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Financialism in Pretrial Release and Criminal Case Outcomes: A Relative Comparison of Finances, Ethnicity and Sex

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FINANCIALISM IN PRETRIAL RELEASE AND CRIMINAL CASE OUTCOMES: A RELATIVE COMPARISON OF FINANCES, ETHNICITY AND SEX

by

Daniel White

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Submitted to the
Faculty of The Graduate College
in partial fulfillment of the
requirements for the
Degree of Doctor of Philosophy
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Advisor: Charles Crawford, Ph.D.

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Daniel White
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CHAPTER I

INTRODUCTION

In the year 2003, the Justice Department completed a report noted there are currently over 2 million people behind bars in our nation’s jails and prisons. In addition, the reality that Blacks and Hispanics are disproportionately represented in America’s jails and prisons is also not disputed (Mauer, 2006). Recent research has shown that women minorities are disproportionately represented in U.S. jails and prisons as well (Belknap, 2007; Muraskin, 2000). Then again, statistics from the book titled *The Myth of a Racist Criminal Justice System* found that race is not a contributing factor in the disproportionate numbers of minorities behind bars or in the grasp of the criminal justice system (Wilbanks, 1987).

In light of factual disparities by race, it has been suggested, “[t]he criminal justice system in general and prison in particular have long served as the principal arena for responding to the crimes of lower-income people (Mauer, 2006: 177-178).” In fact, “when we speak about race and the criminal justice system, we often in fact are also talking about class” (Mauer, 2006: 177). Legal scholars and criminologists both assert that the quality of legal representation is also based on money (Goldman, 1940; Campbell, 1978).

As such it may be that if race is not to blame for the current state of affairs for minorities in criminal justice, and social class is to blame, how does this happen when there are more poor Whites in America than all of the minorities combined in this country? So the question then becomes how we explain the disparities within the criminal justice system that lead to disproportionate numbers of poor minority men and
women being convicted and subsequently incarcerated. As a result, research questions that underlie this study are designed to understand and explore this general relationship between poverty and high rates of incarceration for minority men and women:

• Question One: Does money for legal representation create an advantage for those who have it over the poor?
• Question Two: If an influence of money is found, how does it impact defendants relative to race, ethnicity and sex?
• Question Three: Should the focus of such a question be directed at citizens or the criminal justice system?

More specifically, if one were to critique the criminal justice system for structural inequalities, where would poverty begin to impact the processing of criminal defendants? With this in mind, this study will be undertaken to examine the pretrial processing of criminal defendants at the pretrial stage with these implied questions.

1. Does money influence the outcome of pretrial detention?
2. Does indigence hamper the pretrial outcome for a defendant?
3. If an influence of money is found, does it also apply to other areas of the process such as the outcome of the case?
4. Does money impact pretrial outcomes and case outcomes to a greater degree than race, ethnicity, or sex?

Given the noted opinions of legal and criminological scholars alike, there is a need for research on the influence of money on the pretrial stage. However, to date this researcher has found no past or current research that seeks to investigate the possible relationship of money to pretrial outcomes or case adjudication outcomes.

2
Significance of Research

Prior research on disparities in pretrial processing has only focused on demographic characteristics such as race, sex, and ethnicity (Demuth and Steffensmeier, 2004; Demuth, 2003; Schlesinger, 2005). Some have focused on macro-sociological factors to account for incarceration patterns—such as labor surplus (D’Alessio and Stolzenberg, 2002) and how it impacts pretrial incarceration rates by race. Still others have recently moved beyond pretrial outcomes to pretrial decisions-making (Albonetti, 1989; Barnes, Kingsnorth, and Hodgins, 1989; Petee, 1994) while examining racial and ethnic disparities (Demuth, 2003; Katz and Spohn, 1995; Nagel, 1983).

However, there are theoretical and methodological shortcomings within this growing body of literature and research (Gabbidon and Greene, 2005). First, even with the obvious need for research on pretrial incarceration processes, most studies that examine this stage in criminal processing generally use pretrial incarceration as an independent rather than dependent variable (Schlesinger, 2005). Though the pretrial outcome is important, it has been narrowly considered with regard to understanding aspects of sentencing and bail amounts. Failure to view pretrial outcomes as dependent variables simplifies the impact and importance that this stage has on the processing of criminal cases given that it has been suggested that “outcomes of early decision-making in the criminal case process may affect later decisions made by judges and prosecutors (Demuth, 2003, 900).” The second shortcoming in the literature and research is there have been no studies that have examined the effect of pretrial outcomes on eventual criminal case outcomes. Given the possible impact that pretrial outcomes have directly and indirectly on the decisions of formal actors and participants in this process, assessing
the relationship between pretrial outcomes and eventual criminal case outcomes is critical. It has been suggested that the pretrial process makes it significantly harder for an innocently accused person to present a defense (Leipold, 2005). Though there are many decisions and processes that lead to an eventual outcome of a criminal case, pretrial may be one of the most important and will be discussed later in this research.

The third limitation in the literature is the lack of attention given to specific financial influences within the processing of criminal cases, namely attorney type and the ability to post bail. Given the differences suggested between defense services given by private versus public attorneys, this is also a critical area to examine as it impacts both the pretrial outcome and eventual criminal case outcome (Siegel, 1968; Campbell, 1978; Chambliss, 1978; Chambliss and Seidman, 1971; Cole, 1999; Clarence, 1957; Davis, 2007; National Legal Aid & Defender Association, 2008). For defendants given the possibility of release before trial, the economic resources and networks of each defendant awarded bail ultimately determine if they released. Of course, this does not include those defendants who have been denied bail or those released on recognizance. As noted by Schlesinger (2005), the disparities in prison populations across the United States reveal a possible inequity in pretrial incarceration outcomes.

Fourth, there have also been few if any research studies that critique the pretrial stage of the criminal justice system to determine if the system itself may produce the disparities due to financial influences in the United States. While studies have recognized the need to study pretrial incarceration decisions as well as pretrial outcomes (Chiricos and Bales, 1991; Spohn et al., 1981-1982), they have yet to offer definitive findings on the direct or indirect effects of sex, ethnic/racial discrimination from the
effects of socioeconomic status. This adds further importance to investigating other factors such as financial influences on the processing of criminal defendants.

The fifth and final shortcoming in the literature involves the lack of theoretical focus on financial influences and the possible interaction of a dual explanation for different phases of the process that may explain disparities in the criminal justice system. The focal concerns perspective or ‘Theory of Court Decision-Making’ (Albonetti 1991; Farrell and Holmes 1991) offered for disparities in pretrial decisions and outcomes fails to consider or recognize the impact that “the ability to post bail” has on bail decisions and outcomes for indigent defendants. In fact, recent research on the impact of sex and race-ethnicity in the pretrial release process has found that a major factor that explains this discrepancy in outcomes is the inability of many Hispanics and Blacks to post bail to gain their release (Demuth and Steffensmeier, 2004). Other researchers have noted that for indigent defendants, any amount of bail is tantamount to financial discrimination and pretrial incarceration. Demuth (2004) is quoted here stating the influence that money, and inequality, has on the legal process of justice for defendants:

Our analysis reveals that White defendants, whether female or male, are advantaged relative to non-White counterparts at the pretrial stage primarily because they are better able to post bail, rather than because they are less likely to be preventively detained or are required to post higher bail amounts. This finding in effect suggests that, even if there were no apparent gender or racial/ethnic disparities in pretrial release decisions, disparities in pretrial release outcomes might still emerge. This possibility is troubling because these differences in early pretrial release outcomes may translate into unwarranted differences in decisions or outcomes at later stages (e.g., sentencing), as some writers suggest. At issue is the often overlooked influence that poverty and social class have on sentencing and case-process decision making (p.240).
Another major theoretical critique given by Sampson and Lauritsen (1997) is the lack of 'a priori' explanations, but 'post hoc' applications. There is also no present theoretical attempt that considers a dual or pre and post theoretical focus to explain disparities. Simply put, racial and/or ethnic foci may explain police/ing interaction and arrest disparities, while economic inequality may explain disparities in conviction and detention of the poor and minorities. This model suggests the possibility that there may be a difference between explanations that bring defendants into the purview of the criminal justice system in disparate ways, and those that explain how defendants within the criminal justice system are processed to produce further disparities. The researcher will further address this in the literature at length.

In sum, what is missing in the existing pretrial research and literature is a comprehensive theoretical perspective and model that connects early decisions to eventual outcomes, and connects financial factors to criminal justice processing. Also, there is a need for a methodological research focus on the relationship between pretrial outcomes individually and also on criminal case outcomes; and the relationship of 'attorney type' and the 'ability to post bail' for those awarded financial bail options on pretrial detention and criminal case outcomes. Therefore the purpose of this research is to develop a theoretical foundation and test a causal model that will measure the impact of financial (and demographic) variables on pretrial outcomes and criminal case outcomes.
Relevance of Focus

This focus on the criminal justice process itself both is timely and relevant for several reasons. First, interest in pretrial research has primarily focused on race, ethnicity and sex over the impact of poverty (Demuth and Steffensmeier, 2004; Demuth, 2003; Schlesinger, 2005). Second, most research focuses on individual attributes of a population or characteristics of groups within a population to the exclusion of the social structures and/or institutions within which they are to navigate. The very underpinnings of the social science empirical model generally put forth the idea that ‘those affected are the subject’ more so than the social institutions themselves. Third, it may be because it is easier to conceptualize and examine differences between people as opposed to examining processes, outcomes, and decision-making processes of a social institution. Finally, the nature of the research has a different political agenda when you move from looking at sex, race and ethnic groups of people to critiquing a major institution in society.

Thus, the overarching goal of this research is to advance the alternative idea that financial resources have a significant if not the most significant impact on the processing of criminal defendants at the pretrial stage with the exception of legal factors. Simply put, researchers may be putting the proverbial “cart before the horse” when examining demographic before financially laden factors in the processing of criminal defendants.

With this rationale, the researcher will introduce the term which will be referred to as ‘financialism.’ Financialism and ‘financial discrimination’ are conceptually defined as discrimination based on one’s financial resources. Conversely, this researcher will refer to the term ‘advantageous financial ability’ to represent the general influence that finances have on one’s ability to receive a position of advantage for treatment or services.
both internally and externally. According to this conceptual definition, if defendants with finances ('Advantageous Financial Ability' or AFA) give them an unfair advantage over those that are poor and indigent based on that premise, financial discrimination is present (if in a system whose goal is equal treatment or equality). Simply put, proof of ‘AFA’ simultaneously substantiates the existence of financial discrimination within criminal justice if this is the sole requirement for being released when bail is awarded.
CHAPTER II
THEORETICAL PERSPECTIVES APPLIED TO
ELEMENTS OF THE PRETRIAL STATE

In this chapter the researcher will give a comprehensive review of the major theoretical models of racial and gender disparity at the pretrial release stage will be presented along with a general theory of racial disparity in criminal justice. The researcher will also offer a new theoretical model to account in this chapter to explain pretrial outcomes and criminal case outcomes from a financial perspective. Next, Chapter III presents a review of the empirical literature on pretrial incarceration. Since the focus of this research is on financial influences as they relate to the processing of criminal cases, only those past studies which focus on primarily on these issues will be presented in the empirical literature review. Finally, Chapter IV discusses the present study including the theoretical model to be tested, data collection methods, ethical issues, and the analytical strategy. Chapter V will present the results of the data analysis and Chapter VI will close with discussion, recommendations and limitations, and suggestions for future research.

Theories Related to Pretrial Stages in Criminal Processing in General

In general, theoretical shortcomings within the literature on pretrial disparities come as a result of the few studies conducted in this new area of research. Consequently, efforts to explain disparities in race-ethnicity have only been addressed via the focal concerns perspective of court decision-making. More specific to this study, the researcher is not aware of any theory/explanations that focus attention on wealth as an
arbiter of justice in American society in general of during the pretrial stage. However, there is a general theory of court decision making that has been used when researching the pretrial stage (Demuth, 2003; Steffensmeier and Demuth, 2004). Therefore, it will be reviewed and critiqued here.

The focal concerns perspective on court decision-making contends that on the basis of incomplete information about cases or defendants, judges try to reduce uncertainty by relying not only on the defendant's present offense and prior criminal conduct but also on attributions linked to the defendant's sex, race, social class, or other social positions (Belknap, 2007; Albonetti, 1991; Bridges and Steen, 1998; Davis, 1995; Farrell and Swigert, 1978; Knapp, 1993; Spohn and Holleran, 2000; Steffensmeier, 1980; Steffensmeier, Kramer, a Streifel, 1993; Ulmer, 1997; Demuth, 2003; Steffensmeier and Demuth, 2004). Furthermore, on the basis of incomplete information, judges may project behavioral expectations about the defendant (likelihood of a defendant's rehabilitation, the potential danger to the community a defendant represents, the blameworthiness of the defendant, or the likelihood that the defendant will either re-offend or fail to appear at trial) according to racial, ethnic, and sex stereotypes.

This perspective asserts that if judges attach their biases to particular groups, there will be an increased likelihood that they will make detrimental decisions that impact defendants according to those biases in the absence of complete factual information. This simply means that prosecutorial actors (police, prosecutors, and judges) do allow stereotypical biases to impact criminal justice decisions. Some state that this is done for the purpose of securing the judges' career advancement by limiting the likelihood that a defendant will either re-offend or fail to appear at trial as this could adversely affect the
judges' career advancement (Liska, Logan and Bellair, 1998; Peterson and Hagan, 1984). It may also be biased based on the ability to secure a conviction on the basis of the information that is available as well.

There are several weaknesses in this perspective. First, while stereotypical biases may lead to negative criminal justice decisions for some defendants in the absence of complete information, research and theory have only focused on how it impacts defendants negatively by looking at areas such as race and sex. On the other hand, this perspective overlooks how stereotypical biases (social class, financial resources, community reputation, etc.) in the absence of complete information impact decision-making in advantageous ways for a defendant. Thus, if judges rarely have complete information about cases or defendants, there is also a similar likelihood that positive stereotypical bias regarding defendants may come to the forefront as well. As it stands, this perspective contends that the information provided to judges only adds to negative judgments of criminal defendants.

The second shortcoming in the literature via the focal concerns perspective lies in its lack of attention to financial influences at the pretrial stage of the criminal justice process. Decision-making at each stage does focus on the intrinsic needs of the criminal justice system to process defendants. On the other hand, we know that financial resources serve to increase the likelihood of pretrial release for defendants offered the opportunity to post bail. This minimization of economic factors make it easy for those decision-makers processing defendants to allow positive stereotypical biases such that they add them to the overall assessment of a defendant as well.
Next, another general theory applied to pretrial decision-making is attribution theory. Attribution theory argues that negative attributions that include race and ethnicity are more likely to be made when legal factors relevant to the case increase their salience (Schlesinger, 2005.). Again, this theory overlooks the overall social class factors referred to as attributions—that may have increase positive effects as well. For example, there have been cases where African Americans who have financial resources have not been processed in typical ways. For example, music icons Michael Jackson and his alleged child molestation charges and R. Kelly and his alleged sex with a minor case; athlete Kobe Bryant and his alleged rape charges; and the infamous O.J. Simpson murder trial. Though these men met the negative attribution traits articulated by this theory, they were not detained prior trial. Furthermore, they were not convicted in a criminal court. Similarly, women with financial resources have also received greater leniency for criminal conduct. A major example includes the past sanction imposed on Martha Stewart, and the recent lenient sanction imposed on Paris Hilton. Of even more interest is the impact of financial resources on ‘minority’ women. As one example, Naomi Campbell, a world renowned model, was convicted of domestic assault on a hired caretaker and was sentenced to less than 1 month in jail. This shows that there have been cases where African Americans, women, and minority women who have financial resources have not been processed in typical ways. It is also worth noting that investigations of criminal conduct for citizens with financial resources rarely end in arrest at all. In most cases, the researcher contends that cases of criminal conduct that cannot be covered up or overlooked via seriousness of the crime, evidence and witnesses are
significant, or no option to have a financial agreement made in lieu of prosecution have a higher chance of having charges filed and making it through to arrest (Belknap, 2007).

**Sex and Crime Processing**

Sex and gender discrimination in criminal justice, in general, have also been offered to explain disparities between males and females. However, there must first be a general discussion around the terms sex and gender and their application in data collection. Gender is the term used to describe one's sexual orientation, sexual expression, and sexual preference/selection for that expression. One researcher asserts that gender is socially organized and is not simply an individual attribute but rather is accomplished through interactions with others (Belknap, 2007). In contrast, the term ‘sex’ is a simple dichotomous body form that denotes the presence of female or male reproductive organs. Unfortunately, the majority of social science data instruments and collection strategies do not ask for gender related identity information. Instead they ask for the sex of the respondent or it is inferred by observing a respondent’s physical make-up (Ex. Women prison populace that omits identifying non-traditional gender roles like bisexual, homosexual, etc.). Given this limitation, theories connected to research with this limitation are forced to be ‘simple sex theories’ versus gender related theories. With this in mind, there are three hypothesized notions around sex disparities in crime processing in general. They are important because they do serve to shape how females are viewed by the criminal justice system and subsequently how they may be processed. Though there have not been any female theories on pretrial outcomes and subsequent case outcomes, or theories related to financial resources, these three general perspectives remain relevant to this discussion. They may also be used to form a foundation by which
future scholarship may progress toward such theories that focus on pretrial outcomes and subsequent case outcomes and/or financial resources.

According to Joanne Belknap (2007), the three hypotheses that impact sex disparities in criminal processing are the equal treatment hypothesis, the chivalry hypothesis, and the “evil” woman hypothesis. She describes them here noting:

The *equal treatment* (or the null) *hypothesis* states there is no sex discrimination in crime processing. Males and females are treated identically...The *chivalry or paternalism* thesis hypothesizes that there is sex discrimination against males offenders; that is, females are treated or processed more leniently than males...The third category, the *evil woman hypothesis*, purports that sex discrimination against exists in crime processing: Females are treated more harshly than males for similar offenses. The reasoning behind this belief is that offending females have violated gender roles as well as laws (2007:149).

These three hypotheses support premises of no discrimination, discrimination that leads to crime processing that is less than that of males for the same crimes, and discrimination that leads to crime processing that is greater than that of males for the same crimes. As such, this research and its’ findings should serve to align itself one of these hypothesized outcomes and add to this body of theory/literature and new research relevant to pretrial release outcomes and their relationship to subsequent case outcomes when financial factors are included.

Finally, if the impetus for studying pretrial incarceration is to understand and explain racial and ethnic disparities (direct or indirect effects), and if indeed financial resources are unequally distributed by race and sex in America, the literature has yet to offer any explanations that embark on issues of financial influences on neither judicial decision-making specifically nor its impact in general on the pretrial stage of the criminal justice process.
Introduction to the Interactional Theory of Financialism and Cumulative Disadvantage

This theory has its basis in the writings of William Julius Wilson (1987) in a book titled *The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy*. In his book (1987) he describes the underclass and urban social problems together and at the same time being separate from one another. His attention and recognition that class and social factors have produces the reality of the underclass and urban social problems is primary. Another contribution to this theory is found in the work of Sampson and Lauritsen (1997) who contend that discrimination in criminal justice in the United States is not attributable to race directly and appears to be indirect, stemming from the application of initial disadvantages that become incrementally greater. The third contributor to this theory is Jeffrey Reiman (2006) who states the criminal justice system is sometimes thought of as a sieve (where possible) that sifts the affluent out from the poor. In this way, the wealthy are able to buy their way out of the grasp of the criminal justice machine, whereas, the poor are propelled deeper into it at every stage of the criminal justice process.

Within these three sets of ideas, *The Interactional Theory of Financialism and Cumulative Disadvantage* draws from three major underpinnings. First, disparities in criminal justice and in society are the result of two major forces in society. They are social-psychological and historical/contextual forces (that are ‘intangible), and the capitalist economy that underlies every social institution (which is tangible). Put another way, social institutions, including the social institution of criminal justice, are fueled by political and social ideas about people and society that become a part of the structures of social institutions. It is here that Sampson and Lauritsen (1997) assert that these indirect
effects (i.e. Race, ethnicity, etc) explain the ‘intangible’ portion of the disparities in the criminal justice system. With this idea, poverty and subsequent crime are concentrated today as a result of past and present discrimination and historical forces (Wilson and Sampson and Lauritsen, 1997). Though this may explain why more minorities and the poor enter the criminal justice system, it does not explain why the disparities exist for them when they are processed through the criminal justice system. As a result, there has not been a theory that explains what may be directly related to disparities in the American criminal justice system to date which leads to the third major idea or premise of this theory. As Reiman (2006) suggests, this theory contends that the direct relationship not explained by intangible forces can be explained by ‘tangible’ financial resources/forces.

In sum, this theory and current research suggests another possible explanation for racial, ethnic and sex disparities in general. It is money! Based on this general framework/perspective, the researcher puts forth the Interactional Theory of Financialism and Cumulative Disadvantage. However, more specific to this research, pretrial outcomes and criminal case outcomes will be the scope of this research. The hypothesis that finances have a direct relationship to criminal justice processing will be explored by studying pretrial outcomes and their subsequent case outcomes for direct and cumulative effects.

The Interactional Theory of Financialism and Cumulative Disadvantage

This theory suggests that a defendant’s financial ability can offset negative stereotypical biases and allow for favorable outcomes in criminal court processing where applicable. This is referred to as ‘advantageous financial ability’, which is the ability to influence and satisfy the requirements of the criminal justice process to be released from
its grasp. On the other hand, a defendant’s ‘lack of’ financial ability can further enhance negative stereotypes and influences that will propel a defendant into the criminal justice process where applicable. This is referred to as ‘financial discrimination’ or financialism which again is discrimination (based on one’s inability to meet and influence the requirements of the criminal justice process) based on financial resources. This theory further suggests that financial factors interact with other individual ‘intangible’ social factors based on case information, both advantageous and disadvantageous, to produce a cumulative or interactional affect on criminal case processing.

Furthermore, defendants with disadvantageous financial ability (DFA) are severely underprivileged compared to those with advantageous financial ability (AFA). It has been stated by the Institute of Government (1998) and the Justice Management Institute (2007) that pretrial detention, in general or due to indigence, does significantly handicap the defense of a defendant (North Carolina Civil Commitment Manual, 1998; Mahoney, 2007).

As such, the researcher suggests a model that has 2 steps within this theoretical approach. The first component phase rests on the idea of (prior) cumulative disadvantages. Unlike ‘chattel slavery’ in America’s past, no single social institution, social norm or structure typically has the power to become a total impediment to the life chances of those who are without social and financial resources. However, today people interact with several entities that rub and ‘grind’ society’s members into serving their needs, there is a ‘cumulative effect’ of these ‘weights’ in society that begin to ‘together’ encumber and impede the progress of individuals and their freedom to follow their desired paths. These include being on the powerless end of several varied and complex
social structures and institutions in society that take 'small pieces' of dignity and respect from individuals as they navigate the American success gauntlet. In crude terms, this becomes a relative formula for what life opportunities one can achieve where American success is the goal. Though this is a conceptually general first step in the model and macro-sociological in scope, the idea that people today navigate life dealing with neighborhood prejudice and housing discrimination, religious and cultural conflict, racial profiling and stereotyping, ethnic and cultural prejudices, and sex based differential treatment to name a few, may bring people and a defendant to make choices that bring him or her to the door of the criminal justice machine at greater rates than other groups. The second component phase is where the arm of the criminal justice system has a hold on an individual and begins to operate in totality. Once the (Criminal Justice system) has made a determination to proceed with a criminal inquiry based on a 'cumulative perspective', the second phase begins by sifting out those with AFA (advantageous financial ability) and propelling those with DFA (disadvantageous financial ability). In this way the those who have managed to find a measure of success and security in acquiring resources to insulate them from the grind of daily life are sifted out through informal avenues within the Criminal Justice process while the poor, powerless, mentally ill, and illiterate who have considerably less resources remain. Once inside of the mechanism that is the criminal justice process, financialism (financial discrimination) is greater than 'all other forces' when determining the outcome of pretrial detention and criminal cases outcomes after controlling for offense type and criminal history. Generally this applies to defendants who are given a financially based option to post bond to secure their appearance at further criminal proceedings, and those able to afford the
services of a private versus a public defense remedies. [This is due to the fact that capital and/or index crimes along with defendants that pose a threat to the community are generally denied bail and those defendants offered a non-financial release option have no obstacles to surpass directly to secure pretrial release. However, while ‘advantageous financial ability (AFA)’ does directly impact the decisions to charge and prosecute, beyond that this theory does not apply as well to these categories.] In sum, those defendants who are able to financially impact the criminal justice process are better able to secure preferential consideration based on 1) societies ‘cumulative worth’ placed on them and 2) their financial ability. The value of this societal cumulative worth is based on categorical and individual attributions that include social class, education, social networks, occupation, while their financial ability includes socio-economic status, income, wealth, potential for wealth acquisition.

Worthy of mention here, are occasions where AFA outshines individual cumulative disadvantages such as race, social class, etc. As capitalism’s ultimate betrayal, this highlights the reality that ‘individual financial value’ is esteemed above ‘society’s value’ and maybe even the crimes that the affluent commit. Inversely, where AFA and finance based attributions do not exceed individual dispositions and categorical stereotypes/prejudices, they do not counteract them to allow for advantageous outcomes where applicable. Instead the teeth of the criminal justice clamp down and swallow them until they are expelled from the bowels of the correctional system.
CHAPTER III
LITERATURE AND RESEARCH REVIEW

Prior Focus

Until recently, the pretrial release stage received a small amount of research interest compared to sentencing practices (Gabbidon and Greene, 2005; Steffensmeier and Demuth, 2004, Demuth, 2003). Comparatively, there are more studies that explore the relationship between class, race-ethnicity and sentencing outcomes. This lack of attention is unfortunate for several reasons. To begin, pretrial detention is punishment prior to conviction. In addition to being disruptive to family stability and finances, it negatively stigmatizes the defendant (Irwin, 1985; LaFree, 1985); it may encumber the defendant’s ability to prepare an adequate defense (Leipold, 2005; Senna and Siegel, 2005); and may lead to more severe sanctions upon conviction (Goldkamp, 1979; Leipold, 2005). Second, discretion, inconsistency, and inequality are more likely at early stages of criminal case processing than at final sentencing (Hagan, 1974; Steffensmeier, 1980). In fact, the literature indicates that decisions and outcomes early in the processing of criminal cases have an effect on later decisions and eventual outcomes (Skolnick, 1967; Nagel, 1983; Ares et al., 1963; Landes, 1974; Bernstein et al., 1977; Hagan et al., 1980). Third, conditions that impact pretrial outcomes are less visible than decisions to convict or imprison. Thus, it is anticipated that the greater informality, the lesser visibility, and the fewer legal avenues for indigent defendants surrounding pretrial outcomes may facilitate undue disparity at the pretrial stage including class, sex and race-ethnicity.
Public Policy Significance for Examining Pretrial Stage

According to a 2003 report, the number of people in prison and jail exceeded 2 million and the majority of them are racial ethnic minorities (Mauer, 2006; Davis, 2007). In fact, the national inmate population has risen more than 500 percent in the last thirty-five years (Mauer, 2006). In an edited collection of works in a book on critical Black studies, is a Chapter titled *State of Emergency* (Marable et al, 2007). Angela Davis as the author of this chapter comments on the status of the prison population this way:

If you count in this expanding prison system not only state prisons but county jails, federal prisons, youth prisons, immigration detention centers, and military prisons-and if you also count what they call jails in Indian country-the number of people who presently live their lives inside U.S. prisons amounts to 25 percent of the world’s prison population; the total U.S. population makes up less than 5 percent of the global population (Marable et al., p.323).

The issue of overcrowding, due to pretrial detention and other concerns, is also a concern for policy makers. For example, last year (2005) the *Michigan Task Force on Jail and Prison Overcrowding* stated in a report to governor Granholm that counties within the state have been invoking the County Jail Overcrowding State of Emergency Act of 1982 on a regular basis. The chair of this commission noted:

Nationwide, more than two million Americans are behind bars. This number has never been higher in our nation’s history, and represents the highest rate of incarceration in the world. Although statistics indicate that crime and arrest figures are decreasing in Michigan, the prison population fluctuates between 49,500 and 50,000 annually, costing taxpayers roughly $1.4 billion. In addition, most jails operate at or near their rated capacity, causing sheriffs to, in some instances, ask county officials to allocate funds for expansion. In these difficult economic times, Michigan cannot afford to bear the social or financial costs associated with the unchecked growth of this population (p.5).
The second issue is the racial disparity that is prevalent in the prison population. A substantial portion of the rise in the inmate population from 1985-2000 consisted of drug offenders (Mauer, 2006). This share has been disproportionately felt by Blacks and Hispanics. Currently, 50 percent of all prison inmates are Black and 19 percent are Hispanic, and these percentages overshadow their numbers in the general population by far (Mauer, 2006). "Further, a black boy born in 2001 stood a 32 percent chance of being imprisoned at some point in his life, compared to a 17 percent chance for a Hispanic boy and a 6 percent chance for a white boy" (Mauer, 2006: 137).

Because Blacks and Hispanics suffer from numerous economic inequalities, they are more likely to be affected by any economic hurdle within criminal justice whether it is making bail or presentence investigations recommendations that look at quality of life avenues to become a productive member of society. As such, there is a societal need for further research and examination on the issue of racial disparities (Mauer, 2006; Marable et al, 2007; Hansen, 2000). This is an area that has received much research activity in reference to the numbers but less has been given to explanations for the numbers.

The same disparities that apply to males and race/ethnicity hold true for females. Females offend at rates five to ten times less than males (Steffensmeier and Haynie, 2000; Crime in the U.S., 2005). They also account for approximately one quarter of all arrests in North America (Crime in the U.S., 2004). Given these rates, it is possible that the chivalry hypothesis by Belknap (2007) may be an appropriate explanation. However, when race and sex are controlled there are major differences between ethnic groups and crime rates.
The researcher agrees with Bloom and Chesney-Lind who state “the characteristics of U.S. women prisoners reflect a population that is triply marginalized by race, class, and gender (Bloom and Chesney-Lind, 2000, Mann, 1984).” For women, race/ethnicity and social class is vital to understanding crime rates (Mann, 1984, Mann, 1987; also see Belknap, 2007, Muraskin, 2000). In fact, Belknap (2007) states that research using simple race or sex comparisons are less useful that those controlling for race and sex “to see how the experiences of women from different races compare and how men and women of the same race compare (Pp. 108).” Even, after the well known trial and conviction of Martha Stewart and the debate and commentary on appropriate sanctions, issues around deterrence, punishment and rehabilitation still apply to all citizens. Unfortunately “the questions we ask when celebrities are on trial go silent when the lives of black and brown low-income people are at stake (Mauer, 2006: p. xii).”

As such, if it is found that financial discrimination is part of the explanation for overcrowding and/or convicting the poor who are predominantly minority because they cannot afford bail it could be a place to start examining how criminal case processing can be revamped to eliminate this discrepancy.

Third is the issue of cost to the American public. This three decade buildup of the prison industrial complex now costs $57 billion dollars a year nationally (Mauer, 2006. If this trend continues, at what cost is it too much before changes are considered? The fact that we spend $22,000 dollars per year to incarcerate people leaves much to the imagination as to what other options are available especially when we consider the recidivism rate for prisoners (Mauer, 2006).
On a non-policy note, social scientists and criminologists have long theorized the impact of demographic variables on the processing of criminals (Renford, 2006). To add, this researcher contends financial variables impact the processing of criminals as a function of sex, race and ethnic disposition and together they account for more than either alone. For example, in a study conducted by Steffensmeier and Haynie (2000) it was found that higher levels of many variables measuring structural disadvantage (ex. poverty, income inequality, etc.) increased both male and female offending, with a greater impact on male offending. If proven by this research study, this may help to further support and explain why disparities exist in the prison population by race, yet has not been shown in crime rates.

Pretrial Release and Research

Basic data on the pretrial stage has been analyzed according to race. In a study by Reaves and Perez (1994), they found that all categories in the study had access to the various kinds of release, Whites and ‘Others’ appeared for court approximately 83% of the time while Blacks and Hispanics appeared approximately 71% of the time. However, when considering the percentage of defendants that remained fugitives, a different pattern emerged. Whites (6%), Blacks (8%) and Others (6%) did remained fugitives while Hispanics (13%) were more likely to remain at large (Reaves and Perez, 1994).

Historically, research on criminal justice outcomes has focused on sentencing (Albonetti, 1997; Chiricos and Crawford, 1995; Crawford, 2000; Crawford et al., 1998; Daly, 1987; Steffensmeier and Demuth, 2004; Demuth, 2003). And though there are practical reasons for research at this stage, general knowledge and research on earlier stages has been neglected (Steffensmeier and Demuth, 2004; Demuth, 2003, Gabbidon &
Greene, 2005). However, in 2002 a study found support for the contention that African Americans and Hispanics were required more often than Whites to post cash or surety bonds (Free, 2002). This, in turn, may contribute to biases in the criminal justice process at the pretrial stage.

Upon reading the literature around this research topic, the researcher is not aware of any studies that directly address whether there may be an impact of financial resources on pretrial criminal case outcomes or whether this may lead to influences on subsequent criminal case outcomes. Yet, researchers support the argument that pretrial detention may interfere with the defendant’s ability to prepare an adequate defense (Senna and Seigel, 2005); that racism exists for Blacks and Hispanics regarding the decision to grant bail, that the decision to prosecute is racially biased; and that while women in general may be released more often than men this may not be true for Black women where sexual assault is charge. In addition, research has found pretrial detention may lead to more severe sanctions upon conviction (Goldkamp 1979).

The literature review produced five studies to date that addressed aspects of pretrial release. They include the impact of race, race-ethnicity and sex on pretrial outcomes (Demuth, 2003; Nagel, 1983; Schlesinger, 2005, Steffensmeier and Demuth, 2004). However, only three have been conducted employing data collected within the last thirty-five years (Demuth, 2003; Schlesinger, 2005, Steffensmeier and Demuth, 2004). Given that the bail system and patterns of behavior are historically and contextually located, the researcher will review these studies which used recent data in their analyses in this review.
The impetus for this dissertation builds upon the study that was conducted with similar data from 1990-1996 (Demuth and Steffensmeier, 2004), where the researchers found sex and race-ethnicity have moderately strong main effects on whether a defendant secures pretrial release (net of controls for legal factors like prior record and offense). In addition to being held as the first analysis of the pretrial release process, this study found that female defendants are more likely to receive pretrial release than their male counterparts. They also found that Black defendants are more likely to be detained than similarly situated White defendants. To add, they found that compared to all other sex-racial/ethnic defendant groups, White females are the most likely to secure pretrial release. Most notably, for purposes of this research, they also found that a major factor that explains this discrepancy in pretrial outcomes is the inability of many minorities including Blacks to post bail to gain their release. They went on to suggest that an important finding to emerge from their analysis regarding pretrial outcomes was that both female and male White defendants were advantaged at the pretrial stage in large part because of their “greater ability to make bail.” They further suggest:

This possibility is troubling because these differences in early pretrial release outcomes may translate into unwarranted differences in decisions or outcomes at later stages (e.g., sentencing), as some writers suggest. At issue is the often overlooked influence that poverty and social class have on sentencing and case-process decision making (Demuth, S. and Darrell Steffensmeier, 2004; p. 240).

This study also included Hispanic as an ethnic category. Research in other fields finds that Hispanic or Spanish speaking people from different national origins may face extremely different experiences once in the U.S. (Mauer, 2006, Marable et al, 2007, Hansen, 2000, Renford, 2006). While they are commonly identified along with Blacks as
criminal minorities and those to be feared (Mauer, 2006, Marable et al, 2007, Hansen, 2000, Renford, 2006), and face some of the same social problems as Blacks, including poverty, unemployment, female headed households, failing educational systems, and crime (Mauer, 2006, Marable et al, 2007, Hansen, 2000, Renford, 2006), Hispanics may face additional discrimination due to possible language barriers along with being possible flight risks for prosecution. American popular culture also views ‘Hispanics’ in general to the illegal drug trade and this adds to the public perception of them as criminally dangerous irresponsible and lazy (Mauer, 2006, Marable et al, 2007, Hansen, 2000, Renford, 2006; Freidman, 1993, NMAC, 1979)). It is also necessary to consider Hispanics as a distinct category for this research because they comprise a growing population due to the fact that their numbers increased by 50 percent from 1980 to 1990 (Farley, 1995, Jaret, 1995). Trends also show that by the year 2050, the Latino population is expected to reach 100 million (Del Pinal and Singer, 1997). Indeed, according to Demuth (2003), Hispanic defendants suffer what was referred to as a ‘triple burden’ at the pretrial release stage. He found that 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 likely to pay/post bail to secure release. His study mainly supported the premise that race and ethnicity increase bail amounts significantly for Hispanics. As a result, this population may be facing greater levels of discrimination and incarceration as their numbers continue to increase.

A year later Traci Schlesinger (2005) examined this same data set after adding additional years that included 1990, 1992, 1994, 1996, 1998 and 2000 (without females). The research method involved used both logistic and linear fixed effect models for the
following five response/dependent variables: denial of bail, non-financial release, bail amount, made bail, and pretrial incarceration. The analyses were disaggregated by both decision and crime type. Her independent variables consisted of both extra-legal and legal variables of race, ethnicity, and age on the one hand, along with several measures of offense seriousness, offense type, and criminal justice history. Her findings supported her integrative theoretical perspective in which she suggests that stereotypes of Blacks as dangerous and violent increase the likelihood that criminal justice officials will see Black defendants-relative to White defendants-as a danger to their communities. Similarly, they would be inclined to view Latinos as prone to involvement in drug trade and use coupled with their immigration status. This would then increase the likelihood that judges will see Latino defendants-relative to White defendants-as both flight risks and intimately connected to drug trafficking.

This study also found that being Black increases a defendant's odds of being denied bail by 25 percent, and being Latino increases a defendant's odds of being denied bail by 24 percent. Latinos have odds of being granted a non-financial release that are 25 percent lower than Whites, while Blacks have odds of being granted a non-financial release that are 12 percent lower than Whites as well. Looking at the last legal decision that affects pretrial incarceration, the analysis shows that Latinos receive bails that are 12 percent higher than Whites, while there are no significant differences between bail amounts for Black and White defendants. In addition, after examining pretrial incarceration outcomes, in contrast her analysis did find that, though legal variables are the best predictors of each pretrial decision [criminal justice status is the best predictor of the decision to deny bail and the decision to grant a non-financial release], her results
revealed that race and ethnicity are the best predictors of both pretrial outcomes. She goes on to suggest that economic resources and networks are at least as determinative of pretrial incarceration outcomes as are legal processing decisions. She also fails to emphasize sex as a factor which is a major limitation. However, there are studies that look at gender and criminal case processing that will be addressed later in this study.

Financial Effects

There are two major discussions were financial resources has an impact on the pretrial process that may amount to a ‘domino effect’ for the remaining stages of criminal cases. The first is ‘making bail’ and the other applies to the unfortunate and money-laden defense structure that exists within the criminal justice system. As such, the current system amounts to a ‘quality of defense for hire’ reality for most defendants.

While pretrial release eligibility for defendants who are either given non-financial releases or denied bail are completely determined by legal statute, most defendants are given financial requirements for release. Some of these defendants are able to post bail, while others are not. Thus, after the three legal decisions that influence pretrial release eligibility (crime being alleged, and criminal history) are considered, economic resources primarily influence pretrial release. The effects of these resources and networks can be seen when examining whether defendants given financial requirements for release are able to meet those requirements and, more broadly, whether defendants are released or detained pretrial (Schlesinger 2005).

Most notably, the purpose of this research lies in Demuth and Steffensmeier’s (2004) research finding that the major factor that explains this discrepancy in pretrial outcomes is the inability of many minorities including Blacks to post bail to gain their
release. They also suggest that an important finding to emerge from their analysis regarding pretrial outcomes is the fact that both White female and White male defendants are advantaged at the pretrial stage in large part because of their "greater ability to make bail." They further suggest that:

This possibility is troubling because these differences in early pretrial release outcomes may translate into unwarranted differences in decisions or outcomes at later stages (e.g., sentencing), as some writers suggest. At issue is the often overlooked influence that poverty and social class have on sentencing and case-process decision making (Demuth, S. and Darrell Steffensmeier, 2004; p. 240).

This fact has been shown to handicap even innocent people who need access to lawyers and the outside world to Also, having legal counsel prior to the first appearance and bail decision in court is crucial (Free, 2003). When accused people enter their pleas of guilty or not guilty and the decision to grant bail is made, these are fundamental decisions requiring considerable legal expertise to establish whether the accused has a valid legal defense, and the incorrect choice can have grave consequences. Unfortunately, a large proportion of poor defendants appear before the courts with less prepared counsel due to their large caseloads and lack of resources (Rhode, 2005; Wice, 2005). Next, indigent defense systems are not the same as private attorney defenses. Public defenders and assigned counsel attorneys may lack experience, have much larger caseloads and have comparatively disadvantageous resources with which to work. In fact, almost every study made of defender programs has noted very serious shortcomings that are traceable directly to lack of funds (Rhode, 2005; Wice, 2005). This includes a lack of resources for investigators, scientists, and other experts, which are still out of reach for the poor (Harris, 1992). And with today's increasing use of technology and its expert testimony in the courtroom (Ellner, 2006), the resource gap is growing wider.
between “the haves and the have nots.” This consequently leads to more poor defendants being convicted. Charles Ogletree succinctly addresses this contemporary issue, writing:

The problem facing indigents in criminal cases are well documented... [n]evertheless, funding for public defender services remains woefully inadequate. Studies at both the state and the federal level document the inadequacy of the resources available to those who are charged with the responsibility of defending the accused. Indeed, even the Supreme Court has noted the inability of public defenders to provide adequate counsel as a result of their limited resources and training. Yet the problem remains (Ogletree, 1995:81).

To add insult to injury, at the state level 82% are handled by public defenders, 15% handles by assigned counsel, and 3% by contract attorney (Defrances and Litras, 2000). Though not as substantial, federal felony defendants are represented by public defenders approximately 66% of the time (Harlow, 2000). This has an effect that ripples throughout the remaining criminal case process because in this lies the foundation of defense. In other words, from this root grows every branch and fruit that grows. Consequently, by the sentencing stage, more or less all of the defendants who remain before the courts are from low-income (and indirectly minority) backgrounds, both males and females.

Next, in addition to the poor having “less than private” attorneys, it is a common reality that low-income defendants are less likely to be freed on bail due to lack of funds to pay the bail release amount (Skolnick, 1967: 263). Consequently, due to financial resources, the likelihood that pretrial detention for the poor is also a common reality (Lizotte, 1978: 572). In fact, the major factor that explains sex and race-ethnicity on both pretrial release decisions and outcomes is the inability of many Hispanics and Blacks to
post bail to gain their release (Demuth and Steffensmeier, 2004). For some defendants, any amount of bail it tantamount to pretrial detention.

As a result, being imprisoned often bars poor people from alternative measures, through which other suspects who commit minor offenses are diverted out of the formal criminal justice system (Reiman, 2006; Cole, 1999). Thus, financial resource (class) disparities exist at the peril of the poor.

Contrary to this discussion is the finding that conviction rates for Federal and large State courts were the same whether represented by public or private counsel (Harlow, 2000). Interestingly enough, though Harlow (2000) states this finding, it is augmented with a finding from this same study that those defendants represented by public defense were more likely to be incarcerated compared to those with private defenses. There was a difference of 11% at the federal level and an appalling 17% at the state level (Harlow, 2000). With this in mind, there does seem to be a very different outcome for those with private defenses for the most important reason of all which is to remain free from incarceration. Unfortunately, they fail to discuss the categorization according to indigence which may be a mitigating factor. Harlow (2002) also omits the numerous smaller State courts. This study will examine this relationship of defense type as well as other factors to better understand this discussion.

Race and Ethnicity Effects at Pretrial Stage

There have been a few studies that show race differences according to race. A few empirical studies reviewed in 2002 show moderate support for the argument that African Americans are given harsher sanctions for less serious crimes than Whites and also less likely to have their cases dismissed as well (Free, 2002). In another
comprehensive study that analyzed 700,000 criminal cases from 1981 to 1990, it was shown that Whites were more successful at all stages of plea bargaining compared to African Americans and Hispanics. This included getting charges dropped, cases dismissed, having their records wiped clean. Whites were also better able to avoid receiving extra charges and harsher sanctions (Donzinger, 1996). This same study also found that one third of the criminal cases where felonies were reduced were given to Whites while this same provision was given to Blacks and Hispanics one quarter of the time (Donzinger, 1996).

Current literature on race and class relative to defense counsel is growing. One study revealed that minorities (75%) used public defense systems more than Whites (69%) and consequently suffered greater rates of incarceration (Harlow, 2000). This again, connects race and class to the public defender system which admittedly is overworked, understaffed and overworked (Pennsylvania Supreme Court, 2003).

The next major premise lies in the stereotypical and personal biases that impact the roles of the people that occupy these positions, it can lead to discrimination on a grand scale during the pretrial stage as with the entire criminal case process. In the study mentioned above, it highlighted a procedural bias toward minorities that is striking to say the least. According to personal statements given by a key player for the defense, it was stated that there is a ‘subconscious thing’ that allows racial stereotypes to pervade the system. He went to say that for this reason, Whites are given breaks and the systems bends over backwards to accommodate them. However, Blacks and Hispanics are “on a one way track and will eventually they’re going to end up in state prison (Donzinger, 1996, p. 113).” This subconscious favoritism is not structural but conceptual, and
unfortunately, has the power to do more damage because any system of justice is powerless to subvert its influence.

Another chief concern in past studies that analyzed and controlled for racial-ethnic differences in court processing was blending Hispanics into groups with Whites and Blacks (Steffensmeier and Demuth, 2001; Farnworth et al., 1991). Due to the dichotomization of American race relations, studies have routinely attempted to add Hispanics (a minority ethnic group) with either Whites (a non-minority) or Blacks (a minority racial group). However, it does not force researchers to ‘blend’ them in to either White or Black categories for race. This prohibits identification of disparity based on either ethnicity or race. According to Steffensmeier and Demuth:

[T]he 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 (2004: 224).

As such, examining Blacks and Whites separately as defendant groups has implications for a more complete and correct understanding of the treatment of both Black defendants in relation to White defendants for the pretrial stage.

Race and Class

The less than ideal history of race-related legislation in the U.S. has been directed at African Americans (Higgenbotham, 1978). This has served to tarnish the image of justice and fairness in the U.S. for African Americans then as well as today (Dubois, 1901/2002). With discrimination and denial of fairness aimed at this population, it is no surprise that legacies of discrimination are structural, political, practical and personal on the part of criminal justice actors and the criminal justice process. In the past following
the abolition of slavery there were legal statutes that allowed southern states to 'lease out' convicts for labor. This tied the continuation of slavery 'per se' to the legal system of justice. This of course led to legislators enacting laws to ensnare African Americans (Higgenbotham, 1978). To add, this treatment of African Americans was complimented with southerners who resorted to trickery and violence (Freidman, 1993).

As a result, African-Americans and other minorities constitute a disproportionate percentage of incarcerated populations nationally. In the U.S. today as in the past, race and class are inextricably joined in society as well as the prison population for both sexes. Discrimination appears to be indirect and cumulative outgrowths of social forces that ecologically concentrate race with poverty and other social dislocations (Sampson and Lauritsen, 1997). These results are strengthened by research literature that reveal an association of violent and other crime in Black neighborhoods with joblessness, family disruption, and neighborhood poverty (Crutchfield and Pitchford 1997; Messner et al. 2001; LaFree and Drass 1996; Morenoff et al. 2001; Sampson and Lauritsen 1997, Mauer, 2006, Marable et al, 2007, Hansen, 2000; Mann, 1984, Belknap, Muraskin, 2000). Although there is little evidence to suggest racial disparities are the result of systematic overt bias, the fact that minorities (African American and Hispanics) make up the majority of the prison population is a function of social class as much as racial discrimination (Sampson and Lauritsen, 1997; Demuth, 2003; Demuth, 2004).

Sampson and Lauritsen (1997) contend that the same areas where Blacks come from are socially disorganized, low income, and have high unemployment (Mauer, 2006; Marable et al, 2007; Hansen, 2000; Free, 2003). As a result these areas have residents with high stress, hostile demeanors, and have citizens who are less likely to have
confidence in societal institutions and social control mechanisms. As such, associating high crime with race alone and overlooking the impact of socio-economic or social class factors is an appalling oversight.

Black and Latino defendants generally have fewer economic resources and networks; as such, it is not surprising that the effects of race and ethnicity on posting bail and pretrial incarceration are greater than the effects of race and ethnicity on any of the legal decisions that help to determine whether a defendant is incarcerated pretrial. Since race and ethnicity are correlated with economic resources and networks, and these resources and networks are an important determinant in pretrial incarceration, researchers interested in isolating the effects of racial or ethnic disparity in criminal processing need not only to include relevant legal controls, but also to look at the legal decisions that affect pretrial incarceration, rather than at pretrial incarceration itself (Schlesinger 2005).

Given that contemporary society currently finds its poor concentrated in urban areas where high numbers of minorities (Black and Hispanic) reside due to poverty, disentangling race and/or ethnicity from social class is not a reasonable ambition given the social context in which they live (Mauer, 2006; Marable et al, 2007; Hansen, 2000). For this reason, addressing the interaction of race and class variables together is an improved research approach. Chambliss (1969) concurs stating “the lower class person... if found guilty, [is] more likely to receive harsh punishment than his middle or upper class counterpart (1969:86).” Thus, racial and class disparities together exacerbate the rate at which the poor and minorities enter jail and prison ranks (Mauer, 2006; Marable et al, 2007; Hansen, 2000).
Sex and Gender

In the last fifteen years the use of feminist theories has been growing in studies of women’s criminality and causes (Belknap, 2007). For women, most of the research completed in the last quarter of a century that addresses crime and gender patterns over time reveals women’s crime rates have approximately stayed the same except for less serious property crimes and drugs. However, there has also been a neglect of research that includes women of color. There is a diversity of women in the United States and gender role stereotypes vary according to class and race/ethnicity. However, feminist scholarship has historically forgotten about the lives and experiences of non-White, less than middle class women and girls. As a result issues of race and class were overlooked until the last quarter century (Belknap, 2007). Following the previous discussion on the use of the terms ‘gender’ and ‘sex’ in social research, some researchers have come to the conclusion that ‘sex’ is the most powerful variable regarding crime and it has been ignored (Belknap, 2007; Leonard, 1982).

The next major discussion related to women and measuring crime relates to all crime measurement but will be discussed here. It centers on the question of old and new crime rate measurement. Indeed, crime rates in the last 20 years were less than they are today. However, rates of offending over time remain the same for males and females. This is possible when we take into account how society has changed in its measurement and quantity of crime categories. Researchers note that this is a function of net widening for females as a result of policies and practices (Belknap, 2007). Joanne Belknap eloquently describes this occurrence writing:
Overall, the findings indicate a closing of the gender gap concerning arrests, but a feminization of poverty and net-widening strategies, aimed particularly at delinquent girls and women’s drug use, that results in increases of labeling women and girls as offenders may be causing the rates to appear to converge when, in fact, they are not (2007:104).

Research on sex and crime has shown males generally receive harsher sanctions than females in crime processing. This fact remains because they generally commit more serious crimes and have lengthier and more serious records (Belknap, 2007). In fact, the Uniform Crime Report from 2003 showed that males still account for the majority of arrests for all but four of the twenty-eight offenses listed. On the other hand, in the same year there were noticeable increases for females in the percentages of arrests. They include male-gender related offenses where females accounted for 64% of arrests for prostitution, and 59% of arrests for runaways. In addition women have increased in arrest percentages for gender neutral offenses which included embezzlement (50%), fraud (45%) and forgery (40%) (Belknap, 2007).

However, when we look at the research on women in general we find that there may be differences in crime processing by race, and social class (Hill and Crawford, 1998; Steffensmeier and Allan, 1988). Studies have revealed that preferential treatment is reserved for ‘certain’ types of females based on personal characteristics (Dodge, 2002; Butler, 1997; Seitz, 2005). They found that White females are viewed as able to be rehabilitated compared to African American and immigrant women (of color) who are viewed as aggressive and virile (Seitz, 2005). Others state that Black women who are further subjected to discrimination that choose maladaptive lifestyles epitomize the type of woman criminal that the criminal justice system seeks to punish (Lewis, 1981). These females also receive more severe reactions by the criminal justice system than White
females (Dodge, 2002; Butler, 1997; Seitz, 2005; Leiber and Mack, 2003; Steffensmeier et al., 1998; Agozino, 1997). According to Belknap’s chivalry hypothesis, this stems from the idea that 1) women are viewed as less equal and 2) this ‘bartering system’ is only available to certain kinds of females according to race, class, age, sexual orientation, demeanor, and adherence to normative gender roles (2007). Others agree stating this explanation is a function of gender-status inequality, socialization, gender-role expectations, and racism (Lewis, 1981). To add, poorer females receive more severe reactions than wealthier females (Dodge, 2002; Butler, 1997; Kruttschnitt, 1981; Worrall, 1990; Manatu-Rupert, 2001).

More specifically, there is a small amount of research related to the pretrial process and subsequent case outcomes. Though less than one in ten cases go to trial, pretrial decision making is not subject to due process which leaves more room for discrimination (Figueira-McDonough, 1985; Bernat, 1984; Frazier and Cochran, 1986; Kruttschnitt and McCarthy, 1985; Steury and Frank, 1990). One study found that where males and females had similar risk of failing to appear for court, females received more leniency than males regarding the pretrial release decision (Steury and Frank, 1990). In another study on the impact of sentence reduction on subsequent case outcomes, Farnworth and Teske (1995) found that charge reduction decision significantly affected the final sentence in a gendered manner. This same study also found that three quarters of all females and White males in the sample were given sentence reductions while only two thirds of the African Americans males were given the same benefit. This shows that females are given leniency compared to males and even more so when they subscribe to traditional gender roles. As a result, the researcher expects that same leniency to be
given at the pretrial stage and that females are also given comparatively less case outcomes that end in conviction. The researcher also expects females with financial resources to be given even greater than 'average' leniency when it comes to pretrial release decisions and subsequent case outcomes.
CHAPTER IV
METHODS

In this chapter, the researcher will discuss the present study including data and collection methods, hypotheses, and the theoretical model to be tested and statistical method used in this research. The first section will present the data, hypotheses and variables used in the ‘Logistic Regression’ model. Section two of this chapter will include the analytical framework, diagrams to outline the framework/model for this study, and the logistic regression assumptions.

Data Source

According to Arvinites and Asher (1998), with the exception of a few studies, sentencing studies have limited their analyses to state and federal data only. Though most individuals are found within these ranks, it overlooks a significant number of people confined in city and county jails. In fact, “studies that overlook county and jail inmates are underestimating by as much as one-third the actual number of persons imprisoned at any given time (Arvinites and Asher, 1998: 211).” As a result, this study will examine county inmates.

Given the growing amount of research on this topic, an assessment of the research on class, race-ethnicity, and sex disparities in the case processing of criminal defendants at earlier stages brings to light several major areas that will be addressed in this study. To be more specific, the research findings that the financial resources of some defendants may be unduly changing the outcome of pretrial and criminal case outcomes will be the focus of this research.
Data and Variables

Data

The data was collected by the United States Department of Justice, Bureau of Justice Statistics. The title is *State Court Processing Statistics, 1990-2000: Felony Defendants in Large Urban Counties*. The data were available in 2004. This data set was originally known as the National Pretrial Reporting Program that gathered the State Court Processing Statistics (SCPS). It is a program that tracks felony cases filed in May of a given year until final disposition or until one year has elapsed from the date of filing. This collection presents data on felony cases filed in approximately 40 of the nation's 75 most heavily populated counties in 1990, 1992, 1994, 1996, 1998, and 2000. These 75 counties account for more than a third of the United States population and approximately half of all reported crimes. The cases from these 40 jurisdictions are weighted to represent all felony filings during the month of May in the 75 most populous counties. Data were collected on arrest charges, demographic characteristics, criminal history, pretrial release and detention, adjudication, and sentencing. The original data set for all years equaled 87,437.

The researcher chose to use only 1998 and 2000. The total sample size for these years equaled 30,713. This was done for several reasons. First, the years prior to 1998 were analyzed employing similar research agendas. Thus, as an extension of previous research in this area the researcher choose to use more recent data as well. Second, the data size was considerably large which meant that it was still appropriate for data analysis using logistic regression as a statistical method. Third, as a matter of perspective, there is
a tendency to ascribe more reliability and accuracy to data sets that are as current as possible unless the research design requires a longitudinal focus.

The SCPS data are 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 that may affect decisions at various stages of the pretrial process; (3) furnish adequate numbers of cases across all sex and racial/ethnic groups of interest at the pretrial stage of case processing; and (4) permit considerable generalizability of findings since the counties sampled represent courts that handle a substantial proportion of felony cases in the United States.

The data were further divided for this study by selecting those accused of a drug, property, and violent crimes. The rationale for this was to find categories that are most likely to have a diverse population of people in them as possible.

It was determined that there was a significant amount of missing cases in this data which is typical when there are many variables across many counties. Because the amount of missing data are large (greater than 10%) the results of subsequent statistical analyses may be biased (Bennett, 2001). To remedy this issue a missing value analysis was conducted to determine if listwise deletion or imputation of these missing cases was appropriate. As such, it was determined that there is a considerable difference in the means when cases are deleted and imputed. However, when contrasting the two results the most appropriate choice was imputation using the Expectation-Maximization (EM) Algorithm. The result created values for the missing values and all cases were complete for the whole data set to be researched.
Research Hypotheses

The dependent variable in this research query is a dichotomous end result. As such, binary logistic regression is employed to test the following hypotheses:

General Premise Hypothesis

H1= Individuals accused of crimes that are detained prior to trial for any reason are more likely to be convicted than those who are released (Note: ‘Criminal History’ will be controlled. Criminal history includes seven variables plus offense name. They are a prior felony arrests, prior felony convictions, prior prison and/or jail time, multiple charges, those who have failed to appear for court dispositions, and those with an active CJ status at time of arrest. Offense names include murder, rape, robbery, assault, other violent crimes, burglary, larceny theft, motor vehicle theft, forgery, fraud, drug sales, and other drug crimes.).

Specific Independent Financial Variables Premise Hypotheses

H2= Individuals accused of crimes who are held on bail prior to trial are more likely to be convicted than those who are released. ‘Criminal History’ will be controlled.

H3= Individuals accused of crimes who have public defenders or assigned counsel are more likely to be held over for failure to post bail prior to trial than defendants with private attorneys. They are also more likely to be convicted. ‘Criminal History’ will be controlled. They are also more likely to be convicted.

Independent Variables
H4= Females who are accused of crimes are less likely to be held over for failure to post
bail prior to trial than males. They are also more likely to be convicted. ‘Criminal
History’ will be controlled.

H5= Blacks who are accused of crimes are more likely to be held over for failure to post
bail prior to trial than Whites. They are also more likely to be convicted.
‘Criminal History’ will be controlled.

H6= Hispanics who are accused of crimes are more likely to be held over for failure to
post bail prior to trial than Non-Hispanics. They are also more likely to be
convicted. ‘Criminal History’ will be controlled.

Interaction Model Variables

H7= Individuals accused of crimes who are represented by a private attorney and are
detained (interaction effect) are more likely to be convicted than defendants
represented by a private attorney and released prior to trial. ‘Criminal History’
will be controlled.

H8= Individuals accused of crimes who are represented by assigned counsel and are
released (interaction effect) are more likely to be convicted than defendants
represented by a private attorney and released prior to trial. ‘Criminal History’
will be controlled.

H9= Individuals accused of crimes who are represented by assigned counsel and are
detained (interaction effect) are more likely to be convicted than defendants
represented by a private attorney and released prior to trial. ‘Criminal History’ will be controlled.

H10= Individuals accused of crimes who are represented by a public defender and are released (interaction effect) are more likely to be convicted than defendants represented by a private attorney and released prior to trial. ‘Criminal History’ will be controlled.

H11= Individuals accused of crimes who are represented by a public defender and are detained (interaction effect) are more likely to be convicted than defendants represented by a private attorney and released prior to trial. ‘Criminal History’ will be controlled.

**Dependent Measures:** The first of two dependent measures was a data variable code that indicated whether the defendant was “released or detained”. The response categories were “Released,” “Detained,” “Case closed before bail”, and “Missing”. As such, the researcher recoded Detained as 1, Released as 0.

The second measure was a data variable code that indicated whether the defendant was “Convicted or Not Convicted.” The response categories were “convicted,” “not convicted,” “Other outcome”, “Case pending”, and “Missing.” As such, the researcher recoded Convicted as 1, Not convicted as 0.

**Independent Measures:** Categorical independent and control variables include demographic, legal variables, and financial variables.

Demographic variables were dummy coded into dichotomous independent variables in the analysis (1s to represent the presence of the variable and 0s for none.).
Though this is not needed, it was chosen due to the large number of variables in the model. The variables included were sex, race (White, Black), Hispanic.

Financial variables were dummy coded into dichotomous independent variables in the analysis (1s to represent the presence of the variable and 0s for none.). The variables included those held on bail, those released on full cash bond, those released on a full cash bond, those released on any (10%) deposit bail or bond, and those released on their own recognizance (ROR bond).

Legal variables were dummy coded into dichotomous independent variables in the analysis (1s to represent the presence of the variable and 0s for none.). The variables included multiple charges, prior failure to appear, active criminal justice status, prior felony arrest/s, prior felony conviction/s, prior prison incarceration/s and prior jail incarceration/s.

Analytical Research Model

In the absence of income, wealth, or social class variables, two proxy variables were employed to represent advantageous financial ability (AFA). First, the ability to afford a private (as a measure of AFA) versus a public defense counsel (as a measure of DFA) was used. If the assumption is that everyone that could afford private counsel on a criminal property matter would do so, we can expect people with the ability to afford private attorneys (AFA) to differ financially from those who cannot (DFA) and are defaulted to public defenders or assigned counsel. Second, those released on a full cash bond is the second variable (as a measure of AFA) used. The ability to afford a pay a full cash bond versus a ROR, deposit bail, or other bond type does give insight into the resources available to a charged defendant. If the assumption is that everyone that could
afford to pay a full cash bond on a criminal matter would do so, we can expect people with financial resources (AFA) to differ from those who are not released on a full cash bond prior to trial.

Given the shortcomings detailed in the first chapter, the overarching goal of this research is to make room for the alternative idea that money has a significant impact on the processing of criminal defendants at the pretrial stage where pretrial release is an option. To add, race and sex do interact with financial variables and produce further additive/cumulative effects.

The literature and research both suggest that an important finding to emerge regarding pretrial outcomes is the fact that both female and male White defendants are advantaged at the pretrial stage in large part because of their “greater ability to make bail.” Based in part on this conclusion by Demuth and Steffensmeier (2004), this study also seeks to examine the impact of pretrial release versus detention on subsequent criminal case outcomes.

This analysis will allow for an exploration into the relationship between pretrial detention and adjudication outcomes as further alluded to by Chambliss (1969) (Figure 1). This will allow the researcher to explore the impact of detention on case adjudication outcomes resulting in convictions.
Second, it will allow the researcher to explore the relationship between having a private attorney or public defender/assigned counsel on being detained and convicted (Figure 2). Together they will allow the researcher to explore and contrast the impact of attorney type on pretrial detention outcomes and criminal case outcomes.

Third, it will allow the researcher to explore the relationship between types of specific pretrial release categories and case outcomes (Figure 3). Together they will allow the researcher to explore and compare those who can pay a full cash bond to those held due to the inability to post bail and the subsequent case outcome.
Figure 3: The relationship between types of specific pretrial release categories and case outcomes.

It will also allow the researcher to compare the impact of financial variable to the impact of demographic variables to determine which is greater.

Fourth, it will allow the researcher to determine if pretrial detention is a mediating factor in criminal case outcomes with respect to the type of attorney, bond status, race, and sex (See Figure 4).
Finally, the focus of this study is to assess effects of pretrial detention on criminal case outcomes net of control for legal variables. To finish, the aim will include an analysis of the interaction between attorney type and release type on final case outcomes (Figure 5).
As the sole method for the current study, logistic regression will be employed. A statistical package that offers a flexible and exhaustive way to perform logistic regression
is SPSS. This program (1) allows for the easy inclusion of both continuous and categorical variables; (2) it allows for automatic dummy and effect coding of categorical variables; (3) and it computes many of the diagnostic statistics that are familiar from OLS (Ordinary Least-Squares) linear regression. Before these statistics are examined, prerequisite steps were conducted. The data coding and labeling for this research was conducted prior to performing logistic regression and is displayed in Appendix A.

The first step in performing a logistic regression is to analyze the cross-tabs of each model. Cross-tabs are descriptive percentage tables demonstrating the frequencies of a given independent variable by a given dependent variable. When analyzing these cross-tabs the frequency of each cell in each table should be noted. This is necessary because if there are zero frequencies in any of these cells, the logistic regression results are likely to be biased. According to Fox (1984: 354), zero cell frequencies occur because (1) "Certain combinations of categories may be empty because of logical or definitional situations," and (2) they have arisen by chance "when a particular cell occurs rarely in the population, when the sample is not large compared with the number of cells in the table." If zero frequencies are found, one must collapse categories of the independent variable in question, and re-run the cross-tab with this collapsed variable and dependent variable. On the other hand, if all cells have non-zero frequencies, we need to move onto the next step.

The second step is to determine if the multicollinearity of the model(s) is at an acceptable or an unacceptable level. This is done in SPSS by regressing each dependent variable onto all independent variables in a normal OLS linear regression. (NOTE: One has to click on “Collinearity Diagnostics” in the “Statistics” window). Multicollinearity is “a condition of high or near perfect correlation among the independent variables in a
multiple regression equation (Knoke and Bohrnstedt, 1994: 300).” In other words, when a model has an unacceptable level of multicollinearity two or more independent variables are measuring approximately the same thing. Unemployment and poverty status are typical examples of this situation. To minimize this statistical problem, the model needs to be re-analyzed with the omission of the problematic independent variable. The multicollinearity of the model can then be re-evaluated to determine if multicollinearity has reached an acceptable level.

The three main indicators of multicollinearity are the tolerance level (TOL), the variance inflation factor (VIF), and the Condition Index k values. TOL is the unique variance in each independent variable not shared with the other independent variables. VIF is an indicator of “how many times $\hat{R}_i^2$ increases the sampling variance $s_{\hat{b}_i}^2$” (McClendon, 1994:162). The Condition Index k is an “index of the global instability of the least-square regression coefficients…” (Fox, 1984: 148). In other words, large k values indicate that small changes in the data typically produce large changes in the least-squares solution.

If TOLs are below .40, this indicates that these variables share over 60 percent of their variance with the other independent variables (it is redundant), and the researcher may have to remove variable with the lowest tolerance. Also, if the VIFs and their square roots exceed the cutoff values of 2.5 and 1.58, respectively, this indicates that the standard errors are inflated by multicollinearity which may make it difficult to reject the null hypothesis.

When a given model has acceptable levels of multicollinearity, the TOL will upwardly approach a quantitative value of 1.0, the VIF will downwardly approach a
quantitative value of 1.0, and the Condition Index k values are typically less than or equal to a quantitative value of 30.0 (Fox, 1984:148). For each independent variable, the tolerance statistics were above 0.40; none of the variance inflation factors were above 2.50; and all of the condition indexes were below 20.

Third, logistic regression assumes linearly between the logit of the independent variables and dependent variable. This assumption is checked for all continuous independent variables in the model by employing the Box-Tidwell transformation. However, this specific model does not have any continuous independent variables; therefore there is no need for such a test.

After examining the boxplots for the residuals for outlying cases that appear to have no significant influence in residuals, the researcher have confidence in the model that all of the assumptions of binary logistic regression have been met using OLS regression.

The fourth step consists of running the logistic regression results. The results or values that will be analyzed are Cox and Snell, Nagelkerke, significance level of $\Pi^2$ model, significance level of given independent variable, and the log odds ratio, the logit/antilog, and the probability difference of given independent variable. The Cox and Snell value is a pseudo-adjusted $R^2$ value, and Nagelkerke is an unadjusted $R^2$ value. These statistics tell us the proportion of variance of the dependent variable(s) explained by the independent variable(s). The third statistic is the significance level of the entire model. It is desired for this value to be less than or equal to 0.05; if this occurs, the model is said to have good fit; otherwise, the model doesn’t have good fit. The fourth set of statistics is the significance level of each independent variable. In SPSS 12.0, these
levels are given as a two-tailed test. To get a one-tailed test, divide this value by two. All significance levels on a one-tailed test that are less than or equal to 0.05 signify that a given independent variable explains a statistically significant proportion of the dependent variable.

Next, the logit (B) is the natural log (LN) of the odds ratio [Exp(B)], and the odds ratio is the number by which we multiply the odds of each dependent variable for each one-unit increase in the independent variable (Menard, 1995:49).

If this statistic is greater than 1.0, this means that a given dependent variable increases per one-unit X, or each independent variable varies X times more than the comparison/reference group of the independent variable on the dependent variable (ex. Blacks vs. Whites, Males vs. Females, etc.). If the log odds is less than 1.0, this means that a given dependent variable decreases per one-unit X, or a given independent variable varies X times less than the reference group of the independent variable on the dependent variable. If the log odds is 1.0 then a given dependent variable doesn’t vary by one-unit X, or a dependent variable doesn’t either increase or decrease by one-unit X. Some researchers prefer the logit over the log odds, because its probability is not restricted by a minimum or maximum value, where the log odds statistic has a minimum value of 0, but has no fixed maximum limit (Menard, 1995:12). Even though such a limitation exists, both the odds ratios and logits of each model along with the probability differences will be provided.

The last statistic is the probability difference, a percentage form of the odds ratio. Because it is not provided in SPSS output, it must be calculated by hand. The formula is:

\[
((\text{oddsratio}) - 0.5)100\%
\]
CHAPTER V

RESULTS

The researcher will present here the results of analyses examining the effects of race, ethnicity and sex on pretrial release. The researcher will also present here the results of analyses examining the effects of public or private attorney; release on full cash bond, detained or held on bail specification; and interaction terms that include 1) public defender and held on bail, 2) assigned counsel and held on bail, 3) and private attorney and released on a full cash bond.

First, the researcher will examine descriptive statistics at the pretrial release stage, focusing on differences between male and female, White, Black, and Hispanic defendant groups. Next, the researcher will present the results of logistic regression analyses examining the main effects of being held over for trial, other extralegal and legal factors on being convicted. Then, the researcher will present the results of multiple regression analyses examining the main effects of being held over for trial due to the inability to post bail, other extralegal and legal factors on being convicted.

Last, the researcher will examine and compare 6 interaction variable terms on the likelihood of being convicted to determine whether the interaction of attorney type and pretrial release outcome is present as hypothesized. The purpose of examining interaction among variables allows the researcher to evaluate if the effect of combining two (or more) variables together has more or less of an effect together than separately. From the hypotheses and the two financial variables, the six combined interaction terms created are ‘public defender and being detained’, ‘public defender and being released’,
assigned counsel and being detained', 'assigned counsel and being released', and 'private attorney and being released'.

The three 'detain' interaction terms are indicative of defendants who have (DFA) disadvantaged financial ability because they cannot post bail, are denied bail, or are detained for reasons unknown. The three 'detain' interaction terms represent defendants with (AFA) advantageous financial ability that are able to be released by financial or non-financial release. These hypotheses represent two valuable and substantial arguments for this study. First, the hypotheses generally extend the major thesis (hypothesis 1) that all defendants held over for trial for any reason are more likely to be convicted. Second, the goal is to determine if the combined effect of these terms on conviction are greater when combined with attorney type. Second, if so the researcher can focus on each significant relationship to examine if it is greater than either of the combined factors alone.

Descriptive Statistics

Table 1 provides descriptive statistics for variables included in the logistic regression analyses. They are partitioned by defendant's pretrial release outcome for all detained before trial, all held on bail, and all released on full cash bond. To begin, as the data show that attorney type does differ in favor of private attorney defense counsel. The most widely used indigent legal representation option is public defense and it represents the majority of all defendants who are detained prior to trial (74.3% of all detained, 75.9% of those held on bail). In fact, defendants held on bail with public defenders make up a significant percentage of legal representation for all defendants detained for any reason (58.8%). This research finding was also suggested and eluded to in previous research (Demuth, 2004; Steffensmeier and Demuth, 2001). In contrast, assigned counsel
is less widely used and accounts for substantially less general detainees (14.5%), those held on bail (13.6%) and even more so for those released on full cash bail (9.2%). The results also show that private attorneys represent accused defendants detained 16.8% of the time and less than that for those held on bail (13.6%). This suggests that indigent defendants with DFA are held on bail more often and given public defenders more than any other defense types and other outcomes. On the other hand, defendants released on full cash bond obtain a private attorney 51.2% of the time and are given a public defender 39.1% of the time. Inversely, for those with AFA who are released on a full cash bond have more access and opportunity to secure a private attorney than having one assigned (9.2%) or given as a public defender.
Table 1: Descriptive Statistics for Variables Included in the Logistic Regression Analyses

<table>
<thead>
<tr>
<th>Measure</th>
<th>All Detained Pretrial</th>
<th>Held On Bail</th>
<th>Released On Full Cash Bond</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>88.1%</td>
<td>17.1%</td>
<td>14.4%</td>
</tr>
<tr>
<td>Female</td>
<td>11.9%</td>
<td>14.1%</td>
<td>15.5%</td>
</tr>
<tr>
<td>White</td>
<td>51.2%</td>
<td>17.3%</td>
<td>13.5%</td>
</tr>
<tr>
<td>Black</td>
<td>46.5%</td>
<td>15.9%</td>
<td>15.9%</td>
</tr>
<tr>
<td>Hispanic</td>
<td>26.7%</td>
<td>14.1%</td>
<td>12.4%</td>
</tr>
<tr>
<td>Prior Felony Arrests</td>
<td>32.7%</td>
<td>18.0%</td>
<td>15.9%</td>
</tr>
<tr>
<td>Prior Prison Incarceration</td>
<td>32.7%</td>
<td>18.0%</td>
<td>15.9%</td>
</tr>
<tr>
<td>Prior Jail Incarceration</td>
<td>61.5%</td>
<td>12.4%</td>
<td>13.5%</td>
</tr>
<tr>
<td>Prior Felony Conviction</td>
<td>58.9%</td>
<td>14.3%</td>
<td>14.2%</td>
</tr>
<tr>
<td>Multiple Arrest Charges</td>
<td>59.0%</td>
<td>13.8%</td>
<td>10.9%</td>
</tr>
<tr>
<td>Active CJ Status</td>
<td>51.5%</td>
<td>15.4%</td>
<td>13.2%</td>
</tr>
<tr>
<td>Those Who Failed To Appear</td>
<td>40.9%</td>
<td>14.0%</td>
<td>11.4%</td>
</tr>
<tr>
<td>Murder</td>
<td>1.9%</td>
<td>36.7%</td>
<td>8.6%</td>
</tr>
<tr>
<td>Rape</td>
<td>1.9%</td>
<td>21.3%</td>
<td>20.8%</td>
</tr>
<tr>
<td>Robbery</td>
<td>9.1%</td>
<td>18.0%</td>
<td>14.8%</td>
</tr>
<tr>
<td>Assault</td>
<td>12.9%</td>
<td>19.2%</td>
<td>13.8%</td>
</tr>
<tr>
<td>Other Violent Offenses</td>
<td>4.2%</td>
<td>17.5%</td>
<td>13.4%</td>
</tr>
</tbody>
</table>
Table 1—Continued

<table>
<thead>
<tr>
<th>Measure</th>
<th>All Detained Pretrial</th>
<th>Held on Bail</th>
<th>Released on Full Cash Bond</th>
</tr>
</thead>
<tbody>
<tr>
<td>Burglary</td>
<td>10.1%</td>
<td>12.1%</td>
<td>14.5%</td>
</tr>
<tr>
<td>Larceny Theft</td>
<td>7.3%</td>
<td>15.9%</td>
<td>13.5%</td>
</tr>
<tr>
<td>Motor Vehicle Theft</td>
<td>4.3%</td>
<td>10.9%</td>
<td>15.5%</td>
</tr>
<tr>
<td>Forgergy</td>
<td>2.1%</td>
<td>16.5%</td>
<td>16.9%</td>
</tr>
<tr>
<td>Fraud</td>
<td>1.3%</td>
<td>15.2%</td>
<td>17.2%</td>
</tr>
<tr>
<td>Other Property Offenses</td>
<td>3.0%</td>
<td>21.6%</td>
<td>13.4%</td>
</tr>
<tr>
<td>Drug Sales</td>
<td>17.8%</td>
<td>18.3%</td>
<td>14.4%</td>
</tr>
<tr>
<td>Other Drug Offenses</td>
<td>16.2%</td>
<td>12.7%</td>
<td>15.0%</td>
</tr>
<tr>
<td>Attorney Type</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Convicted</td>
<td>74.3%</td>
<td>14.6%</td>
<td>16.4%</td>
</tr>
<tr>
<td>Valid N (listwise)</td>
<td>11079</td>
<td>1858</td>
<td>1608</td>
</tr>
</tbody>
</table>
Table 1 results also note further differences for the case outcomes as well. For all detained defendants, the data show that 74.3% of them were convicted and a slightly higher percentage were convicted (75.9%) for defendants held on bail. Of greater interest than this is the finding that only 56.4% of those with private attorneys were convicted. This adds support to the idea that attorneys may make a difference in defendants being detained and/or criminal case outcomes. Another key finding is that 48.8% of those with a private attorney and released on full cash bond were convicted. This also gives more possible justification for viewing money and AFA as a mediating factor in the processing of criminal cases.

When discussing AFA and its advantages it should be noted that defendants after a 3 x 4 crosstab was run to determine if looking at simple descriptive data can give preliminary insight into the interaction of attorney type and full cash bond release defendants. The data revealed defendants who have a private attorney and were released on a full cash bond were found to not be convicted 64% of the time. Second, defendants with a public defender and no full cash bond were convicted 57.7% of the time. Accordingly, this is preliminary data support for interaction effects with the financial variables in the model.

When examining general sex comparisons by partition in Table 1, the data show males are the majority of those detained. However, the data further reveal that the percentages of male and female defendants with public defenders are very different from those with AFA and full cash bond release. Those that had public defenders, males and females who were detained for any reason or held on bail started at percent 68.1% or above (range 68.1 to 71.0%) whereas male and female defendants who were released on
full cash bond who had a public defender was noticeably smaller at 39.3% for males and 38.3% for females. This shows that those with AFA who can post a full cash bond prior to trial do not have a public defender or assigned counsel. Males and females released on a full cash bond have a private attorney at least half the time (50% and 56.5% respectively) compared to all detained defendants (17.9%), and those held on bail (13.9%).

It should also be noted here that there is a disparity between females and males and being released prior to trial. After crosstabs for full cash bond and being released were ran, the aggregate data reveal that males who were released on full cash bond status did so at a rate over three times that of females (77.4% to 22.6%). Since prior research shows that males have more serious criminal histories and commit more serious crimes in larger numbers than women, one can interject that males in the criminal justice system have more AFA (advantageous financial ability) than women. This is important when the data goes on to show that half of those released on a full cash bond are not convicted (49.5% men, 50.5% women- crosstab for full cash bond, released, and convicted).

For race and ethnicity distributions being detained at all, held on bail, and release on full cash bond, patterns are clear with regard to pretrial outcome, attorney type and aggregate conviction. When examining general comparisons by partition and predicted in previous research (Demuth, 2004; Steffensmeier and Demuth, 2001), Table 1 shows that a greater percentage of Hispanics (76.0%) are held on bail that have public defenders compared to Blacks (71.8%) and Whites (71.7%). On the opposite end where AFA is hypothesized to be influential, Whites (53.8%) with private attorneys are released on full cash bond more than Blacks (43.3%) and even more so when compared to Hispanics.
(11.9%). As such the results of Table 1 for public defender and full cash bond percentages suggest that Hispanics with public defenders are held on bail more due to DFA and they are released on full cash bond more as well compared to Blacks and Whites.

Focusing on legal variables, there are similarities in the data for defendants held on bail and defendants held and all defendants held for any reason. The pattern reveals large distributions of the cases were handled by public defenders and that criminal history and offense type impact being detained or released which was expected. Next, it shows that approximately 60% all defendants held on bail have been previously convicted of a felony, been to jail, and are currently on being accused of multiple charges. To add, near half of these same defendants have an active criminal justice status. This suggests that indigent (DFA) defendants are more likely to have committed felonies, have been to jail, and are currently committing multiple offenses. When looking at the numbers of people detained with race it also may suggests that crime is not tied to race but closely tied to being poor. In contrast, defendants released on a full cash bond which represents those with AFA have half the criminal history percentages with the exception of multiple arrest charges. This suggests that defendants with resources are there for multiple offenses to a similar degree as those who are indigent.

When examining the data on offense type, the researcher noticed right away that 100% of AFA defendants accused of murder, given the option to pay a full cash bond, and pay it have a private attorney. On the other hand, 64.3% of those with DFA and are held because they couldn’t post bail have a public defender while 26.5% of them have a private attorney.
The data for offense type also reported that where people with AFA are accused of these violent crimes, 80% of rapists, 66% of robbers, 49% of those who assault people, and 66.1% for other violent offenses released on a full cash bond have a private attorney. On the other hand, where people with DFA are accused of these violent crimes, 63.7% of rapists, 68.4% of robbers, 69.6% of those who assault people, and 70.8% for other violent offenses that are held on bail have a public defender. To add, of those held on bail for all of these violent offenses less than 16% of them had a private attorney.

With regard to AFA defendants with private attorneys who are held on bail, it may be that the judge is preventatively detaining the defendant or denying bail. This is usually done by setting a substantially large bail amount in conjunction with a full cash bond requirement that the accused is unable to pay for after securing a private attorney. In the other instance, it may be that defendants who are accused of serious crimes simply may be denied bail.

The tabled data also suggest that 58% of all defendants detained for trial could be at released if they were able to post their bail. This is substantial in light of the overcrowding issues in the largest counties of the U.S.

Table 2 presents the totals for descriptive statistics for all defendants detained, held on bail, and released on full cash bond prior to trial. This table is displayed as a compliment to Table 1 with the goal of comparing conviction percentages for the financial, demographic and legal factors in the model. First, data in the table for financial variables show that less than sixty percent (58.6%) of all defendants held prior to trial are convicted. Approximately 75.0% of all defendants detained prior to trial and those held on bail are convicted while only 56.4% of those released on a full cash bond were
This shows there are definite advantages for defendants that obtain private attorneys compared to those with public defenders. This is substantial and suggests that AFA may reduce the likelihood of conviction.

Table 2: Totals for Descriptive Statistics for All Defendants Detained, Held on Bail, and Released on Full Cash Bond Prior to Trial

<table>
<thead>
<tr>
<th>Measure</th>
<th>Detained</th>
<th>Held On Bail</th>
<th>Released On $ Bond</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>Convicted</td>
<td>Total</td>
</tr>
<tr>
<td>Male</td>
<td>88.10%</td>
<td>74.00%</td>
<td>87.80%</td>
</tr>
<tr>
<td>Female</td>
<td>11.90%</td>
<td>76.80%</td>
<td>12.20%</td>
</tr>
<tr>
<td>White</td>
<td>51.20%</td>
<td>78.10%</td>
<td>51.00%</td>
</tr>
<tr>
<td>Black</td>
<td>46.50%</td>
<td>70.00%</td>
<td>46.90%</td>
</tr>
<tr>
<td>Hispanic</td>
<td>26.70%</td>
<td>78.20%</td>
<td>27.80%</td>
</tr>
<tr>
<td>Prior Felony Arrests</td>
<td>32.70%</td>
<td>76.80%</td>
<td>31.90%</td>
</tr>
<tr>
<td>Prior Prison Incarceration</td>
<td>32.70%</td>
<td>76.80%</td>
<td>31.90%</td>
</tr>
<tr>
<td>Prior Jail Incarceration</td>
<td>61.50%</td>
<td>78.70%</td>
<td>61.50%</td>
</tr>
<tr>
<td>Prior Felony Conviction</td>
<td>58.90%</td>
<td>75.90%</td>
<td>57.10%</td>
</tr>
<tr>
<td>Multiple Arrest Charges</td>
<td>59.00%</td>
<td>75.30%</td>
<td>59.70%</td>
</tr>
<tr>
<td>Active CJ Status</td>
<td>51.50%</td>
<td>77.90%</td>
<td>46.50%</td>
</tr>
<tr>
<td>Those Who Failed To Appear</td>
<td>40.90%</td>
<td>76.90%</td>
<td>40.30%</td>
</tr>
<tr>
<td>Murder</td>
<td>1.90%</td>
<td>31.00%</td>
<td>1.10%</td>
</tr>
<tr>
<td>Rape</td>
<td>1.90%</td>
<td>58.00%</td>
<td>1.80%</td>
</tr>
<tr>
<td>Robbery</td>
<td>9.10%</td>
<td>63.90%</td>
<td>9.20%</td>
</tr>
<tr>
<td>Assault</td>
<td>12.90%</td>
<td>65.50%</td>
<td>12.90%</td>
</tr>
<tr>
<td>Other Violent Offenses</td>
<td>4.20%</td>
<td>70.30%</td>
<td>4.30%</td>
</tr>
<tr>
<td>Burglary</td>
<td>10.10%</td>
<td>78.20%</td>
<td>10.40%</td>
</tr>
<tr>
<td>Larceny Theft</td>
<td>7.30%</td>
<td>80.40%</td>
<td>7.20%</td>
</tr>
<tr>
<td>Motor Vehicle Theft</td>
<td>4.30%</td>
<td>76.10%</td>
<td>4.50%</td>
</tr>
<tr>
<td>Forgery</td>
<td>2.10%</td>
<td>77.90%</td>
<td>1.90%</td>
</tr>
<tr>
<td>Fraud</td>
<td>1.30%</td>
<td>81.40%</td>
<td>1.40%</td>
</tr>
<tr>
<td>Other Property Offenses</td>
<td>3.00%</td>
<td>76.80%</td>
<td>3.00%</td>
</tr>
<tr>
<td>Drug Sales</td>
<td>17.80%</td>
<td>81.90%</td>
<td>18.50%</td>
</tr>
<tr>
<td>Other Drug Offenses</td>
<td>16.20%</td>
<td>78.30%</td>
<td>16.70%</td>
</tr>
<tr>
<td>Private Attorney</td>
<td>1858</td>
<td>64.50%</td>
<td>1169</td>
</tr>
<tr>
<td>Assigned Counsel</td>
<td>1608</td>
<td>83.80%</td>
<td>1269</td>
</tr>
<tr>
<td>Public Defender</td>
<td>7577</td>
<td>74.70%</td>
<td>6117</td>
</tr>
<tr>
<td>Convicted</td>
<td>74.30%</td>
<td>75.90%</td>
<td></td>
</tr>
<tr>
<td>Total (17987)</td>
<td>11079</td>
<td>8233</td>
<td>8584</td>
</tr>
</tbody>
</table>
The results show that 77.4% of all detained defendants were held on bail and 55% of them had a public defender as well. On the other hand, 10.5% of all detained defendants held on bail had a private attorney. Furthermore, defendants with a private attorney that were able to post a full cash bond were convicted only 1.8% of the time. This suggests that those with DFA are at a higher risk of being detained due to lack of resources to post bail and hire a private attorney.

The data from Table 2 goes on to suggest that of the 56% of defendants released on full cash bond only 2% of them were convicted. This says two things to the researcher. One, defendants with AFA that are released on a full cash bond find avenues based on their influence and resources to have their criminal matters settled out of court. Or two, since they are may have private attorneys in greater percentages who find savvy legal loopholes to secure non-convictions.

Regarding sex, though a preliminary look at the data revealed a large discrepancy in males to females, the conviction data suggest that there men and women are approximately convicted at the same percentage, with 3% for all detained, 2% for all held on bail, and 11% for defendants released on full cash bond.

Table 2 results also show that Blacks are convicted less than Whites and Hispanics for defendants held on bail and all detained. The data also report greater percentages for conviction for the indigent defense types that reveal a possible connection between legal variables, criminal history and being detained and held on bail. This finding has also supported by previous research.
Main Effects of Attorney Type on Pretrial Detention (Held on Bail).

This section provides the results of logistic regression analyses that examine the likelihood of a defendant being held on bail net of statistical controls for financial, demographic, and legal factors. Logistic regression was employed for all models to be presented for Table 3. Model 1 displays the results of a specific detention model representing the intermediate outcome for those held on bail.

The researcher started with the proposed legal variables that were both found to support my hypotheses. The analysis revealed that defendants with public defender representation were almost four and one half times (4.43) more likely to be held on bail net of statistical controls for financial, demographic, and legal factors compared to defendants with private attorneys. This effect was statistically significant (p < .001) and supports the hypothesized contention that having a public defender increases the likelihood of pretrial detention (Hypothesis 3). Defendants with assigned counsel were also found to be almost five times (4.81) more likely to be held on bail net of statistical controls for financial, demographic, and legal factors compared to defendants with private attorneys (Hypothesis 3). This effect was also statistically significant (p < .001) and supports the hypothesized contention that having assigned counsel increases the likelihood of being held on bail. Regarding the theoretical significance of these results, the financial influence of hiring a private attorney on the likelihood of being held on bail was hypothesized to show a greater effect than demographic factors and it has based on these results. This finding is statistically significant (p < .001) and supports the argument that having assigned counsel or a public defender increases the likelihood of being
detained compared to having a private attorney. Or put another way, defendants with private attorneys are at least 4 times less likely to be held over for trial compared to defendants with assigned counsel and/or public defenders.

Table 3: Main Effects of Attorney Type on Pretrial Detention (Held on Bail)

<table>
<thead>
<tr>
<th>MEASURE</th>
<th>Odds Ratio</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td>0.710</td>
<td>***</td>
</tr>
<tr>
<td>Black</td>
<td>1.000</td>
<td></td>
</tr>
<tr>
<td>Hispanic</td>
<td>1.640</td>
<td>***</td>
</tr>
<tr>
<td>Murder</td>
<td>3.030</td>
<td>***</td>
</tr>
<tr>
<td>Rape</td>
<td>2.640</td>
<td>***</td>
</tr>
<tr>
<td>Robbery</td>
<td>3.340</td>
<td>***</td>
</tr>
<tr>
<td>Assault</td>
<td>1.820</td>
<td>***</td>
</tr>
<tr>
<td>Other Violent</td>
<td>1.740</td>
<td>***</td>
</tr>
<tr>
<td>Burglary</td>
<td>2.100</td>
<td>***</td>
</tr>
<tr>
<td>Larceny Theft</td>
<td>1.130</td>
<td></td>
</tr>
<tr>
<td>MV Theft</td>
<td>2.200</td>
<td>***</td>
</tr>
<tr>
<td>Forgery</td>
<td>0.920</td>
<td></td>
</tr>
<tr>
<td>Fraud</td>
<td>0.790</td>
<td></td>
</tr>
<tr>
<td>Drug Sales</td>
<td>1.520</td>
<td>***</td>
</tr>
<tr>
<td>Other Drug</td>
<td>1.100</td>
<td></td>
</tr>
<tr>
<td>Multiple Arrest Charges</td>
<td>0.920</td>
<td>**</td>
</tr>
<tr>
<td>Prior Failure To Appear</td>
<td>0.990</td>
<td></td>
</tr>
<tr>
<td>Active Criminal Justice Status</td>
<td>1.130</td>
<td>***</td>
</tr>
<tr>
<td>Prior Felony Arrests</td>
<td>1.430</td>
<td>***</td>
</tr>
<tr>
<td>Prior Felony Convictions</td>
<td>1.460</td>
<td>***</td>
</tr>
<tr>
<td>Prior Jail Incarceration</td>
<td>1.710</td>
<td>***</td>
</tr>
</tbody>
</table>

Logistic Regression Model 1
Table 3—Continued

<table>
<thead>
<tr>
<th>MEASURE</th>
<th>Odds Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Defender</td>
<td>4.430 ***</td>
</tr>
<tr>
<td>Assigned Counsel</td>
<td>4.810 ***</td>
</tr>
<tr>
<td>Constant</td>
<td>0.050 ***</td>
</tr>
<tr>
<td>Nagelkerke R Square</td>
<td>0.236</td>
</tr>
</tbody>
</table>

Note: The comparison groups for gender, race/ethnicity, and offense type are male, white, and other property offenses respectively.

** p < .01, *** p < .001

Surprisingly, these effects have also surpassed the effect of legal and criminal history on the likelihood of being detained in comparison. This is unexpected given that research to date has shown that legal factors determine pretrial release decision more than other factors (Demuth, 2004; Steffensmeier and Demuth, 2001, Schlesinger, 2005). As for the concepts of DFA, AFA, and financialism, these results supports the ideas that defendants with (DFA) disadvantaged financial ability have a greater likelihood of being detained prior to trial that is more than 4 times greater than defendants who have (AFA) advantageous financial ability to acquire private attorneys.

Moving on, the demographic variables in the both models in table 3 were sex, race, and ethnicity. Model 1 reveals females were 29% less likely to be held on bail net of statistical controls for financial, demographic, and legal factors compared to males. This effect was also statistically significant (p < .001) and supports the hypothesized contention that females have a less likelihood of being held on bail (Hypothesis 4). For
ethnicity, Hispanics were 65% (1.64 times) more likely to be held on bail compared to non-Hispanics net of statistical controls for financial, demographic, and factors. This effect was also statistically significant (p < .001) and supports the hypothesized contention that being Hispanic increases the likelihood of being held on bail (Hypothesis 6). The data also found a lack of support for Hypothesis 5. As such, Blacks are not significantly more likely to be held over on bail than Whites net of controls for financial, legal, and demographic variables.

While it was found that the effect of having assigned counsel or a public defender compared to a private attorney increases the likelihood of being held on bail more than offense severity and all criminal history factors, there are some significant findings in these variables. The legal variables in Model 1 show that defendants are more likely to be held on bail for all offense types with the exception of larceny, forgery, miscellaneous drug crimes and fraud compared. To be specific, all defendants accused of violent crimes were more likely to be held on bail than those accused of miscellaneous property crimes. Murder (3.03), rape (2.64), robbery (3.34), assault (1.82) and other violent offenses (1.74), were all more likely to be detained due to their failure to post bail. Some defendants accused of property crimes were more likely to be held on bail than those accused of other property offenses. For property crimes, burglaries (2.10), and motor vehicle thefts offenses (2.2) were more likely to be detained due to their failure to post bail than those held for miscellaneous property offenses. For drug crimes, only defendants accused of drug sales (1.52 times) were more likely to be held on bail than those accused of miscellaneous property offenses. The data in Table 3 also show that offense severity increases the likelihood of being detained prior to trial for defendants.
From greatest effect to least they are prior jail time (1.71), prior felony convictions
(1.46), prior felony arrests (1.43), and prior active criminal justice status. These effects
are statistically significant ($p < .001$) and supports current research that has found pretrial
detention to be related to offense type and criminal history.

In sum, the data results for both models and the entire set of hypotheses addressed
by this model have been shown to be statistically significant with the exception of Blacks
compared to Whites where being detained before trial is the final outcome. Similarly,
there was shown to be a greater likelihood of being detained and held on bail before trial
for 4 out of 12 offense types which included all of the violent crimes. More importantly,

**Main Effects of Financial Variables on Subsequent Conviction**

Table 4 provides the results of logistics regression analyses for full models 3 and
4 which predict the likelihood that a defendant will be convicted net of statistical controls
for financial, demographic, and legal. First, the researcher will examine three predicted
relationships from the results of Model 2 and Model 3 and contrast them. The difference
in the two models is related to how the pretrial outcome is added to the model. For the
first model the variable represents all defendants detained prior to trial. For the second
model all detained defendants has been broken down by specific pretrial. Model 2 has
the specified independent variable of being detained prior to trial added to the full model
from the previous table (Table 2, Model 1) and conviction is now the dependent outcome
predicted. For Model 3, the independent variable of being held on bail prior to trial is
added to the full model from the previous table (Table 2, Model 1) and conviction is now
the dependent outcome predicted. Two hypotheses (1 and 2) will be addressed in this
table. Hypothesis 1 predicts that individuals accused of crimes who are held for any
reason before trial are more likely to be convicted than those with who are released net of controls for demographic, financial and legal factors. Hypothesis 2 predicts that individuals accused of crimes who are held on bail prior to trial are more likely to be convicted than those with who are released net of controls for demographic, financial and legal factors.

Table 4: Main Effects of Financial Variables on Subsequent Conviction

<table>
<thead>
<tr>
<th>MEASURE</th>
<th>Model 2</th>
<th>MEASURE</th>
<th>Model 3</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Odds Beta</td>
<td></td>
<td>Odds Beta</td>
</tr>
<tr>
<td>Female</td>
<td>0.05 1.05 ***</td>
<td>Female</td>
<td>0.042 1.04 ***</td>
</tr>
<tr>
<td>Black</td>
<td>-0.421 0.66 ***</td>
<td>Black</td>
<td>-0.44 0.64 ***</td>
</tr>
<tr>
<td>Hispanic</td>
<td>-0.122 0.89 ***</td>
<td>Hispanic</td>
<td>-0.121 0.89 ***</td>
</tr>
<tr>
<td>Murder</td>
<td>-1.870 0.15 ***</td>
<td>Murder</td>
<td>-1.576 0.21 ***</td>
</tr>
<tr>
<td>Rape</td>
<td>-0.712 0.49 ***</td>
<td>Rape</td>
<td>-0.671 0.51 ***</td>
</tr>
<tr>
<td>Robbery</td>
<td>-0.607 0.55 ***</td>
<td>Robbery</td>
<td>-0.562 0.57 ***</td>
</tr>
<tr>
<td>Assault</td>
<td>-0.692 0.50 ***</td>
<td>Assault</td>
<td>-0.673 0.51 ***</td>
</tr>
<tr>
<td>Other Violent Offenses</td>
<td>-0.397 0.67 ***</td>
<td>Other Violent Offenses</td>
<td>-0.386 0.68 ***</td>
</tr>
<tr>
<td>Burglary</td>
<td>-0.123 0.89</td>
<td>Burglary</td>
<td>-0.103 0.90</td>
</tr>
<tr>
<td>Larceny Theft</td>
<td>-0.114 0.89</td>
<td>Larceny Theft</td>
<td>-0.109 0.90</td>
</tr>
<tr>
<td>Motor Vehicle Theft</td>
<td>-0.321 0.73 ***</td>
<td>Motor Vehicle Theft</td>
<td>-0.304 0.74 ***</td>
</tr>
<tr>
<td>Forgery</td>
<td>0.183 1.20</td>
<td>Forgery</td>
<td>0.175 1.19</td>
</tr>
<tr>
<td>Fraud</td>
<td>-0.197 0.82</td>
<td>Fraud</td>
<td>-0.177 0.84</td>
</tr>
<tr>
<td>Drug Sales</td>
<td>0.062 1.06</td>
<td>Drug Sales</td>
<td>0.062 1.06</td>
</tr>
<tr>
<td>Other Drug</td>
<td>-0.289 0.75 ***</td>
<td>Other Drug</td>
<td>-0.29 0.75 ***</td>
</tr>
<tr>
<td>Multiple Arrest Charges</td>
<td>0.234 1.26 ***</td>
<td>Multiple Arrest Charges</td>
<td>0.222 1.25 ***</td>
</tr>
<tr>
<td>Prior Failure To Appear</td>
<td>-0.042 0.96</td>
<td>Prior Failure To Appear</td>
<td>-0.05 0.95</td>
</tr>
<tr>
<td>Active Criminal Justice Status</td>
<td>0.101 1.11 **</td>
<td>Active Criminal Justice Status</td>
<td>0.176 1.19 ***</td>
</tr>
<tr>
<td>Prior Felony Arrests</td>
<td>0.025 1.03</td>
<td>Prior Felony Arrests</td>
<td>0.019 1.02</td>
</tr>
<tr>
<td>Prior Felony</td>
<td></td>
<td>Prior Felony</td>
<td></td>
</tr>
<tr>
<td>Convictions</td>
<td>-0.050 0.95</td>
<td>Convictions</td>
<td>-0.013 0.99</td>
</tr>
<tr>
<td>Prior Jail Incarceration</td>
<td>0.493 1.64 ***</td>
<td>Prior Jail Incarceration</td>
<td>0.493 1.64 ***</td>
</tr>
</tbody>
</table>
Because of the implied belief that money is very influential in outcomes, Model 3 and the effect of all defendants being held on bail should be greater than the results for Model 2 and the effect of all defendants being detained for those convicted. The second hypothesis states defendants with public defenders and assigned counsel (DFA) are more likely to be convicted than defendants with private attorneys.

The results from Model 2 show the likelihood of conviction is 2.42 times greater for defendants who are detained prior to trial than defendants who are released. This effect is statistically significant (p< .001) and supports the hypothesized contention that being detained for any reason increases the likelihood of conviction compared to being released (Hypothesis 1). This validates the hypothesis of relationship between being
detained for any reason and subsequent conviction because it is the foundation of the entire study and all other relationships build on this one.

Next, the results of Model 2 and 3 display the primary hypothesis in a more specific way regarding AFA and financial influence for the second hypothesis. The results of the analysis found that when groupings of variables (all detained) are divided into separate variables, the effect decreases. The data show that defendants who are detained pretrial for any reason are 2.42 times more likely to be convicted than released defendants net of controls for demographic, financial and legal variables (Hypothesis 1). The data go on to show that defendants who are held on bail are 2.06 times more likely to be convicted net of controls for demographic, financial and legal variables (Hypothesis 2). This effect is statistically significant (p<.001) and supports the hypothesized contention that being only held on bail increases the likelihood of conviction. Thus, there are two valuable findings from this model. The first is there being held for any reason or being held on bail is statistically shown to increase in the likelihood of conviction. Second, there is a statistically significant increase in the likelihood of conviction for all defendants that are detained for any reason prior to trial that is greater than the same effect for defendants held because they simply cannot afford to post bond. This means that when there are other groups within the ‘all detained’ category that are more likely to be held over than those simply held on bail. This makes sense when one considers that those denied bail and are also within this category.

The next financial variable was attorney type which included public defenders, assigned counsel compared to private attorney. The reference category was private attorney for both models. As such, both Model 2 and Model 3 show there is a significant
increase in the likelihood of conviction for those with public defenders (1.56 times for Model 2, and 1.64 times for Model 3) compared to those with private attorneys. Furthermore, when they effect of having a public defender is compared for both models, the effect is greater for defendants in the model 3 where the pretrial release outcomes is broken down by specific release category (ROR, Held on bail, and all bond/bail types). These effects are statistically significant (p< .001) and support the hypothesized contention that having a public defender increases the likelihood of conviction compared to private attorney counsel (Hypothesis 3).

Next, Model 2 and Model 3 show there is a significant increase in the likelihood of conviction for those with assigned counsel (3.55 times for Model 2, and 3.72 times for Model 3) compared to those with private attorneys as well. Furthermore, when they effect of having a assigned counsel is compared for both models, the effect is greater for defendants in the model 3 where the pretrial release outcomes is broken down by specific release category (ROR, Held on bail, and all bond/bail types). These effects are statistically significant (p< .001) and support the hypothesized contention that having assigned counsel also increases the likelihood of conviction compared to private attorney counsel (Hypothesis 3). Put another way, as a financial factor this is valuable given that this analyzed effect is referenced by its comparison to private attorney counsel. Also, because assigned counsel is an indigent defense counsel for the most part, and though not used as much as the other defense types considerably, the effect is more significant and has a greater effect than even those defendants with public defenders. The increased likelihood of conviction was also essentially the same for both models in table 4 when controlled for all detained (1.56) and held on bail (1.64 times) factors that were added to
each model respectively. This shows that indigent/poor defendants have a greater likelihood of being convicted compared to private attorneys. Given the results from these two financially-laden variables, the researcher will now look to see if there is an increased interaction effect for both of these statistically significant variables (attorney type and being held on bail, or all detained) will produce a greater likelihood of conviction for this model net of controls for legal, demographic, and financial controls.

In sum, the data results for Table 4 reveal several findings in support of the hypothesized predicted relationships. This also connects to financialism, AFA, DFA, and The Interactional Theory of Financialism and Cumulative Disadvantage. Second, support was found for the hypothesis that being detained for failure to post bail has an effect on subsequent criminal case outcomes, which is statistically significant net of controls for legal, financial and demographic factors. Third, support was then found for the hypothesis that being detained for any reason and those held on bail has an effect on subsequent convictions that is statistically significant net of controls for legal, financial and demographic factors (hypothesis 1 and 2). Fourth, logistic regression analysis did not support hypothesis 6 which stated that Blacks who are accused of crimes are more likely to be convicted than Whites. To add, hypotheses 6 and 4 were supported because the data showed there is an increased likelihood (1.64) being held over on bail for Hispanics compared to non-Hispanics. There is also an even less likelihood that females will be held on bail also. This effect was statistically significant (p < .001) and supports the hypothesized contention that being held on bail before trial also increases the likelihood of conviction compared to being released.
In contrast, hypothesis 8 and 10 sought to extend the results of being detained for females and Hispanics to subsequent conviction (with race conviction was unsuccessful as the data did not support these predictions). Overall, given the results for this analysis regarding demographic variables compared to the financial variables, the researcher is fairly confident in the results of this study regarding the financial variables and how they explain larger relative increases in odds ratios and statistically significant odds ratio percentages. To add, because these financial variables were not shown to predict conviction for Blacks, one cannot offer a financial causality to explain their disparities in the criminal justice system. This is just as valuable because it may be that Blacks are convicted more than their proportion in American because of their racial category more than financial resources. With that in mind the researcher will turn to the interaction terms created that have been predicted to increase the likelihood of conviction.

**Main Effects of Financial Interaction Variables on Subsequent Conviction.**

This section provides the results of logistic regression analyses that examined the likelihood of being convicted using interaction term combinations of the financial variables/factors for the full model. As stated in the intro to this chapter, the researcher is examining and comparing 6 interaction terms determine whether the interaction of attorney type and pretrial release outcome is present as hypothesized. From the hypotheses and the two financial variables, the six combined interaction terms created were ‘public defender and being detained’, ‘public defender and being released’, ‘assigned counsel and being detained’, ‘assigned counsel and being released’, and ‘private attorney and being released’. As previously discussed, the three ‘detain’ interaction terms are indicative of defendants who have (DFA) disadvantaged financial
ability because they cannot post bail, are denied bail, or are detained for reasons unknown. The three ‘release’ interaction terms represent defendants with (AFA) advantageous financial ability that are able to be released by financial or non-financial release. In the analysis the interaction term ‘Private attorney and release’ will be removed and be use as the reference interaction term. Again these hypotheses represent two valuable and substantial arguments for this study. First, the hypotheses intend to extend the major thesis (Hypotheses 1, 2 and 3) that all defendants held over for trial for any reason that have indigent defense systems are more likely to be convicted than defendants that have private attorneys and are released for any reason. Second, the goal is to determine if the combined effects of these terms on conviction are greater when combined with attorney type. If so, the researcher will focus on each significant relationship to examine if it is greater than either of the combined factors alone which is predicted.

The full model with the addition of 5 interaction variables is predicted to increase the likelihood that defendants will be convicted net of controls for demographic and legal factors. As such, it is believed that defendants with private attorneys who are released prior to trial have a less likelihood of being conviction. According to the literature this is because private attorneys have more resources than assigned counsel and public defender counsel; private attorneys have greater access to the client which allows them more time to prepare a defense and communicate with the defendant; defendants released will arrive to the courtroom presumably in better clothing and grooming than those detained before trial which influences the jury and judge; private attorneys and defendants released may be more likely to bargain harder for a non-conviction because stalling and filing
additional motions to the court don’t force them to be inconvenienced with incarceration;
and if defendants and private attorney are influential in the community jurors and
courtroom actors may introduce positive biases and stereotypes to defendants and
become raise the burden of proof to decide on guilt.

Table 5 presents the logistic regression results of for the dependent variable conviction. According to the researcher, the likelihood of conviction for those held on bail with indigent defense types (public defender, assigned counsel) should be larger than those released who can post a financial or non-financial release. As such, Model 4 shows that compared to defendants that represent AFA that are released with private attorneys, defendants also released that have a public defender are over 59% (1.59) more likely to be convicted. By the same token defendants with assigned counsel and released are 296% or almost four times (3.96 or) more likely to be convicted. This is a disturbing finding considering that the vast populations of indigent defendants can neither afford a private attorney nor post bail prior to trial if given the option by a judge. This may suggest that there is a substantial difference between the defense counsels given to people that can afford a private attorney and their indigent counterparts. In fact, the research showed that all defendants detained had greater chances of being convicted for each attorney types when they were detained versus released. This supports the explanation that where defendants are all released, those with public defenders have an increased probability of being convicted while defendants with assigned counsel face even more increased chances of being found guilty.
Table 5: Model 4—The Logistic Regression Results for the Dependent Variable Conviction

<table>
<thead>
<tr>
<th></th>
<th>Odds Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td>1.05</td>
</tr>
<tr>
<td>Black</td>
<td>0.66</td>
</tr>
<tr>
<td>Hispanic</td>
<td>0.89</td>
</tr>
<tr>
<td>Murder</td>
<td>0.15</td>
</tr>
<tr>
<td>Rape</td>
<td>0.47</td>
</tr>
<tr>
<td>Robbery</td>
<td>0.52</td>
</tr>
<tr>
<td>Assault</td>
<td>0.48</td>
</tr>
<tr>
<td>Other Violent</td>
<td>0.64</td>
</tr>
<tr>
<td>Burglary</td>
<td>0.84</td>
</tr>
<tr>
<td>Larceny Theft</td>
<td>0.85</td>
</tr>
<tr>
<td>MV Theft</td>
<td>0.69</td>
</tr>
<tr>
<td>Forgery</td>
<td>1.15</td>
</tr>
<tr>
<td>Fraud</td>
<td>0.78</td>
</tr>
<tr>
<td>Drug Sales</td>
<td>1.01</td>
</tr>
<tr>
<td>Other Drug</td>
<td>0.71</td>
</tr>
<tr>
<td>Multiple Arrest Charges</td>
<td>1.26</td>
</tr>
<tr>
<td>Prior Failure To Appear</td>
<td>0.96</td>
</tr>
<tr>
<td>Active Criminal Justice Status</td>
<td>1.11</td>
</tr>
<tr>
<td>Prior Felony Arrests</td>
<td>1.03</td>
</tr>
<tr>
<td>Prior Felony Convictions</td>
<td>0.95</td>
</tr>
<tr>
<td>Prior Jail Incarceration</td>
<td>1.64</td>
</tr>
<tr>
<td>Private Attorney and Detained</td>
<td>2.73</td>
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<tr>
<td>Assigned Counsel and Detained</td>
<td>7.51</td>
</tr>
<tr>
<td>Assigned Counsel and Release</td>
<td>3.96</td>
</tr>
<tr>
<td>Public Defender and Released</td>
<td>1.59</td>
</tr>
<tr>
<td>Public Defender and Detained</td>
<td>3.80</td>
</tr>
<tr>
<td>Constant</td>
<td>0.86</td>
</tr>
</tbody>
</table>

Model Chi-Square (df= 27) **4039.766***
Nagelkerke R-Square **0.166***

**Note:** The comparison groups for gender, race/ethnicity, and offense type are male, white, and other property offenses respectively.

**p < .01, ***p < .001**
First, defendants detained that have a public defender are over three and a three quarters more likely (3.80) more likely to be convicted compared to defendants released with private attorneys. In addition, defendants with assigned counsel who are detained are amazingly seven and half times (7.51) more likely to be convicted compared to the same reference group which is over 650%! Last, analysis found that even those with private attorneys that are detained have a 2 and three quarters (2.73) likelihood of being convicted if they are detained compared to the reference group. This shows also that when all detained defendants are compared to the reference group, defendants with assigned counsel are approximately 200% more likely to be convicted than both of the other attorney types combined.

As such, all five of these interaction findings were derived after being controlled for demographic and legal variables. These effects are all statistically significant (p< .001) and support the hypothesized major contention that and any pretrial detention for all attorney types will statistically increase the likelihood of being convicted. These results indicate any defendants with indigent counsel (assigned and public defense) are substantially more likely to be detained prior to trial and also more likely to be convicted. Furthermore, having assigned counsel is by far shown to be the most ineffective where obtaining any type of release or preventing conviction is the goal by far. These findings support all of the interaction hypotheses as follows:

Hypothesis Result 7. Individuals accused of crimes represented by private attorneys that are detained are more likely to be convicted than defendants represented by a private attorney and are released prior to trial.
Hypothesis Result 8. Individuals accused of crimes that are represented by assigned counsel and are released are more likely to be convicted than those represented by a private attorney and released prior to trial.

Hypothesis Result 9. Individuals accused of crimes that are represented by assigned counsel and detained are more likely to be convicted than those represented by a private attorney and released prior to trial.

Hypothesis Result 10. Individuals accused of crimes have public defenders and are released are more likely to be convicted than those represented by a private attorney and released prior to trial.

Hypothesis Result 11. Individuals accused of crimes that are represented by public defenders and detained are more likely to be convicted than those represented by a private attorney and released prior to trial.

In sum, there is a positive relationship between having a lack of resources and securing the appropriate counsel which leads to what has been found to be a significant increase in both pretrial detention and conviction both by alone and together. The analyses and results point clearly to the reality that a lack of resources (DFA) and being detained (due to DFA to hire private counsel) together raise the likelihood of either effect alone and substantially increase the likelihood of conviction.
CHAPTER VI

DISCUSSION, CONCLUSION, AND LIMITATIONS
AND RECOMMENDATIONS FOR
FUTURE RESEARCH

Introduction

The two main premises guided this study. First, was to investigate if financial factors lead to being held on bail and if they were more significant than race (Demuth, 2001). The second premise centered on whether there is a relationship between being held on bail (Demuth, 2001) and being detained at all on conviction. The third premise is whether there is an interaction effect for being detained and financial factors (attorney type) on conviction as well. Furthermore, drawing from the 'financialism' perspective for its predicted financial influence on the pretrial process, the researcher expects that defendants with indigent defense structures (public defense and assigned counsel) would receive less favorable pretrial outcomes. The researcher also expected less than favorable outcomes for males, Blacks and Hispanics.

Next, this analysis draws on the Interactional Theory of Financialism and Cumulative Disadvantage drawing from its approach that the more negative conditions and outcomes there are to influence pretrial outcomes the greater the likelihood of eventual pretrial detention and subsequent criminal case convictions. To be more specific, defendants with public defenders and assigned counsel that are also detained
prior to trial for any reason will have a greater likelihood of being convicted compare to those who are both able to secure private attorneys and release prior to trial. Here the researcher expects less than favorable adjudication outcomes for defendants with both indigent defense types together with the influence of detention prior to trial. In addition to the strong effects of prior record and offense seriousness on pretrial release options and outcomes (also predicted by the Interactional Theory of Financialism and Cumulative Disadvantage framework), the findings were generally supportive of these hypotheses in the first analysis and were also generally supportive of these hypotheses for the second analysis.

Specific to the first analysis, the results showed some important attorney type effects in pretrial outcomes. However, the second analysis revealed greater financial effects for pretrial outcome-attorney type interactions on subsequent case outcomes. The influence of varied attorney type and pretrial release outcome comparisons here can be viewed in alternative ways, depending on which group or subgroup combination one wants to put emphasis on. The following findings represent important contributions to the literature on pretrial release outcomes and the leading to criminal case outcomes.

Net of controls for legal and extra legal factors the results show: 1. Sex, ethnicity, and attorney type has a significant direct effect on pretrial outcomes. 2. Attorney type and pretrial outcomes have a significant direct effect on subsequent criminal case outcomes. 3. Attorney type and pretrial outcomes—when combined have a greater significant direct effect than either alone on subsequent criminal case outcome. 4. When all interaction variables for attorney type and pretrial outcome were controlled there is a significant direct effect on subsequent criminal case outcomes.
To be more specific:

• Male defendants received less favorable pretrial outcomes than female defendants. Males were more likely to receive outcomes that did result in pretrial detention (e.g., denial of bail, held on bail, and detained for reasons unknown) than female defendants.

• Hispanic defendants received less favorable pretrial outcomes than non-Hispanic defendants. Hispanics were more likely to receive outcomes that did result in pretrial detention (e.g., denial of bail, held on bail, and detained for reasons unknown) than non-Hispanic defendants.

• Defendants with indigent defense counsel received less favorable pretrial outcomes that did result in pretrial detention (e.g., denial of bail, held on bail, and detained for reasons unknown) than defendants with private attorneys. Defendants with indigent defense counsel were more likely to receive outcomes that resulted in pretrial detention than defendants with private attorneys.

• Defendants with indigent defense counsel received less favorable adjudication outcomes than defendants with private attorneys. Defendants with indigent defense counsel were more likely to receive outcomes that did result in a conviction than defendants with private attorneys.

• Defendants with indigent defense counsel who were detained prior to trial were more likely to receive outcomes that did result in a conviction than defendants with private attorneys that were released prior to trial.
• Defendants with indigent defense counsel who were detained prior to trial were also more likely to receive outcomes that did result in a conviction than defendants with private attorneys that were detained prior to trial.

• Defendants with private attorneys who were detained prior to trial were more likely to receive outcomes that did result in a conviction than defendants with private attorneys that were released prior to trial.

• Males, Blacks and Hispanics were not found to receive less favorable pretrial outcomes than female, White, and non-Hispanic defendants. However, males, Blacks and Hispanics were more likely to receive outcomes that did result in pretrial detention (e.g., denial of bail, held on bail, and detained for reasons unknown) than females, Whites, and non-Hispanic defendants.

Discussion

An important contribution of this study for research and theory on the pretrial phase of the criminal justice system involves the significance of (1) recognizing that financial resources do impact the pretrial detention after the decision to award bail has been made and (2) understanding that pretrial outcomes to impact adjudication outcomes. As a result, this research brings the issue of financial inequality to the forefront where the processing of criminal defendants at the pretrial stage begins that has now been shown to directly influence the outcome of the case. More importantly, this finding points clearly to the influences that money has on sifting out the segment of society that is ‘deserving’ of another chance and propels those with cumulative disadvantages further and faster into
the correctional system. These results are precursors for understanding how the pretrial outcomes might vary by attorney type, and how the eventual adjudication outcomes may vary after attorney type and pretrial outcomes are factored in together.

Even though DFA defendants receive pretrial outcomes that are not fairly favorably with those for defendants with AFA (e.g., relative to whether the defendant is preventively detained, released on ROR, or bail amount), they (DFA defendants) are significantly more likely to be convicted when detained coupled with indigent defense options. Stated differently, defendants with AFA that are released and hire private attorneys are considerably advantaged relative to defendants who are detained prior to trial and cannot afford legal representation.

Past research has found the apparent reason for pretrial detention is that defendants for minority racial and ethnic backgrounds are less able to post bail (regardless of the amount) (Demuth, 2001; Steffensmeier and Demuth, 2004,). They report that relative to similarly-situated sex and race-ethnic subgroups, White defendants of both sexes apparently have greater financial capital or resources either in terms of their personal bankroll/resources, their access to family or social networks willing to post bail, or their greater access to bail bondsmen for purposes of making bail. Conversely, being detained because they simply cannot afford to post bail is a main disadvantage facing Hispanic male and female defendants, black male and black female defendants. They suggest this primarily because White males and females are better able to post bail rather than because they are less likely to be preventively detained or are required to post higher bail amounts (Demuth, 2001; Steffensmeier and Demuth, 2004). However, the researcher is able to assess this same set of criteria for sex as well. The findings from
these analyses also show that race (Being black) is not a significant predictor of detention or conviction. This is a major departure from what previous research has focused on to explain disparities. This also may serve to extend and strengthen this position of the researcher that Black defendants are detained and subsequently convicted at greater rates in the population not because of their race or ethnicity but because they are indigent (DFA). In fact this research suggests that the most dominant effect on pretrial detention and subsequent conviction were financial factors over demographic categories and even criminal history and legal factors.

Regarding effective representation for defendants this study may open the door to shedding more light on legal responsibility of defense attorneys. While all attorneys do what they are required to do by protecting the rights of the accused, they may not feel an obligation or duty to do more than that for indigent defendants being processed at the beginning stages or the end.

To look beyond the defense attorney who is one of many actors in the processing of criminal cases, the researcher would be remiss if didn’t speak to the social institution of criminal justice. Advantageous financial ability (AFA) also has the power to change the entire process from arrest to sentencing for these reasons. Judges take into account influences that include the accused defendants’ financial resources and legal representation as they affect ability to secure a conviction. Financial resources typically include the reputation and services of private attorneys, their appearance at arraignment, and expertise at all possible stages of the criminal court process. Financial resources influences include wealth, income, social class, or other social positions and the available financial resources to apply to the legal process. In addition, financially-based
attributions of success, character, honesty, hard work, and status quo moral character are assessed to those who have them. These influences also impact decisions made by judges and other actors such as probation officers, prosecutors, and juries. Yet, the focus of this research only allowed the examination of pretrial and adjudication outcomes.

Conclusion

Based on the most recent review of the literature this study is the first analysis of the pretrial release process that allows for a consideration of main and interactive effects of pretrial release outcomes and attorney type (private, public defender, and assigned counsel) on pretrial and case adjudication outcomes. These findings suggest six important implications for research on criminal case processing both in terms of the pretrial release stage and more generally at other stages.

First, the findings demonstrate the importance of including the financial resources of defendants in studies of case processing and of testing not only for main effects but also for their impact on subsequent case outcomes. In addition, gives support to the concept of financialism which is discrimination based on lack of financial resources. This is significant when the research has shown that defendants that are detained are 651% or 7.51 times more likely to be convicted compared to defendants that have private attorneys and are released.

Second, research on pretrial outcomes and attorney type as financial factors cannot neglect earlier stages of the criminal justice system (Arrest, pre-charge decisions). In the present study, financial factors are considerable at the pretrial release stage and the adjudication stage, suggesting that restricting our focus to one stage or the other alone
yields a misrepresentation of the roles of financial factors and attorney type in the criminal case process.

Third, research needs to examine not only pretrial outcomes, but also the impact that they have on case outcomes (adjudication). 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.

Fourth, research is needed that goes beyond the sort of statistical analysis reflected in this study to probe in depth how money moves some people into the system at some stages while others are diverted out. The findings lend credibility to the financialism construct and (1) judges and other court actors develop “normative responses” that evaluate ones financial resources and social networks relative to assessing blameworthiness, dangerousness, risk of recidivism or flight; and that (2) the defendant’s attorney type and pretrial outcome may intertwine with the defendant’s race, sex and ethnicity in ways that shape subsequent adjudication outcomes. The researcher suggests here field research and interviewing of all courtroom actors is needed to better assess the financialism concept and to better understand the overall harsher treatment of indigent defendants at the pretrial stage. They not only are the group most likely to be detained prior to trial, but the poor are also the group least able to afford private attorneys to increase the likelihood of non-conviction. The observations and interviews should address whether, for example, the harsher treatment or the indigent is because (1) they lack the resources or power to resist the imposition of harsh legal sanctions; (2) they are perceived as more dissimilar and threatening than affluent members of society and hence most deserving of punishment; (3) they represent a greater risk of failing to appear for
court disposition; and/or (4) some are disadvantaged by their difficulty with their higher levels of illiteracy, mental illness or alcohol and other drug use.

Given the general lack of knowledge about or mistrust of the criminal justice system by indigent people, and their unwillingness to cooperate with authorities out of fear of mistreatment and violence may be reasons why they are a more challenging group of people in our society. In light of their apparently unsympathetic treatment at other case-processing stages (Steffensmeier and Demuth, 2004), there is a pressing need for field research and interviewing that examines the unique factors and situations (e.g., lack of employment, social status, literacy, mental illness, etc.), affecting the treatment of indigent defendants in the pretrial release stage as well as in the larger criminal justice system.

Fifth, regarding race and ethnicity, this study shows that while the major factor for being detained for Blacks and Hispanics is their inability to post bail, when financial factors are considered, Blacks are not more likely to be held on bail than Whites while Hispanics are. As Demuth suggested, Hispanics do face a greater likelihood of being detained compared to Whites and Blacks. To add, when financial factors are included, Hispanics are more likely to be detained and subsequently convicted compared to Whites as well. This is troubling because no other factors have been investigated to explain this finding. It has been suggested by Demuth (2001) that Hispanics may face more discrimination than Blacks due to immigrant, drug, language, and flight risk stereotypes.

Last, highlighting one final and very important matter that is suggested from these finding is the importance of social and economic factors in shaping the effects of sex, race-ethnicity on pretrial outcomes and subsequent case outcomes. This means that (by
extension) having a balanced research approach to examining the impact of factors in the processing of criminal cases should include financial factors because they have a greater impact than race-ethnicity and sex.

This analysis reveals that defendants with AFA, whether female or male, Black or White, Hispanic or Non-Hispanic, are advantaged relative to their indigent counterparts at the pretrial stage primarily because they are better able to post bail or be released, rather than because they are less likely to be preventively detained or are required to post higher bail amounts. This finding in effect suggests that, even if there were no apparent economic disparities in pretrial release outcomes, disparities in adjudication outcomes might still emerge. This possibility is troubling because these differences in early pretrial release outcomes have been shown via this study to translate into unwarranted differences in decisions or outcomes at later stages (e.g., convicted or not convicted), as some writers suggest.

In summation, at issue is the often overlooked influence that poverty and discrimination have on detention, conviction, and imprisonment. By focusing on individual worth and ability maybe social structure within society need to be open to critiques that allow it to become more effective and efficient. As Jeffrey Reiman (2001) notes, “to focus on individual guilt is to ask if the individual citizen has fulfilled his or her obligation to his or her fellow citizens. It is to look away from the issue of whether the fellow citizens have fulfilled their obligations to him or her (p. 165).” Regarding justice and socioeconomic status, Lewis Powell, Jr., U.S. Supreme Court Justice was quoted stating:

"Equal justice under law is not merely a caption on the facade of the Supreme Court building; it is perhaps the most inspiring ideal of our
society. It is one of the ends for which our entire legal system exists...it is fundamental that justice should be the same, in substance and availability, without regard to economic status.”
(http://www.nlada.org/News/Equal_Justice_Quotes)

Limitations of this Study

First, according to Steffensmeier and Demuth (2004) race/ethnicity and sex are significant for pretrial release. With the addition of financial factors (attorney type) shown to be significant after controlling for legal factors, financial and other factors need to be investigated to further explain pretrial release and outcomes and subsequent adjudication outcomes. These may include the defendant’s attitude and disposition when interacting with all facets of the criminal justice system, the defendant’s knowledge of and/or manipulation of the criminal justice system from prior knowledge or others who have this knowledge, and the background of the defendant and his family/home environment.

Second, there needs to be further analysis of pretrial outcomes that examines the interaction of race/ethnicity, sex and attorney type on pretrial outcomes and subsequent conviction (this study only examined financial factors, sex, and race ethnicity factors individually). There may be an interaction effect that explains more of their impact on pretrial release outcomes and eventual case outcomes. If so, further support for the Interactional Theory of Financialism and Cumulative Disadvantage may be possible.

Third, this research used secondary data. Though secondary data is routinely used in social research, this study may have been better served with primary data that would have provided direct measures of financial ability over the indirect measures used for this
research. Future research using direct measures may explore if there is a greater or lesser effect of financial resources on pretrial detention and subsequent outcomes.

Fourth, regarding racial/ethnic discrimination in criminal justice, today more than in the past, there must be a general discussion around the terms ‘ethnicity’, ‘race’ and ‘sex’ and its application in data collection. Ethnicity and race are terms used to describe one’s ethnic socialization and/or heritage, cultural expression, and cultural preference/selection for that expression. This researcher asserts that they both are socially organized and are not simply an individual attribute, but rather are accomplished through interactions with others in one’s environment/society. In contrast, prior data collection has simply relegated this largely under-described characteristic as the term ‘race’ or ‘ethnicity’. Unfortunately, the majority of social science data instruments and collection strategies do not ask for ethnic related information. Instead they ask basic race categories of the respondent or it is inferred by observing a respondent’s physical make-up (Ex. Black prison populace that omits identifying different cultures and country distinctions like Jamaican, Haitian, and Africa-African, etc.). Given this limitation, theories connected to research with this limitation are forced to be basic race theories versus even more basic ethnically related theories. This is important in light of the many varied ethnic backgrounds that make up the most populated counties in the United States. Because this serves to shape how ethnic groups are viewed by the criminal justice system, and subsequently how they may be processed, we must grow beyond this historical oversight. Similarly, as highlighted in this study, the term gender in data collection and even study for that matter has overlooked the vast differences in experiences for women who are ‘categorically female’. Data collection and study of
women who are not ‘traditionally’ or normatively viewed as women overlook all of those who are outside of this traditional norm. As a result, this includes transvestites, transsexuals, hermaphrodites, lesbians and all women who don’t normatively subscribe to ‘womanhood’ as prescribed by society.

Fifth, given the diversity of ethnicities in America there is a need to collect data from all ethnic backgrounds. This applies more so to urban areas where many smaller yet visible ethnic enclaves reside.

Sixth, there are also rural categories that are not represented, including Native American and Mexican Americans that should have been included in such a study but were not due to the data focus on urban populated areas. Future research should include rural and less populated areas as well as increase the number of ethnic and racial data collection strategies.

Seventh, this research was conducted on data collected for the years 1990-2000. As a result, these results may not be as accurate given that the criminal justice system is changing rapidly and the population as well. This leads to an obvious time disconnect for these results to the same populations today per se.
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