

RACIAL AND ETHNIC DIFFERENCES IN PRETRIAL RELEASE DECISIONS AND OUTCOMES: A COMPARISON OF HISPANIC, BLACK, AND WHITE FELONY ARRESTEES*

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The present study uses data on the processing of felony defendants in large urban courts to examine Hispanic, black, and white differences at the pretrial release stage. The major finding is that Hispanic defendants are more likely to be detained than white and black defendants. And, racial/ethnic differences are most pronounced in drug cases. In fact, Hispanic defendants suffer a triple burden at the pretrial release stage as they are the group most likely to be required to pay bail to gain release, the group that receives the highest bail amounts, and the group least able to pay bail. These findings are consistent with a focal concerns perspective of criminal case processing that suggests Hispanics as a newly immigrated group are especially prone to harsher treatment in the criminal case process.

KEYWORDS: Guideline departures, courtroom discretion, sentencing disparity, race/ethnicity, modes of conviction.

State and federal criminal justice systems allow prosecutors and judges a great deal of discretion in handling most criminal cases (see for detailed examination, Gottfredson and Gottfredson, 1990; Walker, 1993).¹ In view

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1. The extent to which discretion is allowed in legal decision making varies greatly between the states and the federal system as well as across different stages of the criminal case process. For instance, judicial discretion at sentencing is considerably more limited in federal courts than in most state courts (see Steffensmeier and Demuth, 2000) but prosecutorial discretion is considerable in both the state and federal courts. Also, for reasons stated later in this article, it is likely that more discretion exists at the

of the nation's democratic ideals and the legal system's doctrine of "equality before the law," this discretionary authority raises a vital question for court officials, policy makers, and criminal justice researchers: Does the American judicial system in any way differentially process and sanction defendants? Historically, the question has been focused on criminal punishments and whether black defendants are sentenced more harshly than white defendants (Hagan, 1987). Indeed, the extent of black disadvantage and white advantage at sentencing remains a question at the forefront of research on inequality and stratification in the criminal justice system (Albonetti, 1997; Chiricos and Crawford, 1995; Crawford et al., 1998; Hebert, 1997; Steffensmeier and Demuth, 2000, 2001).

However, the focus on race and sentencing brings to light two notable gaps in research about the processing and sanctioning of criminal defendants. First, researchers have been slow to investigate whether Hispanics are treated differently than whites and blacks in the criminal courts, despite the dramatic increase in the Hispanic population in the United States. (U.S. Bureau of the Census, 2000a). Hispanics share many of the same social disadvantages as blacks (e.g., poverty, unemployment, crime), in addition to unique problems surrounding language and citizenship (Healy, 1998). And, with a tradition of antagonism toward Hispanics as representing a social, economic, and criminal threat (Healey, 1998; Mata, 1998), it is possible that Hispanic defendants may receive harsher treatment in the criminal courts than white and possibly even black defendants. Recent studies do provide some evidence of a Hispanic disadvantage at the sentencing stage, especially for drug offenses (Engen and Gainey, 2001; Spohn and Holleran, 2000; Steffensmeier and Demuth, 2000, 2001).

Second, our knowledge is considerably more limited regarding the effects of race and ethnicity on judicial decisions and defendant outcomes at earlier stages of the criminal case process prior to sentencing. At least three interrelated reasons account for the research, public, and legislative focus on sentencing and not on earlier stages. First, sentencing is most proximate to jail and prison. Consequently, the sentencing stage is viewed as where the "real" punishments are meted out. Second, the sentencing stage is more visible and more highly regulated than other stages. Sentencing guidelines, statutory mandates, and legislative and media interests highlight (and possibly exaggerate) the importance of sentencing relative to other aspects of the criminal justice system. Third, data are most likely to be collected at the sentencing stage. Increasingly, sentencing guidelines are used to structure judicial decision making and to ensure that similarly situated defendants are treated alike. Sentencing commissions collect data

earlier stages of the criminal case process (e.g., decisions to arrest or detain) than the later stages (e.g., sentencing).

to monitor the effectiveness of sentencing guidelines and to provide feedback for future judicial decision making. Thus, data are convenient for analysis.

As a result, most of what we know about the treatment of different racial and ethnic groups in the criminal courts is based on the impact of race at the sentencing stage. However, inferences about the functioning of the larger criminal case process should not be based simply on the outcomes of the defendants reaching the final sentencing stage. Given the substantial amount of discretion available to decision makers at earlier stages and the considerable level of attrition that occurs as cases move through the criminal case process, it is important to examine earlier stages of the process more closely to identify the nature of racial and ethnic disparities. Many researchers (e.g., Feeley, 1979; Hagan and Bumiller, 1983) suggest that race differences are likely to be greatest at earlier decision-making points where the influential exogenous variable (i.e., race/ethnicity) is most proximate in the causal chain to the case processing decision (e.g., pretrial release). Indeed, variables that are the furthest removed from each other in the criminal case process (i.e., race/ethnicity and sentencing) are likely to have the smallest correlations with each other (see Blalock, 1964).

Using felony defendant data collected (biennially) in large urban courts by the State Court Processing Statistics (SCPS) program of the Bureau of Justice Statistics for the years 1990, 1992, 1994, and 1996, I address these gaps in prior research to see if there are Hispanic-black-white differences at the pretrial release stage. Importantly, the present study clarifies various dimensions of the pretrial release process, notably a dual focus on both pretrial release decisions (e.g., financial versus nonfinancial release) and pretrial release outcomes (e.g., pretrial detention versus release) because an examination limited to legal decision making ignores the possibility that similar decisions may produce different outcomes for Hispanic, black, and white defendants. The central empirical issue is whether early criminal case processing is influenced by ascribed statuses like race and ethnicity once other legally allowable factors have been taken into account. The guiding hypothesis is that Hispanic defendants will be treated harshly relative to white defendants and possibly even black defendants. Moreover, Hispanic defendants may be especially likely to be detained for suspected drug offenses because the current drug "war" entails particularly harsh stereotyping of Hispanic males as drug couriers or traffickers (Musto, 1987; Portillos, 1998; Scott and Marshall, 1991). Hence, an analysis of racial/ethnic differences in pretrial release outcomes across different offense types is also undertaken.

THE SIGNIFICANCE OF RACE/ETHNICITY AND PRETRIAL RELEASE

Pretrial release decision making involves a fundamental tension between the court's desire to protect citizens from dangerous criminals, ensure that accused individuals are judged before the law, and minimize the amount of pretrial punishment meted out to legally innocent defendants (Clark and Henry, 1997). In light of this tension, researchers and policy makers are concerned with the fair and equal application of pretrial release and detention to all defendants without regard for defendant characteristics such as race and ethnicity.

Research on the effects of race and ethnicity on pretrial release practices is less abundant than research on sentencing, but no less important. Indeed, the significant race and ethnicity findings of recent race/ethnicity-sentencing studies suggest a real need to more thoroughly examine possible race and ethnicity effects at the pretrial release stage. Additionally, there are at least five other reasons that research on race/ethnicity and pretrial release is of particular importance.

First, pretrial detention is punishment before conviction. Defendants are legally presumed innocent until proven guilty in court, but they may be forced to remain in jail for extended periods of time pending case disposition. Even temporary incarceration is disruptive to family, employment, and community ties and negatively stigmatizes the defendant (Irwin, 1985; LaFree, 1985). In addition, there is evidence that pretrial detention may interfere with the defendant's ability to prepare an adequate defense (Foote, 1954) and may lead to more severe sanctions upon conviction (Goldkamp, 1979). In other words, racial and ethnic disparities at the pretrial release stage may not only provide a disadvantage for some defendants before case disposition, but may also indirectly affect later case processing decisions as well.

Second, pretrial release decisions are often made with incomplete information and involve a great deal of prosecutorial and judicial discretion (Albonetti, 1989; Nagel, 1983). Furthermore, pretrial decisions receive much less scrutiny and oversight than sentencing decisions. Whether a defendant is released depends primarily on 1) the perceived safety risk that the defendant poses to the community and 2) the perceived likelihood that the defendant will return for future court appearances (see Goldkamp and Gottfredson, 1985). However, some information used to make pretrial release decisions (e.g., criminal history, employment) may reflect past racial and ethnic biases (e.g., differential law enforcement, hiring discrimination) that indirectly disadvantage some defendants relative to others (see Farrell and Swigert, 1978; Tonry, 1996).

Third, the criteria used for making pretrial release decisions are less

restrictive than the criteria considered legally relevant for making sentencing decisions. In sentencing decisions, judges are encouraged (and under some guideline systems, mandated) to rely primarily on legal factors such as offense seriousness and criminal history (Kramer and Steffensmeier, 1993). In contrast, although judges and prosecutors rely heavily on legal factors such as offense seriousness and criminal history in determining pretrial release risk, they also are permitted to take into account information such as the defendant's employment status, community ties, and marital status (Goldkamp and Gottfredson, 1985; Petee, 1994; Walker, 1993). Given the subjective nature of these risk evaluations, it is possible that race and ethnicity might influence decision making. In addition, the risk assessment criteria themselves may be correlated with race and ethnicity; thus it is possible that even more objective risk assessment tools cannot guide pretrial release decisions without introducing racial and ethnic biases (Gottfredson and Jarjoura, 1996).

Fourth, judicial and prosecutorial discretion that involve financial considerations may also produce racial and ethnic disparities in pretrial release outcomes. Early bail studies (e.g., Beeley, 1927) found that many poor or minority defendants were detained before trial not because they were likely to fail to appear in court, but rather because they could not afford bail. In the 1960s, research showed that based on developed criteria, many defendants could be released on nonfinancial terms (e.g., release on recognizance) with minimal risk of failure to appear in court (Ares et al., 1963). Ironically, poor and minority defendants, the groups most likely to benefit from non-financial release, are also the groups least likely to qualify for non-financial release based on established criteria (Gottfredson and Jarjoura, 1996). Consequently, if minority defendants are less able to pay bail, then this disparate impact may amount to a form of de facto racial and ethnic discrimination.

Finally, Steffensmeier and Demuth (2001) note that the frequent practice of categorizing Hispanic defendants for reporting purposes into the "white" defendant group may dampen black-white differences in criminal case process outcomes because Hispanics may be treated more harshly than whites. Indeed, in their sentencing study, they find that black-white sentencing differences that appear when separately accounting for Hispanic defendants (who are treated more like black defendants) are reduced or disappear when white and Hispanic defendants are combined together into a single "white" group. Similarly, Farnworth et al. (1991) find that the failure to account for Hispanic defendants as distinct from white and black defendants obscures racial differences in charge reduction, probation, and incarceration outcomes in the felony court process. For the pretrial stage as well, examining Hispanics as a separate defendant group

has implications for a more complete and accurate understanding of *both* the treatment of Hispanic and black defendants vis-à-vis white defendants.

PRETRIAL RELEASE DECISIONS VERSUS PRETRIAL RELEASE OUTCOMES

Prior studies of pretrial release have tended to ignore or confuse the distinction between pretrial release *decisions* and pretrial release *outcomes* (e.g., LaFree, 1985; but see Nagel, 1983). Pretrial release *decisions* are decisions made by legal agents that directly affect a criminal defendant's pretrial release status. These decisions include preventive detention (i.e., denying bail), whether to grant a financial or non-financial release option, and the bail amount. In contrast, pretrial release outcomes refer to a defendant's final pretrial release status—i.e., Is the defendant actually detained or released before adjudication? Pretrial release outcomes are a function of pretrial release decisions, but also depend on the defendant's ability to satisfy the conditions of release. For example, a judge may grant financial release and specify a bail amount (i.e., decision is release), but the defendant cannot afford bail and remains in jail (i.e., outcome is detention). This relationship between decisions and outcomes is also evident at other criminal case processing stages. At the sentencing stage, decisions may not equal outcomes if some defendants serve longer terms than others given the same ordered sentence lengths.

In the present study, I examine the effects of race and ethnicity on both pretrial release decisions and pretrial release outcomes. This dual focus is important because an examination limited to legal decision making ignores the possibility that similar decisions may produce different outcomes for white, black, and Hispanic defendants. It is possible for there to be no racial/ethnic disparities in pretrial release decisions, but large racial and ethnic disparities in pretrial release outcomes. If certain defendant groups are less able to "make bail" than other defendant groups, the meaning of bail is different for these defendant groups. Indeed, for indigent defendants, any amount of bail is tantamount to preventive detention. This is especially important in light of the negative effects that pretrial detention may have on defendants' future life chances and case processing outcomes.

RESEARCH ON RACE, ETHNICITY, AND PRETRIAL RELEASE

The results of the few recent studies examining the relationship between race/ethnicity and pretrial release are mixed. The differences in findings across studies are likely the result of several limitations of existing research. These include 1) failure to control adequately for legally relevant

factors; 2) combining or failing to distinguish between the pretrial release decision and the pretrial release outcome; 3) application of inappropriate statistical procedures; 4) small number of black or Hispanic cases in a limited number of jurisdictions; and 5) relying on older data sets dating back to the early 1980s.²

Albonetti et al. (1989), in an analysis of ten federal court districts, find that race does not have a significant direct effect on pretrial release outcomes, but does interact with stratification resources to the disadvantage of black defendants. Relative to similar black defendants, white defendants receive "better returns" on education and income resources at the pretrial release stage. But black defendants are not always the more disadvantaged group; increases in statutory severity produce more severe sanctions for white defendants.

In contrast, in a study of formalized bail procedures in Florida, Patterson and Lynch (1991) find that although white and nonwhite defendants are similarly likely to receive bail above schedule guidelines, nonwhite defendants are significantly less likely to receive bail below schedule guidelines controlling for relevant legal and extralegal factors. These findings suggest that instead of setting excessive bail for nonwhite defendants, legal agents instead fail to give non-white defendants the same "benefit of the doubt" as white defendants. Patterson and Lynch (1991) posit that a stereotype of blacks as less dependable and more likely to be serious criminals than whites may be operating among decision makers.

In an examination of defendants charged with violent felonies in Detroit Recorder's Court between 1976 and 1978, Katz and Spohn (1995) find that race did not have an effect on the amount of bail imposed by the judge, but did have an effect on the likelihood of pretrial release. That is, black defendants are less likely to be released from pretrial detention prior to trial than white defendants.

Several recent studies on pretrial release examine ethnicity (i.e., Hispanic-white differences). LaFree (1985) finds mixed evidence of Hispanic-white disparity in pretrial release outcomes. In Tucson, Arizona, Hispanic defendants receive more favorable treatment than white defendants, but in El Paso, Texas, Hispanic defendants receive less favorable treatment than white defendants. In fact, in El Paso, "being Hispanic was the single best predictor of an unfavorable pretrial release decision" (LaFree, p.

2. I focus here on more recent studies of pretrial release, although the considerable debate among social scholars concerning the use and effectiveness of pretrial release and the impact of race on pretrial decisions goes back many years (e.g., see Bock and Frazier, 1977; Goldkamp, 1979; Goldkamp and Gottfredson, 1985; Landes, 1974; Nagel, 1983; Suffet, 1966).

222). However, the dependant variable (a three-point severity scale ranging from released on recognizance (ROR)-conditional release to denied bail/held on bail) used in the analyses does not adequately capture the actual structure of pretrial release decision making and combines the concepts of decisions and outcomes (discussed earlier), making interpretation of results difficult.

Holmes et al. (1996), in a study of ethnicity and felony dispositions in two southwestern jurisdictions, find no direct effect of Hispanic ethnicity on pretrial release outcomes (although this may be due, in part, to a very small sample size). They do find that employment status and private counsel is related to pretrial release outcomes, which suggests a possible indirect relationship between ethnicity and pretrial release through these two income-based factors. Hence, it remains unclear what roles race and ethnicity play, either directly or indirectly, in pretrial release decision making and outcomes.

FOCAL CONCERNS OF CRIMINAL CASE PROCESSING

Legal decision making is complex, repetitive, and often constrained by information, time, and resources in ways that may produce considerable ambiguity or uncertainty for arriving at a "satisfactory" decision (Albonetti, 1991; Farrell and Holmes, 1991).³ As an adaptation to these constraints, a "perceptual shorthand" (see Steffensmeier et al., 1998) for decision making emerges that allows for more simple and efficient processing of cases by court actors. Indeed, prior studies examining the decisions of "courtroom workgroups" provide evidence that an inability to internalize crime stereotypes threatens the effectiveness of an overloaded case processing system (Eisenstein and Jacob, 1977; Nardulli et al., 1988). As a result, legal agents may rely not only on the defendant's current offense and criminal history, but also on stereotypes linked to the defendant's race, ethnicity, gender, or social class (Albonetti, 1991; Steffensmeier et al., 1993). On the basis of these stereotypes, judges may project behavioral expectations about such things as the offenders' risk of recidivism or danger to the community. Once in place and continuously reinforced, such patterned thinking and acting are resistant to change and may

3. The results of prior research on court decision making can be viewed as consistent with a "legal realist" perspective of the criminal justice system (Nagel, 1983; Stryker et al., 1983). That is, although legal factors such as offense severity and criminal history are the primary determinants of legal decision making, other extralegal and contextual factors can and often do influence the criminal case process. For instance, race and ethnicity, if not relevant in legal decisions as direct effects, may be influential in combination with stratification resources and other legal and extralegal variables (Albonetti et al., 1989).

result in the inclusion of racial and ethnic biases in criminal case processing. For instance, Swigert and Farrell (1977) report that the criminal behaviors of defendants who are viewed as prone to violence are labeled "normal primitive" by court actors. The label, disproportionately applied to black and poor defendants, results in a decreased likelihood of receiving pretrial release or going to a jury trial.

This analysis of race-ethnicity effects on pretrial release decisions and outcomes is framed by the focal concerns theory of judicial decision making, first articulated by Steffensmeier (1980), and then expanded on by colleagues (Steffensmeier and Demuth, 2001; Steffensmeier et al., 1993; Steffensmeier et al., 1998; Ulmer, 1997) and other sentencing scholars (e.g., Spohn and Holleran, 2000). Steffensmeier and colleagues (1993, 1998, 2001) suggest that judges are guided by three focal concerns in reaching legal decisions: blameworthiness, protection of the community, and practical constraints and consequences. Blameworthiness is associated with defendant culpability, the severity of the offense charge, and the defendant's criminal history. Protection of the community draws on similar concerns but emphasizes the goals of incapacitation and general deterrence. Practical constraints and consequences include concerns about the organizational costs incurred by the criminal justice system and the disruption of ties to children or other family members. Importantly, they report that all of these focal concerns may be influenced by legally irrelevant extralegal factors, such as race/ethnicity, age, and sex (see Steffensmeier et al., 1998).

Research on decision making by judges, prosecutors, and other legal agents at earlier stages of the criminal justice system (e.g., pretrial release) confirms the importance of these focal concerns to decision makers at all points throughout the criminal justice system (Albonetti, 1986, 1987, 1989). For instance, although most state courts have as their stated pretrial release goals to ensure the return of the defendant to court for adjudication and maintain public safety, the findings of past research studies suggest that offense severity and prior record (and not community ties or employment) are the strongest predictors of pretrial release decisions (Bock and Frazier, 1977; Goldkamp, 1979; Goldkamp and Gottfredson, 1985; Gottfredson and Gottfredson, 1990; Walker, 1993). Indeed, blameworthiness and protection of the community appear to be the most important factors in legal decision making throughout the larger criminal case process (Gottfredson and Gottfredson, 1990). And, especially at earlier stages (e.g., before conviction) in the criminal justice system, when all legal facts are unavailable, decision making may involve highly subjective evaluations that are likely to be influenced by attributions linked to defendant characteristics.

SOCIAL DISADVANTAGE AND CRIMINAL STEREOTYPES

Political and public concerns regarding crime control and community safety, combined with conceptualizations of crime as a minority or "under-class" problem, have led to the development and reinforcement of labels and stereotypes of racial and ethnic criminality (Bridges et al., 1987). Traditional research on the labeling and stereotyping of black male offenders suggests that blacks are viewed by others as being aggressive and irresponsible (Tittle and Curran, 1988), disrespectful of authority (Bridges and Steen, 1998), and more criminal in their lifestyles (Swigert and Farrell, 1976). Hispanic offenders also elicit similar negative stereotypes (Anderson, 1995; Carnevale and Stone, 1995; Mata, 1998). Prior studies of immigrant and ethnic prejudice report characterizations of Hispanics as lazy, irresponsible, and dangerously criminal (Healey, 1987:374; see also Brown and Warner, 1992). Indeed, when asked why minorities are sentenced differently than whites, a court officer interviewed in a study by Bridges et al. (1987) attributes this to minorities' being "hot headed, Latin tempered." Thus, not only black males but also Hispanic males are identified with crime and fear of crime in popular and political culture (Anderson, 1995).

Hispanics also share many of the same social problems as blacks: poverty, unemployment, female-headed households, failing educational systems, and crime (Healey, 1998; Moore and Pinderhughes, 1993). Additional problems may face some Hispanic defendants (and especially recently immigrated Hispanic defendants): difficulty with the English language, general ignorance about or distrust of the criminal justice system, and an unwillingness to cooperate with authorities out of fear of deportation of family and friends (Brown-Graham, 1999; Messier, 1999; Molvig, 2001). Defendants with limited English-speaking ability are less capable of mounting a strong criminal defense that could reduce criminal sanctions (Molvig, 2001). In addition, unfamiliarity with or distrust of the criminal justice system, combined with a fear of retaliation by immigration officials, could make Hispanics less forthcoming to court employees and, as a result, more "deserving" of punishment (Brown-Graham, 1999; Messier, 1999). And national efforts to combat drug crime combined with the current and historical identification of drug problems and drug trafficking as closely linked with foreign groups and internal minorities makes it especially likely that Hispanic defendants suspected of drug crimes will become targets of increased legal controls (Musto, 1987; Portillos, 1998; Scott and Marshall, 1991).

However, it is also possible that Hispanics may be judged as a greater flight risk or more dangerous because of their citizenship status. Assuming

that Hispanic defendants are more likely to be noncitizens or recent immigrants than either white or black defendants, it is possible that Hispanics may be justly detained because of their alien status or a relative lack of community ties (Demuth, 2002). But, as stated earlier, past research shows rather strongly that these flight risk factors are considerably less important to legal agents than the legal culpability and dangerousness of the defendant at the pretrial release stage. Nonetheless, concerns about the link between noncitizen status and drug trafficking may encourage legal agents to disproportionately detain Hispanic defendants to prevent future offending and to minimize potential threats to public safety (Demuth, 2002).

Thus, it seems reasonable that the social disadvantages and criminal stereotypes of Hispanic Americans, in combination with highly discretionary decision making by court actors, especially at the pretrial stage, may contribute to the harsher treatment of Hispanic defendants in the criminal courts. Indeed, based on the review of the literature, I expect Hispanic defendants to be treated more harshly than either black or white defendants, especially in drug cases.

DATA AND METHOD

In the present study, I use individual-level data compiled (biennially) by the State Court Processing Statistics (SCPS) program of the Bureau of Justice Statistics on the processing of a sample of formally charged felony defendants in the State courts of the nation's 75 most populous counties in 1990, 1992, 1994, and 1996. The SCPS data are exceptionally well suited for the proposed analysis because they 1) offer extensive information on the processing of defendants, including detailed information about pretrial release decisions and outcomes; 2) provide important demographic, case, and contextual information such as race and ethnicity, age, criminal history, arrest and conviction offense, and jurisdiction that might affect decisions at various stages of the process; 3) furnish adequate numbers of cases across all three racial and ethnic groups of interest at the pretrial stage of case processing; 4) cover a sizable number of settings or jurisdictions, so that disparities can be examined not only in relation to the stage of case processing but also within and between jurisdictions; and 5) permit considerable generalizability of findings because the counties sampled represent courts that handle a substantial proportion of felony cases in the United States.

I restrict the original data sample in two important ways. First, I exclude certain demographic groups because of an insufficient number of cases. The analysis is limited to male defendants; the number of female defendants within the racial and ethnic subgroups is too small to ensure stability

in the model estimates.⁴ Defendants belonging to the “other” race-ethnicity category are deleted from the analysis. “Others” comprise less than 1% of the total sample and are not distributed evenly across counties, which makes data analysis and interpretation of findings difficult. Depending on the county, defendants categorized as “other” may be Asian, Native American, or some other non-white, non-black, or non-Hispanic racial or ethnic identity.

Second, I limit the analysis to three general offense types: property, violent, and drug. Public order offenses (e.g., weapons, driving, flight/escape, violations, obstruction, rioting, slander, treason, perjury, prostitution, bribery, tax law violations) are excluded from the sample because they constitute a relatively small number of cases in the total sample (less than 10%) and because they represent such a varied group of criminal acts. The percentage of public order filings within each racial and ethnic group varies slightly (11% of white filings, 8% of black filings, 9% of Hispanic filings). The analytic sample contains 33,315 defendants; 25% of the sample is white, 49% of the sample is black, and 26% of the sample is Hispanic.⁵

EXTRALEGAL VARIABLES

Race and ethnicity are measured using three dummy variable categories: non-Hispanic white, non-Hispanic black, and Hispanic of any race. It is misleading to assume that race and Hispanic origin are objective and measurable characteristics. The meaning and salience of racial and ethnic categories and labels vary over time and space. Indeed, race and ethnicity are socially constructed (see Bobo and Hutchings, 1996; Pollard and O'Hare, 1999). Just as there is no purely white or black person, it is an oversimplification to suggest that persons of Hispanic (Latino) origin can be combined

4. There are 6120 female defendants in the sample with the following racial/ethnic distribution: 1902 white, 3088 black, and 1130 Hispanic. The relatively small number of females in the sample (especially in the critically important Hispanic subsample) combined with the uneven distribution of race/ethnicity and gender across the 53 counties and 10 offense types leads to many “zero cells” and unstable regression model estimates when females are included in the analyses.

5. Missing data provide a potential threat to the representativeness of the sample and, hence, to the generalizability of the findings to the greater population of felony cases processed in the counties. A list-wise deletion of cases with missing data results in a significant reduction in the number of cases available for analysis, likely biases statistical results, and makes the overall findings less meaningful. The strategy chosen to include cases with missing values is the multiple imputation approach to the statistical analysis of incomplete data developed by Schafer (1997; see also Little and Rubin, 1987). Multiple imputation, the “filling in” of missing data with plausible values, uses a Monte Carlo technique to replace missing values with simulated values. Imputation is preferable to deletion because deletion leads to valid inferences in general only when missing data are missing completely at random. Multiple imputation software (NORM) developed by Schafer is used to replace missing values.

into a single uniform group. The broad categorization of Hispanics (and whites and blacks) into a single group and the assumption that all individuals within the group will be treated similarly conceals important differences associated with language, nationality, and color that characterize specific subgroups (Portes, 1990). For instance, Simon (1985) documents considerable variation in the stereotypes associated with different white ethnicities in the United States in the early 1900s. And, research by Sanders (1993) suggests that bond decisions for illegal immigrants in Miami are influenced in part by characteristics of their country of origin. Aliens from countries with dictatorships and those from drug producing nations receive higher bond levels than other aliens.

There is also evidence that categorizations and impressions of race and ethnicity are influenced heavily by skin color (Brown et al., 1998). Considerable research suggests that skin color has important implications for the distribution of rewards and opportunities in society such as education, occupation, and income (Hill, 2000; Keith and Herring, 1991; Telles and Murguia, 1990). Indeed, darker-skinned blacks and Hispanics tend to be disadvantaged relative to lighter-skinned blacks and Hispanics. The apparent persistence of colorism (color bias) in other important areas of contemporary American society suggests a real need to expand studies of racial and ethnic differences in the criminal case process to include information on skin color especially in light of the "mental shortcuts" that court decision makers may use when information is limited or unavailable.

It is true that the SCPS data (like most public-use data sets) provide only very broad categories of race and ethnicity. However, there are several reasons that research on general populations of Hispanics remains relevant and worthwhile. First, Hispanics now make up 12 to 13% of the U.S. population, up from 9% in 1990 and 6.4% in 1980 (U.S. Bureau of Census, 2000a). Indeed, demographic projections for 2002 suggest that Hispanics now outnumber non-Hispanic blacks making Hispanics the largest "minority" group in the United States (U.S. Bureau of Census, 2000b). Despite these changes in population structure, social scientists continue to focus mostly on blacks and whites. One strategy would be to wait for new data sources with more refined measures of ethnicity to become available; however, I consider the analyses here a useful first step in the process of building knowledge in this area while acknowledging its weaknesses.

Second, because individuals (e.g., judges, prosecutors) often rely on stereotypes linked to broad categories of race and ethnicity, an inability to more precisely measure race and ethnicity does not necessarily diminish the significance of findings that suggest that race and ethnicity (in general) influence decision making and outcomes in the criminal justice system (Spohn and Holleran, 2000).

Third, even if a finding of a general Hispanic effect conceals important

subgroup differences, the finding would suggest that at least some subgroups are treated more harshly vis-à-vis white and black defendants. That is, some Hispanic groups may be treated more harshly than the average Hispanic, whereas others are treated less harshly. However, recent sentencing studies examining Hispanics in different contexts (e.g., Southwest-Mexican, Holmes et al., 1996; Pennsylvania-Puerto Rican, Steffensmeier and Demuth, 2001; Chicago-Mexican, Miami-Cuban, Spohn and Holleran, 2000) find the predicted Hispanic effect, as do recent studies of diverse Hispanic groups in the federal courts (Hebert, 1997; Steffensmeier and Demuth, 2000). Hence, the best available evidence suggests that less favorable criminal justice outcomes may extend across Hispanic groups regardless of national origin. Importantly, pretrial release outcomes for Hispanics as a group are less favorable than outcomes for blacks and whites despite the possibility that some Hispanic subgroups may receive relatively favorable outcomes.

Fourth, as discussed earlier, the ability to correctly identify Hispanics as ethnically distinct from non-Hispanic blacks and whites is critical for understanding the nature of black-white racial differences in crime and the criminal justice system.

Age is measured using a continuous variable. An age-squared component (that is centered and orthogonal to the linear component) is also included. The results of past sentencing studies suggest that age has a non-linear relationship with incarceration and term length outcomes (see Steffensmeier et al., 1995). That is, judges are likely to give the most lenient sentences to the youngest and oldest offenders. It is possible that a similar relationship exists at the pretrial release stage.

LEGAL VARIABLES

Measures of offense severity and criminal history are critical for any analysis of criminal case process decision making because these two variables are the best predictors of legal decisions (see for discussion, Gottfredson and Gottfredson, 1990; Walker, 1993). For this analysis, *offense severity* is measured using a set of ten dummy variables representing the specific offense type of the most serious arrest charge (which are all felonies). The ten specific offense types fit into three general offense type categories. The general and specific offense types are violent offenses (murder, rape, robbery, assault, and other), property offenses (burglary, theft, and other), and drug offenses (trafficking and other).

Criminal history is measured in three different ways. The first measure is an index of prior contact with the criminal justice system. Four dummy variables comprise the index: Has the defendant ever been arrested for a

felony? Has the defendant ever been convicted of a felony? Has the defendant ever been in jail? Has the defendant ever been in prison? The index has a Cronbach alpha reliability of 0.82. The second measure of criminal history is a dummy variable that indicates the criminal justice status of the defendant at the time of the most recent arrest (i.e., the arrest recorded in the current data set). Defendants who are on release pending another case, on probation, on parole, or in custody when arrested have active criminal justice statuses.⁶ The third measure can be seen as both a measure of criminal history and flight risk. It is a dummy variable that indicates whether the defendant has ever failed to appear (FTA) in court pending disposition in the past.

Other data such as education, income, employment status, and marital status that are considered legally relevant to pretrial release decisions as they relate to community ties and the likelihood of returning to court for adjudication are not available. The lack of such information represents a limitation of the present study in that the availability of these data would enable a more robust test of race/ethnicity effects at the pretrial release stage. But the reliability of information such as income, employment, and education collected in criminal case processing data sets is equivocal. For instance, federal sentencing data sets contain very detailed information regarding income, but over 50% of defendants list their incomes as \$0 (Steffensmeier and Demuth, 2000). And, as discussed earlier, community ties information appears to hold considerably less weight in making pretrial release decisions than information on offense severity and criminal history. Although these ties may not be as important at high levels of offense severity and criminal history where discretion is more limited, the ties may be more influential when making decisions in cases involving middle and lower levels of these factors. That the defendants in the present study are charged with felonies may serve to reduce some concerns that model misspecification may lead to overstated race/ethnicity effects, but the concern remains nonetheless. Given the limited information available on community ties in this data set, it is difficult to disentangle the effects of race and ethnicity from the effects of community ties. There are likely many unmeasured disadvantaging socioeconomic characteristics wrapped up with race and ethnicity that might legally (and illegally) result in more punitive outcomes for black and Hispanic defendants. Hence, a more conservative interpretation of the findings of this study might be that

6. Although the best available sources of criminal history information are used for the original data collection, there are jurisdictional differences in access to some criminal history data sources. Some jurisdictions have access to FBI rap sheets, state criminal histories, and local record checks, while others are limited to state or local sources (Bureau of Justice Statistics, 1999).

racial and ethnic differences constitute overall disparate impacts rather than "pure" effects of race and ethnicity.

Because there is significant variation in case processing outcomes across counties, dummy variables for each of the counties in the sample are included in regression models.⁷ Inclusion of these variables controls for mean differences in outcomes across counties.⁸ Dummy variables representing the filing year are also included in the regression models.

PRETRIAL RELEASE DECISIONS AND OUTCOMES

This analysis of pretrial release incorporates five different dependent variables. The most general pretrial release variable is a dummy variable that indicates whether the defendant is detained or released pending case disposition. However, whether the defendant is ultimately released or detained also depends on the outcomes of a series of decisions made both by agents of the court (e.g., judge, pretrial release officer) and by the defendant. These intermediate decisions constitute the remaining four dependent variables.

Goldkamp (1979), in his analysis of Philadelphia bail practices, presents an analytic model that organizes the bail-setting decision into a trifurcated process. In his model, bail setting is not a simple choice involving three alternatives, but it is rather a more complex decision process comprising

7. The counties included in the present study are: Jefferson, AL, Maricopa, AZ, Pima, AZ, Alameda, CA, Los Angeles, CA, Orange, CA, Sacramento, CA, San Bernadino, CA, San Diego, CA, San Francisco, CA, Santa Clara, CA, Ventura, CA, Washington, DC, Broward, FL, Dade, FL, Duval, FL, Hillsborough, FL, Orange, FL, Palm Beach, FL, Pinellas, FL, Fulton, GA, Honolulu, HI, Cook, IL, DuPage, IL, Marion, IN, Jefferson, KY, Montgomery, MD, Baltimore (City), MD, Essex, MA, Middlesex, MA, Suffolk, MA, Wayne, MI, Jackson, MO, St. Louis, MO, Essex, NJ, Bronx, NY, Erie, NY, Kings, NY, Monroe, NY, New York, NY, Queens, NY, Suffolk, NY, Hamilton, OH, Allegheny, PA, Montgomery, PA, Philadelphia, PA, Shelby, TN, Dallas, TX, Harris, TX, Tarrant, TX, Salt Lake, UT, Fairfax, VA, King, WA, Milwaukee, WI.

8. The goals of pretrial detention are relatively consistent across counties. Most counties aim to protect the community from further offending and/or reduce the flight risks of defendants. However, there are differences across states in terms of the statutory aims of pretrial detention as well as differences across counties within states regarding the formal and informal procedures for processing criminal cases. For instance, the stated purpose of the determination of pretrial release in Pennsylvania is to ensure that the defendant appears in court (Pa. R.Cr.P. Rule 523), while in Florida the stated purpose is equally to ensure appearance and to protect the community (Fla. Stat. §§ 903.046). The goals of the California statute are similar to Florida's, but California's explicitly states that public safety should be the primary consideration for pretrial release (Cal Pen Code §§ 1275). Interestingly, although the stated goals of these various statutes are somewhat different, the relevant criteria listed in the statutes for making pretrial decisions are similar. Likewise, there is scant mention of the relative weights to be applied to various criteria when making decisions. A more in-depth examination of these county-level differences is worthwhile, but beyond the scope of the present study.

three contingent decision-making stages. The three decisions in Goldkamp's model are 1) release on own recognizance, 2) denial of bail, and 3) setting of bail amount. Although pretrial release options differ across jurisdictions and all bail decisions are not necessarily made in this way, the model provides a useful framework for conceptualizing the pretrial release decision-making process.

I use a model similar to Goldkamp's (1979) in the present study. At the first stage, the judge determines whether the defendant is eligible for pretrial release. For instance, defendants accused of capital crimes, defendants deemed likely to commit new crimes while released, and defendants who are considered a substantial flight-risk may receive preventive detention pending case disposition. The dependent variable representing this decision is a dummy variable that shows whether the defendant was given preventive detention or some other release option.

At the second stage, if the defendant is eligible for release, the judge decides whether a financial or nonfinancial release option is most appropriate. The nonfinancial release options are 1) release on recognizance (ROR), 2) unsecured bond, and 3) conditional release and the financial release options are 1) surety bond, 2) deposit bond, and 3) full cash bond. To simplify the analysis, the specific release options have been combined into two general categories: nonfinancial release and financial release. I assume that financial and nonfinancial release options have the same relative meaning across jurisdiction; that is, nonfinancial release is seen as less punitive and constraining than financial release. The dependent variable representing this decision is a dummy variable that demonstrates whether the defendant is given a financial or nonfinancial release option.

At the third stage, for defendants given a financial release option, the amount of bail is set. Importantly, the bail amount takes on a different meaning depending on the specific type of financial release used. For instance, if the bail amount is \$5000 and a full cash bond is required, then the defendant must pay the court \$5000 to gain release. But, if only a surety bond is required, then the defendant might only have to provide 10% of the bail (or \$500) to a bondsman in order to gain release. In other words, the ability to gain financial release may depend on the specific type of release options available to the defendant. In the present study, I cannot account for these differences because financial release option information is not provided for defendants who cannot make bail. However, bail amount is available for all financial release cases regardless of whether the defendant can pay bail. The dependent variable representing this decision is a continuous variable that specifies the number of dollars set for bail. Because the distribution of bail amount is skewed, the natural log of bail amount is used in regression analyses.

A fourth stage is whether the defendant offered bail can actually afford

to post bail. Because the poor are less able to post bail, they are more likely to have to remain in jail pending case disposition. This is also likely to disproportionately disadvantage black and Hispanic defendants who are more likely to be poor than white defendants. Although the ability to pay bail is not technically a criminal justice decision (i.e., made by a legal agent), it is a direct consequence of case process decision making. In this sense, a financial release option may amount to preventive detention for many defendants and indirectly create racial and ethnic disparities in pretrial release outcomes. The dependent variable representing this outcome is a dummy variable that indicates whether the defendant is held on bail or released on bail.

RESULTS

I present here the results of analyses examining the effects of race and ethnicity on pretrial release among white, black, and Hispanic defendant groups. Next, I present the results of multiple regression analyses examining the effects of race and ethnicity and other extralegal and legal factors on pretrial release decision making and outcomes. Using the conceptual framework discussed earlier, I examine pretrial release as a process comprising several intermediate, contingent dimensions or stages. Lastly, I partition the sample by offense type to determine whether racial/ethnic differences in pretrial detention exist among violent, property, and drug offenses.

DESCRIPTIVE STATISTICS

Table 1 provides descriptive statistics for variables included in multivariate regression analyses, including defendant's race, ethnicity, age, offense type, criminal history, and pretrial release. Descriptive statistics are presented for the total sample of cases and separately for white, black, and Hispanic defendant groups.

As displayed in Table 1, white defendants comprise about 25% of the analytic sample; black defendants account for about 49%, and the remaining 26% are Hispanic defendants. There are noticeable differences in the arrest charges and criminal history profiles of the three defendant groups. Looking within racial and ethnic defendant groups, a plurality (46%) of white defendants are charged with property crimes. For black defendants, the arrest charges are spread relatively evenly across violent (31%), property (32%), and drug (37%) crimes. Hispanic defendants are overwhelmingly charged with drug offenses (42%), most notably drug trafficking (26%). Hispanic defendants are slightly more likely to be charged with multiple crimes than white and black defendants.

Regarding past involvement with the criminal justice system, the general

Table 1. Descriptive Statistics for Total Sample and White, Black, and Hispanic Subsamples

Measure	Total	White	Black	Hispanic
Age	28.6	29.6	28.5	27.8
Violent	28.7%	27.2%	30.7%	26.6%
Murder	0.8%	0.6%	0.9%	0.9%
Rape	2.1%	2.5%	2.1%	1.6%
Robbery	9.1%	4.6%	11.9%	8.3%
Assault	13.0%	14.1%	13.1%	11.8%
Other Violence	3.7%	5.4%	2.7%	4.0%
Property	35.5%	46.0%	32.0%	31.6%
Burglary	12.3%	14.9%	11.2%	11.9%
Theft	13.1%	16.4%	12.1%	11.6%
Other Property	10.1%	14.7%	8.7%	8.1%
Drugs	35.8%	26.8%	37.2%	41.8%
Drug Trafficking	19.8%	12.1%	20.3%	26.2%
Other Drug	16.0%	14.7%	16.9%	15.
Multiple Charges	55.6%	54.9%	54.5%	58.2%
Prior FTA	36.5%	30.3%	40.6%	35.0%
Active CJ Status	41.8%	33.9%	45.1%	43.1%
Criminal History	1.7	1.4	1.9	1.6
Released	56.6%	66.9%	55.2%	49.5%
Nonfinancial	32.8%	35.3%	31.8%	32.2%
Made Bail	23.8%	31.6%	23.4%	17.3%
Detained	43.4%	33.1%	44.8%	50.5%
Denied Bail	7.8%	6.3%	9.2%	6.7%
Held on Bail	35.5%	26.8%	35.6%	43.8%
Mean Bail Amount	\$26031	\$21646	\$23387	\$34646
N	33315	8359	16218	8738

race/ethnicity pattern of criminal history profiles places white defendants as having the least serious prior record, black defendants as having the most serious prior record, and Hispanic defendants in the middle. That is, black defendants are the group most likely to have 1) an active criminal justice status at the time of the current arrest; 2) a prior felony arrest; a felony conviction, or a record of prior jail or prison time; and 3) a record of a failure-to-appear in court on a prior offense. White defendants are the

group least likely to have these characteristics. Hispanics place in the middle.

Based on legal factors, it is reasonable to expect that black and, to a lesser extent, Hispanic defendants will be treated more punitively than white defendants at the pretrial release stage. Descriptive statistics for pretrial release shown in Table 1 provide partial support for these expectations. In total, white defendants are the group most likely to be released pending case disposition. But, Hispanic defendants are considerably less likely to gain release (50%) than either white (67%) or black (55%) defendants. This difference does not appear to be due to differences in the application of preventive detention. A relatively small number of defendants are denied bail (about 8%), and there are few differences across defendant groups in this regard (although black defendants are slightly more likely to be denied bail). Rather, the group differences in pretrial release appear to result from group differences in the price of bail and the ability to make bail. White, black, and Hispanic defendants are similarly likely to be granted nonfinancial release (about 33% for all three groups). But mean bail amounts are higher for Hispanic defendants than white and black defendants. In turn, Hispanic defendants are the group least likely to make bail among defendants offered financial release. Only 28% of Hispanic defendants offered bail are released on bail, compared with 40% of black defendants and 54% of white defendants. In sum, despite not having the most serious criminal characteristics, Hispanic defendants are the group least likely to gain pretrial release and the group most likely to be detained before adjudication.

EFFECTS OF RACE/ETHNICITY ON PRETRIAL RELEASE DECISIONS AND OUTCOMES

This section provides the results of multivariate regression analyses that examine whether differences in pretrial release decisions and outcomes among white, black, and Hispanic defendants persist net of statistical controls for legal, extralegal, and contextual factors. The importance of controlling for legal factors has been discussed earlier in more detail. It is also important to control for jurisdictional differences in pretrial release processing. Langan (1994) argues that aggregation effects may lead to the misinterpretation of race effects when analyzing data from multiple jurisdictions. For instance, if county differences in pretrial release are ignored and Hispanic defendants are disproportionately processed in especially punitive counties, even though racial and ethnic disparities may not exist in any individual county, it may appear that Hispanic defendants are treated more harshly overall than other defendants. Dummy variables for each county are included to help rule out this alternative explanation of

race and ethnicity findings.⁹

Table 2 displays the results of five regression models (from left to right): a general detention model representing the overall pretrial release outcome and four specific models representing intermediate decisions and outcomes that comprise the ultimate pretrial release outcome (i.e., preventive detention, financial-nonfinancial release, bail amount, and posting bail). I use logistic regression to model four of the five dependant variables: general detention, preventive detention, financial versus nonfinancial release, and the ability to post bail. I use ordinary least squares (OLS) regression to model bail amount. Importantly, I control for the cross-stage dependence of pretrial release decisions and outcomes by including correction terms for sample selection in the relevant models (see Berk, 1983; Peterson and Hagan, 1984).¹⁰ Controls for county and year are included in

9. Also, in a review of prior race-sentencing studies, Chiricos and Crawford (1995) find that despite a *general* pattern of black disadvantage in incarceration decisions, it is unreasonable to presume that this pattern of black disadvantage is *specific* to and consistent across all jurisdictions. In fact, they find considerable variation in racial disparity across jurisdictions as evidenced by the large number of race findings that are statistically nonsignificant (in both positive and negative directions). To the extent that the effect of race on sentencing is not uniform across jurisdictions—that is, that racial discrimination or differential treatment is not “systemic”—this raises the important issue that sentencing context might influence the sentencing of white and black defendants (Hagan and Bumiller, 1983; Zatz, 1987). This issue is similarly important for the present analysis of decisions and outcomes at the pretrial release stage. In supplementary analyses (not shown here), I used logistic multiple regression to examine the main effects of race and ethnicity on the pretrial release outcome by county to determine whether the main effects of race and ethnicity discussed in the main analysis are consistent in size and direction across individual contexts, net of legal and extra-legal controls. Similar to past meta-analytic studies that summarize the race and ethnicity effects of multiple studies (e.g., Hagan, 1974; Kleck, 1981), I tabulated the race and ethnicity findings from the 53 counties to determine if consistency in findings exists. The small number of cases in some counties contributes to insufficient statistical power in many county-specific models and explains, in part, the considerable number of black and Hispanic coefficients that are large but not statistically significant. Across counties, 92% (49 of 53) of black coefficients and 79% (42 of 53) of Hispanic coefficients are positive, indicating more punitive outcomes for black and Hispanic defendants than for white defendants. Furthermore, 38% (20 of 53) of black coefficients and 40% (21 of 53) of Hispanic coefficients are positive and statistically significant. Notably, none of the negative pretrial release findings are statistically significant. These county-specific findings are supportive of the overall findings of the main analysis.

10. In the present study, pretrial release is examined as a multi-stage process. Peterson and Hagan (1984) address some problems with treating these multiple stages as separate, unrelated events. First, in practice, we know that the results of later stages of the pretrial release process depend on the outcomes of earlier stages. For instance, a defendant cannot pay bail if the court does not first make the defendant eligible for bail. To ignore this reality is to misrepresent the true functioning of the pretrial release process. Second, the parameter estimates for the later regression models (i.e., stages) in the pretrial release process will be statistically biased if the models fail to account for

Table 2. Logistic and OLS Regression Models for Pretrial Release Decisions and Outcomes

Measure	Detained (odds ratio)	Deny Bail (odds ratio)	Financial Release (odds ratio)	Bail Amount (log[bail])	Held on Bail (odds ratio)
(White)					
Black	1.663***	1.210**	1.083	0.031	2.136***
Hispanic	1.914***	1.232**	1.392***	0.077**	2.063***
Age	1.049***	1.003	1.049***	0.003	1.041***
Age ²	0.999***	0.999	0.999***	-0.000	0.999***
Murder	8.764***	20.229***	13.930***	2.733***	0.541
Rape	2.741***	2.346***	3.797***	1.451***	0.705**
Robbery	3.203***	2.116***	3.479***	1.111***	1.261**
Assault	1.197***	1.208	1.972***	0.628***	0.538***
Other Violence	1.197	0.992	1.904***	0.962***	0.413***
Burglary (Theft)	1.668***	1.149	1.411***	0.333***	1.535***
Other Property	0.766***	0.976	0.869	-0.020	0.727***
Drug Trafficking	1.093	1.022	1.721***	0.604***	0.486***
Other Drug	0.559***	0.848	0.711***	-0.052	0.541***
Multiple Charges	1.290***	1.172**	1.320***	0.346***	0.976
Prior FTA	1.142***	1.063	1.071	-0.023	1.200***
Active CJ Status	2.028***	3.448***	1.675***	0.104***	1.647***
Criminal History	2.028***	3.448***	1.675***	0.104***	1.647***
Bail Amount (logged)	—	—	—	—	1.933***
Hazard	—	—	2.664**	0.013	3.287**
-2 Log L/R ²	36119.7	14407.7	31438.1	0.414	18632.4
N	33315	33315	30711	19413	19413

*** $p < .001$; ** $p < .01$

the models, but they are not shown in the tables.

GENERAL DETENTION MODEL

Legal factors are the strongest determinants of whether someone is released or detained. Defendants charged with more serious crimes and defendants with more extensive criminal backgrounds are more likely to

the likelihood of being selected into the later stages (i.e., being eligible for release) (Berk, 1983). For instance, whether or not a defendant receives financial release will be a function not only of its usual predictors, but also of the "hazard rate," or risk of not being denied bail at the previous stage. I use a procedure discussed by Berk (1983) and Peterson and Hagan (1984) to address this sample selection bias problem. I include the hazard rate of preventive detention in the model of financial release and the hazard rate of financial release in the models of bail amount and posting bail.

be detained than other defendants. Among all defendants at the pretrial release stage, defendants charged with murder, rape, and robbery are especially likely (compared with the reference category, theft) to be detained. In particular, the odds of a defendant charged with murder being detained are about nine times as great as the odds of a defendant charged with theft being detained. And, defendants with multiple arrest charges or prior instances of failure to appear in court are more likely to be detained than defendants with a single arrest charge or no prior FTAs. Regarding past criminality, for each one-unit increase in the defendant's criminal history (5-point) index score, the odds of detention increase by 40%. Importantly, the odds of detention for defendants with an active status in the criminal justice system at the time of arrest are approximately twice those for defendants without an active status. These findings suggest that public safety and defendant recidivism are important concerns surrounding pretrial release.

Turning to the findings of primary interest, black and especially Hispanic defendants are significantly more likely to be detained than white defendants, controlling for important extralegal, legal, and contextual factors. The odds of detention are 66% greater for black defendants than white defendants, and the odds of detention are 91% greater for Hispanic defendants than white defendants. Furthermore, the odds of detention for Hispanic defendants are significantly higher than the odds of detention for black defendants ($p < .001$). In view of the results that show more punitive outcomes for Hispanic and black defendants relative to white defendants in general, I next examine the pretrial release process in greater detail in order to assess what particular aspects of the process contribute to the overall more punitive pretrial release outcomes of Hispanic and black defendants.

PREVENTIVE DETENTION OR DENIAL OF BAIL

Keeping in mind that few defendants (about 8%) are denied bail, results (second column in Table 2) pertaining to the preventive detention decision indicate that (1) defendants charged with very serious crimes and (2) defendants having significant current involvement with the criminal justice system are most likely to be denied bail. Most notably, defendants charged with murder and defendants with an active criminal justice status at the time of arrest have odds of preventive detention that are 20 and nearly 3.5 times as great as their reference groups, respectively. Importantly, the findings indicate that Hispanic and black defendants are more likely than white defendants to be denied release. The odds ratios for preventive detention (compared to white defendants) are 1.21 for black defendants and 1.23 for Hispanic defendants.

FINANCIAL-NONFINANCIAL RELEASE

Recall that for defendants who are not given preventive detention, judges and prosecutors must determine whether defendants should be released on nonfinancial terms (e.g., ROR) or required to post bail to gain release. Because the majority of defendants required to pay bail to gain release cannot or do not pay, a judgment of financial release ultimately results in the pretrial detention of many defendants (see Table 1 and earlier discussion). Turning to the results (third column in Table 2), for the most part, the effects of legal factors at this stage are generally similar in size and direction to the effects found at the other stages. Importantly, two main findings emerge: ethnicity effects and age effects.

Regarding race and ethnicity, Hispanic defendants are significantly more likely to receive a financial release option (versus a nonfinancial release option) than either white or black defendants ($p < .001$), meaning that Hispanic defendants are the group most likely to have to provide money or property in exchange for pretrial release. There is no difference between white and black defendants regarding the financial-nonfinancial release decision. The odds of receiving a financial release option are approximately 39% higher for Hispanic defendants than for white and black defendants. Put differently, white and black defendants are more likely to be released under nonfinancial terms (e.g., ROR) than Hispanic defendants controlling for extralegal, legal, and contextual factors.

Turning to the age effects, there is an "upside-down U" relationship between age and the likelihood of receiving a financial release option. The youngest and oldest defendants are less likely to be required to post bail to gain release than defendants who fall in the middle. In other words, these young and old defendants are most likely to be released on nonfinancial terms. Some prior research on age and sentencing (e.g., Steffensmeier and Demuth, 2000; Steffensmeier et al., 1995, 1998) suggests that the youngest (i.e., under age 21) and oldest (i.e., 55 and over) defendants are less likely to be given incarceration terms than young adult or more middle-aged defendants. In this regard, financial release and incarceration decisions are alike. For reasons similar to those used in incarceration decisions, judges may see young and old defendants as more reformable, less of a safety risk, and less able to "do time" in jail awaiting trial. Middle-aged defendants may be treated more harshly because they are viewed as more dangerous, less respectable, and more irresponsible. Also, the perception that young and old defendants are less able to pay bail may influence decision making.

BAIL AMOUNT

Another important stage is the amount of bail required to obtain financial release. Looking at the results of the OLS regression model for bail amount (fourth column in Table 2; the natural log of bail amount dollars is used to correct for skewness), Hispanic defendants receive significantly higher levels of bail than white defendants, whereas the average bail amount required for black defendants is not significantly different than for white defendants. Taking into account the likelihood of receiving bail as opposed to some form of nonfinancial release, the bail assigned to Hispanic defendants is approximately 8% ($\exp [.077]$) higher than for white defendants.

POSTING OR "MAKING" BAIL

For the majority (about 59%) of defendants at the pretrial release stage, freedom depends on money. In order for defendants to gain release, defendants must acquire sufficient funds to post bail. Hence, the strongest predictor of making bail is bail amount. Because bail amount is tied to offense severity, bail amount also serves as a proxy for offense severity. Importantly, then, this model is essentially a detention model, similar to the general detention model discussed earlier, only exclusively for those defendants who are given a financial release option.

The results (fifth column in Table 2) indicate that both black and Hispanic defendants are more likely to be held on bail (i.e., less likely to pay bail) than white defendants, controlling for relevant factors. Among defendants required to pay bail, the odds of detention for black and Hispanic defendants are more than twice those for white defendants. That is, controlling for the amount of bail (and other legal and contextual factors), black and Hispanic defendants are significantly less able to post bail. These results suggest that bail is particularly prohibitive for minority defendants. For many black and Hispanic defendants, a financial release decision is, in effect, a denial of release.

EFFECTS OF RACE/ETHNICITY ON GENERAL PRETRIAL RELEASE OUTCOMES BY OFFENSE TYPE

Table 3 presents logistic regression results for the effects of race and ethnicity on general pretrial release outcomes (i.e., detained versus released) separately for violent, property, and drug subsamples. (Findings for the total sample are repeated in the table for ease of comparison.) Z-tests of differences between race/ethnicity regression coefficients for each offense type are conducted to determine if there are statistically significant differences in the effects of race/ethnicity across offense types (see Clogg et al., 1995; Paternoster et al., 1998). All of the variables included in the

models presented in Table 2 are also included in the analyses presented in Table 3; because the focus is on race and ethnicity, the other variables are excluded from the table.

Table 3. Logistic Regression Models for General Detention Outcome Partitioned by Offense Type

Measure	Total (odds ratio)	Violent (odds ratio)	Property (odds ratio)	Drug (odds ratio)
(White)				
Black	1.663***	1.614***	1.504***	1.960*** ^{ab}
Hispanic	1.914***	1.649***	1.606***	2.497*** ^c

*** $p < .001$

^a Black coefficients different between Drug and Violent cases at $p < .05$ (two-tailed z-test)

^b Black coefficients different between Drug and Property cases at $p < .01$ (two-tailed z-test)

^c Hispanic coefficients different between Drug and Violent and Drug and Property at $p < .001$ (two-tailed z-test)

Among defendants arrested for violent offenses, the odds of detention for black defendants (1.61) are significantly higher than the odds of detention for white defendants (net of statistical controls). The Hispanic-white detention difference is also statistically significant (odds ratio = 1.65). For defendants arrested for property crimes, the odds of detention for black and Hispanic defendants are 50% and 61% higher than the odds of detention for white defendants, respectively. Concerning drug cases, the odds of detention for black and Hispanic defendants are 96% and 150% higher than the odds of detention for white defendants, respectively. Z-tests of differences between race/ethnicity coefficients across offense type-specific models reveal that black-white and (especially) Hispanic-white differences in pretrial detention are significantly larger in drug cases than in property or violent cases (the effects of race/ethnicity are not significantly different between property and violent cases).

In general, these findings suggest that black and especially Hispanic defendants receive pretrial release outcomes that are harsher than the outcomes of white defendants across all offense types. But, these analyses also reveal that race/ethnicity differences in pretrial release outcomes do differ somewhat across the different offense types. Importantly, the largest racial/ethnic differences emerge in cases involving drug crimes, with Hispanics being the defendant group most likely to be detained before adjudication.

SUMMARY AND IMPLICATIONS

The present study addresses major shortcomings of the scant research on bail and pretrial release, including 1) a lack of empirical research that goes beyond black-white comparisons to include Hispanic-white and Hispanic-black comparisons; and 2) prior research that fails to examine the pretrial release stage as a multi-stage process comprised of both pretrial release decisions and pretrial release outcomes. The central finding is that net of controls, Hispanics are the defendant group most likely to be detained pending case disposition; whites are the least likely to be detained and blacks are in the middle. This pattern of racial and ethnic differences is most pronounced in drug cases, with Hispanics being the group most likely to be detained. Specifically, four elements of the pretrial release process combine to result in higher levels of pretrial detention for Hispanic (and black) defendants:

1) Black and Hispanic defendants are more likely than white defendants to be denied bail.

2) Hispanic defendants are less likely to receive a nonfinancial release option (e.g., ROR) than either white or black defendants.

3) The amount of bail required for release is higher for Hispanic defendants than white defendants; there is no black-white difference in bail amount.

4) Hispanic and black defendants are more likely than white defendants to be held on bail because of an inability to post bail. Indeed, the inability to "make bail" accounts for the majority of black and Hispanic defendants' overall greater likelihood of pretrial detention.

Thus, these elements of the pretrial release process combine to help clarify why Hispanic and black defendants are more likely to be detained than white defendants. On one hand, black defendants are more likely to receive pretrial detention not because of racially differential decision making by legal agents, but rather because of their inability to pay bail. On the other hand, Hispanics, in addition to their inability to pay bail, also suffer the burden of legal decisions that make them more likely to have to pay bail, and more of it, than other defendants. That is, an examination of legal decision making at the pretrial stage shows that ethnic disparities exist in legal decision making such that Hispanic defendants are more likely than other defendants to have to pay money to attain release. Furthermore, among those defendants ordered to pay bail, Hispanic defendants are required to pay higher bail amounts. Indeed, Hispanic defendants face a "triple disadvantage" at the pretrial release stage—they are the group most likely to have to pay bail, the group with the highest bail amounts,

and the group least able to pay bail.¹¹

These findings have at least four critical implications for research on criminal case processing. First, the results demonstrate the necessity of considering not only defendants' race (i.e., black-white differences) in criminal case processing but also the need to include ethnicity (i.e., Hispanic-white and Hispanic-black differences). In general, Hispanic defendants are treated as or more harshly than black defendants and considerably more harshly than white defendants. Clearly, future studies in this area must distinguish among Hispanic, black, and white defendants (as well as racial and ethnic subgroups) as each group has unique experiences in the criminal justice system.

Second, research on racial and ethnic disparities cannot neglect earlier stages of the criminal justice system. In the present study, racial and ethnic differences are considerable at the pretrial release stage, suggesting that restricting our focus to the sentencing stage yields a misrepresentation of the roles of race and ethnicity in the criminal case process. Unchecked prosecutorial and judicial discretion at earlier stages of the process create the potential for such factors as defendants' race and ethnicity as well as other extralegal characteristics to influence legal decision making and outcomes. Because a limitation of the present study is the inability to disentangle the effects of race/ethnicity and community ties at the pretrial release stage, future research needs to address this issue. However, given the subjective nature of risk evaluations based on community ties information and that even more objective risk assessment criteria may be correlated with race and ethnicity, it remains a difficult task to establish the extent to which race and ethnicity directly and indirectly impact pretrial release decisions and outcomes. Nevertheless, research examining this issue is critically important given the possibility that the outcomes of early decision making in the criminal case process may affect later decisions made by judges and prosecutors.

Third, research needs to examine not only the decisions made by judges and prosecutors but also the outcomes of such decisions. As shown in the present study, just because defendants are given the opportunity for pretrial release does not necessarily mean that they are actually released. Indeed, the apparent decision to grant release is frequently at odds with the *actual* outcome. This is not a new finding (see, for example, Goldkamp, 1979), but one that is often overlooked in research on the criminal justice system. Extrapolating to research on sentencing, the same relationship could exist at the sentencing stage where the focus of prior

11. Indeed, Hispanic defendants may ultimately face a "quadruple disadvantage" in that prior research suggests that pretrial detention may disadvantage defendants at sentencing (Goldkamp, 1979).

research is almost exclusively on racial and ethnic disparities in sentencing decisions. Importantly, we should examine white, black, and Hispanic differences in the amount of time actually served by defendants.

Fourth, the results are consistent with the focal concerns perspective as set forth by Steffensmeier and colleagues, particularly with regard to the harsher treatment of Hispanic defendants, as well as with expectations of Hispanic and black disadvantage associated with criminal stereotyping and limited economic, political, and social resources. Especially for Hispanic defendants, a number of findings support these theoretical perspectives. Overall, Hispanic defendants are treated most harshly in the criminal case process, net of controls. At the pretrial release stage, Hispanic defendants are not only less likely to receive favorable (i.e., nonfinancial) release decisions but are also less able than white defendants to be able to afford bail in order to gain release. As socially and economically disadvantaged offenders, Hispanic defendants may lack the resources or power to resist the imposition of harsh legal sanctions. In addition, the behavior of Hispanic defendants may be perceived as more dissimilar and threatening than the behavior of white and black defendants and hence most deserving of punishment. Stereotypes and attributions connecting Hispanics with crime and irresponsibility may contribute to harsher punishments for Hispanic defendants, especially for defendants accused of drug offenses.

CONCLUSION

In sum, the most notable finding from this study is the general pattern of Hispanic disadvantage across all stages of the pretrial release process. That Hispanic defendants are more likely to be denied bail, more likely to have to pay bail to gain release, required to pay higher amounts of bail, and more likely to be held on bail is consistent with a growing body of research that shows Hispanic disadvantage throughout the criminal case process (e.g., Spohn and Holleran, 2000; Steffensmeier and Demuth, 2000, 2001). Indeed, the consistency of my findings with those of other researchers at the sentencing stage suggests that Hispanics are more likely to encounter criminal stereotypes and are less likely to have the resources to avoid the imposition of negative labels. Obviously, more research with more and better refined legal and extralegal measures is needed, but the Hispanic disadvantage observed here and in related studies indicates the continued importance of racial and ethnic stratification in U.S. society.

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