LANGUAGE AS A BARRIER TO EQUALITY: ASSESSING THE GAP BETWEEN A SAMPLE OF ENGLISH-SPEAKING AND NON-ENGLISH-SPEAKING DEFENDANTS IN TRAVIS COUNTY, TEXAS

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ABSTRACT

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With the recent controversy surrounding immigration laws in the United States, it is clear this topic will continue to drive and influence future policy changes as to how these individuals are handled in the criminal justice system. Included in this thesis is a review of the relevant literature that takes into consideration race and ethnicity and examines their effect on how defendants are processed throughout various stages of the justice system. Judging from the available research, it appears that there are extra-legal variables that come into play when making decisions regarding certain elements such as making arrests, pretrial release and sentencing. Results of this study indicate that

Spanish-speakers are more likely to be arrested for DWI and uncooperative offenses, English-speakers were more likely to secure release on bond, the mean bond amount for Spanish-speakers was slightly higher than that of English-speakers, and both language and charge type were significantly related to release on bond.

CHAPTER 1

INTRODUCTION

Racial and Ethnic Disparities in the Criminal Justice Process

Whether one chooses to endorse the notion of the United States as a "melting pot" or as a mixed "salad bowl," one issue remains certain—the American population is diverse and ever-growing. The implications this has on a criminal justice system founded on the principles of equality and justice for all can be questioned. Research has shown racial and ethnic disparities do exist regarding how certain individuals are processed throughout the criminal justice system (LaFree, 1985; Bridges et al., 1987; Sampson & Lauritsen, 1997; Bridges & Steen, 1998; Mustard, 2001; D'Alessio & Stolzenberg, 2003; Demuth, 2003; Mitchell, 2005). Despite the plethora of research examining racial and ethnic disparities in the criminal justice process, few studies have looked at the differences in English-speakers and non-English-speakers. This thesis is an examination of the existing literature and research conducted relating to this issue of much debate.

Race and Ethnicity and the Criminal Justice System

Research on race and crime has become increasingly relevant over the last century. It was in the early 1970s that illegal aliens first came to be seen as a "numbers problem" leaving legislators in the unique position of having to decide what to do about these "undocumented" residents (Corwin, 1982). This overall increase in the

immigration population brought the issue of race to the forefront of the American conscious. In the United States, the term "race" is usually defined based on skin pigmentation or color, whereas "ethnicity" generally refers to the country of origin from which a person's ancestors can be traced (Sampson & Lauritsen, 1997). Furthermore, while some researchers believe these definitions to be biologically determined, others consider them to be more of a self imposed or self identified social construction (Sampson & Lauritsen, 1997).

As far as this nation has come with regard to race relations, it seems discrimination continues to be a thorn in the side of justice in America. Some of those who have studied the topic of race believe discrimination to be the byproduct of a society whose minority population has had to deal with intense social and economic disadvantages over time, coupled with the creation of "moral panics" and the resulting political reactions (Sampson & Lauritsen, 1997). In fact, the mere highlighting of such racial discriminations may only serve to exacerbate the situation and increase racial tension. Choosing to dwell on existing disparities brings to light the fact that racism is still a reality—a fact which for some may be difficult to acknowledge and accept. For this reason, irrespective of the overabundance of available data, many criminologists are reluctant to openly discuss issues related to race and crime due to the possibility that their statements may be misrepresented or labeled as racist (Sampson & Lauritsen, 1997). Regardless of which viewpoint one supports, continued research on the effects of race on the criminal justice process is profound and important.

Chapter 2 of the current thesis begins by introducing a few of the more common

theories and explanations of race differences in crime and discusses perceptions of fairness regarding both the arrest and pretrial release of defendants. For instance, race appears to have an impact on the decision to arrest—which, in turn, affects the perceived fairness by the community. Furthermore, this section discusses how race and ethnicity can negatively impact a defendant's opportunity to obtain pretrial release in addition to the sentencing outcomes. More importantly, this thesis introduces the concept and brings to light the importance of immigration and the existing language barrier with respect to how defendants are processed in the criminal justice system. The research questions this thesis will attempt to address are as followed:

- **Research Question 1:** Is there a difference between English-speaking and non-English-speaking defendants in how they are processed through pretrial services in Travis County, Texas?
- **Research Question 2:** Are non-English speakers disproportionally arrested for particular types of offenses compared to English speakers?
- **Research Question 3:** Are non-English speaking defendants less likely than English speaking defendants to be released on bond?
- **Research Question 4:** Are the bond/bail amounts set higher for non-English speakers compared to English speaking defendants?
- **Research Question 5:** What factors predict whether one will be released on bond?

If the goal of equality and justice for all is ever to be reached, it must first be proven that there is a problem with the process in its current form. Criminologists who

choose to ignore this need for research for fear of being scrutinized risk missing out on an opportunity to facilitate change and growth. Research has shown that there are no differences among different races in regard to the proportion who commit crimes. Rather the differences seem to be more related to the processing of defendants. With as little research that exists with respect to the criminal processing of Hispanics, and even less attention being given to the problem that the language barrier can pose, the primary purpose of this thesis is to fill a gap in the literature by providing much needed research. If it can be proven or shown that language disparities do exist in the criminal process, then not only will it encourage future research in this area of study but also aid in the implementation of change. The results of this study are presented in Chapter 4 followed by a summary and discussion of the implications of these findings in Chapter 5.

CHAPTER 2

LITERATURE REVIEW OF EXISTING STUDIES

As previously mentioned, the literature pertaining to the differences in the criminal processing of English-speaking versus non-English-speaking defendants is limited. Therefore, literature from studies of racial and ethnic disparities in the criminal justice system will be reviewed prior to addressing the language barrier issue.

Theories/Explanations of Race Differences in Crime

In order to thoroughly address any issue, it is important to have a general understanding of the underlying theories surrounding the topic of interest. Given this, the following section will provide a brief overview of some of the more influential and popular theories/explanations of race disparities in crime.

Family Socialization Theories

Some sociologists/criminologists suggest that crime can be linked to poor or inadequate family socialization. Those who are supporters of the "culture of poverty" and lower-class culture theories claim that households headed by females, a family structure most predominantly found among blacks, can be linked to poor socialization; additionally, structurally oriented theories purport that "economic deprivation" can lead to differences in the child socialization practices adopted (Sampson & Lauritsen, 1997).

With respect to the current thesis, this theory may be important in that it casts light on the issue of poverty and its intertwinement with immigration and the Hispanic population in general. Perhaps the children of immigrants are the victims of inadequate parenting resulting in a defective personality. While family socialization may play an integral role in the onset of juvenile delinquency and aggression, there is no consistent evidence that suggests that it accounts for racial differences in crime.

Subculture of Violence Theory

Although there have been many proposed explanations given for crime causation, perhaps one of the more prominent is the subculture of violence theory which contends that there are certain subgroups (primarily blacks) which have come to embrace the use of violence and adopt certain attitudes (such as "sexual machismo") not typically supported by the dominant culture (Sampson & Lauritsen, 1997). This theory may seem to go hand-in-hand with the culture of poverty theory in that violence seems to be more prominent in communities of lower socio-economic status (aka "ghettos" or "barrios"). Though one's environment invariably has an influence on an individual, the extent to which it drives someone to commit an act of crime remains to be seen. According to Sampson & Lauritsen (1997), the primary weakness in this theory is that violent behaviors are used to infer a subculture of violence which is used to explain behavior. Furthermore, the authors propose that there is little evidence to suggest that the attitudes and values towards crime differ significantly among blacks and whites.

Economic Inequality/Deprivation Theories

Racial differences in crime have long been attributed, at least in part, to low

socioeconomic status and a lack of opportunity for success. Aponte (1991) argues that despite its dramatic escalation and increasing prevalence, poverty among the Hispanic/Latino community remains largely neglected in the field of research. This lack of attention may be partly due to the dominance of research focusing on issues related to black poverty. In addition, other perspectives, such as strain theorists, argue that those individuals who strive to achieve certain culturally acceptable goals (e.g., a good paying job, higher education, etc.), but lack "legitimate" opportunities to attain those goals, will be more likely to use "illegitimate" methods (i.e., crime) out of a sense of desperation and frustration (Sampson & Lauritsen, 1997). Though this theory makes logical sense from a sociological perspective, empirical research has found that racial differences persist even after controlling for socioeconomic status.

It appears traditional theories have failed to adequately explain racial differences in crime. Furthermore, the Hispanic population is a largely underrepresented statistic when it comes to disparities in the criminal processing of defendants. Additionally, there is even less research in the area of immigration—a category complex enough to require the emergence of new theories. Therefore, continued research is paramount to a successful explanation of the race-crime link. Perhaps if researchers can manage to shed some light in explaining both racial and ethnic differences in crime, then this information may be used to examine more closely whether or not our preconceptions of what causes crime has an effect on how individuals are processed in the criminal justice system.

Racial Disparities in Perception

It goes without saying that much of what society does and how they act relies

heavily on their perceptions of the environment. For example, a person's decision to call the police or stand and fight may be based on whether or not they perceive their situation to be life-threatening. Due to the fact that perceptions govern actions, it stands to reason that racial disparities can arise from one's own perception or misconception of that particular race, culture or ethnicity.

Public Perceptions of Fairness

Because the faith the American public places in its legal system is strongly related to its perception of fairness throughout the criminal processing, some debate exists as to whether or not law enforcement officers are subject to racial biases when conducting their job duties (D'Alessio & Stolzenberg, 2003). In the 1960s, as tensions and hostilities grew between minority citizens and police, reports from the National Advisory Commission on Civil Disorders (aka, the Kerner Commission) spurred an already increasing anti-police sentiment calling into question the legitimacy of law officials and alleging a national crisis in race relations (Engel, 2005). The Kerner Commission report claimed that an individual's race significantly affects their perceptions of police officers, how they view their legitimacy, and their overall satisfaction with criminal justice officials.

To test the hypothesis that the public's perception of injustice is largely based on normative factors rather than instrumental (i.e., perceptions of fairness versus actual outcomes received), Engel (2005) decided to test these perceptions using data conducted as the result of routine traffic stops. Utilizing data collected for the Police Public Contact Survey taken from a national sample of citizens in 1999, Engel performed a multinomial

logistic regression to examine the influence of normative and instrumental perspectives while controlling for citizens' characteristics and race-interaction terms, along with legal, situational, and other control variables. Of the 80,543 respondents included in the study, 17,720 reported having had some form of contact with the police of which only 7,054 reported having actually been the driver during the traffic stops. The findings not only supported the initial reports of the Kerner Commission but also showed significant racial differences in the public's perception of distributive injustice (i.e., whether or not the stop was viewed as illegitimate) and procedural injustice (i.e., whether or not the police officer was viewed as having acted improperly) (Engel, 2005).

Official Reactions to Hispanic Defendants

Though it is clear that differences exist in how citizens perceive the treatment of Hispanics by law enforcement officials, it is important to determine whether and to what extent differences in how Hispanic defendants are perceived affects the outcomes of their criminal cases. Studies into the processing disparities of Hispanics in the legal system began as early as 1931 when a report by the National Commission on Law Observance and Enforcement (aka, the Wickersham Report) claimed that this highly targeted group is more likely to be the subject of exploitation and discrimination, to endure illegal police practices and to be victims of language barriers as compared to other citizens (LaFree, 1985).

Utilizing data obtained through official records from Pima County (Tucson), Arizona and El Paso County, Texas, LaFree (1985) examined the case processing information for 755 male defendants whose most serious offense was robbery or burglary

in order to compare the outcomes received by Hispanic defendants in these two southwestern jurisdictions. In Tucson, being Hispanic yielded more favorable outcomes with regard to the pretrial release process relative to other defendants but had no effect on the adjudication type, verdict, or severity of sentence. In El Paso, however, significant differences did exist in the processing of Hispanic defendants. To be more specific, Hispanics were found to receive less favorable decisions regarding pretrial release, were more likely to be convicted in a jury trial, and received harsher sentences if they were found guilty.

The practical implications of these findings have potential to be tremendous in that they seem to fly in the face of common sense. For instance, one may conclude that because Tucson has a smaller percentage of Hispanics (21%) relative to El Paso (61%), greater racial disparities would exist. Because the results contradict this line of thinking, it begs the question as to what other factors may be coming into play. One possible explanation of these findings may lie in the dissimilarities between the two differing Hispanic populations and how they are perceived relative to their respective jurisdictions.

Information collected through the interviewing of legal agents in both Tucson and El Paso indicated that processing disparities may be in part due to the fact that Hispanics residing in Tucson tend to be better established and held in higher respect than their counterparts in El Paso (LaFree, 1985). In contrast, the Hispanic community in El Paso can be characterized as a more "highly stratified" population in that it is likely to consist of an amalgamation of prominent Hispanic families, those who have recently immigrated (including illegal citizens) and those of lower socio-economic status (LaFree, 1985).

Interviews further revealed that jurors in El Paso, consisting largely of upper and middle class Hispanics, tend to be less sympathetic when it comes to lower-class Hispanic defendants. Additionally, LaFree (1985) suggested that another important difference between Tucson and El Paso is the contrast in the amount of people needing language assistance. That is to say, because El Paso has a much higher ratio of Spanish speakers as compared to Tucson, they tend to be over-burdened with the magnitude of this problem making any attempt at accommodation financially difficult and impractical to provide. Overall, this study suggests that the racial disparities, as they relate specifically to Hispanics, may be more multi-dimensional and highly complex than originally postulated, thus requiring an equally complex and multi-faceted solution.

Racial Disparities in Arrest

Given that race and ethnicity can have an affect on one's perceptions, it is interesting to see whether or not they impact the criminal justice system directly beginning with the decision to stop a suspect and following through to the decision to arrest. The following two sections examine the probability of arrest taking into consideration the race and ethnicity of both the offender and the arresting officer.

Offender Race and the Probability of Arrest

With respect to law enforcement, race has often been considered a divisive topic in America with regard to its ability to affect policing (Donohue & Levitt, 2001). Furthermore, it is certainly possible that certain races are disproportionately more arrested for particular offenses. Conflict theorists would suggest that an elevated arrest rate of minorities, such as African Americans, is a direct consequence of discrimination

by police. This is because many view society as being composed of two conflicting groups (i.e., the "haves" and have-nots") and assert that the state is organized in such a way as to primarily serve the interests of those in power (D'Alessio & Stolzenberg, 2003). In other words, the criminal justice system is set up to protect the interests of the elite. Despite what conflict theorists may presume, it should be considered whether there is sufficient evidence to back-up the claims made.

A large-scale quantitative study to evaluate race-specific arrest rates was conducted by Michael Hindelang. In his research, Hindelang (1978) compared race-specific arrest data derived from the UCR with reported offender data drawn from the National Crime Victimization Survey in order to examine the relative amount of crime committed by both blacks and whites. Hindelang analyzed four specific types of crimes that involved enough contact to allow for potential identification of the offender's race. They were rape, robbery, aggravated assault, and simple assault. Hindelang (1978) theorized that, if the data contained in the UCR is sizably biased, significant discrepancies should exist in the perceived racial characteristics of the offenders alleged in the victimization survey reports. Results showed that African Americans were overrepresented by about ten percentage points in the UCR arrest data for the crimes of rape, aggravated assault and simple assault. Robbery was the only crime which showed a convergence of both data sets, thus indicating no racial biases.

Officer Race and the Probability of Arrest

While the majority of research on disparities in the arrest process focuses mostly on the race of the offender, few examine the unique relationship between the probability

of arrest and the race of the officer. Because officers of minority status have a better understanding of the cultural norms and differences of those who are of the same or similar ethnic background, the potential social benefits are significant. This is, in part, due to the fact that they can identify more with the minority population and, thus, are generally more accepted in those particular communities. Furthermore, anyone who is a proponent of community policing can attest to the fact that community acceptance is a crucial component to success. Diversification of law enforcement may actually help improve police-community relations and decrease biased behabior (Brown & Frank, 2006). For example, a victim or witness to a crime may be more likely or willing to come forth to an officer with whom they can self-identify. The potential downside, however, may be that certain officers may be more reluctant to arrest suspects of their own race—not only because they share a similar cultural background, but also because a part of them may feel more pressure from their peers in the community to be more lenient or understanding of the circumstances surrounding them.

In a study conducted by Donohue and Levitt (2001), the relationship between the racial composition of a city's police force and the racial patterns of arrests was examined using panel data for 122 large U.S. cities. Results revealed that increases in the number of minority police were associated with significant increases in arrests of whites but had little impact on arrests of nonwhites. Similarly, more white police increased the number of arrests of nonwhites but did not systematically affect the number of white arrests. Although these findings were interesting, it remains uncertain whether an increase in the number of minority police would be beneficial given the results. In other words:

> we do not yet know whether the significant increases in arrests for whites when more nonwhite police are hired is desirable because they restore greater equality in the likelihood of arrests conditional on the existence of unlawful conduct or because the higher rates of arrest lead to greater decreases in the number of crimes committed by whites (and vice versa). Nor do we know if these increases in cross-race arrests suggest that greater harassment is being perpetrated or that cross-race policing is less effective because crime and, correspondingly, arrests are higher when such policing is more prevalent. (Donohue & Levitt, 2001, p. 391)

Consequently, the results of this study reveal a need for further research in the area of cross-race policing and its potential impact on crime.

Disparities in the Pretrial Process

When an individual is arrested and is either denied bond or fails to post bond, they are detained in the local jail until such time that they are able to bond themselves out or until their case is disposed of or adjudicated. According to the U.S. Department of Justice, Bureau of Justice Statistics (2006), between July 1, 2005 and June 30, 2006, the number of persons held in local jails increased 2.5% to reach 766,010 inmates. The median term of incarceration in local jails is approximately six months. Interestingly, over a quarter of the individuals incarcerated in the United States are being held custody in local jails, and over half of these are being held pending trial (U.S. Department of Justice, Bureau of Justice Statistics, 2001). This prolonged incarceration time could have deleterious effects on certain individuals, especially those who are later found not guilty

or given a non-custodial sentence. In essence, they are made to experience, and thus subjected to the effects associated with, post-trial incarceration (e.g., a decreased likelihood of employment, depressed wages, a decreased likelihood of marriage, and an increased likelihood of recidivism (Schlesinger, 2005).

In an effort to assess the problem with race and presentencing, Free (2001) conducted a review of the findings from 52 individual studies going back as far as 1970 that utilized multivariate statistical analysis. In addition to supporting the general notion that race adversely affects a defendant's probability of being released, this study brought to light many of the "methodological shortcomings" (e.g., ignoring defendant ethnicity or combined racial categories, failing to take into consideration racial disparities in evidentiary strength, failing to account for victim race). This being said, if one truly wants to assess the full extent to which racial disparities impact those of minority status, they must broaden their scope of research to include a careful examination of the pretrial release process.

Pretrial Release Process

The criminal justice system has typically been thought of as being a complex organization during which critical decisions must be made beginning from the point of arrest and continuing through to the sentencing process (Goldkamp & Gottfredson, 1979). Often overlooked, the pretrial release process is an important aspect of this complex system. As a result of the bail reform movement during the 1960s and 1970s, various government agencies began intrusting pretrial officers with the power to make decisions regarding who would be allowed to be released on their own recognizance (i.e.,

release from jail without having to pay the bond set by the judge based on the defendant's promise to appear in court as scheduled). The criteria for release on what is referred to as a "personal bond" include, but is not limited to: 1) residential stability (e.g., length of time at current address and/or county, 2) employment history, 3) seriousness of offense/allegations, 4) prior criminal history, and 5) any evidence suggesting flight risk or failure to appear in court. Despite these seemingly objective standards, there still remains a certain amount of subjectivity and bias in the recommendation process due to the discretion given to the pretrial officers. Goldkamp & Gottfredson (1979), in an examination of the pretrial release process, found that a significant amount of the variation in the decisions being made could not be explained through scientific methodology. Various studies have shown that there are other factors (e.g., race and ethnicity) which factor in the decision making process as well, perhaps contributing to this unexplained variance (Petee, 1994; Demuth, 2003; Demuth & Steffensmeier, 2004; Schlesinger, 2005). The extent to which these variables have an effect on the decisions being made, however, remains to be seen.

Extralegal Variables Affecting Pretrial Release

In a study conducted by Petee (1994), the pretrial release agency for Lucas County (Toledo), Ohio was examined utilizing data collected from a random sample consisting of 500 felony cases eligible for release on personal recognizance. In addition to the tradition release criteria, the following extralegal variables were also taken into consideration: 1) the demeanor of the defendant, 2) race, and 3) sex. Results revealed that, although the officially sanctioned release criteria were among the strongest

predictive factors of pretrial release, both demeanor and race were inversely related to the decision process. In other words, those defendants perceived as having a negative demeanor as well as those who were classified as "non-white," had a reduced probability of being recommended for release on their own recognizance.

In a more recent study conducted by Demuth (2003), data on the processing of felony defendants in a large urban court was examined to determine if there were any differences among Hispanic, black, and white detainees during the pretrial release stage. In his research, Demuth used data compiled biennially by the State Court Processing Statistics program of the Bureau of Justice Statistics in the State courts of the nation's 75 most densely populated counties in 1990, 1992, 1994, and 1996. The major finding was that Hispanic defendants were more likely to be detained than white and black defendants. Furthermore, it appeared Hispanic defendants were faced with a "triple burden" in that they were the group most likely to be required to post bond to secure release, the group to which the highest bonds were set, and the group least financially capable of paying the bail amount (Demuth, 2003). These findings are consistent with other research suggesting Hispanics are subject to more prejudiced treatment throughout the criminal justice process (Demuth, 2003).

Perhaps one of the biggest factors determining whether or not a defendant is able to secure pretrial release is the bail amount. For those unable to be released on recognizance, they must pay all or at least part of the bond that is set for them by the judge. Research into the variables affecting bail reveals that race and ethnicity do have an important role to play. In a comparison of bail amounts for Hispanics, whites and

blacks, Turner & Johnson (2005) examined disparities utilizing 1996 data on defendants accused of felony offenses derived from District Court files of Lancaster County, Nebraska. Employing bivariate and multivariate analyses to asses the extent to which differences exist in the bail amounts set by the judge for Hispanics and other racial and ethnic groups. The study controlled for two independent "legal" variables (i.e., prior arrest and seriousness of the instant offense) as well as the "extralegal" variables of age, gender, type of attorney, residency, and race. Concluded in this research was the finding that Hispanics receive higher bail amounts compared to their non-Hispanic counterparts.

The Decision to Release

Much like the study conducted by Demuth, Schlesinger (2005) also decided to analyze data collected from the State Court Processing Statistics (1990-2000) on the processing of felony defendants in large urban counties for the purpose of determining the extent to which racial and ethnic disparities exist with respect to pretrial release. Utilizing a sample of felony cases filed in 40 of the nation's 75 most populous counties, this study used both logistic and linear fixed effects models for the following five response variables: denial of bail, non-financial release (personal recognizance), bail amount, made bail, and pretrial incarceration. Additionally, the analyses were disaggregated by both decision and crime type. What was found was that, while legal characteristics of defendants were the best predictors of pretrial incarceration decisions, race and ethnicity were also factors. In fact, both Blacks and Latinos received less beneficial pretrial release decisions and outcomes than whites. More specifically, Schlesinger's study found that racial disparities were most identifiable in the decision to

deny bail for those accused of violent offenses and the decision to allow "non-financial release" for drug offenders. Also noteworthy was the consistent finding that, whenever racial disparities were evident, Latinos appeared to receive the least favorable outcome when compared to blacks with analogous legal characteristics. In addition, Black and Latino defendants have access to fewer economic resources and networks, which can account for a lot of the racial and ethnic disparities with regard to pretrial incarceration. This lack of financial resources may aid in the explanation of why many defendants of minority status are unable to post the required bond to secure their release from jail (Demuth & Steffensmeier, 2004).

Disparities in the Sentencing Process

Although much of the literature discussed thus far has focused on pre-sentencing aspects of the criminal justice system, the following section examines the issue of race/ethnicity and its affect on the sentencing outcomes of defendants. The subsequent discussion begins with a brief outline of the laws and guidelines that have been set in place to regulate sentencing in an attempt to assure equality and fairness.

Sentencing Reform Act of 1984

The existence of racial and ethnic disparities in the sentencing of convicted criminals can be attributed to various causes. The Sentencing Guidelines and Policy Statements of the Sentencing Reform Act (SRA) of 1984 were created with the intent of reducing or curtailing existing disparities in the criminal sentencing process and state specifically that the length of one's sentence should not be directly or indirectly affected by an individual's race, gender, ethnicity, or income (Mustard, 2001). In a study of

77,236 federal offenders sentenced under the SRA of 1984 it was found that after controlling for extensive criminological, demographic, and socioeconomic variables, blacks, males, and offenders with low levels of education and income received substantially longer sentences (Mustard, 2001). Also of interest was the finding that more than half of the differences in sentencing were due to general deviations from the guidelines, as opposed to disparities occurring within the guidelines, and that citizenship status also resulted in a difference in sentencing when it came to Hispanic defendants (Mustard, 2001).

Federal Sentencing Guidelines

Under the Sentencing Reform Act of 1984, Congress established the United States Sentencing Commission whose main task was to design a sentencing structure that would avoid disparities in the sentencing of individuals convicted of similar offenses with comparable criminal histories (Albonetti, 1997). This commission replaced the pure "judicial-discretion paradigm" with an "administrative-sentencing system" (Klein & Steiker, 2002). Essentially, these guidelines were designed to reduce the amount of judicial discretion and established a criminalization and sentencing process that is largely prosecutor controlled.

Using federal court data collected by the U.S. Sentencing Commission for the year 1993-1996, a study examined racial and ethnic differences (i.e., white versus black versus white-Hispanic versus black-Hispanic) in sentencing outcomes and criteria under the federal sentencing guidelines (Steffensmeier & Demuth, 2000). What they established was that there was considerable consistency in the sentencing of federal

criminal defendants (i.e., judges prescribed similar sentences for similar defendants convicted of the same offense regardless of whether they were white, black or Hispanic). Despite these findings, however, some important racial and ethnic disparities did emerge. Specifically, ethnicity was found to have a small to moderate effect in terms of sentencing and length of incarceration in that white (non-Hispanic) defendants often received more favorable outcomes than Hispanics—as demonstrated by the disproportionate number of Hispanics convicted of drug-related offenses receiving little to no opportunity for sentence reduction (Steffensmeier & Demuth, 2000).

Hispanics and Sentencing

There has been much controversy over whether or not racial and ethnic disparities exist throughout the various stages of the criminal justice system. The issues surrounding this debate have, historically, focused on the sentencing of black defendants relative to their white counterparts (i.e., are black defendants more harshly punished?) (Demuth, 2003). The recent focus on race and sentencing has helped bring attention to certain areas lacking research. For example, one area deserving further inquiry is whether Hispanics are treated differently than whites and blacks in the criminal courts given their recent dramatic increase in population in the United States. This topic of research is especially interesting in that, in addition to the existing language barrier and citizenship issues surrounding many non-native Hispanics, they seem to share several of the same socio-economic characteristics as blacks (e.g., poverty, increased unemployment, and crime) (Demuth, 2003). In a study using data on Pennsylvania sentencing practices, it was found that Hispanics were the subgroup most at risk to receive the harshest penalty

compared to white and black defendants (Steffensmeier & Demuth, 2001).

In the summer of 1993, Munoz et al. (1998) examined misdemeanor sentencing decisions in three non-urban Nebraska counties with relatively large, Latino, and primarily Mexican population. They contended that the significant growth of the Latino population in Nebraska and throughout the Midwestern region of the United States had evoked a socially constructed stereotype of "Mexican criminality" that had evolved over time. These prejudiced constructs, perpetuated and manipulated by the masses, provided the fuel necessary to justify the favoring of Anglos over Latinos in the processing of misdemeanor offenses, thus establishing a "dual standard" of law enforcement (Munoz et al., 1998). This double standard has been coined by Mirande as "gringo justice" (as cited in Munoz et al., 1998). Results revealed that Latinos overall had significantly higher proportions of individuals charged with misdemeanor offenses other than simple traffic violations (i.e., misdemeanor alcohol and drug offenses). They also received a higher mean number of charges. Additionally, Latinos received significantly higher mean fines and mean days probation in comparison to their white counterparts. These findings lend support to the notion that a biased discretion exists in the enforcement, processing, and sentencing of particular offenses and that Latinos are subject to what some term a "cumulative disadvantage" in the criminal justice system (Munoz et al., 1998).

Structural Organization Theory and Sentencing

If a review of sentencing research indicates that racial disparities do indeed exist, then what possible explanation could there be for those having to make these decisions? Though it is difficult to say with certainty what goes on in an individual's thought

process, the issue lies in each perspective's discretionary use of information in decision making. According to structural organizational theorists, the exercise of discretion may be best understood through the application of rational choice models of decision making (Albonetti, 1991). Furthermore, they suggest that, to be fully rational, a decision should be made with a complete understanding and knowledge of all possible outcomes—a condition which is very rarely met in the real world. The understanding here is that if one possesses complete information regarding a particular set of circumstances, then all uncertainty in the decision making and outcomes are eliminated. This being said, the main point of contention here is whether or not judicial authorities employ rational choice models when making their decisions as well as the effects these racial biases have. In instances where complete information is not available, these decision makers may attempt to ease any existing uncertainty by relying upon a socially constructed rationale predicated on habit and past experiences (Albonetti, 1991). Therefore, those who have been socialized to believe one thing about a particular race or culture may unintentionally bias their decisions. For instance, if one believes a particular race to be more prone to alcohol consumption and overall deviant behavior, then whoever decides the sentencing on an alcohol related crime may be quicker to convict and inflict harsher penalties on the defendant. According to Clegg & Dunkerley, the end result is a decision based upon an amalgamation of the individual decision-maker's personal history, stereotypes, prejudices, and specific outlook on their surrounding environment (as cited in Albonetti, 1991). Thus, decision makers, in an attempt to achieve a sense of rationality, develop a "patterned response" which they rely on to reduce uncertainty and attain the desired

outcome.

Citizenship Status in the Criminal Justice System

With much of the recent hype surrounding the issue of immigration in America, it is clear how pertinent this topic has become particularly with respect to how these immigrants are protected by and held accountable to the laws that govern this nation. The following section examines the policies surrounding immigration and reviews the existing research concerning misperceptions of immigrants and crime and how it affects their treatment within the criminal justice system.

Immigration, Politics and Policing

By 1900, the foreign-born population made up, on average, nearly one-fourth of the total population in the 50 largest cities and ranged as high as 48 percent. During this period of time, the United States was undergoing rapid industrialization and urbanization that created an increase in economic opportunity. This drew immigrants to American cities in numbers that threatened to subjugate the position and power held by the native-born population (Brown & Warner, 1992). Many Americans feared that the votes of such a relatively large immigrant population, if successfully mobilized, could affect the outcome of city elections. The fact that this segment of the population would be difficult to mobilize bearing in mind the language barriers and vast cultural differences existing was inconsequential to concerned Americans—the mere potential to control and influence city politics was enough to make the native-born feel threatened (Brown & Warner, 1992). Furthermore, it appeared as though a lot of this concern was motivated by increasing anti-immigrant, xenophobic sentiments premised on the misguided notion

that immigrants were far more likely to commit criminal acts than native-born citizens in addition to being responsible for the depletion of government resources, decreased employment rates, housing shortages, overloading the nation's education and heath care systems, and "undermining the existing social order" (Mears, 2001). Suffice to say, economic/racial tensions between non-immigrants and immigrants were at an all time high. As a result, non-immigrant Americans put pressure on law officials to become more stringent with their arrest policies concerning inner-city crime, and crack down on those crimes more commonly associated with the "undesirable aspects" of the immigrant population such as the consumption of alcohol (Brown & Warner, 1992).

Three Theories on the Relation of Immigration to Crime

Abbott (1915) suggested that there are three possible theories on which special consideration of the relation of immigration to crime may be based. First, there is the postulation that the volume of crime is disproportionately increased by immigration and, therefore, to reduce crime one must reduce the flow of immigration. Second, is the belief that because of racial and environmental differences, the types of crime and the temptations that lead to them differ in the case of the immigrant versus that of the native born American. Therefore, any programs designed for crime prevention must be adjusted accordingly to account for these differences. Last, is the supposition that immigrants are not allotted the same opportunities to secure justice as are native citizens and that a specialized program is needed in order to protect them from any racial disparities they may endure. To address some of the issues surrounding immigration and crime, Abbott (1915) made the following recommendations:

1. That court records in criminal cases include race, birthplace, and birthplace of parents in order that reliable information in regard to the relation of immigration to crime may be available.
2. That such criminal statistics as are available be used in determining what adjustment of our social and educational institutions should be made to reduce the temptation in the various national groups to commit crime.
3. That competent interpreters paid by the city and appointed by civil service examination should be provided in all criminal cases in which non-English speaking immigrants are concerned.
4. That the modification of the present system of imprisoning those who are unable to pay the find imposed on them by an extension of the probation system will be especially productive of good results among immigrants inasmuch as their offenses are frequently the result of ignorance or the difficulty of adjusting old standards to their new environment.
5. That because of his peculiar helplessness a public defender is especially needed for the non-English speaking immigrant who is accused of crime. (p. 531)

Although this report by Abbott was written so long ago, the underlying issues remain relevant still today. Most importantly, what this report did was shed light on some of the important issues surrounding immigration and the notion that changes to the criminal justice process are necessary in order to fairly compensate for the influx of immigrants, particularly those considered to be non-English speaking. To support or refute the three

theories suggested in this report, it would be necessary to determine the extent to which immigration can be linked to crime.

Immigration and Crime

Current sociological knowledge of crime is inadequate at best in correcting the gross misperceptions perpetuated by governmental reports of an increase in the number of Hispanics in U.S. prisons and resulting in the public being mislead with respect to the supposed link between immigration and crime (Hagan & Palloni, 1999). Some researchers argue that high Hispanic incarceration rates are actually the product of specific immigration and criminal justice policies and practices. Furthermore, "sociological criminology . . . has an obligation to show how this is so, that is, to demonstrate how the 'sequence of interactions' resulting from immigration and criminal justice policies and practices yield Hispanic incarceration rates that misinform our understanding of immigration and crime" (Hagan & Palloni, 1999, p. 619).

The problem with using prison statistics to make assumptions about the relationship between immigration and crime is that Hispanics are a very heterogeneous group, deriving not only from Mexico, but also from Cuba, the Dominican Republic, Columbia, El Salvador, Guatemala, and other countries in South America and the Caribbean Islands. Furthermore, statistics relating to the imprisonment rates among immigrants can be problematic in that immigrants not only tend to be younger and consist mostly of males compared to citizens, but also are far more restricted with regards to how they are treated and processed throughout the criminal justice system (Hagan & Palloni, 1999). Because of this, some researchers have argued that the purported increase in

crimes committed by immigrants is largely due to the process of acculturation and the strain imposed by the need to assimilate in that it results in a gradual transformation, most notably in the children, causing them to become more like their native-born counterparts with regard to their involvement in criminal activities (Hagan & Palloni, 1999). This new way of thinking has led to many American criminologists adopting what has been called by some as the "not the foreign born but their children" view of immigration and crime. This idea was based on the notion that the children of immigrants were essentially being torn between two conflicting identities leaving some with no alternative other than to resort to crime as a means of attaining their goals or realizing the American dream (Hagan & Palloni, 1999).

Public Concerns on Immigration and Crime

Despite evidence suggesting that the assumed link between immigration and crime is a misconception, this issue still remains a major concern of the general public. These moral panics have led to policy changes regarding how the United States deals with illegal immigrants. An example of such policy is in Proposition 187 adopted in California. This proposition has been heavily targeted and publicized for its supposition that illegal immigration is directly related to the mounting costs of education and government assistance (e.g., welfare) that the public has been forced to incur (Butcher & Piehl, 1998). Additionally, it highlights victimization. In Section 1 of the law, it states "The People of California find and declare as follows: . . . That they have suffered and are suffering personal injury and damage caused by the criminal conduct of illegal aliens in this state."

Given the degree to which public concern over immigration has grown, Butcher & Piehl (1998) conducted a study examining the relationship between immigration into a metropolitan area and that area's crime rate during the 1980s. Having used data from the Uniform Crime Reports and the Current Population Surveys, they found that cities with high crime rates did tend to have large numbers of immigrants. However, when they controlled for the demographic characteristics of the cities, recent immigration appeared to have had no effect on the crime rates. In explaining changes in a city's crime rate over time, the flow of immigrants again had no effect, whether or not the researchers controlled for other city-level characteristics. In a secondary analysis of individual data from the National Longitudinal Survey of Youth, Butcher & Piehl (1998) found that youth born abroad were statistically significantly less likely than their native-born counterparts to be criminally active. Therefore, though recent immigrants have demographic characteristics similar to those of criminal offenders (e.g., disproportionately male, young, poorly educated, and non-white), research suggests that they are not more prone to criminal behavior. In fact, it appears that those who have recently immigrated are less likely to engage in criminal activity when they first arrive, perhaps suggesting that, over time, some immigrants adjust and eventually come to adopt the laws of the land while others acclimate to the "illegal sector" (Butcher & Piehl, 1998). If the goal of society is to reduce crime through the control of immigration, it appears as though this goal would best be served by controlling population growth in general rather than isolating a particular segment.

Citizenship and Sentencing

With all the controversy over immigration and its effect on crime, it could be asked why there seems to be a lack of research into the effects of citizenship on sentencing outcomes. Demuth (2002) postulates that this may, in part, be due to "a relative lack of interest in the treatment of non-citizen criminal populations and a reduced sense of urgency in resolving any sentencing disadvantages experienced by non-citizens vis-à-vis sentencing disadvantages--by race, ethnicity, or gender--experienced by citizens" (p. 271). Using data for fiscal years 1996 through 1999, Demuth (2002) examined the effects of citizenship status and race ethnicity on sentencing outcomes in drug cases controlling for legal and extralegal factors. Statistical findings of recent federal sentencing studies show that racial and ethnic differences are larges in drug cases. Results revealed that, when looking at imprisonment outcomes, black and Hispanic defendants are more likely to receive incarceration sentences than white defendants in both citizen and non-citizen groups. Specifically, compared with white defendants, the probability of incarceration is 7% higher for blacks and 12% higher for Hispanics. Non-citizen status increases the probability of incarcerations by 30% for legal aliens and 44% for illegal aliens as compared to citizen defendants. Also of relative interest is the finding that non-citizen defendants are disproportionately sentenced in a few judicial districts such as California and Texas, both areas considered to have a heavily concentrated "illegal alien" population. What these findings further reveal is a segment of the population that has been "abstractly defined . . . [as] something of a specter, a body stripped of individual personage, whose very presence is troubling . . . Moreover, this

body stripped of personage has no rights" (Ngai, 2003, p. 77).

Immigration Reform Legislation of 1996

For those non-English-speaking defendants who must endure an array of obstacles throughout the criminal justice system, the consequences of judicial discrimination has the potential to be serious. This became especially true in 1996 when Congress enacted legislation which drastically changed the consequences of criminal convictions on immigration status. Under the new immigration legislation, an alien defendant convicted of an offense may not only lose his legal resident status, but may also face deportation proceedings or be unable to naturalize. For the purpose of immigration and deportation, a "conviction" has been defined by the Illegal Immigrant Reform and Immigrant Responsibility Act to include: a judgment of guilty by a judge or jury, a plea of guilt or nolo contendere, and an admission of sufficient facts to warrant a finding of guilt (Messier, 1999). In addition, the risk of deportation can further complicate the sentencing process when considering plea bargains. In cases of minor charges, for example, the prosecutors may opt for deportation rather than incarcerating him at the expense of the American public. Furthermore, in situations where accepting a plea offer could lead to deportation, defendants may often choose to go to trial because they, essentially, have nothing to lose. This, in turn, leads to the burdening of the courts with many trials for charges that otherwise would have been settled in a plea bargain (Messier, 1999).

Breaking the Language Barrier

A crucial aspect of the rising immigration population is the existing language

barrier and what it means to the criminal justice system. Often overlooked, the non-English speaking population has not only been subjected to racial and ethnic discrimination, but has also had to endure a measure of injustice due to the fact that effective communication can be very difficult, if not unfeasible, given the circumstances and conditions. An example of this can be given in the past disenfranchisement of non-English speaking citizens. Historically, the right to vote has been the subject of much rhetoric and remains a primary criterion upon which we define freedom and equality today. Prior to the enactment of the 1975 amendments to the Voting Rights Act, those who did not understand English were "effectively disenfranchised" by elections that were only conducted in English (Guerra, 1988). These revisions to the act allowed for the implementation of multilingual voting assistance specifically in areas where the population of non-English speakers was considerable. Furthermore, the need for language accommodation can be supported by the fact that, in 1980, there were more than twenty-three million Americans who spoke languages other than English in their homes (Guerra, 1988). Yet, this is only one example of how the language barrier has created problems for non-English speakers in the United States. The intent of this review is to examine the extent to which the language barrier hinders the administration of justice.

Language and Criminality

Over time, various research has demonstrated that non-English speakers are at a higher risk of criminality due to the presence of three key factors: lack of opportunity for lucrative or gainful employment, lack of opportunity for educational advancement, and maintaining a suitable and stable residence (Drake, 2006). Furthermore, many bilingual

probation and parole officers have pointed out that offenders who do not speak English are far more likely to have critical needs. In fact, these individuals often find themselves in a difficult situation in that they have a hard time understanding the court system and the requirements or conditions of their sentences. The implications of these findings are that, unless society is willing to devote considerable time and show a vested interest in this disadvantaged segment of offenders, they will more than likely re-offend—resulting in the violation of any terms of pretrial release, probation or parole (Drake, 2006). Because the social and cultural landscape of the correctional workplace is ever-changing, how well an organization adapts to these changes relies heavily on its ability to communicate both openly and effectively (Drake, 2006).

Communication in Policing

Unfortunately, the segment of the population for whom English is not their principle language, thus making it more difficult to understand and communicate, makes up a "discouraging proportion of offenders" (Safford, 1977). That being said, how this issue affects policing is an important area of focus. In a series of cases reported to the California State Advisory Committee to the United States Commission on Civil Rights, policemen became enraged by the apparent lack of response to orders when Spanish-speaking persons failed to comprehend what was said (Safford, 1977). The Civil Rights Commission concluded after a series of hearings that the source of the problem was that officers could not understand the intent from the Spanish-speaker's speech. This is because "the regular rise and fall of the Spanish intonation pattern, when accentuated by excitement, may be interpreted as a harangue" (Safford, 1977, p. 18). Furthermore, a

misinterpretation of words similar to those in English can also be the cause of much confusion leading to serious consequences. For example, Safford (1977) tells the story of a mother who complained to the police that her husband had struck their daughter while under the influence of alcohol. In this situation, the police took this to mean that the father was sexually molesting the child and subsequently arrested him. Because the father understood very little English, he did not object to the charge and, as a result, remained in jail for two months unable to make bail.

Communication in the Court Room

While the language barrier can prove detrimental to an officer's decision to arrest, this is not the only area where miscommunication can affect non-English-speaking individuals. In the arena of the courtroom, misinterpretations of "alien defendant" behaviors can oftentimes have deleterious consequences. Whenever you have a group of foreign-born persons mixed with native-born Americans, the potential for misunderstandings to occur is great considering the substantial differences in the social and behavioral norms. As a result, the actions, appearance, and demeanor of alien defendants can be easily misunderstood by judges, jurors, attorneys, and other court personnel. For instance, depending on an individual unique cultural experience, a defendant may seem to be reticent, unusually loud or even appear taciturn in their inability to display or verbalize any remorse or feelings of guilt (Messier, 1999). "Lack of emotion[, for example,] is often interpreted as lack of remorse, although an unemotional demeanor may only reflect a cultural indoctrination outside the American experience" (Messier, 1999, p. 1401). In addition, there are numerous other non-verbal

gestures that could easily be misinterpreted as well. Something as simple as failing to make eye contact could be interpreted as a sign of untruthfulness and guilt, when in actuality it indicates respect or fear. In order to offset any deleterious effects that could result from these cultural and behavioral differences, it is important that jurors, judges and attorneys be educated and trained to deal with—and more effectively understand—non-English-speaking defendants.

Communicating in Corrections

Human communication has been defined as "the activity of conveying meaning from one person to another through a set of signals that serve to conduct it" (Eberhardt, 2006, p. 40). In order for the communication to be effective, both parties have to agree on the signals and their meaning. If not, then a language barrier is created. This can create numerous problems with regard to communication. With the immigration and assimilation of drastically different cultures, it seems that naturally created language barriers would be an inevitability and almost certainty—particularly between law enforcement and the communities they have been sworn to protect and serve (Eberhardt, 2006). Therefore, in order for correctional and other law enforcement employees to effectively and efficiently perform their jobs, they must work to bridge the barriers that exist between the communities and the jails.

The Need to Accommodate

Some may question the need and justification for accommodating non-English speaking individuals in the criminal justice system. The rationale behind the answer to that question is rooted in the issue of immigration, an area of interest that has quickly

become one of the nation's most divisive topics. The truth is that the ethnic and cultural composition of the U.S. population is rapidly evolving and if a just and fair judicial system is to be created, every effort must be made to accommodate the fundamental needs of the defendants. For example, the obstacles presented by the existence of language barriers not only results in breakdown of communication, but may also prevent cases from being resolved in a timely manner—a consequence that can prove detrimental to all parties involved. Additionally, these barriers inhibit a defendant's ability to gain a firm understanding of their rights and what is needed to ensure they comply with lawful commands or may prevent them from attaining "meaningful access" to services and information within correctional facilities (Eberhardt, 2006). In the end, a failure to accommodate only serves to deny these individuals the ability to exercise certain rights. All individuals are afforded certain rights and protections whenever the government threatens their "liberty, person, or property." These rights should be upheld and defended irrespective of citizenship status and the ability to speak, read or write English (Adams, 1973).

Accommodation in the Court Room

Because the need to accommodate non-English speakers has been clearly demonstrated, the criminal justice system has made various changes in order to assuage the communication problems of defendants. Chang & Araujo (1975) believed one step towards correcting this problem is through the appointment of court-compensated interpreters. With English being the principal language used in all legal proceedings, the ability to comprehend the language used is paramount to the fairness of those

proceedings. Furthermore, interpreters may play three different roles in criminal proceedings:

1. They make the questioning of a non-English-speaking witness possible;
2. They facilitate the non-English-speaking defendant's understanding of the colloquy between the attorneys, the witness, and the judge; and
3. They enable the non-English-speaking defendant and his English-speaking attorney to communicate. (Chang & Araujo, 1975, p. 802)

Even though the need for better accommodations exists, this does not mean that non-English speaking offenders are entitled to them. In fact, initially most courts were reluctant to provide interpreters. "The state requires that English be used in its courts, thus placing a burden on those unable to speak English, and then institutes a criminal prosecution, which further subjects non-English-speaking persons to the burden of the rule" (Chang & Araujo, 1975, p. 805). Some argued that in denying the request of some non-English-speaking defendants to an interpreter, the courts were actually promoting the learning and use of English. However, when you take into consideration the likelihood of conviction and imprisonment, it hardly seems a justifiable sanction for failing to learn English.

Due Process and Bilingual Notice

In the article "El Derecho" (1973), the issue of bilingual notification is discussed. For those who are unable to read English, legal notices that are sent in English essentially fail to fulfill their purpose. The misguided belief that this type of notice is suffice to fulfill the due process requirements is a fallacy in that notice must be provided in a

language the defendant can understand unless it is infeasible—only in this situation would this be a permissible and adequate form of notice ("El Derecho," 1973). Furthermore, all written communication conducted in English places Spanish speakers, and other non-English speakers at a severe disadvantage. For instance, something that could have easily been cleared up or taken care of if given proper notification instead causes unnecessary stress and complication to both the individual and the criminal justice system. The case of *Mullane v. Central Hanover Bank & Trust Co.* (1950) set forth the constitutional requirements for notice of judicial proceedings to a potential party under the Fourteenth Amendment to the United States Constitution. Therefore, in the interest of justice and for the sake of due process, every effort should be made to ensure that non-English-speaking defendants have equal access to information, particularly that which is relevant to their individual cases.

Technology and Communication

In law enforcement and correctional training, more emphasis is placed on cultural diversity awareness for different ethnic groups. Though it is critical that officers be able to understand and develop sensitivity to certain cultures, this alone is not enough to bridge the gap in communication. In 2000, the U.S. Census revealed that, while 21.3 million people residing in the United States reported difficulty in effectively communicating in English, 3.3 million of those who responded reportedly did not speak English at all (Drake, 2006). Considering the need for improved methods of communication, it is important to consider technological alternatives due to the fact that it may not always be possible or feasible to provide bilingual staff members. Advances in

technology have now made it possible for officials to reduce the dependency on human translation, placing translation in the hands of computers to fill the gaps created by language barriers. One such advancement is the use of a device known as "The Phraselator" which relies on computerized phrase-based translation concepts. It was originally developed for the U.S. military for use in Afghanistan to facilitate communication between the troops and the local population. The device essentially uses speech recognition technology to phonetically analyze spoken phrases and match those phrases to prerecorded foreign languages. Unfortunately, this device is not a two-way instrument; the response is not translated back into the language of the person initiating the communication.

Because the U.S. military has long recognized the need for troops to be able to effectively communicate directly with foreign locals, they have continued to fund research in the development of technology that may one day meet the standard of the stated goal which, simply put, is to be able to translate anything at any time regardless of location or language (Drake, 2006). One improvement that has been made can be demonstrated by the SpeechGear's Interact system that supports an English vocabulary of more than 200,000 words along with a foreign language vocabulary of around 50,000 words. These words can be combined into any sentence and translated. The context of the words is used to both identify what was said as well as to generate the appropriate translation. To test if this device would indeed be successful in fulfilling its intended purpose, the Probation and Parole Division of the New Mexico Corrections Department were given the opportunity to test this new technology in the workplace.

Given that New Mexico is a border state with a large population of Spanish-speaking residents, it is often challenged to provide appropriate services to its ever-growing population of non-English-speaking offenders. Given this, bilingual officers who supervise Spanish-speaking caseloads were asked to use the equipment when communicating with their clients and evaluate its effectiveness in translating each portion of the interviews. Throughout the process, officers were to refrain from speaking Spanish unless the translation system failed to communicate the concept. The 30-day trial found that the English-to-Spanish translation was extremely effective, while the Spanish-to-English communication was sometimes problematic. The study provided evidence that the use and development of translation equipment could potentially be an effective method to bridge the ever-growing gap in communication. Furthermore, it is expected that the systems will only get better with time.

Summary and Discussion of Literature

Today, more than ever, the Hispanic population can be represented in almost every facet of the criminal justice system from victims to offenders and even criminal justice professionals—a fact which makes the paucity of "Hispanic-focused research" more astounding (Schuck et al., 2004). The purpose of this thesis is to provide a review of relevant research on race, ethnicity and the criminal justice system and perhaps shed some light into the growing problems associated with Hispanics—focusing on immigration and the issues presented by the existing language barrier. It is important to note that, according to the U.S. Census Bureau (2001), the Hispanic population is now the largest minority in the United States and an increasing proportion of the jail and

prison populations. In light of this growing populace, some researchers still contend that the extent to which racial disparities exist is grossly exaggerated. However, it is because Hispanic defendants have often been included in the same category as whites that some studies have found only small to negligible effects of race in sentencing, thus making it more difficult to unravel the true effects of the "Hispanic ethnicity" (Steffensmeier & Demuth, 2000). Furthermore, because there are various disparities that exist within a particular ethnicity, it is important to consider ethnicity when examining disparities in the criminal processing to avoid obscuring racial disparities (e.g., the classification of Latinos as "white" may skew the gap among whites and blacks, making it seem negligible or not significant) (Schlesinger, 2005).

As can be learned form the information presented, continued research is necessary to assess more accurately the extent to which race and ethnicity affect various stages of the criminal justice process. In fact, a great deal of the existing sociological research in race and crime suggests that the "socially disadvantaged" (including many offenders of minority status) are unjustly targeted and subject to more "coercive treatment" by law officials (Steffensmeier & Demuth, 2000). According to Steffensmeier & Demuth (2000), this prejudiced treatment can occur for three distinct reasons:

1. Minorities and/or the socially disadvantaged lack the legitimate means or resources to resist or challenge the negative stereotypes or labels placed upon them by society.
2. Those individuals or groups who are in positions of power, being concerned mostly with their own economic and moral interests, feel threatened by the

behaviors of the minority or disadvantaged.

3. Whenever criminals are perceived to be "racially or culturally dissimilar" to the majority, the crimes committed will be more feared and the sentences given will be far harsher because they appear to be more "dangerous" and "unpredictable."

In light of the recent controversy surrounding immigration, I would ultimately like to examine whether or not those who are Spanish-speaking-only are unjustly discriminated against throughout the criminal justice process. Furthermore, I believe that a critical component in assuring that these individuals are fairly treated in the judicial system is working to help break down the language barrier by facilitating equal access to information through the use of bilingual officers and staff or the implementation of newly developed translation technologies.

CHAPTER 3

RESEARCH METHODS AND PROCEDURES

Given the lack of adequate research in the processing disparities of non-English speakers in the criminal justice system, the primary purpose of this research is to explore the issue of language barriers experienced by non-English speakers with specific attention to the pretrial release process. Much of the existing research indicates that race plays an important role in the criminal processing of individuals; little attention, however, has been paid to the experiences of those classified as non-English speakers—particularly Spanish-speaking offenders. With the recent escalation in the concern over immigration, the potential implications of this thesis are not only paramount but also relevant. Government officials, particularly law enforcement, need to become better aware of the issues surrounding non-English speakers in the criminal justice system in order to maintain fairness and equality.

In this chapter the design of the research study is discussed as well as an outline of the specific research questions—including a brief discussion of each question's research hypothesis. This section also details the concepts utilized. It also explains how each concept is operationally defined and discusses the variables used to measure each of those concepts. Additionally, there is a discussion of the data used in this thesis and any

possible limitations of the research design. The results of the analysis are presented in Chapter IV and a summary of the analysis along with their implications in Chapter V.

Overview of Research Design and Research Questions

The purpose of this thesis is to identify and assess the various disparities that exist throughout the criminal processing for non-English speakers by relying on a sample from Travis County. Several aspects and offender characteristics are explored in these analyses. The data utilized for this study originated from a report by Travis County Pretrial Services generated specifically for the purpose of this thesis. This report included a list of all defendants arrested and interviewed by pretrial officers for the month of January 2008. The list was further narrowed to include only male defendants charged with a single misdemeanor offense and interviewed only for personal bond—irrespective of whether or not they were recommended or approved. Other offender variables included in the report were age, ethnicity, offense type, bond amount, language (i.e., English-speaking or non-English-speaking), citizenship status, and release type.

Given that the focus of this research is on non-English-speaking defendants, this group is identified as the reference group. Likewise, those offenders who spoke English served as the comparison group. In order to simplify the comparison, English-speakers were narrowed down to include only white defendants. The reasoning behind this decision was to isolate the differences among Spanish-speakers and English-speakers decreasing the likelihood of other extraneous variables (e.g., race) confounding the results. The reference group consisted of 104 male defendants obtained through a systematic sampling of every 1st, 3rd and 4th data set included in the thesis report.

Similarly, the comparison group was comprised of 118 male defendants each derived, again, utilizing a systematic sampling of every 5th subset from the list generated by Pretrial Services. The following are the specific research questions for the current thesis.

Research Question 1: Is there a difference between English-speaking and non-English-speaking defendants in how they are processed through pretrial services in Travis County, Texas?

Research Question 2: Are non-English speakers disproportionately arrested for particular types of offenses compared to English speakers?

Research Question 3: Are non-English speaking defendants less likely than English-speaking defendants to be released on bond?

Research Question 4: Are the bond/bail amounts set higher for non-English speakers compared to English-speaking defendants?

Research Question 5: What factors predict whether one will be released on bond?

Research Hypothesis, Conceptualization, and Operationalization

In this section, the primary and specific research questions are discussed in terms of how each concept is operationally defined and how it relates to the overall study. For the purpose of this thesis, the unit of analysis is the non-English-speaking defendant. Each question is listed with the main concepts operationalized, as well as the variables that are used to measure each concept.

Research Question 1: Is there a difference between English-speaking and non-English-speaking defendants in how they are processed through pretrial services in Travis County, Texas?

The main function of this question is to gain a broad understanding of the pretrial release process and how it relates primarily to Spanish-speaking defendants. The proposed hypothesis here is that there will be significant differences in the pre-sentencing outcomes of English-speaking and non-English-speaking defendants, favoring those capable of speaking and understanding English. The concepts in this question include "English-speaking" defendants, "non-English-speaking" defendants, and "pretrial services."

English-speaking defendants refer to the segment of the inmate population who can both speak and understand English well enough to communicate without the use of an interpreter. Non-English-speaking defendants, for the purpose of this study, refers to those who speak Spanish only and require the assistance of a bilingual officer in order to communicate effectively. Subjects were categorized as English-speaking or non-English-speaking based on whether or not they needed the assistance of a bilingual officer during the personal bond interview process. When defendants are interviewed by Pretrial Services, they are asked if they would like to request court appointed counsel. The interviewing officer records the response on the personal bond application and indicates whether or not the offender requires bilingual counsel. For example, somebody who qualifies for a court appointed attorney and is Spanish-speaking is noted on the bond by placing the abbreviation AASP. These notations were included in the thesis report generated by Pretrial Services and was the method used to ascertain whether or not a defendant was English-speaking or not. Travis County Pretrial Services is a subdivision of the probation department, which is responsible for interviewing defendants for the

purpose of determining eligibility for release on personal bond as well as qualification for court appointed counsel.

This primary question specifically addresses the potential problem the language barrier poses throughout the criminal justice system—with special attention focusing on the environment of correctional facilities. In order to obtain a more accurate picture of the role language plays, this study measures the differences in arrests, types of bond release and bail amounts between English-speaking and non-English-speaking offenders. Also taken into consideration are factors such as a defendant's citizenship status and age.

Because a majority of the race-related research in the field of criminal justice has focused primarily on either race (i.e., white or black) or ethnicity (i.e., Hispanic or non-Hispanic) there is not much by which to compare the present study. Despite the paucity of language-related studies, past research has indicated a higher risk for criminal behavior among non-English speakers—lending support to the furtherance of research into the rising language barrier issue (Drake, 2006).

Research Question 2: Are non-English speakers disproportionately arrested for particular types of offenses compared to English speakers?

This specific question is an attempt to address the issue of racial discrimination—or as some would refer to as racial profiling—with respect to the decision to arrest. Historically, as has been explained previously, much of the literature has focused on the differences between whites and blacks with little attention paid to the Hispanic ethnicity—making them an almost "invisible" population (Schuck et al., 2004). Furthermore, even less research exists into the negative experiences of those with the

unique handicap of being unable to speak or understand English. Because of this, it is difficult to hypothesize whether or not arrest disparities exist and, if so, for which types of offenses. However, from personal experience as a bilingual pretrial officer, it would appear as though the most common offenses Spanish-speaking defendants get arrested for include driving while intoxicated, family violence assault, driving with a suspended or invalid license, and failing to give identification or providing false information.

Due to the lack of specific research, this particular question is especially important because it could be evidence for whether or not language discrimination—much like racial profiling—factors into the decision to arrest. Imagine, for example, that an officer arrives at the scene of a domestic disturbance. Now say the alleged victim is unable to communicate with the officer while the offender is fully capable of speaking English and, therefore, is able to give an account of the incident which favors him or her. If a bilingual officer is unavailable, this situation could be potentially problematic for the non-English speaking defendant and could result in a wrongful arrest.

The main concepts in this research question are "non-English speakers," "disproportionally arrested," "types of offenses," and "English speakers." Disproportionally arrested and types of offenses are tied together and essentially refers to whether non-English speakers are arrested for a particular offense more or less often than English speakers (e.g., are non-English-speaking defendants arrested for assaults or DWI offenses compared to their English speaking counterparts). This particular concept is measured by taking the offenses recorded by the research sample and simply adding them up to see if any one type of offense seems to be more prevalent in the reference group

versus the comparison group. In order to simplify this process, the offenses themselves are first categorized into two general categories—violent and non-violent offenses. Violent offenses are further divided into family related (i.e., domestic violence) and non-family related offenses while non-violent crimes are grouped primarily into three categories—alcohol related (e.g., DWI), drug related (e.g., possession of marijuana) and theft (e.g., theft and burglary of a vehicle). Those offenses that fit into neither of these categories are divided into traffic, nuisance, uncooperative, and weapons charges.

Research Question 3: Are non-English speaking defendants less likely than English speaking defendants to be released on bond?

In researching racial disparities in the criminal justice system, some of the literature has focused on the release process and how detrimental it could be to be denied bail and forced to remain in jail until the disposition of their case either because they were denied bond or could not afford to post the required bail amount (Schlesinger, 2005). Given this, the importance of this research question is clear. Should the inability to speak and understand English prove to be a hindrance to the obtaining of pretrial release, the affect this has not only on the defendant but also on their families could be damaging to say the least. The proposed hypothesis here is that non-English-speaking defendants will be less likely to obtain pretrial release, especially release on recognizance (i.e., personal bond).

The main concepts in this research question are "non-English speaking defendants," "English-speaking defendants," and "released on bond." To be released on bond is to obtain pretrial release through one of four different methods: cash bond, surety

bond, personal bond, and cash deposit bond. A cash bond simply means that the defendant posts the entire bond amount set by the judge in full prior to release as a guarantee that they will return to court. This money may be returned to the defendant upon sentencing if it can be shown that they fulfilled their obligation to the court. A surety bond is a type of bond that one may seek if it seems they may not be able to pay the full bond amount. In this case, the defendant hires a bail bondsman and pays a percentage (usually about 10-20% of the bond) to obtain release. If the defendant fails to return to court, the bail bondsman may be held liable for the full bond amount—in other words, the bondsman acts as a guarantor to the court that the defendant will appear as instructed by the court. In instances where a defendant appears responsible and seemingly poses little to no threat to the community, they be recommended by a pretrial officer for release on their own recognizance (i.e., personal bond). Eligibility for release on personal bond is determined by pretrial officers designated by the court to conduct extensive investigations including a personal interview of the defendant, an extensive criminal background check and the verifying of information by personal references. Failing to return to court and comply with any additional conditions set by the court could result in the revocation of the bond and an issuing of a warrant for arrest. The last option, cash deposit bond, is essentially the same as a personal bond with the stipulation that the defendant pay a small percentage of the bond as an added incentive to the defendant to return to court. This type of bond is typically reserved for those with more serious offenses or those defendants who have demonstrated non-compliance issues in the past (e.g., a defendant who has failed to report to court). Release information for the

defendants included in this research sample was obtained from the Travis County Jail system. Those who were never released on bond were categorized as "released upon disposition," meaning they were unable to post bond and did not get released until their case was disposed of (i.e., dismissed, sentenced to jail time, or given probation).

Research Question 4: Are the bond/bail amounts set higher for non-English speakers compared to English-speaking defendants?

This research question is important for the same reasons as Research Question 3. However, this particular question is an attempt to address the issue of risk assessment—that is, the risk assigned to non-English-speaking defendants. The bond amount set by the magistrate judge is, for the most part, based on the seriousness of the offense, the potential risk they pose to the community should they be released, and the probability that they will return to court and not flee (i.e., flight risk). The hypothesis with respect to this question is that the bond/bail amounts will be set higher for non-English-speaking defendants. As discussed in the literature review, research has suggested that Hispanics may actually receive higher bail amounts compared to both whites and blacks (Turner & Johnson, 2005). If the same holds true for non-English speakers, this could mean that this segment of the population receives higher bond amounts because they are viewed as a flight risk due to the fact that many non-English-speaking defendants are immigrants and, thus, may be more tempted to flee back to their country of origin rather than stay and face criminal prosecution.

The concepts included in this research questions are "bond/bail amounts," "non-English speakers," and "English-speaking defendants." For the purpose of this thesis, the

bond/bail amount simply refers to the dollar amount set by the judge that must be paid in order to obtain pretrial release—assuming they are not released on personal bond in which case they are only required to pay the personal bond fee. In some cases, the bond/bail amount could be set at cash or surety meaning that the defendant must either obtain a cash bond or obtain a surety bond through the employing of a bail bondsman. The information for the defendants included in this research was, again, obtained from the Travis County Jail system.

Research Question 5. What factors predict whether one will be released on bond?

The primary function of the last research question is to determine if there are other factors which can be used to predict the likelihood of an offender being released on bond. For instance, it is hypothesized here that a defendant's citizenship status (i.e., U.S. citizen or non-citizen) will result in a lower chance of pretrial release for those who are non-citizens. While there appears to be a lack of studies that focus on the pretrial release process of citizens versus non-citizens, this hypothesis is predicated on previous findings indicating that extralegal variables such as race and ethnicity have an effect on decisions regarding pretrial release (Petee, 1994; Demuth, 2003; Demuth & Steffensmeier, 2004; Schlesinger, 2005). The main concepts in this last research question are "factors" and "released on bond."

In the context of this research, factors refer to any additional offender characteristics that may factor into the decision to release or the ability to be released on bond. Examples of such factors could include a defendant's citizenship status, ethnicity, and age. Released on bond has been previously defined as the method of release (i.e.,

cash bond, surety bond, personal bond, cash deposit bond, or released upon disposition).

Data

The data utilized for the purpose of evaluating these research questions involves two different sources. First, the Travis County Jail corrections database is utilized, which contains information regarding all offenders who have gone through the booking process. After being arrested for a specific crime, the offender is taken to the county jail and must undergo what is termed "the booking process." When someone is booked-in, the facts surrounding the arrest are recorded and the accused is fingerprinted and photographed in order to maintain an accurate measure and description of the inmates being held. The database includes the following information for each offender: name, age, sex, race, ethnicity, date of birth, charge type, bond amount, booking date, location (if currently being housed or in custody), date released, and release type. While this list does not encompass all of the information contained, it includes the most relevant data to this research.

Second, additional information was collected from a specialized report created for the explicit purpose of this thesis—making the process of analysis less complicated. This report was designed by Travis County Pretrial Services to include all of the data needed for analysis. The information was retrieved from both the Pretrial Services database, which, in turn, obtains a lot of its data from the Travis County Jail corrections system. The only data not included in this report was the release type, which had to be obtained independently from the jail corrections system.

Analysis

In order to accurately assess each of the research questions, a variety of analyses are performed. Taking a sample of 104 Spanish-speaking-defendants and 118 English-speaking-defendants, descriptive analyses are employed to examine any disparities among the two groups. Research Question 1 is addressed through the gathering of all the results from Research Questions 2 thru 5 which attempt to measure any differences or existing disparities between English-speaking and non-English-speaking defendants.

Research Question 2: Are non-English speakers disproportionally arrested for particular types of offenses compared to English speakers?

Raw numbers and percentages are reported for each type of offense for English-speaking and Spanish-speaking defendants. To assess the differences between both groups, a cross-tab of language (English and Spanish) by offense type is employed. To test whether the difference between the two groups is significant a chi-square test is employed. This type of test in most effective when the variables being examined are categorical (or nominal). Additionally, several categories are collapsed to avoid violating the assumption of the chi-square test—that 80% of cells must have frequencies of 5 or greater. The offenses utilized in this study are placed into the following categories: traffic, nuisance, drug, theft, uncooperative, assault, weapon, and DWI. Traffic crimes for the purpose of this study include driving while license suspended (DWLS), illegal racing and reckless driving. Nuisance crimes include criminal mischief, criminal trespass, public intoxication, prostitution, and duty on striking fixture/highway landscape. Drug charges consist of possession of marijuana (POM), possession of a controlled

substance (POCS) and possession of a dangerous drug (PODD). Theft crimes include burglary of a vehicle (BOV), theft by check (TBC), theft of service, and of course theft. The category of uncooperative crimes includes evading arrest, failure to identify, failure to stop and give information, and interfering with an emergency call. Those crimes grouped under assault consist of two primary charges: assault and assault family violence. The crimes of unlawful carrying of a weapon and carrying of a prohibited weapon are grouped under the category of weapons charges. Finally, due to the high volume of DWIs included in this sample, this charge was placed in its own category. Having described the category of offenses utilized in this analysis, the next step is to perform a Cross-Tab with Chi-Square analysis to compare both English-speaking and non-English-speaking defendants for each category of offense and bond release type.

Research Question 3: Are non-English speaking defendants less likely than English speaking defendants to be released on bond?

Similar measures are utilized to address Research Question 3 as are employed in Research Question 2. The exception here is that the variables of interest are bond and no bond. This is determined by whether or not a defendant was released on any type of bond or remained in jail until the final disposition of their case. A bond is a method of securing pretrial release, usually requiring some form of collateral (monetary deposit) as a guarantee that the defendant will return to court—the exception being personal bond which only requires a person's own word or personal promise to appear. The different types of bonds included in this study are cash bond, surety bond, personal bond, and cash deposit bond.

Research Question 4: Are the bond/bail amounts set higher for non-English speakers compared to English-speaking defendants?

For Research Question 4, the range, median and mode are reported for both English speakers and non-English speakers. Following this, a T-Test is utilized to assess whether or not any significant differences exist with respect to the average bond amount for both groups. The T-Test is best employed in situations where one is dealing with interval/ratio level data—as is the case here.

Research Question 5: What factors predict whether one will be released on bond?

Finally, Research Question 5 is evaluated through the use of a multivariate technique called logistic regression. The dependent variable for this analysis is defined as released on bond (yes/no), while the independent variables include citizenship status, ethnicity, age, and language.

Limitations of Study

Perhaps the most notable limitation is that the information analyzed here is only as accurate as the manner in which it was collected. In other words, the findings of this study depend greatly on how precise and careful both the corrections officers and pretrial officers are in the data entering process. There is always room for human error. For instance, it could be very easy to enter an incorrect age or forget to include the ethnicity—which for the purpose of this study is "Hispanic" and "not-Hispanic."

Additionally, criminal histories were not included as part of the analysis which could pose certain problems or concerns regarding the release process. Typically, an offender's prior arrest record may be taken into consideration by the judge when

determining bond amounts and also by the pretrial officer when deciding whether or not to recommend for release on personal recognizance (i.e., personal bond). Should further research be conducted in the future, it may prove beneficial to control for a defendant's criminal history.

Other possible limitations to this study include a limited sample size and geographical area. For all intents and purposes of this thesis, a modest sample of a little over a 100 defendants were suffice to attain a general comparison of both English speakers and non-English speakers. Also, because of certain time constraints, data were conveniently limited to Travis County, Texas. Therefore, the results found here are limited in the extent to which they may be generalized beyond the scope of the current sample. Future studies should, thus, widen the scope of data collecting in order to obtain a more accurate finding capable of broader implications and generalizations.

CHAPTER 4

RESULTS

This study focused on defendants in Austin, Texas and utilized data collected by Travis County Pretrial Services—an agency which interviews newly arrested defendants and determines eligibility for release on personal recognizance (i.e., personal bond). A sample of 220, 118 English-speakers (ES) and 104 Spanish-speakers (SS), were chosen from a list of all defendants arrested during the month of January, 2008. This list was narrowed to include only Caucasian males charged with single misdemeanor offenses. While there are specific guidelines regarding the qualification of release on personal bond, each defendant is viewed on a case-by-case basis leaving much room for discretion. In this chapter the results of each research question are presented.

Subjects

As shown in Table 4.1, the mean age for English-speakers was 30.59 years with a mode of 28 years old. For the Spanish-speakers the mean age was 28.78 years with a mode of 24 years. Thus, Spanish-speakers were slightly younger than English-speakers. While all Spanish-speakers were classified as Hispanic, only 36.4% of the English-speaking defendants were Hispanic. With regard to citizenship, 94.9% of English-speakers were U.S. citizens compared to 19.2% of Spanish-speakers. The mean bond

amount was $2,666.95 for English-speakers and $2,867.31 for Spanish-speakers with the mode being $2,000 for both groups. Additionally, Spanish-speakers were arrested more often for DWI (50%) and uncooperative offenses (23.1%) compared to English-speakers (36.4% and 5.1% respectively).

Table 4.1: Study Population Characteristics

Characteristics		English-speaking		Spanish-speaking	
		Number	Percentage	Number	Percentage
Age	17-26	52	43.9%	52	49.9%
	27-36	34	28.5%	37	35.5%
	37-46	20	16.6%	7	6.7%
	47-56	7	5.7%	7	6.9%
	> 56	5	4%	1	1%
Ethnicity	Hispanic	43	36.4%	104	100%
	Non-Hispanic	75	63.6%	0	0%
Citizenship	Non-U.S.	6	5.1%	84	80.8%
	U.S.	112	94.9%	20	19.2%
Charge Type	Traffic	9	7.6%	4	3.8%
	Nuisance	7	5.9%	10	9.6%
	Uncooperative	6	5.1%	24	23.1%
	Theft	13	11%	4	3.8%
	Drug	18	15.3%	1	0%
	Weapon	3	2.5%	0	1%
	Assault	19	16.1%	9	8.7%
	DWI	43	36.4%	52	50%

Research Question 1

Research Question 1 asks: Is there a difference between English-speaking and non-English-speaking defendants in how they are processed through pretrial services in Travis County, Texas? This question is a culmination of the results for the following four

research questions. The results do appear to point to the conclusion that differences do exist between English-speaking and non-English-speaking defendants in how they are processed. These findings will be further discussed below.

Research Question 2

Research Question 2 asks: Are non-English speakers disproportionately arrested for particular types of offenses compared to English speakers? The seven categories of offenses included traffic crimes, nuisance crimes, drug charges, theft, uncooperative, assault, weapon, and DWI. Differences were assessed between Spanish-speaking and English-speaking defendants. The chi-square analysis did indicate significant differences ($p < .01$) regarding arrests for three of the seven categories of offenses (see Table 4.2). Thus, these findings point to language being a factor in the initial arrest process of defendants.

Table 4.2: Results of Differences in Arrests Between English-speaking and Spanish-speaking Defendants for Particular Types of Offenses

Offense	English-speaking		Spanish-speaking	
	Number	Percentage	Number	Percentage
Uncooperative	6	5.1%	24	23.1%
Assault	19	16.1%	9	8.7%
DWI	43	36.4%	52	50.0%
Total	68	57.6%	85	81.8%

Research Question 3

Research Question 3 asks: Are non-English speaking defendants less likely than English speaking defendants to be released on bond? The possible release outcomes included bond (yes) or no bond (no). The types of bonds utilized consisted of cash bond, surety bond, personal bond, and cash deposit bond. Once again differences were assessed

between Spanish-speaking and English-speaking defendants. The chi-square analysis did indicate significant differences ($p < .05$) in the type of release between both the reference and comparison group (see Table 4.3). This finding, again, suggests that language also plays a role in the release of the defendant.

Table 4.3: Results of Differences in Jail Release
Between English-speaking and Spanish-speaking Defendants

Bond	English-speaking		Spanish-speaking	
	Number	Percentage	Number	Percentage
No Bond	18	15.3%	31	29.8%
Bond Received	100	84.7%	73	70.2%
Total	118	100%	104	100%

Research Question 4

Research Question 4 asks: Are the bond/bail amounts set higher for non-English speakers compared to English-speaking defendants? Due to the involvement of monetary figures, the possible outcomes would either be "yes"—the bail amounts are set higher for Spanish-speakers—or "no"—there are no significant differences in the bonds set for either reference or comparison group. The mean bond amount for English-speakers was $2,666.95 while both the median and mode was $2,000. For the Spanish-speakers, the mean bond was set at $2,867.31 while, again, both the median and mode was $2,000. The T-Test revealed no significance $t(220) = .594$, n.s. (see Tables 4.4 – Table 4.6). However, there was a slight difference in the means of the comparison and reference group with Spanish-speakers receiving a slightly higher mean bond amount.

Table 4.4: Mean, Median and Mode between Bond Amounts for English-speaking and Spanish-speaking Defendants

	English-speaking	Spanish-speaking
N	118	104
Mean	$2,666.95	$2,867.31
Median	$2,000.00	$2,000.00
Mode	$2,000	$2,000
Minimum	$500	$500
Maximum	$15,000	$20,000

Table 4.5: Bond Range for English-speaking and Spanish-speaking Defendants

Bond Range	English-speaking		Spanish-speaking	
	Number	Percentage	Number	Percentage
< $1000	9	7.6%	14	13.5%
$1000-$3000	86	73%	72	66.3%
$3001-$5000	19	16.1%	13	12.5%
$5001-$7000	0	0%	0	0%
> $7000	4	3.4%	8	7.7%

Table 4.6: Bond Distribution for English-speaking and Spanish-speaking Defendants

Bond $	English-speaking		Spanish-speaking	
	Number	Percentage	Number	Percentage
$500	6	5.1%	13	12.5%
$700	1	0.8%	1	1%
$750	2	1.7%	0	0%
$1,000	18	15.3%	9	8.7%
$1,500	8	6.8%	10	9.6%
$2,000	28	23.7%	33	31.7%
$2,500	18	15.3%	10	9.6%
$3,000	14	11.9%	7	6.7%
$3,500	4	3.4%	5	4.8%
$4,000	2	1.7%	2	1.9%
$4,500	1	0.8%	1	1%
$5,000	12	10.2%	5	4.8%
$7,500	0	0%	2	1.9%
$10,000	2	1.7%	3	2.9%
$15,000	2	1.7%	1	1%
$20,000	0	0%	2	1.9%
Total	118	100%	104	100%

Research Question 5

Research Question 5 asks: What factors predict whether one will be released on bond? A logistic regression was used to predict the likelihood of release on bond based on ethnicity (Hispanic or non-Hispanic), language (English-speaking or Spanish-speaking, citizenship status (U.S. or non-U.S.), age, and charge type (traffic, nuisance, uncooperative, theft, drug, weapon, assault, and DWI). An assumption of logistic regression is that there is no multicollinearity among the independent varaibles. Multicollinerity was assessed and there was significant correlation with between ethnicity

and language (X2 = 99.83, d.f. = 1, p <.001), and ethnicity and citizenship (X2 = 77.26, d.f. = 1, p <.001). Thus, ethnicity and citizenship were removed from the model.

The model revealed two significant predictors: language (Spanish-speaking versus English-speaking) and charge type—specifically uncooperative crimes and theft-related offenses. This suggests that these variables may be used to predict the likelihood of a defendant being released on bond. Although most of the defendants (78%) were released on bond, Spanish-speakers were significantly less likely than English-speakers to be released on bond (70% compared to 85%). Also, those who were arrested for uncooperative crimes and theft were also significantly less likely to be released on bond.

Table 4.7: Logistic Regression for Factors Affecting Bond Release

Dependent Variable: Bond Release (Yes/No)						
Independent Variables	Beta	S.E.	Wald	df	Sig.	Exp(B)
Language	1.024	.398	6.612	1	.010	2.785
Charge Type – Uncooperative Crimes	1.751	.631	7.703	1	.006	5.760
Charge Type – Theft	1.929	.922	4.375	1	.036	6.881

Summary of Findings

Important findings of the current study include the conclusion that there are significant differences between Spanish-speaking and English-speaking defendants. First, Spanish-speakers were more likely to be arrested for DWI and uncooperative offenses but least likely to be arrested for an assault charge. Second, English-speakers were more likely to secure release on bond. Third, the mean bond amount for Spanish-speakers was slightly higher than that of English-speakers. Last, both language and charge type were significantly related to release on bond. It is important to note that only

49 of the 222 defendants were denied bond—making it difficult to accurately assess the extent to which specific factors affect release on bond. The implications of these findings will be discussed in Chapter 5.

CHAPTER 5

CONCLUSION AND DISCUSSION

In a review of bail and pretrial release decisions in 23 studies over the past three decades, Free (2002) concluded that racial disparities were relatively stable over time. This research further explores the issues surrounding racial disparities in the criminal justice system by specifically comparing Spanish-speaking defendants to English-speaking defendants. Historically, this population—particularly those of Hispanic/Latino heritage—has been under-represented in much of the race-related research. No other published study was identified that specifically compared English-speakers to Spanish-speakers. It is essential to note that many of those who do not speak English face additional adversities than those who speak English, regardless of their race/ethnicity. It is the goal of this research, therefore, to address the gap and contribute to the overall generalizable knowledge.

The results of the present study yielded several key findings. First, with respect to arrest disparities in types of offenses, it does appear that significantly more non-English-speakers were arrested for uncooperative crimes (e.g., evading arrest, failure to identify, failure to stop and give information, and interfering with an emergency call) and DWI which is a category of its own. An unexpected result was the finding that English-

speakers were more likely to be arrested for assault (including regular "simple" assault and family violence charges). In addition to the offense of DWI, many of the offenses included in this study may be a direct result of the defendants' inability to communicate with the officer. For some of these Spanish-speakers—had they been able to speak English—it is plausible that they would not have been arrested.

These findings are consistent with my observations as a pretrial officer for Travis County and indicate that, for these particular offenses, language may have been an important factor in the decision to arrest. For instance, someone who cannot fully understand directions given by a police officer may be viewed as exhibiting resistance or uncooperative behavior. In the case of assault, despite the findings reported by this study, language could present an issue if one of the two parties involved knows English but the other does not, leaving the arresting officer more likely to arrest the non-English speaker.

Another significant finding in this thesis was that language appeared to also play a roll in determining the likelihood of obtaining pretrial release. Specifically, only 15.3% of English-speaking defendants were denied or unable to secure release compared to 29.8% of Spanish-speakers. This may be due to the fact that non-English-speaking defendants are more likely to be socio-economically disadvantaged leaving them less capable of financing their release. Alternatively, Spanish-speaking defendants may lack sufficient comprehension of the criminal justice process and may not understand how the release process operates. As a bilingual pretrial officer, there have been numerous times in which I have encountered a Spanish-speaking defendant in jail who has expressed

concern and, in some instances, frustration over not knowing how the entire process works and what they need to do to get released. Furthermore, when they are released they may not understand all that is required of them as a condition of their release. This, in turn, may lead to future problems (e.g., bond revocations and bond forfeitures).

Future Policy Implications

It is important that criminal justice agencies begin to realize the magnitude of the problems surrounding the language barrier and start to reevaluate how this segment of the population is processed. In order to effectively address the situation, a multi-faceted approach must be undertaken beginning with better training for corrections and law enforcement officers. These individuals are most often the first point of contact for arrestees and, therefore, it is essential that they be fully trained on how to deal with non-English speakers and, wherever possible, comply with requests for bilingual interpretation. As detailed earlier in this thesis, new technology is progressing rapidly making communication more feasible though the use of specialized translation devices that can be used either out in the field, in the office or in a courtroom setting.

Another avenue of change that may be pursued is the employment and/or hiring requirement of bilingual staff in all areas of the criminal justice system where communication is essential. Government agencies, on all levels (i.e., local, state and federal), should make a concentrated effort on ensuring defendants sufficiently understand every step of the criminal justice system as they are being processed. If non-English speakers are educated as to how the system operates, then they will have a better comprehension of the criminal process and, thus, be more likely to comply and less likely

to violate in the future. In the end, effective policy implication will be contingent upon the degree to which the government is able to accommodate the needs of this growing segment of the population and bridge the language barrier.

Recommendations for Future Research

The major limitation of this study is the relatively small sample size used to conduct the analysis. Those who wish to further the area of language-related research should start by collecting a larger body of data. Increasing the sample size of the current study may have helped solidify the findings and/or shed light on some other possible trends that may have been overlooked here. For example, the finding here that Spanish-speakers were less likely to be arrested for assault charges can be misleading. When one examines the actual data, the number of Spanish-speakers arrested for assault-related offenses was 9 compared to 19 of the English-speakers. Had the data set contained larger numbers, the outcome could quite possibly have yielded different results.

Furthermore, having a smaller sample size made it difficult to examine the role that other variables play. With regard to charge type, for example, there were insufficient numbers to represent each category of offense. Had a larger sample size been used, a more accurate assessment could have been made. With respect to predicting release on bond, having a smaller sample made it difficult to ascertain the extent to which particular factors affect one's ability to obtain release—being that only 49 of the 222 defendants were denied bond. Future research should, therefore, focus on obtaining an equally large sample of both groups (i.e., released on bond versus no bond received) and then compare the two populations. As a side note, it may also be interesting and meaningful to include

a sample of felony offenses by which to compare in order to assess the differences in more serious charges.

Additionally, future research should focus on differences between Spanish-speaking and English-speaking defendants of Hispanic/Latino descent in comparison to their Anglo counterparts. This will help address the ethnicity issue which the current study failed to do—another possible effect of the relatively small sample size. One thing remains certain—there is definitely room to expand upon the existing data. The area of race-related criminal research, as it relates to both Hispanics as a group and non-English speakers, is vastly unexplored. To promote change, it is paramount that we first establish the need for change by way of demonstrating a problem with the criminal justice system in its current state.

Nelson Mandela once said, "If you talk to a man in a language he understands, that goes to his head. If you talk to a man in his own language, that goes to his heart." What can be learned from this is that language is clearly an integral component in effective communication. In a nation where everyone is expected to understand and comply with its innumerable laws and regulations, it is important to assure that everyone has the opportunity to be informed in a truly meaningful way. To deprive someone of such an opportunity would be an unnecessary injustice.

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VITA

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