for the development and delivery of empirically based research projects. Clients for these projects have included the following entities:

- The Federal District Court for the Western District of Pennsylvania (in association with the U.S. Department of Justice, the City of Pittsburgh and the Pittsburgh Bureau of

Police) for a five-year, $430,000 project to assess and monitor policing practices in the City of Pittsburgh, with particular attention to indicators of racial bias in the delivery of policing services;

- The U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention for a multi-year, $399,000 nationwide assessment of police practices in handling juvenile offenders;

- The Florida State Supreme Court's Commission on Racial and Ethnic Bias for a one-year, $13,000 project to assess whether or not attributes of racial bias existed in the personnel practices of the State of Florida's criminal justice system; and

- Police agencies from throughout the United States, including the Dallas, Texas Police Department (an empirical assessment of the internal affairs function); the Tampa, Florida Police Department (an empirical assessment of police use of force, training, supervision, management and internal affairs practices); the Lexington-Fayette County Police Department (an empirical assessment of potential racial bias in the internal affairs process); the Albuquerque, New Mexico Police Department (an empirical assessment of potential racial bias in the internal affairs process); and the Prince George's County, Maryland Police Department (an empirical assessment of police training, supervision, discipline and internal affairs practices).

In most of the projects identified above, my proposed empirical methodlogies were critically assessed by peer review panels, either in competitive pre-award evaluations, as in the Pittsburgh, OJJDP and Florida State Supreme Court projects, or through post-project, report review processes.

5. During the past 25 years, I have directed the research and planning functions for two municipal police agencies (Evansville, Indiana and San Antonio, Texas), and have served as deputy director of the Washington, D.C.-based Police Foundation, one of the United States' most renowned police operational research agencies. Between 1984 and 1999, I have conducted extensive data collection projects, and performed detailed data analysis on data collected from more than 100 police agencies. The data collection and analysis performed for those agencies was similar in nature to the analyses I have conducted on the Illinois State Police databases: analysis of empirical, field-based data for the purpose of determining operationalization of appropriate police policy and practice.

6. My focus over the past 29 years has been in the area of applied empiricism. My experience is in the field, collecting and analyzing data under actual field conditions and analyzing that data to assess program impact. My understanding of policing, data and the application of data to police operations led to my recent invitation by the Attorney General of the United States to participate in a national workshop designed to develop solutions to questions involving such issues as police use of racial profiling and police use of force.

7. In my experience in policing and as an instructor in data analytic techniques, controlled experiments in law enforcement—in fact in virtually any non-laboratory environment—are virtually impossible. Following this argument would allow no scientific

evidence to be admitted in civil litigation involving social issues. The "control group" I utilized in my analysis of the Illinois State Police field report data consists of non-Valkyrie-related reports, a control group selection that, if anything, tends to favor the Illinois State Police, not the plaintiffs. In developing my analysis of the ISP field report data, I did not draw a "sample" from the field reports: my "sample" consisted of an analysis of 100 percent of all Valkyrie- and non-Valkyrie-related field reports. The analysis does not project to a universe of all ISP activity: it contains its findings to activities reported in the field reports. For the analogy to *Fisher* to be appropriate, my selection would have had to have eliminated a "class" from his analysis, e.g., a race category such as "white."

8. In conducting my analysis of the ISP data, I compared Hispanics to non-Hispanics across several variables, thus comparing the ISP treatment of motorists operating on Illinois highways, as reflected in the ISP field report database. In so doing, I compared "similarly situated people," the standard that even the defense expert suggests as the appropriate comparison. These comparisons of similarly situated persons were made statistically, and are the basis of my conclusions filed in my earlier "Preliminary Report" which cite a level of statistical significance. Citations of census and traffic volume data were made as an informational benchmark, a process used also by the defense expert.

9. My data collection and analysis were designed to assess the same data and to use the same methodologies reasonably available to the Illinois State Police in the late 1980s and early 1990s in order to monitor and supervise a policing process that was known to offer opportunities for field staff to abuse police discretion. It is reasonable to expect the ISP to monitor its Valkyrie program using data methods similar to—or exactly like—those used by me. While it is possible, of course, to design analytic systems that are more powerful, time-consuming and expensive, the implementation of monitoring systems such as those used in this case by me would have "triggered" the ISP to the fact that closer monitoring and supervision was necessary

10. My selection of the ISP field report database was made for several reasons.

- First, it is clear that the field report database encompasses the broadest set of activities engaged in by ISP field enforcement personnel, including some incidents which were set in motion by stops for "warnings" or citations. For example, a trooper's decision to issue a warning, which results in a canine use, search and seizure and arrest would be reflected in the field report database as an arrest, thus comprising all potential problem areas, save the first, detailed in Figure One of my original "Preliminary Report" in this case (provided again as Figure One in this declaration, below). By restricting my analysis of field report data to Valkyrie-related ***enforcement*** activities, the analysis was conducted of Valkyrie activities compared to a "control group" consisting of non-Valkyrie reports. While this "control group" is admittedly more favorable to the ISP than to plaintiffs[1], it constitutes the best available yardstick against which to compare the activities. While, undoubtedly, the citations and warnings databases—and the "stops" records maintained by the ISP—will also have important data, the single database which contains information

[1] It is reasonable to assume that non-Valkyrie officers, who to my understanding are trained by and work with Valkyrie assigned officers, would adopt some of the strategies seen as "effective" by the Valkyrie officers.

from the broadest spectrum of ISP activity, and which is the best indicator of ***enforcement*** activity of the ISP, is the field report database.

- Second, the field report database contains the type of data which a reasonable police manager would, or should, use to monitor the activities of law enforcement personnel;

- Third, the field report database should a reliable source of data, as, like the citations database, it will contain information that may be used in criminal prosecution or civil litigation, including data which may not be included in the citations and warnings database.

- Fourth, the field report database is, to my knowledge, the only available database which contains race and ethnicity data, making it the only database which ISP supervisors and administrators could easily use to monitor highly discretionary programs such as the Valkyrie drug interdiction program, for racial or ethnic bias.

Supporting rationale for using the field report database was included in my original "Preliminary Report" filed in this case.

11. The degree to which the field report database is reflective of overall ISP activity can be assessed, again, using my original "Preliminary Report" filed in this case. In order to assess the degree to which the ISP field report database was indeed a broad-scale indicator of ISP activity (and not just an administrative database reporting canine use and lost or damaged equipment), I reviewed data collected from a 100 percent sample of 1,843 ISP field reports completed between January 1, 1992 and December 31, 1992, by Valkyrie officers. The sample was a stratified random sample, consisting of a 25 percent sample of Valkyrie-related field report records completed for African-American suspects/drivers/arrestees (from a total of 373 records); a 20 percent sample of Valkyrie-related field reports completed for Hispanic suspects/drivers/arrestees (from a total of 577 records); and an eleven percent sample of Valkyrie-related field reports completed for white suspects/drivers/arrestees (from a total of 893 records). Several important findings—related to the efficacy of the ISP field report database as a reliable indicator of ISP field activity—resulted from that analysis.

- First, a comparison of the data obtained by the sample of field reports to official ISP aggregate reports (and to data in the electronic Valkyrie activity database for 1992) showed that the sample was reliable and predictive of the complete 1992 Valkyrie database (Ginger, "Preliminary Report," p. 7@5.3.5).

- Second, the ISP field report database is, in effect, a database reporting ISP search and seizure activity. In the sample developed as described in paragraph eleven, above, the reports sampled reported a search in 88 percent of the cases, including searches performed on probable cause, frisks of passengers and drivers based on the *Terry* standard of reason to suspect, searches performed on the basis of consent, and searches conducted which resulted in no seizure, as well as other activities.

- Third, the sample of 306 1992 Valkyrie incidents, indicated an apparent differential search rate for African-American, Hispanic and white drivers. As noted in my original "Preliminary Report" filed in this case:

"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.

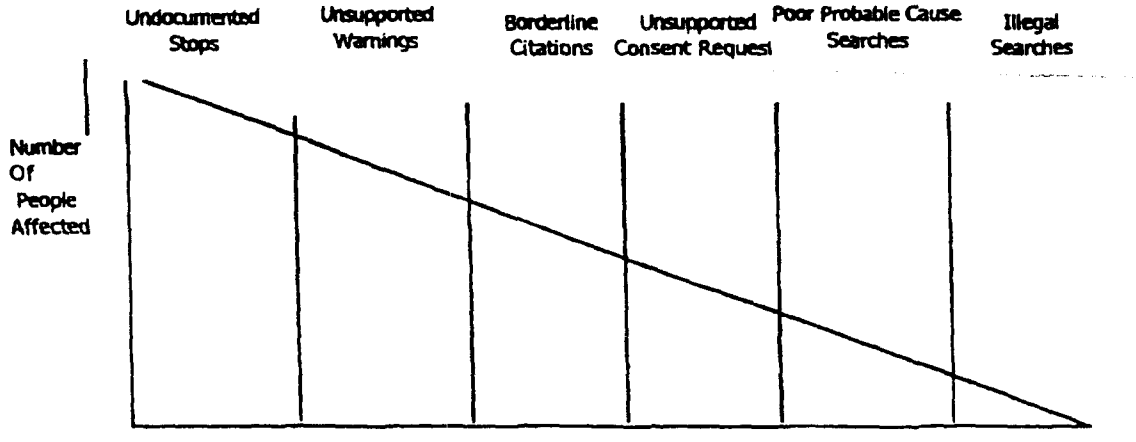
"Probable cause-based searches of vehicles stopped by Valkyrie officers showed similar disparities. Only seven percent of all 1992 Valkyrie-related searches of vehicles driven by Hispanics were based on probable cause. Success rates for 1992 Valkyrie probable cause searches were also the lowest for Hispanics, 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%)" (Ginger, Preliminary Report, pp. 7-8).

It is clear from this analysis that the field report database maintained by the ISP contains the very type of data which is critical to the allegations raised in this case—that Hispanics are disproportionately processed by the Illinois State Police Valkyrie personnel, and this disproportionality leads directly to Hispanic drivers being more often subjected to searches and frisks, than are non-Hispanic drivers. The data in the field report database go directly to assessing the issues involved in unsupported consent requests, poor probable cause searches and illegal searches, as noted in Figure One, below, which was also included in my original Preliminary Report.

While the citations and warnings databases contain information regarding ISP's processing of a larger number of individuals, the field report database contains the data that go to the heart of the pending litigation: information concerning consent searches, probable cause searches and frisks of individuals using the highways of Illinois. While improper searches and frisks obviously affect fewer people than unsupported warnings or borderline citations, the infringement is more severe, the repercussions more dire.

Figure One: (As Depicted in "Preliminary Report")



I state under penalty of perjury that the foregoing is true and correct.

DATED: July 12, 1999

James D. Ginger