

Reading the Tea Leaves: Utilizing Jail Inmate Surveys for Examining the Relationships
between Income, Legal Representation, and Pretrial Release

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Reading the Tea Leaves: Utilizing Jail Inmate Surveys for Examining the Relationships between Income, Legal Representation, and Pretrial Release

This paper makes a case that carefully analyzing jail inmate data can be useful for those interested in researching pretrial release processes. Utilizing the Survey of Inmates of Local Jails (SILJ) series, we show that the SILJ dataseries can often be usefully applied to examine the relationships between income, legal representation during the pretrial stage and making monetary bail. We also show that changes in survey methodology for the SILJ substantially influence findings that the SILJ generates concerning pretrial processes. Pretrial researchers ought to explore available jail inmate data for secondary data analysis, but should make sure to fully acquaint themselves with both the strengths and the limitations of jail inmate data.

The Need to Seek Alternate Sources of Data for Fresh Initiatives in the Study of Pretrial Release

In recent years, the study of pretrial release has relied heavily on the State Court Processing Statistics (SCPS) dataseries provided by the Bureau of Justice Statistics, United States Department of Justice. The SCPS, while an admirable dataseries, is unable to study some questions of fundamental importance to pretrial inquiry. Most notably, the currently available versions of the SCPS cannot examine questions concerning the roles that a defendant's education, familial relations, income, mental and physical health, and legal representation play in the pretrial release process. The SCPS and similar dataseries derived from court data systems and pretrial services agencies data systems are subject to the vagaries of those data systems in how the local courts and pretrial services agencies record defendants' sociodemographic information.¹ To overcome the limitations imposed by the use of actuarial data researchers have three choices: 1) supplement the actuarial data by means of defendant interviews or matching the actuarial data to alternate data systems (e.g., health and human services data systems; 2) to conduct surveys of defendants on their own during the jail intake process; or 3) to do secondary data analysis of existing high quality jail inmate surveys.

The first option may not always be feasible. The publicly available versions of the SCPS dataseries have all defendant identifiers removed. Even if these identifiers were made available via an application to the relevant authorities at the United States Department of Justice, going back in time with the SCPS for important jurisdictions such as New York City is impossible due to the manner in which SCPS was collected – the State of New York scrambles identifiers prior to releasing data to the United States Department of Justice's data collectors in order to comply with New York State laws. The second option is very expensive for individual researchers. Essentially, a researcher would have to conduct a version of the SCPS, which takes over two years to process and employs a fulltime staff to collect the data. Very few researchers have such resources at their fingertips or can apply to granting agencies with resources necessary at the millions of dollars scale. This leaves the average researcher with the third option, analyzing existing jail inmate data. Jail inmate surveys and actuarial data have a number of advantages over court data for pretrial researchers. Jails collect extensive inmate demographic and social-psychological information as part of screenings to place inmates into proper cellblocks or pods and to put inmates on treatment for mental or physical ailments. Jail inmates are also available for extensive survey interviews by state and federal authorities, if state or federal agencies wish to do so. Jail inmates have fewer obligations on their time than the general public and can be run through longer interviews.

This paper is an application of the United States Department of Justice's Survey of Inmates of Local Jails (SILJ) to examining the relationships between income, legal representation of during the pretrial stage and monetary bail release. We view the findings in this paper as exploratory. The findings here can be used to bolster

¹ Many of the court and pretrial data systems that contribute to the SCPS have had consistent problems in recording Latino ethnicity and pretrial supervision conditions. The Pretrial Justice Institute conducts the SCPS for the Bureau of Justice Statistics.

applications to grant agencies requesting funds for options one and two. The reasons that the findings presented are exploratory will become clear in the section of the paper devoted to the nature of the SILJ dataserries.

What We Know About Pretrial Defendants' Release Patterns

Before diving into analysis of jail inmates pretrial monetary bail, a discussion of what is known about the pretrial release process is appropriate.² The American Bar Association guidelines for pretrial release are an excellent summary of what judges and magistrates in most states are required to consider when making pretrial release decisions.³ According to the American Bar Association, pretrial release ought to be shaped by the following factors: 1) the safety of any person or the community; 2) failure to identify himself or herself satisfactorily; 3) refusal to sign the citation; 4) ties to the jurisdiction reasonably sufficient to ensure the defendant's appearance in court (such as age, residence, employment and family relationships); 5) previous failure to appear in response to a legal process for an offense; 6) compliance with release conditions in another case, court order or conditions of probation or parole; 7) the likelihood that the defendant will continue criminal conduct (such as prior criminal history); and 8) the nature of the alleged offense and potential penalty (American Bar Association, 2007, Standards 10-3.2, 10-3.3, & 10.4.2).

Current risk assessment scales that are employed by pretrial service agencies to assist judges and magistrates to make pretrial release decisions attempt to operationalize these rules by examining the degree to which current offense characteristics/severity, criminal justice status at arrest, and criminal history all play a major role in predicting a defendant's likelihood of pretrial misconduct (Maxwell, 1999; Podkopacz, 2006; Siddiqi, 2005; VanNostrand, 2003). Mental health and substance abuse indicators have also been found to consistently be associated with pretrial misconduct (Clark, 2004). Of slightly less consistency, community ties have been found to be predictive of pretrial misconduct (Pretrial Justice Institute, 2007). These factors are all legitimate considerations for a judge or magistrate to consider when placing a defendant on pretrial release, setting conditions of release, and setting monetary bail amounts. For purposes of brevity, we will refer to these three types of decisions as "pretrial release decisions."

How the judge or magistrate goes about incorporating the criteria mentioned above into pretrial release decisions are influenced by courtroom factors. Perhaps the most important of these is the presence of a defense attorney on behalf of the defendant at initial appearance and at the bail review hearing. When defense attorneys are present, the bail review hearings generally take longer and defendants are more likely to be able to present beneficial and verified information to the court (Colbert, Paternoster, & Bushway,

² There are at least three distinct types of decisions in the pretrial release process: placing a defendant on pretrial release, setting conditions of release, and setting monetary bail amounts. In our paper we will also analyze one pretrial outcome – the defendant's making the monetary bail amount necessary for pretrial release on monetary bail.

³ The state statutes on pretrial release vary from state to state. In the end, state statutes are the authoritative guidelines for a judge or magistrate in that state. The American Bar Association guidelines capture most of the factors contained in state statutes.

2002). As a result, the presence of an attorney at the bail review hearing is a major factor in determining whether a defendant is released pretrial (Colbert, Paternoster, & Bushway, 2002). Colbert and his colleagues found that Baltimore City criminal court defendants with an attorney present at the bail hearing 1) were more likely to be released on recognizance; and 2) had lower bail amounts set.

While the factors described above are legal factors, there are also extralegal factors that influence pretrial release decisions. In particular, a defendant's belonging to a minority racial or ethnic group, a defendant's gender and a defendant's income are not supposed to be of relevance to the pretrial release decision. Even so, 1970s research noted that pretrial jail inmates are disproportionately male, African-American, low-income, and unemployed Goldkamp (1979). Since the 1970s, the substance of these disparities has not shifted. What has advanced is the delineation of the systematic mechanisms of bias that seem to account for disparities (e.g., African American males are more likely than other defendants to have extensive criminal histories, which leads to African American male defendants being more likely than white males or black females as classified as high risk for failure to appear or high risk to public safety on pretrial release assessment instruments) (Free, 2002 & 2004). Free (2001) reviewed 52 studies of racial discrimination and presentencing outcomes since 1970 and concluded that 1) there was unequivocal evidence that pretrial decisions and outcomes were disparate by race and ethnicity and 2) the few studies which had not found racial disparities were methodologically flawed. However, Free's metanalysis was weakened by the fact that the only studies he had available to review were based on regional data, not national data.

The criminal justice system was found to be plagued by norms and rules that are defined by American cultural beliefs concerning motherhood and women's roles. These norms and rules disadvantaged men relative to women in pretrial release (Kruschnitt, 1984). Not only are women advantaged, but family role required considerations have produced outcomes that make African-American women are more advantaged relative to African-American men than white women are to white men (Daly, 1987; Demuth & Steffesmeier, 2004; Maxwell & Davis, 1999).

Income tends to play a mediating role to race and gender. Holmes, Daudistel, and Farell (1987) and Holmes, Hosch, Daudistel, Perez, and Graves (1996) demonstrated that Latino ethnicity and race indirectly reduce the likelihood of a defendant receiving a pretrial release. They observed that minorities are less likely to have sufficient income to afford private pretrial legal counsel. Private legal counsel generally results in a higher likelihood of pretrial release. Thus the limitations presented by defendants earning low incomes tend to disproportionately impact minorities. The same logic can be extended to women, since men are still more likely to earn more than women and women are more likely than men to have child support responsibilities that reduce the ability of women to devote income to paying for private legal counsel (Demuth & Steffensmeier, 2004).

A similar mediating role has been observed for employment. In jurisdictions with high unemployment rates, defendants who are unemployed are less likely to be released pretrial than defendants who are unemployed in jurisdictions with low unemployment

rates (D'Alessio, Stewart, & Stolzenberg, 2002). Defendants in these jurisdictions are more likely to be minorities.

Recently, large sample size multi-jurisdictional analysis of pretrial decision making and pretrial outcomes concerning felony defendants in large urban counties has become available through the Bureau of Justice Statistics State Court Processing Statistics (SCPS) database. This data has been a valuable tool to advance the minority and gender disparity studies conducted since the 1970s that Free (2001) summarized. The SCPS data reveal that among violent felony defendants, race and ethnicity disparities in pretrial release exist in the nations large urban counties (Maxwell, Robinson, & Post, 2003). Demuth (2003) found that these disparities in pretrial release went beyond violent felony defendants, including defendants charged with felony property, drug, and public order offenses. In fact, the interaction found between race/ethnicity and gender in local studies is true of large urban counties nationwide (Demuth & Steffensmeier, 2004). Moreover, Demuth and Steffensmeier were able to isolate a mechanism by which the disparities occur – Latinos and African-Americans were found to be less likely to be able to post bail. Schlesinger (2005) reaffirmed the conclusions of Demuth and Steffensmeier with a more recent cohort of felony defendants and made the additional observation that Latinos were less likely than whites or African-Americans to be made eligible for nonfinancial pretrial release. Simply put, the state of the art research concludes that Latino felony defendants in state courts are under a double burden – they are less likely to be deemed eligible for nonfinancial pretrial release and they are less likely to be able to pay the requisite bail amount necessary to secure pretrial release.

In sum, the SCPS dataseries is able to tell us that minorities have lower rates of pretrial release than whites in large urban counties and that a substantial fraction of this is due to differential rates of assignment of defendants to monetary bail release options. What the SCPS-based analyses cannot tell us is if the inability to afford to pay the monetary bail is associated not simply with a defendant's race and ethnicity, but also with a defendant's ability to engage the services of a lawyer during the pretrial stage, as a function a defendant's employment and income. From a perspective of equity, these three factors ought to not to have disparate impacts on defendants' ability to make monetary bail. As noted above, previous studies in local jurisdictions suggest that ability to engage the services of a private lawyer during the pretrial stage, employment, and income all impact the ability of a defendant to afford to pay monetary bail. What we will examine with the Survey of Inmates of Local Jails (SILJ) is how these three factors impact the decision to 1) place a defendant (surveyed in the SILJ as a jail inmate) on monetary bail versus holding the defendant and 2) the probability of a defendant making the bail set by the court.⁴

Using the Survey of Inmates of Local Jails to Study the Impact of the Use of Monetary Bail on Disparities in Pretrial Release Patterns

The Survey of Inmates of Local Jails

⁴ As will be detailed below, we are excluding from this analysis inmates who were placed on release on recognizance or another form of non-monetary bail.

There is currently one nationwide database series suitable for a preliminary examination of the two questions detailed above – the Survey of Inmates of Local Jails (SILJ). The SILJ was conducted in 1989, 1996, and 2002 by the United States Bureau of the Census for the Bureau of Justice Statistics, United States Department of Justice. Data was collected on the individual characteristics of jail inmates such as reason(s) for being held pretrial, sex, race, ethnicity, employment, income, education, current offenses, criminal histories, current legal representation, prior substance abuse and treatment, and mental health issues/treatment. In 1989, the sample was of male and female inmates held in institutions listed in the National Jail Census, 1988. Cases were weighted on four factors so the data would equal 395,554. In 1996, the sample was of male and female inmates held in institutions listed in the 1993 Census of Jails plus jails opened after the census but before the spring of 1996. Cases were weighted on four factors so the data would equal 507,026. In 2002, respondents were selected from a universe of 3,365 jails housing 529,084 adult males, 67,464 adult females and 9,449 juveniles. Cases were weighted on four factors so the data would equal 631,241 – the number of jail inmates on June 30, 2001. The SILJ has moved from a paper based survey in 1989 to a computer assisted personal interview (CAPI) survey by 2002.

The SILJ was not specifically designed for pretrial research. As a result the dataserie has a number of limitations. The most significant issue is the nature of inmates in the SILJ. These inmates are composed of three distinct groups: 1) booked inmates held prior to their initial appearance or bail review hearing; 2) inmates whose initial appearance or bail review hearing has occurred and the result was that the inmate was held in jail; and 3) sentenced jail inmates. The first group is not in our analysis. The second group is missing its natural comparison group, inmates held prior to initial appearance or bail review hearing and released pretrial. Thankfully, there are large numbers of sentenced jail inmates who could have been (and sometimes were) released pretrial to make this study possible. Nonetheless, we should always keep in mind that the results here are not based on a random cohort of pretrial defendants, but on a random cohort of sentenced jail inmates. Sentenced jail inmates have case evidentiary factors, offense severity factors (e.g., more likely to be non-violent offenders than prison inmates and less likely to have a most serious charge of a misdemeanor than person who are not incarcerated at all), and criminal history factors that are systematically different from defendants who eventually receive a prison sentence, defendants who receive a non-incarcerative sentence and defendants who are found not guilty. As a result, the findings this report generates are merely exploratory. Further research with a random cohort of pretrial defendants needs to confirm what findings are generated.

The SILJ has additional variable-specific limitations for pretrial research as well. In 2002, inmates with a monetary bail amount set were not asked what the monetary bail amount set was. In 1989 and 1996, inmates could state the monetary bail amount set. In addition, inmates in 1989 and 1996 could tell surveyors that they did not “make bail” because of an inability to pay. The limitations of the 2002 data dictate how we present findings. In 1989 and 1996, we use monetary bail amount as a predictor of pretrial release on monetary bail and the inmate’s use of the explanation that she was unable to

pay the monetary bail amount set as a response to a multi-item response question. In 2002, we cannot. To make results comparable, we also run models in 1989 and 1996 without monetary bail amount set.

The SILJ has a rather unusual way for measuring the presence of an attorney at the bail review hearing. Inmates were asked if they had talked to or heard from a lawyer or public defender lawyer prior to making a plea or the trial. For this analysis, we used a “low bar” to create the proxy. If the inmate was willing to testify to any contacts with counsel prior to making a plea or the trial, we considered this as the inmate having some form of counsel at initial appearance or a bail review hearing. All inmates who responded with no communication with counsel prior to plea or trial (which does occur) were considered as having no attorney at initial appearance or a bail review hearing. Alternative operationalizations of the proxy are possible.⁵

Ideally, we would also control for the role of the family in paying an inmate’s monetary bail. In 1989, inmates were asked what fraction of the monetary bail was paid by the family. However, this question was not asked in 1996 and 2002. We made the decision not to include in this paper a separate analysis of the impact of family assistance on an inmate’s making monetary bail. First, because we are looking at trends and we simply have no trend to work with. Second, because despite the interesting potential for narrowing the impact of income on making bail, the 1989 data is unlikely to reflect current practices. Third, an inmate’s income is likely a good proxy for the resources the family relations have at their disposal to assist the inmate if they wish to, especially among poor inmates.

A final limitation of the SILJ is that there is no measurement what forms of monetary bail the inmate was placed on. Optimally, we would adjust bail amounts for inmates placed on deposit bail, full cash bail, property bail, or surety bail. This information was not available in the 1996 and 2002 SILJ datasets, but was in the 1989 SILJ dataset. We make do with an unadjusted bail amount for this analysis. We hope that it will inspire future analyses that explore the 1989 SILJ dataset further.

While all the aforementioned items pose problems for those interested in pretrial research, these limitations are really no different than those posed by datasets currently in use by pretrial researchers such as the SCPS. The SCPS is not a representative sample of all pretrial defendants, but only of felony pretrial defendants in large urban counties. Thus, we view the fact that the sample here is “only” sentenced jail inmates and jail inmates held on pretrial as not a real obstacle to generating insightful findings. In fact, these inmates may well be a superb resource for exploring the pretrial processing of defendants whose most serious charge is a misdemeanor. While the SCPS does record the type of monetary bail set, it does not record many of the sociodemographic characteristics that are available in the SILJ or other jail inmate datasets. We believe that

⁵ Future work along these lines is in the Discussion section. We look forward to redoing the study with dummy variables for inmates who first spoke to their lawyer within 24 hours of arrest and inmates who first spoke to their lawyer within a week of arrest.

the potential for generating exploratory answers to previously unanswered questions is well worth the “risk” of utilizing high quality jail inmate survey data like the SILJ.

Construction of research variables from the SLIJ variables required modest SPSS syntax programming and can be made available by the author upon request. Some addition of external information to adjust income for variation in poverty rates was done and is detailed in the Appendix. Operationalizations and distributions of the variables utilized in the multivariate analyses are also available in the Appendix.

Analytic Approaches

Our initial analysis conveys aggregated annual trend data from the SILJ to show some trends in the characteristics of inmates unable to make monetary bail. These results are presented graphically in the section to follow. While this approach is cut-and-dry, our multivariate analyses are more a matter of judgment between various less than ideal options. The ability to pay a monetary bail amount set is dependent upon the inmate having a monetary bail amount set. As Demuth & Steffensmeier (2004) observe, modeling the likelihood of making monetary bail is really a Heckman Selection Bias Correction model, where the selection factor is whether a monetary bail amount is set as opposed to the inmate being placed on nonfinancial pretrial release or being held without bail.⁶ Prior to analysis, we excluded all inmates who expressed that they were held pretrial due to statutory ineligibility or had been placed on nonfinancial release. We are utilizing STATA 10 ® to do analysis. Ideally, analysis using STATA would occur in maximum likelihood Heckman Selection Bias Correction probit models so that we could incorporate the weighting the SILJ utilizes. We are able to incorporate weights effectively in 1989 and 1996, but in 2002, the dataset had the jail identifiers and strata removed for purposes of protection of respondents. As a result we were forced to run 2002 data with sample weighting’s influence on standard errors only corrected for by use of robust standard errors. We chose to exclude employment in the second stage of the models. Employment is a common pretrial release risk assessment criteria, which once income is accounted for should not be critical for finding sufficient monies to obtain monetary bail (Siddiqi, 2005; VanNostrand, 2003). The exclusion of a stage one variable that is expected to be significant in stage one but not stage two helps to reduce multicollinearity problems (Bushway, Johnson, & Slocum, 2007).

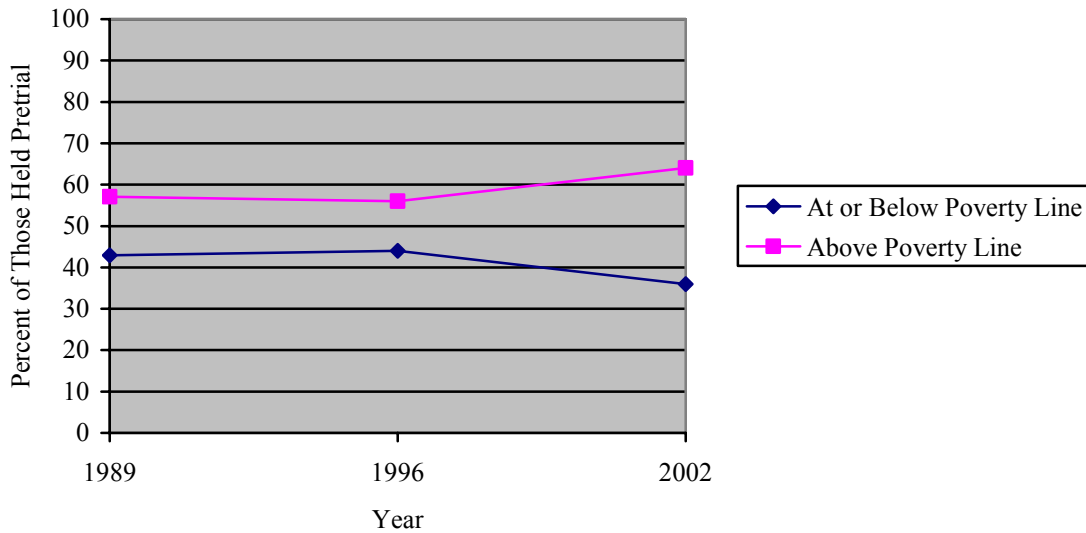
Findings

Chart one shows that the use of monetary bail to handle inmates during the pretrial process has resulted in a situation where an increasing percentage of inmates held pretrial are above the poverty line. While in 1989, only 57% of inmates held were above the poverty line, by 2002, this had increased to 64%.⁷

⁶ Held without bail refers to inmates who are held pretrial without opportunity to make bail or be placed on nonfinancial release.

⁷ For further detail on how the poverty line variable was constructed, see Appendix.

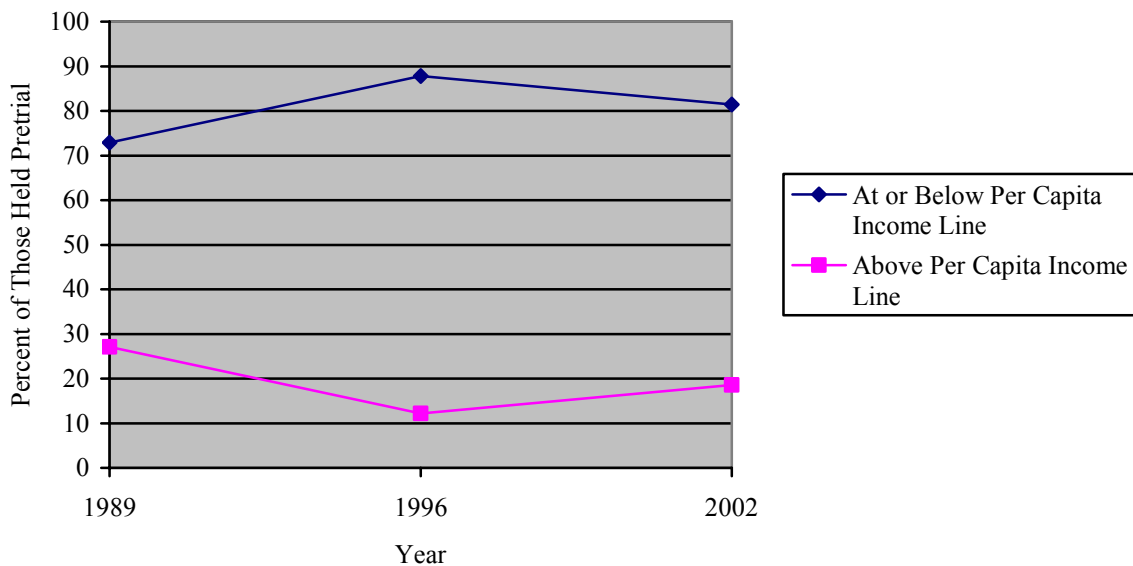
Chart 1. Percent of Those Held Pretrial by Income Above Poverty Line



Source: Survey of Inmates of Local Jails, 1989, 1996, & 2002.

According to chart two, between 73% and 89% of those held pretrial during the 1989-2002 period had incomes below the per capita income line.⁸

Chart 2. Percent of Those Held Pretrial by Income Above or Below Per Capita Income

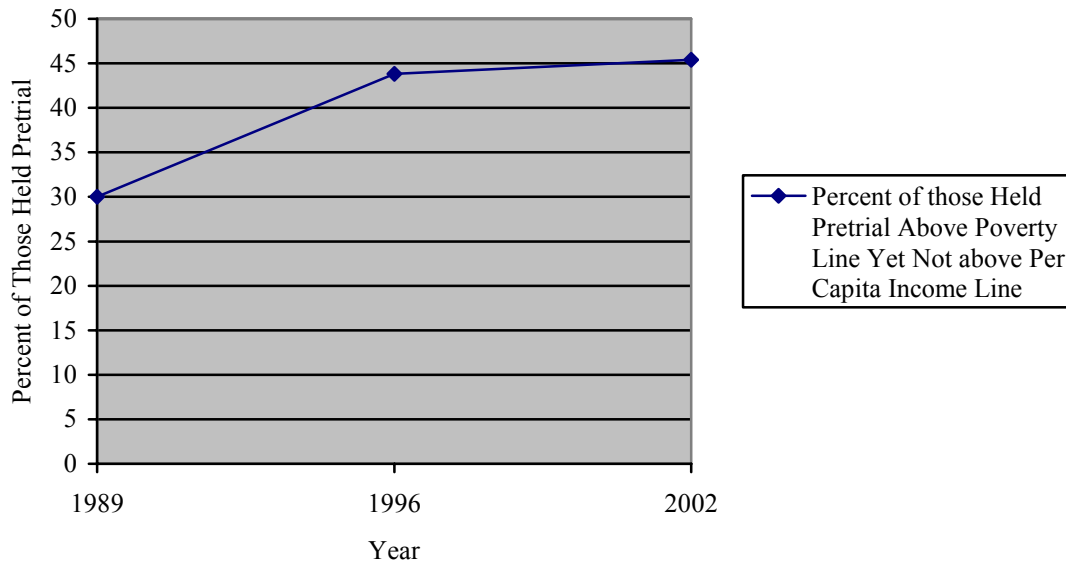


Source: Survey of Inmates of Local Jails, 1989, 1996, & 2002.

⁸ For further detail on how the per capita income variable was constructed, see Appendix.

Chart three shows that most inmates above the poverty line and below the per capita income line experienced a rapid increase in the likelihood of being held pretrial between 1989 and 1996 (30% to 44%), with no substantial increase between 1996 and 2002 (44% to 45%).

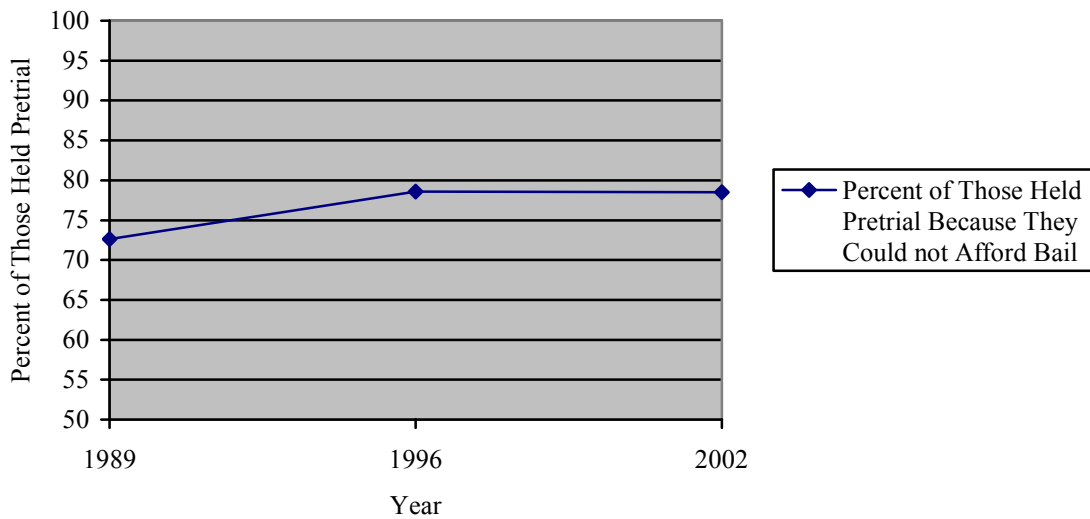
Chart 3. Percent of Those Held Pretrial Above Poverty Line Yet Not Above Per Capita Income Line



Source: Survey of Inmates of Local Jails, 1989, 1996, & 2002.

Chart four shows strong evidence that inmates are willing to claim that their financial means are an obstruction to their making monetary bail. Well over 70% of those held pretrial cite an inability to pay the monetary bail amount set as a key reason they were not released.

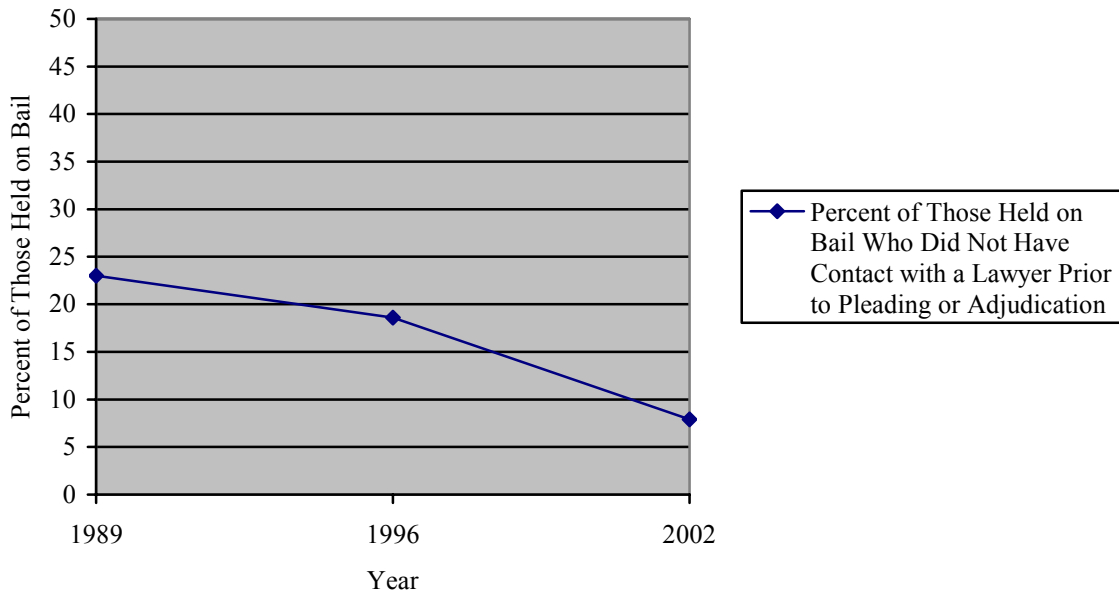
Chart 4. Percent of Those Held Pretrial Because They Said They Could Not Afford to Pay



Source: Survey of Inmates of Local Jails, 1989, 1996, & 2002.

Chart five indicates that inmates held pretrial who claim to not have had contact with a lawyer prior to making a plea or the trial stage has been decreasing. In 1989, 23% of those held pretrial had not had contact with a lawyer during the pretrial process. By 2002, only about 8% of those held pretrial had not had contact with a lawyer during the pretrial process

Chart 5. Percent of those Held on Bail Who Did Not Have Contact with a Lawyer Prior to Pleading or Adjudication



Source: Survey of Inmates of Local Jails, 1989, 1996, & 2002.

The word of jail inmates, while relevant, is clearly not the ideal source for verifying that monetary bails disproportionately impact those with lesser ability to pay. The fraction of inmates held pretrial that did not have contact with a lawyer prior to the process of making a plea or adjudication declined between 1989 and 2002. Was this decline associated with a change in the impact of having a lawyer during the pretrial process on the likelihood an inmate made monetary bail? The SILJ databases allow us to do multivariate analyses of inmate characteristics and monetary bail, with research variables such as income the month prior to arrest, employment status at arrest, legal representation during the pretrial process, and the monetary bail amount set. Multivariate analysis should help to clarify the relationships between income, legal representation during the pretrial process, and making monetary bail.

| | 1989 | | 1996 | | 2002 | |
|---|-------------|------|-------------------|------|-------------|------|
| | Coefficient | SE | Coefficient | SE | Coefficient | SE |
| <i>Held Pretrial-Dependent Variable</i> | | | | | | |
| Income | -.016* | .007 | -.023** | .008 | -.010 | .012 |
| Sex | -.105 | .069 | -.021 | .064 | .029 | .101 |
| Age | -.007* | .003 | -.008* | .003 | -.008 | .007 |
| African-American | .089 | .069 | .181* | .077 | -.181 | .145 |
| Latino | .013 | .080 | .057 | .083 | .084 | .141 |
| Other Race | -.072 | .141 | .287 ⁺ | .156 | -.070 | .158 |
| US Citizen ¹ | .146 | .099 | -.401** | .118 | -.321 | .262 |
| Education | .015 | .019 | .009 | .024 | .018 | .036 |
| Homeless ² | | | -.681 | .490 | .064 | .122 |

| | | | | | | |
|--|-------------------|------|--------------------|------|-------------------|------|
| Live with Nuclear Family | -.080 | .139 | -.695 ⁺ | .411 | -.074 | .094 |
| Alcohol Abuser | -.085 | .053 | -.043 | .066 | .049 | .120 |
| Drug Abuser | .025 | .055 | .074 | .062 | -.016 | .111 |
| Mental Illness | .027 | .056 | .281** | .095 | .107 | .110 |
| Lawyer Pretrial | -.601*** | .070 | -.407*** | .097 | .258 | .372 |
| Violent Offense | .501*** | .071 | .371** | .112 | .240 | .202 |
| Property Offense | .174* | .076 | .190 ⁺ | .101 | .399 ⁺ | .210 |
| Drug Offense | .182** | .066 | .075 | .098 | .122 | .205 |
| Criminal Justice Status at Arrest | -.313*** | .055 | -.988*** | .074 | -1.175*** | .284 |
| Prior Violent Conviction | .211** | .061 | .403*** | .098 | -.063 | .163 |
| Prior Non Violent Conviction | .110 | .072 | .297** | .086 | -.001 | .130 |
| Prior Probation Terms | -.094** | .030 | -.214*** | .033 | -.057 | .056 |
| Prior Incarceration Terms | .013 | .021 | -.046 ⁺ | .024 | .028 | .038 |
| Constant | 1.034*** | .241 | 1.054*** | .231 | -.499 | .709 |
| <i>Bail Amount Set-Dependent Variable</i> | | | | | | |
| Income | -.003 | .009 | -.008 | .009 | .000 | .011 |
| Employment | .112* | .060 | .045 | .081 | .011 | .097 |
| Sex | .170* | .083 | -.079 | .087 | .001 | .088 |
| Age | -.002 | .004 | .006 | .004 | -.009* | .004 |
| African-American | .035 | .080 | -.091 | .077 | -.131 | .089 |
| Latino | -.075 | .101 | -.106 | .103 | .021 | .126 |
| Other Race | .130 | .194 | -.111 | .170 | .238 ⁺ | .137 |
| US Citizen ¹ | .141 | .125 | .340* | .141 | .715*** | .171 |
| Education | -.032 | .026 | -.011 | .028 | -.036 | .030 |
| Homeless ² | | | 4.693*** | .236 | -.146 | .115 |
| Live with Nuclear Family | -.022 | .175 | .482 | .469 | .088 | .083 |
| Alcohol Abuser | .104 | .075 | .013 | .070 | .150 ⁺ | .084 |
| Drug Abuser | .184** | .066 | .057 | .071 | -.104 | .092 |
| Mental Illness | .024 | .073 | -.048 | .110 | .062 | .087 |
| Lawyer Pretrial | .368*** | .085 | .458*** | .083 | .579*** | .103 |
| Violent Offense | .091 | .093 | .195 ⁺ | .102 | .115 | .125 |
| Property Offense | .115 | .096 | .264** | .090 | .095 | .112 |
| Drug Offense | .238* | .095 | .251* | .106 | .309** | .113 |
| Criminal Justice Status at Arrest | .079 | .077 | -.001 | .079 | .156 ⁺ | .082 |
| Prior Violent Conviction | .017 | .075 | -.271* | .113 | -.020 | .134 |
| Prior Non Violent Conviction | -.109 | .091 | -.238* | .105 | .021 | .110 |
| Prior Probation Terms | .069 ⁺ | .036 | .048 | .039 | -.011 | .043 |
| Prior Incarceration Terms | .035 | .027 | .043 | .027 | .007 | .036 |
| Constant | .405 | .287 | .481 ⁺ | .258 | .227 | .300 |
| Rho ³ | -1.000 | .003 | -.290 | .346 | -.686 | .455 |
| n | 3,564 | | 3,801 | | 2,573 | |
| F | 9.45*** | | 22.73*** | | | |
| χ^2 | | | | | 96.73*** | |
| ⁺ p≤.10; *p≤.05; **p≤.01; ***p≤.001. | | | | | | |
| ¹ In 1990, citizenship status not available, substituted place of birth. | | | | | | |
| ² Homeless in month prior to arrest was not available in 1989. Since this is a common element of pretrial risk instruments, it was decided to include it when available to add verisimilitude to criminal justice decision-making. In 1996, all homeless in analysis had a bail amount set. | | | | | | |
| ³ Significance tests for rho cannot be computed with weighted data. | | | | | | |
| Source: Survey of Inmates of Local Jails, 1989, 1996, & 2002. | | | | | | |

According to table 1, if monetary bail amount set is not taken into consideration, income does not actually impact either the likelihood of having a monetary bail amount set or making monetary bail in 2002. These null findings do not hold up as we go back in time. In 1989 and 1996, income is a statistically significant predictor of making monetary bail and not a statistically significant predictor of having a monetary bail amount set. This is as expected. While the decision to use monetary bail as a form of release is not strongly influenced by the inmate's financial status, the inmate's ability to capitalize on the opportunity to gain release by monetary bail is strongly influenced by the inmate's financial status. Legal representation during the pretrial process significantly reduces the likelihood an inmate is held pretrial in 1989 and 1996, but not in 2002. In every year having a lawyer during the pretrial process significantly increases the likelihood of a monetary bail amount being set.

| Table 2. Models of Citing Inability to Pay for Reason Being Held Pretrial | | | | | | |
|---|--------------------|------|-------------------|------|--------------------|------|
| | 1989 | | 1996 | | 2002 | |
| | Coefficient | SE | Coefficient | SE | Coefficient | SE |
| <i>Cited Inability to Pay-Dependent Variable</i> | | | | | | |
| Income | -.017* | .007 | -.056*** | .007 | -.029*** | .008 |
| Sex | .071 | .060 | -.179** | .065 | -.185** | .069 |
| Age | -.005 ⁺ | .003 | .002 | .003 | .000 | .003 |
| African-American | .175** | .060 | .072 | .071 | .062 | .070 |
| Latino | .105 | .082 | .337** | .109 | .086 | .093 |
| Other Race | .127 | .131 | .119 | .165 | .126 | .104 |
| US Citizen ¹ | -.178 ⁺ | .094 | -.326 | .204 | -.287 ⁺ | .165 |
| Education | -.034 ⁺ | .019 | -.000 | .023 | -.046 ⁺ | .024 |
| Homeless ² | | | .877 | .595 | .322*** | .092 |
| Live with Nuclear Family | -.082 | .137 | .605 ⁺ | .351 | .026 | .063 |
| Alcohol Abuser | .047 | .053 | -.034 | .056 | .069 | .067 |
| Drug Abuser | .103 ⁺ | .054 | .252*** | .058 | .125 ⁺ | .074 |
| Mental Illness | .002 | .055 | .099 | .083 | .111 ⁺ | .065 |
| Lawyer Pretrial | -.051 | .073 | -.021 | .191 | .250* | .106 |
| Violent Offense | .273*** | .065 | .325** | .096 | .362*** | .096 |
| Property Offense | .043 | .073 | .264* | .102 | .326*** | .088 |
| Drug Offense | .062 | .071 | .040 | .113 | .052 | .090 |
| Criminal Justice Status at Arrest | -.211*** | .056 | -.292*** | .058 | -.327 | .068 |
| Prior Violent Conviction | .016 | .061 | .106 | .138 | .010 | .097 |
| Prior Non Violent Conviction | .075 | .071 | -.038 | .118 | .002 | .088 |
| Prior Probation Terms | -.073* | .029 | -.092** | .034 | -.016 | .034 |
| Prior Incarceration Terms | .044 ⁺ | .023 | .031 | .026 | .092** | .027 |
| Constant | .246 | .212 | .603 | .569 | -.159 | .259 |
| <i>Bail Amount Set-Dependent Variable</i> | | | | | | |
| Income | -.006 | .009 | -.008 | .009 | .002 | .011 |
| Employment | .199** | .061 | .067 | .150 | .011 | .103 |
| Sex | .188* | .082 | -.074 | .090 | .002 | .089 |
| Age | -.000 | .003 | .006 | .004 | -.008* | .004 |
| African-American | -.024 | .078 | -.086 | .087 | -.117 | .090 |
| Latino | -.068 | .093 | -.107 | .105 | -.001 | .127 |
| Other Race | .188 | .195 | -.113 | .167 | .271 ⁺ | .147 |

| | | | | | | |
|--|-------------------|------|-------------------|-------|-----------|------|
| US Citizen ¹ | .117 | .119 | .330* | .138 | .707*** | .166 |
| Education | -.028 | .025 | -.011 | .028 | -.035 | .030 |
| Homeless ² | | | 7.115 | . | -.125 | .118 |
| Live with Nuclear Family | -.035 | .172 | .458 | .452 | .081 | .082 |
| Alcohol Abuser | .093 | .072 | .014 | .072 | .166* | .085 |
| Drug Abuser | .210** | .067 | .063 | .080 | -.109 | .091 |
| Mental Illness | .025 | .073 | -.041 | .109 | .055 | .088 |
| Lawyer Pretrial | .361*** | .085 | .455*** | .086 | .587*** | .101 |
| Violent Offense | .090 | .092 | .194 ⁺ | .102 | .133 | .120 |
| Property Offense | .120 | .094 | .265** | .090 | .101 | .109 |
| Drug Offense | .216* | .092 | .247* | .106 | .297** | .113 |
| Criminal Justice Status at Arrest | .092 | .074 | -.002 | .078 | .163* | .081 |
| Prior Violent Conviction | -.009 | .076 | -.269* | .115 | -.038 | .132 |
| Prior Non Violent Conviction | -.108 | .090 | -.238* | .104 | .016 | .111 |
| Prior Probation Terms | .067 ⁺ | .035 | .047 | .040 | -.001 | .044 |
| Prior Incarceration Terms | .039 | .025 | .046 ⁺ | .027 | .011 | .036 |
| Constant | .306 | .278 | .472 | .294 | .165 | .302 |
| Rho ³ | .999 | .000 | .224 | 1.065 | .712 | .275 |
| n | 3,564 | | 3,801 | | 2,573 | |
| F | 4.23*** | | 10.63*** | | | |
| χ^2 | | | | | 125.05*** | |
| ⁺ p≤.10; *p≤.05; **p≤.01; ***p≤.001. | | | | | | |
| ¹ In 1990, citizenship status not available, substituted place of birth. | | | | | | |
| ² Homeless in month prior to arrest was not available in 1989. Since this is a common element of pretrial risk instruments, it was decided to include it when available to add verisimilitude to criminal justice decision-making. In 1996, all homeless in analysis had a bail amount set. | | | | | | |
| ³ Significance tests for rho cannot be computed with weighted data. | | | | | | |
| Source: Survey of Inmates of Local Jails, 1989, 1996, & 2002. | | | | | | |

According to table 2, income does affect the likelihood an inmate cites an inability to pay as a key reason for not making monetary bail after having a monetary bail amount set. The higher the inmate's income, the less likely the inmate is to cite inability to pay. Having a lawyer during the pretrial process is not consistently statistically significantly related with citing inability to pay. In 1989 and 1996, the coefficient is in the expected direction – inmates with a lawyer during the pretrial process would be less likely to cite inability to pay. However, in 2002 the lawyer coefficient is positive and is significant.

| | 1989 | | 1996 | |
|---|-------------|----------|-------------------|----------|
| | Coefficient | SE | Coefficient | SE |
| <i>Held Pretrial-Dependent Variable</i> | | | | |
| Bail Amount | 4.58e-06*** | 7.55e-07 | 5.93e-07 | 3.79e-07 |
| Income | -.020*** | .007 | -.022* | .009 |
| Sex | -.070 | .084 | -.004 | .060 |
| Age | -.009** | .004 | -.009** | .003 |
| African-American | .098 | .075 | .178* | .072 |
| Latino | -.021 | .092 | .074 | .083 |
| Other Race | -.032 | .164 | .297 ⁺ | .152 |
| US Citizen ¹ | -.128 | .115 | -.363** | .121 |
| Education | -.011 | .024 | .005 | .023 |

| | | | | | |
|--|-------------------|------|--|--------------------|------|
| Homeless ² | | | | -.612 | .520 |
| Live with Nuclear Family | -.103 | .153 | | -.689 ⁺ | .414 |
| Alcohol Abuser | -.086 | .063 | | -.042 | .063 |
| Drug Abuser | .099 | .087 | | .068 | .061 |
| Mental Illness | .028 | .063 | | .279** | .093 |
| Lawyer Pretrial | -.627*** | .137 | | -.467*** | .089 |
| Violent Offense | .487*** | .088 | | .299* | .138 |
| Property Offense | .242** | .092 | | .151 | .129 |
| Drug Offense | .225* | .100 | | .024 | .112 |
| Criminal Justice Status at Arrest | -.301*** | .067 | | -.949*** | .130 |
| Prior Violent Conviction | .233** | .068 | | .418*** | .092 |
| Prior Non Violent Conviction | .094 | .086 | | .320*** | .085 |
| Prior Probation Terms | -.092* | .037 | | -.218*** | .038 |
| Prior Incarceration Terms | .027 | .024 | | -.044 ⁺ | .023 |
| Constant | .854 ⁺ | .509 | | 1.154*** | .236 |
| <i>Bail Amount Set-Dependent Variable</i> | | | | | |
| Income | -.003 | .003 | | -.008* | .004 |
| Employment | .145*** | .029 | | .044 | .034 |
| Sex | .167** | .052 | | -.083 ⁺ | .050 |
| Age | -.001 | .002 | | .006*** | .001 |
| African-American | -.036 | .040 | | -.085* | .043 |
| Latino | -.079 | .051 | | -.105* | .054 |
| Other Race | .175* | .069 | | -.094 | .098 |
| US Citizen ¹ | .155** | .054 | | .350*** | .072 |
| Education | -.038 | .010 | | -.009 | .012 |
| Homeless ² | | | | 4.470*** | .097 |
| Live with Nuclear Family | -.027 | .064 | | .523** | .190 |
| Alcohol Abuser | .094*** | .026 | | .016 | .026 |
| Drug Abuser | .209*** | .030 | | .051 ⁺ | .027 |
| Mental Illness | .021 | .030 | | -.051 | .042 |
| Lawyer Pretrial | .360*** | .045 | | .496*** | .045 |
| Violent Offense | .091* | .041 | | .208*** | .043 |
| Property Offense | .107** | .037 | | .273*** | .044 |
| Drug Offense | .227*** | .039 | | .263*** | .039 |
| Criminal Justice Status at Arrest | .082** | .028 | | -.016 | .028 |
| Prior Violent Conviction | .018 | .030 | | -.259*** | .055 |
| Prior Non Violent Conviction | -.116** | .035 | | -.232*** | .056 |
| Prior Probation Terms | .070*** | .017 | | .051*** | .014 |
| Prior Incarceration Terms | .030* | .012 | | .040** | .013 |
| Constant | .356** | .128 | | .436*** | .114 |
| Rho ³ | .162 | .381 | | -.548 | .552 |
| n | 3,061 | | | 3,308 | |
| F | 9.50*** | | | 15.10*** | |
| ⁺ p≤.10; *p≤.05; **p≤.01; ***p≤.001. | | | | | |
| ¹ In 1990, citizenship status not available, substituted place of birth. | | | | | |
| ² Homeless in month prior to arrest was not available in 1989. Since this is a common element of pretrial risk instruments, it was decided to include it when available to add verisimilitude to criminal justice decision-making. In 1996, all homeless in analysis had a bail amount set. | | | | | |
| ³ Significance tests for rho cannot be computed with weighted data. | | | | | |
| Source: Survey of Inmates of Local Jails, 1989 & 1996. | | | | | |

Table 3 includes a control for the monetary bail amount set that the inmate must pay. Even when the monetary bail amount is controlled for, income is still a statistically significant predictor of making monetary bail in 1989 and 1996. Interestingly, the monetary bail amount is not always a significant predictor of making monetary bail. This suggests that the inmate's financial means, once over a certain threshold, can overcome the monetary bail amount set. The presence of a lawyer during the pretrial process retains its statistical significance and is in the expected direction.

| Table 4. Models of Citing Inability to Pay for Reason Being Held Pretrial, with Bail Amount Set Included | | | | | |
|--|--------------------|----------|--|--------------------|----------|
| | 1989 | | | 1996 | |
| | Coefficient | SE | | Coefficient | SE |
| <i>Cited Inability to Pay-Dependent Variable</i> | | | | | |
| Bail Amount | 5.05e-06*** | 1.43e-06 | | 2.94e-06*** | 7.34e-07 |
| Income | -.022** | .007 | | -.063*** | .007 |
| Sex | .086 | .065 | | -.160* | .063 |
| Age | -.005 ⁺ | .003 | | .002 | .003 |
| African-American | .197** | .060 | | .068 | .063 |
| Latino | .118 | .083 | | .314** | .092 |
| Other Race | .131 | .133 | | .092 | .164 |
| US Citizen ¹ | -.194 | .099 | | -.255 ⁺ | .136 |
| Education | -.048* | .021 | | -.002 | .023 |
| Homeless ² | | | | .739 | .583 |
| Live with Nuclear Family | -.076 | .144 | | .451 | .342 |
| Alcohol Abuser | .061 | .054 | | -.012 | .057 |
| Drug Abuser | .103 ⁺ | .056 | | .260*** | .061 |
| Mental Illness | .006 | .056 | | .107 | .083 |
| Lawyer Pretrial | -.155 ⁺ | .082 | | -.083 | .096 |
| Violent Offense | .166* | .070 | | .206* | .088 |
| Property Offense | .082 | .073 | | .251** | .079 |
| Drug Offense | -.018 | .071 | | .009 | .083 |
| Criminal Justice Status at Arrest | -.212*** | .056 | | -.296 | .058 |
| Prior Violent Conviction | .007 | .063 | | .111 | .098 |
| Prior Non Violent Conviction | .097 | .071 | | -.014 | .095 |
| Prior Probation Terms | -.088** | .029 | | -.085** | .028 |
| Prior Incarceration Terms | .050 | .024 | | .024 | .024 |
| Constant | .336 | .230 | | .569*** | .218 |
| <i>Bail Amount Set-Dependent Variable</i> | | | | | |
| Income | -.004 | .003 | | -.009* | .004 |
| Employment | .197*** | .032 | | .073 ⁺ | .039 |
| Sex | .186*** | .053 | | -.072 | .045 |
| Age | -.001 | .002 | | .006*** | .001 |
| African-American | -.024 | .041 | | -.081 ⁺ | .043 |
| Latino | -.072 | .051 | | -.112* | .052 |
| Other Race | .192** | .072 | | -.109 | .088 |
| US Citizen ¹ | .161** | .053 | | .332*** | .067 |
| Education | -.036*** | .010 | | -.008 | .011 |
| Homeless ² | | | | 4.839*** | .172 |

| | | | | | |
|--|---------|------|--|----------|------|
| Live with Nuclear Family | -.040 | .067 | | .448*** | .118 |
| Alcohol Abuser | .090*** | .024 | | .014 | .026 |
| Drug Abuser | .215*** | .026 | | .060* | .028 |
| Mental Illness | .019 | .030 | | -.041 | .041 |
| Lawyer Pretrial | .361*** | .045 | | .463*** | .043 |
| Violent Offense | .092* | .040 | | .206*** | .044 |
| Property Offense | .111** | .037 | | .277*** | .041 |
| Drug Offense | .227*** | .039 | | .256*** | .038 |
| Criminal Justice Status at Arrest | .086** | .028 | | -.014 | 0.27 |
| Prior Violent Conviction | .006 | .032 | | -.268*** | .041 |
| Prior Non Violent Conviction | -.120** | .036 | | -.243*** | .037 |
| Prior Probation Terms | .075*** | .017 | | .050*** | .015 |
| Prior Incarceration Terms | .034** | .012 | | .044*** | .012 |
| Constant | .285* | .130 | | .431*** | .116 |
| Rho ³ | .644 | .104 | | .208 | .228 |
| n | 3,061 | | | 3,308 | |
| F | 4.76*** | | | 9.53*** | |
| +p≤.10; *p≤.05; **p≤.01; ***p≤.001. | | | | | |
| ¹ In 1990, citizenship status not available, substituted place of birth. | | | | | |
| ² Homeless in month prior to arrest was not available in 1989. Since this is a common element of pretrial risk instruments, it was decided to include it when available to add verisimilitude to criminal justice decision-making. In 1996, all homeless in analysis had a bail amount set. | | | | | |
| ³ Significance tests for rho cannot be computed with weighted data. | | | | | |
| Source: Survey of Inmates of Local Jails, 1989 & 1996. | | | | | |

We were surprised to find that actual income was unrelated to citing inability to pay in 1989 prior to controlling for monetary bail amount set. Looking at table 4 reveals that finding holds true after controlling for monetary bail amount set. This suggests that perceptions of inability to pay are not always tightly connected to income. This is most likely due to the hypothesis advanced by Demuth and Steffensmeier (2004) concerning the variation in financial responsibilities that inmates face as a result of child care, as well as other inmate financial responsibilities that are not measured by the SILJ. Once monetary bail amount set was controlled for, the statistical significance of the presence of a lawyer during the pretrial process coefficient is marginal. In 1989, the presence of a lawyer during the pretrial process is significantly associated at the 90% confidence level with citing inability to pay.

Other Observations Concerning the Variables in the Models

One of the best aspects of the Heckman Two Stage Selection Bias Correction approach is the ability to separate out when an independent variable impacts outcomes – at the selection stage, at the final outcome or at both stages. In our case, the selection stage is having a monetary bail amount set and the final outcome is actually being released having paid the monetary bail amount. The data from the SILJ make a good case for the correctness of the stage approach. The rho statistic is the conventional means by which to decide if a selection bias correction was necessary. However, rho is a difficult statistic to use in this particular analysis, as we are working with weighted data, which the

significance test for the rho statistic is not designed to take into account.⁹ For non-sample weight adjusted data, a chi-square test suffices to show if rho indicates that both empirically there is a need for selection bias correction models. Since we are working with weighted data, a combination of logic and finding variables that ought to take opposite signs in each stage taking opposite signs must suffice or finding variables which ought to matter in one stage only being significant only in that stage.

In the tables we can see that an inmate's having pretrial contact with a lawyer is generally significantly positively predictive of having a monetary bail amount set, but significantly negatively associated with being held on bail pretrial. Methodologically, this indicates that the two stages are distinct decisions. Substantively, the reversal of sign is also an indication that the criminal justice system is functioning as expected. When defense lawyers are involved during the pretrial stage, one of the purposes is to argue the merits of the defendant's release eligibility (Colbert, Paternoster, & Bushway, 2002). Defense lawyers' success is borne out by the positive association between having a lawyer and having a monetary bail amount set.¹⁰ The negative association between having a lawyer and being held on bail is likely due to the lawyer's ability to get bail amounts reduced to ranges within the defendant's capability to afford (Colbert, Paternoster, & Bushway, 2002).

Another example of differential impact of an independent variable on the dependent variable by process stage is citizenship status. The United States Supreme Court in *Zadvydas v. Davis*, 533 US 678 (2001) held that aliens are entitled to bail under the Due Process Clause. *Kim v. Ziglar*, 276 F.3d 523 (9th Cir. 2002) concluded that aliens are entitled to individualized bail hearings where flight risk and danger to the community are considered. These cases are comparatively recent. They reflect the attempts by the former United States Immigration and Naturalization Service (INS) during the 1990s and early 2000s to have jails automatically hold aliens for deportation proceedings by INS without a bail hearing. Thus it seems likely that during the period of the data collected in this study citizenship was used (however erroneously) in some jurisdictions to bar inmates from eligibility to make monetary bail. If that is correct, citizenship should have most of its impact at the monetary bail setting stage, and not on the ability of an inmate to make the monetary bail amount set, as the Eighth Amendment to the United States Constitution specifies that defendants have the right to not have excessive bail amounts set. In every year, United States citizens are more likely have a monetary bail amount set than non-citizens. Except in 1996, citizenship status does not appear to impact the likelihood of making monetary bail in the event a monetary bail amount has been set. This is another indication that the selection models are appropriate.

The non-impact of an inmate's prior violent convictions on the assignment of inmates to monetary bail in the SILJ data also indicates the suitability of a selection model. Without a selection model, analysis likely would have missed that while prior violent convictions

⁹ Interpreting the sign of rho is not always a good idea, as the sign is highly model specific and subject to minor changes in the combination of stage one predictor variables.

¹⁰ Keep in mind that we have excluded inmates who were placed on nonfinancial release. Thus the inmate either could be held pretrial or placed into eligibility to make monetary bail.

are associated with lower likelihoods of making monetary bail, they are not associated with differing likelihoods of having a monetary bail amount set. If pretrial release is to be done in a manner that protects the public, the presence of a prior violent conviction ought to make a significant proportion of inmates less likely to be placed into eligibility to make monetary bail. No such impact is observed in the SILJ data. On the other hand, we do not explicitly see that the monetary bail amount is being used as a barrier set in relation to the hazard to public safety that the inmate presents. In table 3, inmates with prior violent convictions are less likely to make monetary bail even when income and monetary bail amount set are controlled for.

According to current criminal justice practice, the current offense can be used at both the eligibility decision stage and the bail amount setting decision stage, as it is an accepted risk factor (Mahoney, Beaudin, Carver, Ryan, & Hoffman, 2001; Van Nostrand, 2003) and is also a major component of bail schedules. The current offense in a “bail schedule” system is generally how the monetary bail amount is set. The SILJ data bear these two expectations out. Offense type matters more for making monetary bail when monetary bail amount set is not controlled for. However, offense type consistently matters for having a monetary bail amount set. Relative to other public order inmates,¹¹ inmates with a most serious violent, property and drug charge are usually more likely to have a monetary bail amount set. Keep in mind that in this analysis, inmates released on nonfinancial release¹² have been excluded (see page 8), so this is actually a new finding. This is quite interesting because according to Cohen & Reaves (2006), felony public order defendants are more likely to be placed on monetary bail than felony violent, property, or drug defendants. We may be seeing a difference here generated by the fact that these inmates probably had a most serious charge that was a misdemeanor rather than a felony charge. Future analyses need to probe this finding further.

Gender, ethnicity, and race did not play a consistently significant role in either eligibility for pretrial release or in citing inability to pay as a reason for not being released pretrial. Thus, while the monetary bail decision process and the outcome of making bail appears to be biased against those of lesser income, it is simply that, lesser income, and not accompanied by direct effects of gender, race, and ethnicity on pretrial decisions and making monetary bail on a consistent basis.

What Makes 2002 So Different from 1989 and 1996

In 2002, the Bureau of Justice Statistics decided to discontinue asking inmates about the inmate’s estimated illegal income. This led to a removal of many inmates on the lower end of the income spectrum from analysis on the 2002 data. In 2002, 1,701 (24.4% of all inmates) inmates were missing income information. In 1996 and 1989, less than 12% of all inmates were missing income information. In 2002, the difference in bail setting rates

¹¹ Other public order offenses cover a wide range of offense severity. Some other public order offenses are somewhat violent in nature, such as rioting or RICO violations, other offenses are truly minor offenses such as liquor law violations. We suspect the majority of those who are held without bail being set are for the more serious sorts of other public order offenses.

¹² Most of these are inmates released on their own recognizance.

was statistically significantly higher for cases with known income than unknown income at the 90% confidence level (See Appendix table 1 for details). We suspect that this may be behind the failure of income to be statistically significant in 2002 models. We can see that 2002 was anomalous in several ways beyond the significance of income. Most of the known predictors of pretrial release were not significant in 2002 that were in 1989 and 1996, such as current offense and prior criminal history. In all, the 2002 data seems to be quite problematic.

Discussion

What can we draw from this analysis? First, whether intentional or not, the use of monetary bail as an option for pretrial release does seem to negatively impact the ability of inmates of lower incomes to achieve pretrial release. Second, for the 1989 to 2002 time period, the mid-1990s was when inmates felt that the monetary bail amount set most negatively impacted their ability to make monetary bail. Third, the SILJ, for all its challenges to the analyst interested on pretrial release processes, does provide data that appear to generate plausible results in most years. In fact, a review of the older SILJ datasets (1983 & 1989) suggests that much more detailed analysis can be performed utilizing older data. Fourth, the multivariate models of SILJ data do support hypotheses that that income and the presence of legal counsel during the pretrial stage are associated with inmates being more likely to make monetary bail. This is an important endorsement of Colbert, Paternoster, and Bushway's (2002) single jurisdiction study using nationally representative data of jail inmates. Fifth, while the 2002 redesign was never intended by the Bureau of Justice Statistics to make the SILJ less useful to researchers, the redesign does actually seem to have that impact on certain research questions and also on the ability to utilize advanced survey data variance estimation methods. The United States Department of Justice needs to review its protocols for interviewing jail inmates on income. While the older methodology may have created some accuracy problems by asking inmates for amounts of illegal income, the solution appears to be worse than the cure. Rather than imperfect estimates of income, we are stuck with no estimates at all for nearly a quarter of all SILJ 2002 respondents.

Where Do We Go From Here For Research?

It seems clear to us that while the limitations of the SILJ present obstacles to pretrial researchers, additional studies using the SILJ or similar jail inmate datasets are excellent data sources for which to start investigations into the pretrial process. The volume of individual inmate sociodemographic data available in jail databases is a valuable resource that has been underutilized by pretrial researchers as of this time. For example, there are additional variables such as an inmate's relationships with his/her family that are available on the SILJ which we did not investigate in this paper. We also think that the anomalous findings in the 2002 data are likely to come into concordance with the other years through the use of multivariate imputation models based on the observed data in SILJ 2002 for income and/or the 1996 and 1989 SILJs to "recover" the 24% missing cases for income in the SILJ 2002. This might allow researchers to assess the role of income in the pretrial release process for 2002 jail inmates more effectively.

Given the strong findings concerning legal representation during the pretrial process with the rather imprecise measure we used for this study, we intend to make use of the SILJ to more carefully explore the role of legal representation in achieving pretrial release generally. In this paper we used an exceedingly low bar to classify defendants as having counsel at initial appearance or the bail review hearing. Future studies using the SILJ can set the bar to a higher standard. We intend to investigate if the effects observed in this paper are even stronger for defendants who see counsel within 24 hours of arrest or within one week of arrest.

Another route of interest is to augment SCPS data with income information, where possible. As discussed on page 6, we are not working with a random sample of pretrial defendants on the SILJ. A similar study needs to be conducted with a random cohort of pretrial defendants, which the SCPS can provide. The 2006 SCPS is designed to address some of the questions raised by this paper. It will measure the presence of a lawyer during the pretrial process. This study only addressed the role that contacts with a lawyer had on whether or not a defendant was held for inability to pay the monetary bail amount set or released on monetary bail. If the lawyer's presence is a function of defendant status/income, the income measure ought to have cancelled out the impact of legal representation. Since legal representation mattered, the next question is whether these effects are jurisdictionally based. That is, whether a jurisdiction's practice of assigning counsel prior to initial appearance is associated with more lenient (lower cost financial release amounts set/more likely to place defendants on nonfinancial release, etc). If the jurisdiction effects are controlled for and legal representation still has an impact on financial pretrial release, the next question is do these effects also occur for placement of defendants on forms on nonfinancial pretrial release. The SCPS is well-designed to handle jurisdiction level analyses such as these.

We also hope that this study will generate impetus for the addition of income measurement in the SCPS for a more thorough analysis of the pretrial release decision process among felony defendants. For example, if there are SCPS jurisdictions where 80-90% of defendants are screened for pretrial release and income is part of the screener information, the Bureau of Justice Statistics can theoretically either go back and collect information on defendants' income or in the upcoming SCPS redesign, decide to include that as part of the new version of SCPS prospectively.

What Policy Implications Exist?

While all the analysis here is in a sense provisional, as jail inmates are only a subset of all pretrial defendants, we feel that the main thrust of the findings concerning income and legal representation during the pretrial process are likely to hold up when random sample studies of pretrial defendants are conducted to investigate these findings further. As a result, we have three policy implications we feel can be reasonably drawn even at this stage of the research process. First, the implementation of financial release ought to be scrutinized for failing to uphold the notion of equal stature before the courts. We have public defenders and assigned counsels to represent indigent defendants. Why not a

similar standard for pretrial release? The data here suggest that the constitutional standard concerning the prohibition against the use of excessive bail is not effectively guaranteeing that low income inmates are facing likelihoods of making bail that are equal to higher income inmates. Second, the data provisionally support that we ought to extend the right to counsel to the pretrial release hearing. Thus we concur with Colbert, Paternoster, and Bushway (2002) that the deprivation of representation may well be an obstruction to equal representation before the law. Third, as the Bureau of Justice Statistics moves to redesign of its dataseries, the example of the SILJ should be kept in mind. No matter how carefully thought out, the changes are made are likely to have unexpected consequences for future research.

Appendix – Data Characteristics and Selected Recodes

| Appendix Table 1. Characteristics of Analyzed Variables from SILJ 2002 | | | | | |
|--|--------------|---------------------------------|--------------------|--------|-----------|
| | Observations | Min | Max | Mean | Std. Dev. |
| Held Pretrial | 6,204 | 0=Not held | 1=Held | .324 | .468 |
| Not Afford Amount Set | 3,911 | 0=Not given | 1=Given | .349 | .449 |
| Financial Release Set | 3,905 | 0=Not set | 1=Set | .885 | .319 |
| Bail Amount | | | | | |
| Income | 4,567 | 0=No income | 14=5,000 or more | 7.446 | 3.948 |
| Employed in Last Month | 5,638 | 0=No | 1=Yes | .666 | .472 |
| Sex | 6,024 | 1=Female | 2=Male | 1.279 | .449 |
| Age | 6,024 | 13 | 82 | 31.370 | 10.292 |
| African-American | 6,024 | 0=No | 1=Yes | .420 | .494 |
| Latino | 6,022 | 0=No | 1=Yes | .180 | .384 |
| Other Race | 6,024 | 0=No | 1=Yes | .109 | .311 |
| US Citizen | 6,022 | 0=No | 1=Yes | .934 | .248 |
| Education | 5,963 | 1=8 th grade or less | 6=College graduate | 2.959 | 1.329 |
| Homeless | 5,979 | 0=No | 1=Yes | .152 | .359 |
| Live with Nuclear Family | 5,947 | 0=No | 1=Yes | .424 | .494 |
| Alcohol Abuser | 5,932 | 0=No | 1=Yes | .624 | .484 |
| Drug Abuser | 5,926 | 0=No | 1=Yes | .693 | .461 |
| Mental Illness | 5,917 | 0=No | 1=Yes | .355 | .479 |
| Lawyer Pretrial | 3,555 | 0=No | 1=Yes | .891 | .311 |
| Violent Offense | 5,939 | 0=No | 1=Yes | .257 | .437 |
| Property Offense | 5,939 | 0=No | 1=Yes | .265 | .441 |
| Drug Offense | 5,939 | 0=No | 1=Yes | .248 | .432 |
| Criminal Justice Status at Arrest | 5,934 | 0=No | 1=Yes | .500 | .500 |
| Prior Violent Conviction | 6,024 | 0=No | 1=Yes | .254 | .435 |
| Prior Non Violent Conviction | 6,024 | 0=No | 1=Yes | .318 | .466 |
| Prior Probation Terms | 5,898 | 0=None | 5=11 or more | 1.005 | 1.101 |
| Prior Incarceration Terms | 5,923 | 0=None | 5=11 or more | 1.183 | 1.418 |
| Recodes to create variables were fairly extensive and can be obtained from the author as a SPSS syntax file. | | | | | |
| Source: Survey of Inmates of Local Jails, 2002. | | | | | |

| Appendix Table 2. Characteristics of Analyzed Variables from SILJ 1996 | | | | | |
|--|--------------|-------------|---------|------|-----------|
| | Observations | Min | Max | Mean | Std. Dev. |
| Held Pretrial | 5,118 | 0=Not held | 1=Held | .383 | .486 |
| Not Afford | 4,803 | 0=Not given | 1=Given | .474 | .499 |

| | | | | | |
|--|-------|---------------------------------|--------------------|-----------|-----------|
| Amount Set | | | | | |
| Financial Release Set | 4,794 | 0=Not set | 1=Set | .892 | .310 |
| Bail Amount | 4,124 | 0 | 4,000,000 | 40,558.03 | 140,176.6 |
| Income | 4,532 | 0=No income | 14=5,000 or more | 6.501 | 3.945 |
| Employed in Last Month | 5,077 | 0=No | 1=Yes | .592 | .492 |
| Sex | 5,118 | 1=Female | 2=Male | 1.294 | .456 |
| Age | 5,113 | 13 | 82 | 30.704 | 9.013 |
| African-American | 5,117 | 0=No | 1=Yes | .441 | .497 |
| Latino | 5,115 | 0=No | 1=Yes | .183 | .387 |
| Other Race | 5,117 | 0=No | 1=Yes | .042 | .201 |
| US Citizen | 5,116 | 0=No | 1=Yes | .925 | .264 |
| Education | 5,076 | 1=8 th grade or less | 6=College graduate | 2.854 | 1.268 |
| Homeless | 5,118 | 0=No | 1=Yes | .003 | .058 |
| Live with Nuclear Family | 5,118 | 0=No | 1=Yes | .007 | .081 |
| Alcohol Abuser | 5,049 | 0=No | 1=Yes | .566 | .496 |
| Drug Abuser | 5,051 | 0=No | 1=Yes | .652 | .476 |
| Mental Illness | 5,091 | 0=No | 1=Yes | .116 | .321 |
| Lawyer Pretrial | 4,435 | 0=No | 1=Yes | .850 | .357 |
| Violent Offense | 5,002 | 0=No | 1=Yes | .243 | .429 |
| Property Offense | 5,002 | 0=No | 1=Yes | .287 | .452 |
| Drug Offense | 5,002 | 0=No | 1=Yes | .238 | .426 |
| Criminal Justice Status at Arrest | 5,109 | 0=No | 1=Yes | .007 | .085 |
| Prior Violent Conviction | 4,847 | 0=No | 1=Yes | .303 | .460 |
| Prior Non Violent Conviction | 4,847 | 0=No | 1=Yes | .375 | .484 |
| Prior Probation Terms | 6,061 | 0=None | 5=11 or more | 1.026 | 1.092 |
| Prior Incarceration Terms | 6,064 | 0=None | 5=11 or more | 1.416 | 1.600 |
| Recodes to create variables were fairly extensive and can be obtained from the author as a SPSS syntax file. | | | | | |
| Source: Survey of Inmates of Local Jails, 1996. | | | | | |

| Appendix Table 3. Characteristics of Analyzed Variables from SILJ 1989 | | | | | |
|--|--------------|-------------|------------------|-----------|-----------|
| | Observations | Min | Max | Mean | Std. Dev. |
| Held Pretrial | 4,766 | 0=Not held | 1=Held | .460 | .498 |
| Not Afford Amount Set | 4,459 | 0=Not given | 1=Given | .453 | .498 |
| Financial Release Set | 4,459 | 0=Not set | 1=Set | .878 | .327 |
| Bail Amount | 3,799 | 0 | 999000 | 23,733.81 | 60,005.97 |
| Income | 4,202 | 0=No income | 14=5,000 or more | 6.615 | 3.977 |
| Employed in | 4,744 | 0=No | 1=Yes | .579 | .494 |

| | | | | | |
|-----------------------------------|-------|---------------------------------|--------------------|--------|-------|
| Last Month | | | | | |
| Sex | 4,762 | 1=Female | 2=Male | 1.288 | .453 |
| Age | 4,768 | 13 | 82 | 29.098 | 8.415 |
| African-American | 4,766 | 0=No | 1=Yes | .441 | .497 |
| Latino | 4,769 | 0=No | 1=Yes | .170 | .376 |
| Other Race | 4,766 | 0=No | 1=Yes | .031 | .172 |
| US Born | 4,756 | 0=No | 1=Yes | .910 | .287 |
| Education | 4,727 | 1=8 th grade or less | 6=College graduate | 2.928 | 1.344 |
| Live with Nuclear Family | 4,735 | 0=No | 1=Yes | .966 | .182 |
| Alcohol Abuser | 4,710 | 0=No | 1=Yes | .300 | .458 |
| Drug Abuser | 4,760 | 0=No | 1=Yes | .598 | .490 |
| Mental Illness | 4,767 | 0=No | 1=Yes | .390 | .462 |
| Lawyer Pretrial | 4,191 | 0=No | 1=Yes | .817 | .387 |
| Violent Offense | 4,552 | 0=No | 1=Yes | .211 | .408 |
| Property Offense | 4,552 | 0=No | 1=Yes | .214 | .410 |
| Drug Offense | 4,552 | 0=No | 1=Yes | .274 | .446 |
| Criminal Justice Status at Arrest | 4,769 | 0=No | 1=Yes | .009 | .097 |
| Prior Violent Conviction | 4,636 | 0=No | 1=Yes | .295 | .456 |
| Prior Non Violent Conviction | 4,644 | 0=No | 1=Yes | .649 | .477 |
| Prior Probation Terms | 4,769 | 0=None | 5=11 or more | 1.035 | 1.114 |
| Prior Incarceration Terms | 4,769 | 0=None | 5=11 or more | 1.169 | 1.441 |

Recodes to create variables were fairly extensive and can be obtained from the author as a SPSS syntax file.

Source: Survey of Inmates of Local Jails, 1989.

| Appendix Table 4. Missing Data Analysis | | | |
|---|-------------|--------------|---------------|
| | 1989 | 1996 | 2002 |
| Income Missing | 669 (11.8%) | 700 (11.4%) | 1,701 (24.4%) |
| No income | 70 (1.2%) | 403 (6.6%) | 306 (4.4%) |
| Mean of Income | 6.68 | 6.51 | 7.81 |
| Std. Deviation of Income | 3.98 | 3.93 | 3.87 |
| Variance of income | 15.80 | 15.46 | 14.94 |
| <i>Selected Characteristics of Missing Income Cases</i> | | | |
| Male | 431 (64.5%) | 473 (67.6%) | 1,194 (70.2%) |
| White | 314 (47.0%) | 180 (25.7%) | 728 (42.8%) |
| Black | 338 (50.6%) | 352 (50.3%) | 801 (47.1%) |
| Latino | 127 (19.0%) | 147 (21.0%) | 305 (18.0%) |
| Prior | 512 (76.5%) | 426 (69.6%) | 932 (54.8%) |
| Violent Most Serious Offense Charge | 124 (20.3%) | 164 (23.4%) | 421 (24.8%) |
| Property Most Serious Offense Charge | 133 (21.8%) | 191 (27.3%) | 443 (26.0%) |
| Drug Most Serious Offense Charge | 177 (23.9%) | 152 (21.7%) | 427 (25.1%) |
| Bail Set | 432 (70.5%) | 434 (69.4%)* | 803 (69.0%)+ |
| Held Pretrial | 298 (44.7%) | 256 (36.6%) | 502 (29.5%) |

| | | | |
|---|---------------|---------------|---------------|
| For Cases with Income Known | | | |
| Bail Set | 3,483 (73.3%) | 3,843 (74.1%) | 2,659 (72.0%) |
| Held Pretrial | 2,138 (42.7%) | 1,915 (35.2%) | 1,503 (28.5%) |
| χ^2 test significance of known versus unknown cases: ⁺ p≤.10; *p≤.05; **p≤.01; ***p≤.001. | | | |
| All analyses for this table are based on unweighted data. | | | |
| For selected characteristics, percentages re based on know values for characteristics. | | | |

In order to create above or below poverty line and above or below per capita income line, we needed to add information from outside sources.

Annual totals are approximately the same as monthly totals.

Poverty line annual individual income 1989 \$5,980/12=\$498.

Poverty line annual individual income 1996 \$7,740/12=\$645.

Poverty line annual individual income 2002 \$8,860/12=\$738.

Source: United States Department of Health and Human Services, Prior HHS Poverty Guidelines and Federal Register References,

<http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>.

Per capita personal income current \$ for survey year 2002 \$22,794/12=\$1,899.50.

Per capita personal income current \$ for survey year 1996 \$18,136/12=\$1,511.33.

Per capita personal income current \$ for survey year 1989 \$14,056/12=\$1,171.33.

Source: United States Bureau of the Census, Table P-1. CPS Population and Per Capita Money Income, All Races: 1967 to 2005

<http://www.census.gov/hhes/www/income/histinc/p01ar.html>.

We can consider per capita income as a form of “mean” income. According to the *American Community Survey 2004 Subject Definitions (Revised January 2006)*, per capita income (see page 50) is the mean income computed for every man, woman, and child in a particular group. The Census Bureau derives this income by dividing the aggregate income of a particular group by the total population in that group. The aggregate used to calculate per capita income is rounded.

Source: American Community Survey 2004 Subject Definitions (Revised January 2006),

http://www.census.gov/acs/www/Downloads/2004/usedata/Subject_Definitions.pdf.

The recodes necessary were as follows.

1989 & 1996 code:

recode minc (0 thru 5=0)(6 thru 14=1) into abvpvty.

recode minc (0 thru 10=0)(12 thru 14=1) into abvpcpin.

2002 code:

recode minc (0 thru 6=0)(7 thru 14=1) into abvpvty.

recode minc (0 thru 11=0)(12 thru 14=1) into abvpcpin.

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