The Pretrial Racial Justice Initiative
Roundtable Discussion on Racial and Ethnic Disparities in Bail and Pretrial Detention
Research Summaries by Scholars

Professor Stephen Demuth


Data
This study uses a sample of 33,315 defendants—49% African American, 26% Latino, and 25% white—all charged with felony violent, drug, or property offenses in the State courts of the nation’s 75 most populous counties in 1990, 1992, 1994, and 1996. 1

Findings
The central finding is that even after taking into account differences in legally relevant factors such as offense type, number of charges, prior failures to appear, current criminal justice status, and prior criminal record, Latinos are the defendant group most likely to be detained pending case disposition; whites are the least likely to be detained and African Americans are in the middle. Four elements of the pretrial case process combine to result in higher levels of pretrial detention for Latino and African American defendants:

1) African American and Latino defendants are more likely than white defendants to be denied bail.
2) Latino defendants are less likely to receive a nonfinancial release option (e.g., ROR) than either white or African American defendants.
3) The amount of bail required for release is higher for Latino defendants than white defendants; there is no African American-white difference in bail amount.
4) Latino and African American defendants are more likely than white defendants to be held on bail because of an inability to post bail. Indeed, the inability to “make bail” accounts for the majority of African American and Latino defendants’ overall greater likelihood of pretrial detention. Overall, African American defendants are more likely to receive pretrial detention not mainly because of racially differential decision making by legal agents, but rather because of their inability to pay bail.

1 The data were compiled by the State Court Processing Statistics (SCPS) program of the Bureau of Justice Statistics. The counties included in the analysis are: Jefferson, AL, Maricopa, AZ, Pima, AZ, Alameda, CA, Los Angeles, CA, Orange, CA, Sacramento, CA, San Bernadino, CA, San Diego, CA, San Francisco, CA, Santa Clara, CA, Ventura, CA, Washington, DC, Broward, FL, Dade, FL, Duval, FL, Hillsborough, FL, Orange, FL, Palm Beach, FL, Pinellas, FL, Fulton, GA, Honolulu, HI, Cook, IL, DuPage, IL, Marion, IN, Jefferson, KY, Montgomery, MD, Baltimore (City), MD, Essex, MA, Middlesex, MA, Suffolk, MA, Wayne, MI, Jackson, MO, St. Louis, MO, Essex, NJ, Bronx, NY, Erie, NY, Kings, NY, Monroe, NY, New York, NY, Queens, NY, Suffolk, NY, Hamilton, OH, Allegheny, PA, Montgomery, PA, Philadelphia, PA, Shelby, TN, Dallas, TX, Harris, TX, Tarrant, TX, Salt Lake, UT, Fairfax, VA, King, WA, Milwaukee, WI.
On the other hand, Latinos, in addition to their inability to pay bail, also suffer the burden of legal decisions that make them more likely to have to pay bail, and more of it, than other defendants.

Conclusion
First, the results suggest that an inability to pay bail is the primary factor contributing to higher levels of pretrial detention among African American and Latino defendants. Tying money to freedom disproportionately disadvantages African Americans and Latinos.

Data
This study uses a sample of 39,435 defendants--male and female African-American, Latino, and white arrestees--formally charged with felony violent, drug, or property offenses in the State courts of the nation’s 75 most populous counties in 1990, 1992, 1994, and 1996. The data were compiled by the State Court Processing Statistics (SCPS) program of the Bureau of Justice Statistics.

Findings
Net of controls for offense type, number of charges, prior failures to appear, current criminal justice status, and prior criminal record:

1) Both gender and race-ethnicity have a significant influence on pretrial release outcomes (i.e., whether a defendant is released or detained). Female defendants received more favorable pretrial treatment than male defendants. Females were more likely to receive pretrial decisions that encouraged pretrial release (e.g., nonfinancial release options, lower bail amounts) than male defendants and they were more likely to gain pretrial release than male defendants.

2) African American and especially Latino defendants received less favorable treatment than white defendants. African American and Latino defendants were more likely to receive pretrial decisions that discourage pretrial release (e.g., financial release options, higher bail amounts) than white defendants and they were less likely to gain pretrial release than white defendants.

3) The effect of gender on pretrial release outcomes is generally uniform across African American, Latino, and white groups, but a small interaction effect exists. That is, the gender difference is smallest among whites and largest among Latinos with African Americans placing in the middle.

4) The African American-Latino-white differences in pretrial release outcomes are fairly consistent for men and women, but the differences are slightly greater among males than females.

5) White female defendants receive the most favorable pretrial release decisions in general (although there are a couple of small exceptions) and they are the defendant group most likely to be released prior to trial.

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2 See note 1, infra.
6) Latino male defendants, followed by African American male defendants, receive the least favorable pretrial release decisions and they are least likely to be released prior to trial.

7) Very substantial differences in pretrial release outcomes exist when comparisons are made between the most dissimilar gender-race/ethnicity comparisons (e.g., Latino males are considerably more likely to be detained [probability difference = 23%] than white females); these differences are concealed when the analysis considers only the independent effects of race/ethnicity and gender.

8) Both female and male white defendants are advantaged at the pretrial stage in large part because of their greater ability to make bail. Relative to similarly-situated gender 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.

Conclusions
The findings lend credence to the focal concerns perspective that 1) judges and other court actors develop “patterned responses” that express both gender and race-ethnicity assessments relative to blameworthiness, dangerousness, risk of recidivism or flight; and that 2) the defendant’s gender and ethnicity may intertwine with the defendant’s economic and social resources in ways that shape pretrial outcomes. Importantly, the findings demonstrate that it is essential to differentiate between pretrial decisions and pretrial outcomes. Just because defendants are given the opportunity for pretrial release (i.e., the decision) does not necessarily mean that they are actually released (i.e., the outcome). Indeed, the apparent decision to grant release is frequently at odds with the actual outcome. African American and Latino defendants are less able to pay bail than white defendants such that financial release options for these defendants may amount to de facto preventive detention decisions.
Professor John Wooldredge

Professor Wooldredge has published two recent articles on racial disparities in bail. For both articles, Dr. Wooldredge studied samples of 3,000-5,000 cases in a large urban jurisdiction and compared bail outcomes for African American defendants with the bail outcomes for White defendants. All analyses controlled for legally relevant factors (felony charges, offense seriousness, prior records, failure to appear, trials versus guilty pleas, etc.), so race group differences reflected differences for otherwise similarly-situated defendants. Some of the findings included the following:

1. African Americans, in general, are more likely to be detained in jail prior to trial compared to White non-Latinos, in general.
2. Young African American men face an additional disadvantage regarding pretrial detention. They are the most likely of any age (x) race (x) sex sub-group to be detained.
3. Young African American men are also less likely to be released on their own recognizance compared to any other sub-group.
4. Young African American men who are deemed eligible for bond are assigned higher bond amounts, on average, compared to any other subgroup.
5. The additional pretrial disadvantages faced by young African American men increase their chances of being placed in prison if convicted, even beyond the separate effect of being a young Black man on the odds of ending up in prison.
6. African American suspects who reside in more socially disadvantaged communities are more likely to be detained prior to trial.

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3 Faculty member in the School of Criminal Justice at the University of Cincinnati since 1990 (full professor since 2003). Ph.D. in Sociology received in 1986 from the University of Illinois. Research and publications focus on criminal case processing (sentencing and re-offending, and disparities in case processing and outcomes based on the extra-legal characteristics of defendants and the characteristics of the neighborhoods in which they reside), and institutional corrections (crowding, inmate crime and victimization). Currently involved in research on neighborhood effects on case dispositions and sentencing, official responses to prison inmate rule violations, prisoner victimization, and factors shaping correctional officers’ use of force. Classes taught at UC include courses on courts, institutional corrections, research methods, and statistics.
The State Court Processing Study (SCPS) tracks a sample of felony cases filed in 40 of the 75 largest urban counties until their final disposition or until one year has elapsed from the date of filing and include cases filed on a single day in May during each even year from 1990 to 2006. As such, it provides researchers with a large, nationally representative sample. Moreover, the SCPS data includes a plethora of measures of demographic characteristics, prior record, and current charge. This study is limited to an analysis of black, white, and Latino men who are charged with felony drug offenses. The study sample includes 36,709 defendants. The study examines the predictors of eight different variables: the decision to deny bail, the decision to grant a non-financial release, bail amount, whether defendants given bail are able to post bail, pretrial incarceration, whether the offender was adjudicated at a felony level, whether the defendant was given a sentence of incarceration and the length of the sentence imposed.

Findings:

1. Black and Latino men receive less beneficial sentencing decisions than do similarly situated white men.
2. Criminal legal officials are more likely to deny black and Latino men non-financial releases and also to deny them bail; moreover, when criminal legal officials give black and Latino defendants bail they give them bails that are substantially higher than those of similarly situated white men.
3. Criminal legal officials are more likely to adjudicate black and Latino defendants as felons than they are similarly situated white defendants.
4. Sentencing outcomes are determined by a combination of current case characteristics, prior record, economic resources and networks, and racially disparate processing. Thus, racially disparate outcomes are produced both indirectly through pretrial incarceration and level of adjudication and directly during sentencing decisions.

This suggests that policy changes that aim to address racial disparities in pretrial processing must address a number of issues including, at the very least, the abolition of money bail and the consideration of prior record by criminal legal officials during processing decisions.

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4 See note 1, infra
The State Court Processing Study (SCPS) tracks a sample of felony cases filed in 40 of the 75 largest urban counties. As such, it provides researchers with a large, nationally representative sample. There are five dependent variables for this study: the decision to deny bail, the decision to grant a non-financial release, bail amount, whether defendants given bail are able to post bail and pretrial incarceration.

While the pretrial incarceration results for defendants who are either given non-financial releases or denied bail are completely determined by these legal decisions, most defendants are given financial requirements for release. Some of these defendants are able to post bail while others are not. Thus, the economic resources and networks of defendants influence 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 release or detained pretrial. Both of these outcomes result from the interaction of legal decisions – the denial of bail, the granting of non-financial release, and the setting of bail amount – and the economic networks and resources of the defendants.

There are three major findings.

1. Anti-black disparity is most notable during the decision to deny bail and among defendants whose most serious arrest charge is for a violent crime.

2. Anti-Latino disparity is most notable during the decision to grant a non-financial release and among defendants whose most serious arrest charge is for a drug crime.

3. When there is disparity in the treatment between similarly situated black and Latino defendants, Latino defendants receive the less beneficial pretrial processing decisions.

These findings suggest that stereotypes influence criminal processing when their specific content is made salient by either the concerns relevant to a particular processing decision or the crime type of a defendant’s primary charge. Bail is denied when defendants are thought to be dangers to the community and defendant charged with violent crimes also bring up thoughts of danger and violence: these are the circumstances under which blacks fair worse. Non-financial releases are denied when defendants are feared to be flight risk and defendants charged with drug crimes may bring up may attributions, when these defendants are Latino one of these attributions may be thoughts of connections to international drug trafficking. These are the circumstances under which Latinos fair worse. Thus, black defendants fair worst when stereotypes of black criminality are primed just as Latino defendants fair worst when stereotypes of Latino criminality are primed.

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5 See note 1, infra.
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In pretrial diversions, defendants are made to complete a program such as a drug treatment program; if they do so successfully, all of their charges are dropped and they successfully avoid conviction. While the proportion of felony defendants who receive pretrial diversions is small, it is not negligible. Nearly eight percent of people who police arrest and charged with felonies are singled out by prosecutors for pretrial diversions. Because defendants’ charges are dropped so long as they complete the diversion program, pretrial diversions channel defendants out of the criminal legal system. This allows defendants a chance to avoid both the stigma and the concomitant material consequences of a criminal record. As such, racial disparities in defendants’ odds of receiving pretrial diversion are likely to breed racial disparities in the broad array of social and economic outcomes associated with felony convictions, including employment, income, family stability, and mental health.

This study finds that prosecutors are more likely to grant pretrial diversions to white defendants than they are to similarly situated black or Latino defendants. Disparities disadvantaging Latinos are only present among defendants whose most serious arrest charge is for a drug crime and who have no prior convictions. In contrast, disparities disadvantaging blacks occur among defendants whose most serious arrest charge is for a drug crime regardless of prior convictions and among defendants whose most serious arrest charge is for a violent crime and who have no prior convictions.

One possible interpretation of the findings is that prosecutors use racialized attributions, which are rooted in portrayals of black men as violent and dangerous and both black and Latino men as intimately involved with the drug trade, to reduce their uncertainty when making predictions about how likely defendants are to cooperate with and be rehabilitated by diversion programs.


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6 See note 1, infra.