

Criminal Mitigation:
The Unexamined Effects of Policy Changes on Plea Agreements



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I. INTRODUCTION

Since 1977, in the California Rules of Court, there has existed a sentencing statute that allows judges to take into consideration “mitigating circumstances”. Thus, California judges have been empowered with the judicial discretion to reduce or increase sentences but weighing the given mitigating factors with aggravating factors in a case. While it may seem intuitive that mitigation would lighten criminal sentences, because the defendant is humanized and judges can take their factors into account during sentencing, it is not so clear that there is an effect. Additionally, the effects of laws that allow for mitigation and mitigation’s effects on the outcomes for individual defendants has yet to be formally measured.

What is the impact of mitigation on sentencing? There is evidence that when Defendants are found guilty, their use of mitigation can reduce their sentences. However, only 5% of cases go to trial. Thus, almost all sentences are determined during plea agreements with the shadow of a trial in the background. In this study, I examine the overall effect of mitigation on sentencing in a strategic setting where parties can negotiate or proceed to trial if an agreement is not made.

I argue that mitigation does affect whether or not trials occur and the negotiated sentence. However, the effects of mitigation hinge on how well-resourced the defendant is. In a world where defendants are well-resourced and can fully prepare mitigation packets before trial, they can reduce overall sentencing and ensure that the least culpable defendants receive reduced sentences. However, in a world where mitigating laws exist, but defendants do not have the resources to prepare their packets for the prosecutor, mitigation holds perverse effects. This is because the sentences are only reduced for the defendants that are the most culpable and there is an increase in the risk that less culpable defendants go through a lengthy trial. In this world, this is because the defendant knows their own circumstances and if they can expect to have a reduced

sentence post-trial with mitigation. However, prosecutors do not have insight into backgrounds and possible mitigating factors that a defendant may possess. Thus, they do not calibrate their pre-trial settlements to the defendant's circumstances. Under certain conditions, prosecutors are risk-acceptant and offer high sentences that only defendants with mitigating factors would reject. In others, prosecutors are risk-averse, and they offer all defendants sentence reductions.

I test my argument in this thesis by first modeling the actions of prosecutors and defense attorneys in different institutional periods. Then, a unique policy quirk in San Diego County is exploited to empirically test the assumptions that arise from the formal model. Although there were significant limitations, the collected data suggests that there may be merit to these assumptions.

II. LITERATURE REVIEW

This study concerns three main areas of research. The first concerns defining mitigation and why it exists, on which there is much consensus. The second is the current literature surrounding mitigation, which upon examination, reveals a substantial gap in understanding and information. The third concerns existing theories pertaining to the acceptance of plea deals.

2.1 Mitigation Defined and Justifications for its Existence

Simply put, mitigating factors are reasons why a defendant's sentence should be reduced (Gardner, 2008). Mitigation allows judges to take into account certain factors to reduce their sentences. The factors a judge can consider in mitigation are legislated differently at the Federal and State levels. However, when a court is allowed to consider mitigation factors, like in California, they often fall into two categories: factors relating to the person and factors relating to the crime. Mitigating factors can include factors like a defendant's experience with childhood trauma and the defendant's motivation for the crime being "a desire to provide necessities for his

or her family or self” (full list of factors can be seen in Appendix A, CA Rules of Court 4.423). Mitigating factors were introduced into the California Rules of Court in 1977 and have since been amended frequently to add new mitigating factors that can be considered. Mitigation can refer to a package of documents that a defense attorney prepares that highlights a defendant’s mitigating factors to secure a lighter or otherwise more just sentence. In a mitigation study involving federal cases, Meixner found that mitigation significantly impacts how “judges individualize sentences in ways that consider the personal characteristics of each defendant, beyond what the Guidelines anticipate (2022). However, mitigation can also be directly presented to prosecutors in a plea deal negotiation process (Meixner, 2022).

Mitigation also has a procedural element. After a trial has concluded, a defense attorney compiles a mitigation packet. But, because there are no set standards, this document can vary greatly in content and focus (Meixner 2022). However, to be convincing, this document must provide clear evidence of the claims for mitigation that the Defense attorney hopes the judge will consider. Collecting this evidence is onerous and takes considerable time, as many interviews need to be conducted (Cheng, 2010). Defense attorneys do not always compile mitigation packets, and research suggests that this may be partly due to the limited resources and heavy caseloads of public defenders and their support staff (Gottlieb & Arnold, 2021).

Mitigation is not required for all cases. The only times that it is federally required are in juvenile cases and capital cases, per Supreme Court rulings in *Wiggins v. Smith* (2003) and *Rompilla v. Beard* (2005) (Cheng, 2010). This shows that even the nation’s highest Court has determined the importance of mitigation in the special case of capital cases, and it suggests that mitigation is an extremely valuable tool in criminal defense representation. However, it does not show definitively that mitigation has an effect. Even in Supreme Court cases, it is not shown that

mitigation is an effective tool; rather, that the Court believes it to be important to a defendant's representation.

Although there are stringent guidelines surrounding mitigation in capital cases, in all other criminal cases, mitigation is considered a “free-for-all” (Gardner, 2008). This is because the wording of mitigation laws are loose and leave ample room for interpretation. Mitigation seems even looser when it is compared to the wording of the laws surrounding excusable defenses for a crime (Gardner, 2008). This represents the bifurcation in a criminal case, where defenses/excuses focus on the law and the facts, and mitigation focuses on the person (Gardner, 2008). However, despite the “looseness” that mitigation laws are considered to have, it is important to note that the California Rules of Court divides acceptable categories of mitigating factors into three distinct categories: Factors relating to the crime, Factors relating to the defendant, and Others (CA Rules of Court, Rule 4.423). Additionally, it is important to note that the list of mitigating factors, like all laws, is constantly being updated and adjusted due to changing social attitudes. For example, a recent change in March of 2022 added psychological terror as a mitigating factor that could be considered during sentencing (CA Rules of Court).

Despite critics like Cheng (2010), it is widely understood that the mitigation stage of a trial occurs after a defendant has been found guilty, during the sentencing phase. However, the purposes of presenting a mitigation package for a client can be wider-ranging than just lowering a sentence. Mitigation can also be filed with the court to be considered during the sentencing hearing or used on appeal to “convince the reviewing court that legal errors have more worth because of an inappropriate or disproportionate sentence” (Forsyth, 2017). However, mitigation can also be prepared and used to negotiate a deal with prosecutors so that the case can be settled without a trial (Forsyth, 2017). However, because preparing mitigation packets can be an

arduous process, defense attorneys cannot always compile and present them to prosecutors before a trial. In particular, this is due to the limited resources of public defenders who are overburdened with high caseloads (Gottlieb & Arnold, 2021). Noting this concern, and the importance that mitigation plays, several Public Defenders offices have started to employ mitigation experts to assist attorneys in preparing mitigation packets pre-trial, but this is a new policy feature.

2.2 The Effects of Mitigation

While mitigation, in the context of the American criminal justice system, is a relatively new concept, there has been enough time for a sufficient pool of literature on the topic to form. However, none of the existing literature on mitigation includes evidence that mitigation is effective at reducing sentences, nor does it address the effects of mitigation on the plea bargaining process.

Firstly, one major obstacle in the observation of the effects of mitigation is the rarity of trials. Plea bargaining happens behind closed doors and, despite its air of secrecy, is very common. In fact, 95% of criminal convictions result from guilty pleas (Wilford, et al. 2021). Prosecutors have significant power to influence sentencing through plea agreements, but prosecutors are “extremely difficult to study because they do not release information about their decisions” (Meixner, 2022). This makes an inquiry into the effects of mitigation in the context of plea deal negotiations both extremely pertinent and difficult.

Mitigation has previously been examined through the lens of sociology. For example, in a 2017 paper on a Louisiana capital murder case, Forsyth argued for the importance of sociologists in mitigation. He said, “The expert/sociologist will attempt the more difficult job of explaining why structural, cultural, and familial factors are least partially to blame for the circumstances of

capital murder” (2017). Sociologists like Forsyth have laid out the connections between life factors, like foster care and the adoption system, and outcomes. For example, by showing that 80 percent of people detained at the Louisiana Department of Corrections had been in foster care, he shows the connection between the life factor and the outcome (Forsyth, 2017). While this may be a compelling argument for why a given defendant may have been more likely to commit a given crime, it does not show the efficacy of presenting this information to a judge in reducing the severity of criminal sentencing.

Alternatively, some scholars have argued that mitigation should take a social-sciences and humanities-based geographic approach in the pursuit of “humanizing” clients (Urbanik, 2021). In Urbanik’s argument for the importance of using social science and humanity geography in criminal mitigation, she proffers her “arts-based methodology in body mapping and video” (Urbanik, 2021). While a novel approach to mitigation, the efficacy of this approach is not examined or even questioned in her article.

Additionally, mitigation has been examined through the psychology discipline but not political science (Fazilov, 2021).

Furthermore, no tangible consequences were shown in an article from the Howard Law Review about the “Consequences” for a defendant of not submitting mitigation (Tyson, 1989). Instead, it is baselessly asserted that “A defendant is likely to receive a more severe sentence where he fails to present mitigating circumstances.” (Tyson, 219). Instead, the “consequences” that Tyson lays out are that failure to present mitigation would violate Supreme Court precedents surrounding mitigation.

While many who have contributed to the mitigation literature have focused on the methods that one should use to prepare mitigation or theories of why given circumstances in a

person's life would have a negative outcome on a defendant, none have examined the actual efficacy of mitigation once it is presented to a judge. Therefore, there is currently a large gap in the literature that does not address mitigation's effects on judicial discretion, particularly in the sentencing process. There has been little research into mitigation's general effects and no research on mitigation's effects on plea agreements. This is unfortunate because the decision to go to trial is strategic and based on the inability to negotiate a settlement pre-trial, and 95% of sentences are negotiated via plea agreement.

2.3 Theories Pertaining to the Decision Making of Actors in Regards to Plea Agreements (the Acceptance or Rejection of a Plea Deal)

Central to understanding why mitigation is or is not effective in reducing criminal sentences, is understanding the role that plea deals play in the judicial process. The importance is only magnified when considering that over 95% of convictions result from a guilty plea (Wilford, et al. 2021). Plea deals are important to this research because, in many cases, although presented to a prosecutor's office, mitigation is never filed with the court (and thus unmeasurable), because the case does not reach trial and sentencing. Instead, the defendant agrees to a guilty plea that can stipulate some or all of the terms of a sentence. So, what causes a defendant to accept a proposed plea deal?

The most popular model, proposed by Landes (1961) and developed by Kahneman & Tversky (1979) is the Shadow-of-the-Trial (SOT) model (Wilford, et al. 2021). The SOT model predicts that the "subjective value of a plea deal" is based on how far it is from the expected value of a trial outcome, "where the expected value of trial equals the probability of conviction multiplied by the potential sentence if convicted" (Bartlett & Zottoli, 2021; Landes, 1971). As

Wilford, et al. 2021 demonstrate, defendants will accept plea offers as a function of the penalty discrepancy (PD):

$$\log_e \frac{P(Plea_i = Accept)}{1 - P(Plea_i = Accept)} = \beta_1 \times PD_i + \varepsilon_i$$

Where penalty discrepancy is:

$$PD = (Trial\ Conviction\ Probability \times Trial\ Sentence) - Plea\ Sentence$$

However, as Bartlett & Zottoli critique, this theory was developed based on settlements in civil cases, and there can be vast differences both structurally and procedurally between criminal and civil cases (2021). Additionally, this model fails to account for the wide variances between plea agreements, and it relies on outdated human decision-making understandings (Bartlett & Zottoli, 2021). And as Wilford, et al. 2021 critiqued and showed through a study, the model's accuracy could be improved by considering the actual guilt status of defendants. Additionally, Bartlett & Zottoli's study shows that the model suggests a linear relationship between conviction probability and plea deal, but it does not properly consider the exponential effect that an increasing likelihood of conviction has on a defendant's willingness to accept a plea deal.

This thesis will take the same overall approach: plea agreements that form are part of a strategic process where parties make predictions about trial outcomes, and this determines settlements. Of course, not all cases end in plea agreements. In 5% of cases, parties cannot agree. This is puzzling because there is always a plea that both parties should prefer over a trial. In what follows, I integrate mitigation factors into a formalization of this basic framework to illustrate its important effects for explaining (a) sentences (b) why plea agreements can fail.

III. THEORY AND ARGUMENT

3.1 Establishing the Model

3.1a Actors

First, the actors must be identified to lay out the proposed model for mitigation. In this model, there are two actors: the prosecutor and the defense attorney. Although the defendant should have a say in the acceptance or rejection of a plea deal, the defense attorney is their representative and therefore, for the purposes of this model, they represent both the client and the attorney. Additionally, because this model relies on a subjective analysis of the case's circumstances (including mitigating factors, aggravating factors, etc), an attorney's experience and expertise carries more weight in this subjective analysis than the lay defendant. Judges are not included as actors in this model because although they have the legal authority to dissolve plea agreements, they are incentivized not to and it is extremely rare for them to do so.

Thus, in this model the actors are:

P = Prosecutor and D = Defense Attorney.

3.1b Motivations

In an adversarial legal system, the parties are pitted against one another to attempt to obtain opposite outcomes, like a zero-sum game. The role of the defense attorney is to be the best effective counsel for their client, and their objective is to obtain the best possible sentencing outcome for their client.

Therefore, because of the adversarial nature of the legal criminal justice system, this game model can be viewed as a zero-sum game, where the "win" of one part comes at the expense of the adverse party (and these "wins" are on an incremental scale, not a binary).

3.1c Considerations

Lastly, although not included in the model, it is important to note the broader systems that affect the way that the model functions. Although the effect of these systems could be examined in a model similar to the one being proposed, it is far out of the scope of this thesis and, therefore, cannot be thoroughly examined. For example, there is an invisible motivator for both players in the game: the threat of trial. As pointed out earlier, very few cases go to trial and most end in plea deals. Prosecutors are incentivized to use plea deals because of limited government resources, including restrictions on time, courtroom space, the size of their caseload, and money. Defense attorneys can be split into two categories: private and public defenders. Government resource limitations are shared by prosecutors and public defenders. As for private defense attorneys, these resource strains still exist, even though a defendant's economic advantages may help alleviate some of them. This also suggests that a less wealthy client with a private defense attorney may be more constrained by the cost of a defense attorney because trials can be expensive (billable hours, paid witnesses, etc.). Additionally, for all defendants represented by any type of attorney, the uncertainty of a trial can be a strong motivator in deterring them from trial. As Bartlett & Zottoli's experiment showed, the likelihood that someone would accept a plea deal was heavily influenced by what they expected the outcome of a trial to be. But significantly, they found that as the probability of conviction was higher, participants would accept plea deals that were significantly higher than the expected outcomes of a potential trial (2021). Showing a desire to avoid trial, even if the plea was higher than the expected outcome of a trial. Therefore, my model rests on the assumptions that both sides have a desire to avoid going to trial and that the acceptance of a plea is based on an expected outcome.

3.2 The Model

I model a strategic interaction between a prosecutor (P) and a defense attorney (D). Overall, I study three variants of the model, where each model represents a different institutional context. Scenario 1 models a time before mitigation in criminal sentences existed. Scenario 2 models a time when mitigation existed, but Public Defenders were unable to invest enough resources into mitigation for their clients due to a lack of resources (be it a lack of funding, time, expertise in preparing mitigation packets, etc). Scenario 3 models when mitigation exists and the Public Defenders have enough resources to properly convey mitigation to the prosecuting attorneys. The models intentionally build on each other. This allows me to make claims about how changing laws surrounding mitigation influenced the sentencing we observed for different kinds of Defendants, given that prosecutors and Defense attorneys are strategic actors.

3.2a Mitigation packets did not exist (pre 1977)

The first part of the model is representative of the decisions of prosecutors and defense attorneys when mitigation did not exist. Therefore, this would represent a scenario within the California Courts before July 1, 1977, when mitigation was first codified (California Courts). The sequence of moves and payoffs is drawn in Figure 1.1. Note the payoffs are written above P. First, P can offer a sentence $x \geq 0$. Second, D can accept, leading to a plea agreement, or reject, leading to a trial. If a trial begins, nature determines whether P wins (probability of guilt) or D wins (1-probability of guilt).

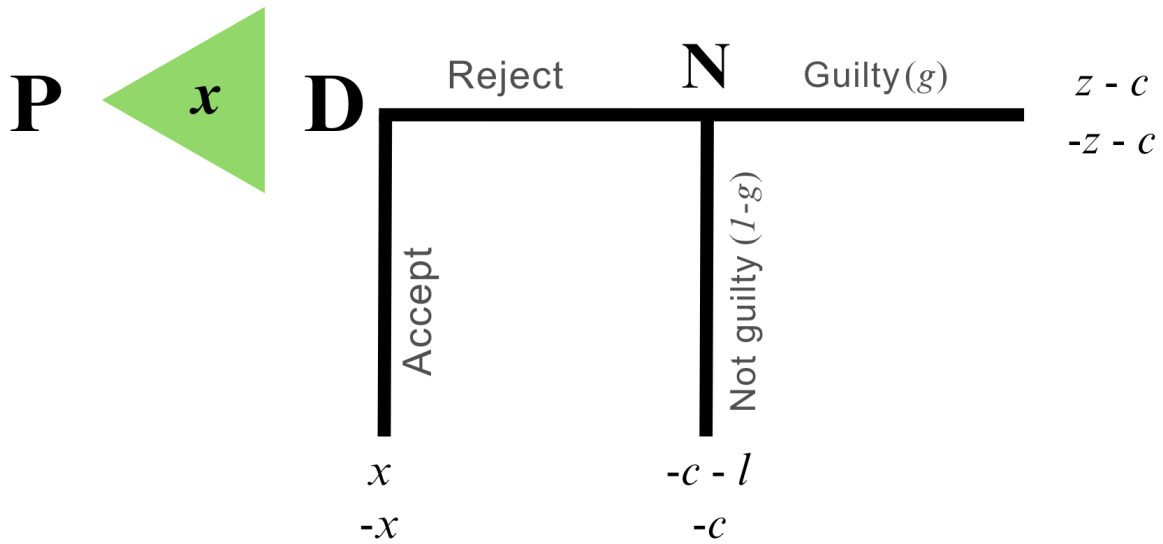


Figure 1.1

Variables:

Variable	Definition
P	The Prosecuting Attorney as one of the two actors in the model.
D	The Defense Attorney as one of the two actors in the model.
x	Variable x is representative of the punishment (as in number of years in prison, years of probation, fines, or other) in a plea deal. The Prosecutor's x value increases as the Defense's x value decreases. When a plea deal is accepted, P is seen to gain x while D "loses" x (hence, $-x$).
z	The sentence from a trial that resulted in a guilty verdict.
N	The guilt or innocence of a defendant is determined by the random variable N , nature. This is because, the actors essentially have no input in whether or not the defendant is found guilty, that is left to a jury or the judge in a bench trial. Thus, it can be considered as random.
g	The probability of a guilty verdict through a trial is represented by g . The probability of an innocent verdict through a trial is represented by, $1 - g$.
c	The variable c denotes the cost of going to trial, as a constraint on the resources of both actors. This is representative of the main deterrent from going to trial.

l	Variable l , expresses the loss that P has from going to trial that differs from the c value, such as professional embarrassment. This loss is specific to the Prosecutor
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Definition: $x^* = zg + c$

As we shall see in a moment, x^* represents the ideal sentence offered, given the prosecutor's anticipation of how the case will unfold.

Proposition: The following strategies are an equilibrium. D accepts $x \leq x^*$ and rejects $x > x^*$. P offers x^* . On the path, we always observe a settlement at x^* .

Analysis:

Because the model has complete information, I solve for subgame perfect equilibria.

The proof is in Appendix B. The logic of the argument is as follows. When offered a plea agreement, the Defense attorney has two options: accept or reject. Their decisions take into account the cost of litigation and what they can expect from a trial's outcome. If the plea agreement is better than what the Defense attorney can expect from a trial, they will always accept. When formulating the offer, the Prosecutor knows what offer the Defense attorney will accept. Thus, it is more beneficial for the Prosecutor to make an offer they know the Defense Attorney will accept. Therefore, the Prosecutor will offer the highest possible plea deal that the Defense Attorney will accept to maximize their utility.

This equilibrium is unique because the Prosecutor will not offer anything greater or less than x^* . First, the Prosecutor will not offer an $x > x^*$ because the defendant will always reject, thus the Prosecutor can improve their utility by improving their offer. The Prosecutor will not offer $x^* - k$ because they get k less than if they had offered x^* . Therefore, the Prosecutor can improve their utility by improving their offer. So, there is one equilibrium.

From this model, we can see that both actors have strong disincentives from going to trial, due to the costs and potential for losing. However, when the prosecutor's plea deal is too high ($> x^*$), the defense attorney will reject this plea deal. Additionally, it is shown that the prosecutor will favor a plea deal that the defendant will accept over one that the defendant is almost guaranteed to reject. Therefore, the prosecutor can maximize their outcome by offering the defendant the highest possible plea deal that they will accept.

This model shows no room for mitigation after the trial ends, and therefore, the prosecutor and the defense attorney do not take mitigating factors into account when formulating plea deals or deciding to accept/ reject them.

3.2b Mitigation packets were legislated but public defenders were under-resourced

(1972-2021)

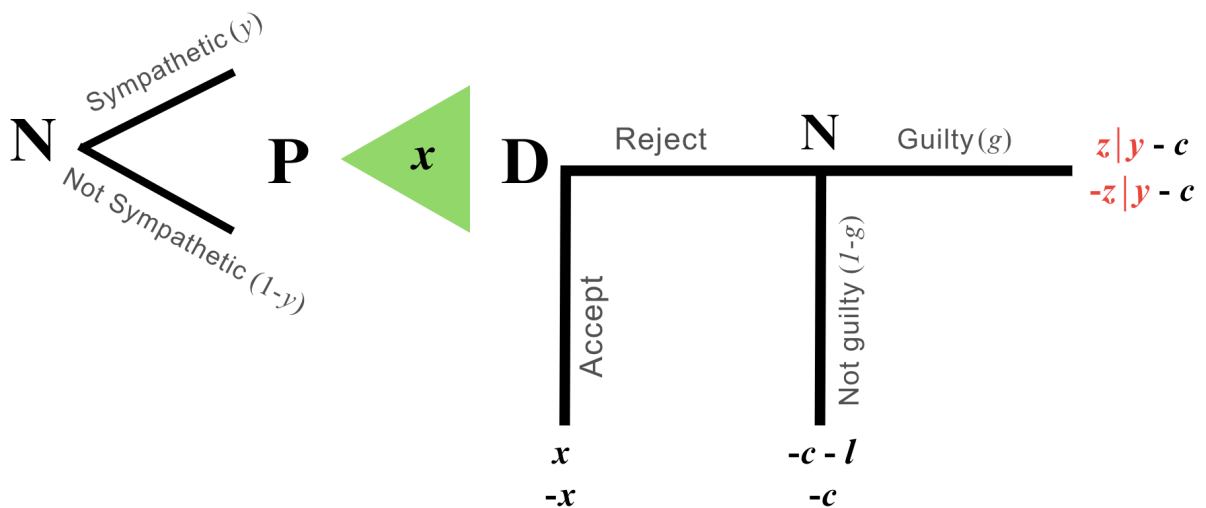


Figure 1.2

To represent the time after July 1, 1977, when mitigation was codified in California law, we now adjust the model to account for the strategic implications of allowing for mitigation after

a trial that resulted in a guilty verdict. This requires three amendments to the core model presented in section 3.1.

First, we add an additional step, wherein Nature determines whether the Defendant is “Sympathetic” or “Not sympathetic”. By Sympathetic, we mean that the defendant has pertinent factors to himself as a person, to the crime, or other factors that would mean he is likely to prevail on mitigating factors at a sentencing hearing, thus receiving a lower sentence if convicted (see y in the table below).

Second, we adjust the payoffs for both players at the decision node following a conviction to reflect the fact that the sentence will vary based on the Defendant's profile (see $z|y$ and $-z|y$ in figure 1.2 above).

Lastly, we limit the information that the Prosecutor holds during pretrial negotiations. Specifically, we assume that the Prosecutor knows the probability that a defendant is sympathetic, but the defendant's true profile is the Defense Attorney's private information. This is a reasonable assumption because, with the caseload of Public Defenders and their limited resources, it would be onerous for them to create mitigation packets before a trial has gone to trial. Therefore, while a defense attorney may have an idea about their client's mitigating factors, they lack the resources to properly convey this to the Prosecutor before a plea offer is made.

Variable	Definition
y	The defendant is classified as either Sympathetic with probability (y) or Not Sympathetic with probability ($1 - y$). This represents whether or not the defendant has mitigating factors that could be used in mitigation. Whether the Defendant is sympathetic is privately known.
z	In this model, the variable z is dependent on whether or not the defendant is sympathetic. Therefore, when the defendant is sympathetic, their sentence after a guilty verdict through a trial is represented by z .

Z	When the defendant is non-sympathetic, their sentence after a guilty verdict through a trial is represented by Z .
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Table 1

Assumption: $Z < \underline{z}$

Analysis:

We now examine how plea negotiations unfold given that Defendants vary in their level of sympathy and can use that to reduce their sentence should they be found guilty. As in the baseline model, the smallest amount that the Defendant will accept is key. However, this now hinges on the Defendant's type. Table 2 defines the smallest sentence that each type of Defendant will accept as \underline{x} , X . We now proceed to the equilibrium analysis.

Proposition 1:

If equation 1 holds, then the following strategies are a Perfect Bayesian Equilibrium: P offers X , the sympathetic D accepts all offers $< X$ and rejects otherwise. The unsympathetic D accepts all offers greater than \underline{x} and rejects otherwise. The game ends in peace at X .

$$y > \frac{zg - Zg}{zg - Zg - 2c + g - 1} \quad (\text{Equation 1})$$

Proposition 2: If equation 1 is violated, then the following strategies are a Perfect Bayesian Equilibrium. P offers \underline{x} , (D 's strategies are the same as in the above proposition). The game ends in peace at \underline{x} if D is not sympathetic or a trial if D is sympathetic.

Recall mitigation laws intended to create more equity across criminal sentences and to allow for compelling evidence to affect sentencing outcomes (Wayland, 2008). In what follows, I show that introducing these laws, in conjunction with the limited capacity available to public

defenders, meant that they created a series of perverse outcomes for vulnerable Defendants most deserving of mitigation.

In the model, we observe the variables in the following table:

Variable in Analysis	Definition
X	Definition: $X = Zg + c$ X is representative of the largest offer that the Non-Sympathetic defendant will accept.
\underline{x}	Definition: $\underline{x} = \underline{z}g + c$ \underline{x} is representative of the largest offer that the Sympathetic defendant will accept.

Table 2

The proof is in Appendix C. The logic of the argument is as follows. The prosecutor knows the highest sentence that the Defense attorney will accept as a plea deal. However, because mitigation is not presented until after a trial, the Prosecutor does not know if the defendant is sympathetic or not. Therefore, they guess how sympathetic the defendant is, and their offer is formulated based on that guess. This means that when the Prosecutor offers a plea deal, under the assumption that the defendant is sympathetic, both types of defendants will accept the offer. But in this scenario, when the defendant is actually Not sympathetic, the Prosecutor has not maximized his offer. When the Prosecutor offers a plea deal under the assumption that the defendant is Not sympathetic, only the Non-sympathetic defendant will accept this offer. The sympathetic defendant will not accept this offer because it is higher than what they can expect from the outcome of a trial. Thus, with either offer, the Prosecutor risks either giving a smaller sentence to a Non-sympathetic defendant (wherein the Prosecutor “loses”) or their offer being rejected by a defendant who was actually sympathetic. Therefore, the

Prosecutor will only offer the larger sentence when they believe that the defendant's actual factors in mitigation meet the conditions in equation 1.

Equation 1 holds the following implications: The Prosecutor's belief that the defendant is sympathetic is weighed against a combination of factors that include the potential outcomes of the trial, the possibility of guilt of the defendant, and the cost of a trial. If their belief that the defendant is not sympathetic outweighs the consideration of these factors, the Prosecutor will offer the highest plea that a Non-sympathetic defendant would accept.

When the sympathetic deal is made, but the defendant is actually Non-sympathetic, they receive a plea bargain that is significantly better than what they could have expected from a trial. When a Non-sympathetic deal is offered, but the defendant is sympathetic, they will reject the offer. Meaning that the sympathetic defendant will go to trial. On this path, the Non-sympathetic defendant will always receive an acceptable plea offer, but the sympathetic defendants won't.

The implications of this are concerning because it shows that a law meant to help people with qualifying mitigating factors may actually have been causing them to go to trial more frequently than defendants with fewer mitigating factors. Thus, the law may have disproportionately burdened the defendants who most deserved relief through mitigation laws. Additionally, it may have had the adverse effect of granting more relief to those less deserving.

3.2c Public Defenders get access to mitigation experts and related resources (2022).

We now study a model identical to model 2 in the sequence of moves and payoffs. However, we assume that Defendants can construct mitigation packets before trial. Since they can construct the packets, the prosecutor has more convincing information about what mitigation evidence would be presented at a sentencing hearing if one were to happen, and therefore, has good knowledge of whether the Defendant is genuinely sympathetic or not. This is a

substantively motivated change. Recall in 2022, the San Diego Board of Supervisors approved the creation of a new position within the Public Defenders' Office devoted to creating mitigation. Due to the increase in resources to address mitigation, the Public Defenders can now create and present mitigation to Prosecutors before a trial. Thus, the Prosecutor knows for certain the mitigating factors that a defendant has.

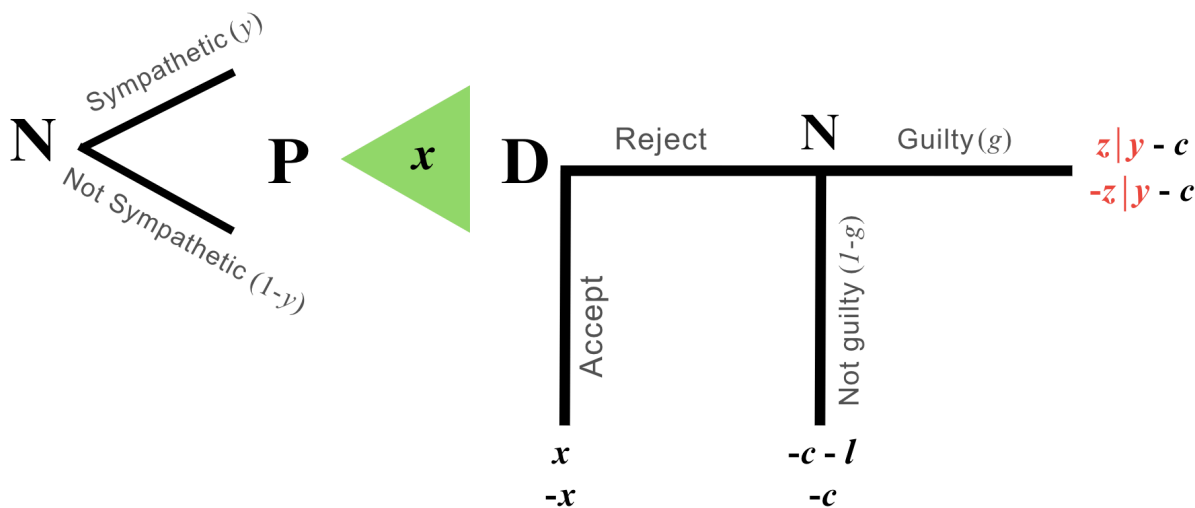


Figure 1.3

Proposition 3:

The following strategies are the unique, perfect Bayesian equilibrium: If D is sympathetic, D accepts $x \leq \underline{x}$ and rejects otherwise. If D is not sympathetic, he accepts $x \leq X$ and rejects otherwise. P offers the minimum that D will accept: \underline{x} if D is sympathetic, and X otherwise.

Analysis:

The proof is subsumed by proposition 2. The logic of the argument is as follows: In this model, because mitigation was presented before a trial, the Prosecutor knows whether the Defendant is sympathetic or not. Therefore, when they are sympathetic, the Prosecutor offers \underline{x} ; when the defendant is non-sympathetic, they offer X .

This is a unique equilibrium because when the Prosecutor offers less than either offer, respective to their type, they lose either $X - k$ or $\underline{x} - k$. Thus, the Prosecutor cannot profit from deviation. The Prosecutor can improve their utility by improving the offer.

In what follows we emphasize the relative welfare effects for Defendants of the three institutional periods.

Summary of Implications for Defendants

Institutional Period	Implications
Before 1977	The laws did not allow mitigating factors to be considered in criminal sentencing. Thus, defendants received harsher sentences. The formulation of plea offers also did not consider mitigating factors, so the sentences would have been higher.
1977 - 2021	When the laws were adjusted to allow for mitigation, we would have expected it to impact plea agreements because prosecutors would anticipate that mitigating factors would be presented throughout and after a trial. The purpose of mitigation was to help people who had factors in their life or related to the crime, that should reduce their sentence. However, when mitigation existed, but Public Defenders did not have the resources to properly convey a defendant's mitigating factors, this law may have had the adverse effect of helping those with less mitigating factors, and hurting those most deserving of mitigation in their case. Therefore, without the proper funding for presenting mitigation before a plea offer is made, the pleas that resulted could be further from what defendants would expect from trial (in that more sympathetic defendants were offered higher sentences and less sympathetic were offered lower sentences than they could expect).
2022 - present	Mitigation is presented to prosecutors at an earlier stage of the case. This means that the offered plea deal is more accurate to what a defendant can expect from going to trial. This also means that regardless of the compelling mitigating factors a defendant has, their plea agreement is closer to their expected outcome from a trial. Additionally, when the pleas are closer to their anticipated outcomes, defendants of all types are more likely to accept, resulting in fewer trials.

Therefore, while the creation of mitigation laws in California may have been a step in the right direction to create more equitable outcomes in criminal sentencing, affording the Public Defenders the appropriate funding to address mitigation, may be even more effective.

3.3 Empirical Implications.

The model examines the implications of introducing mitigation institutions into the legal system. This includes changing laws to allow for mitigation and providing public defenders with the resources to prepare mitigation packets. Historically, these shifts occurred piecemeal. Thus, we develop two sets of predictions. The first relates to the introduction of laws that allowed Defendants to use mitigations.

Expectation 1: Introducing laws that allow defendants to produce mitigation without providing them the resources to prepare mitigation pre-trial raises the probability that cases go to trial for sympathetic defendants. Introducing policies that better fund defendants represented by public defenders would result in less cases going to trial.

This is because period 3 resulted in plea agreements that better reflected the trial outcomes that defendants could expect and allowed for mitigation to

Expectation 2: Of the cases that go to trial, the sentences would be lower overall after the introduction of mitigation laws. Sentences would also be lower in plea deal cases after funding was given to help defendants present mitigation.

There will be two reductions in sentences. Firstly, sentences would be reduced due to the introduction of mitigation laws and defendants using these laws. Secondly, a lowering of sentences resulting from plea deals would be due to the approval of funding for the Public Defender's Office.

The second set of expectations begins in a world where mitigation is allowed, but where public Defenders cannot generate mitigation packets until after trial. Here, we generate two additional expectations.

Expectation 3: For plea agreements, the variance in sentencing from the guidelines in period 3 would be lower than in period 2. The main difference between the contrasting periods was that in period one, there existed a group of defendants who were Not Sympathetic, but were offered low plea deals. Additionally, there was a group of Sympathetic defendants who were only offered higher plea deals. However, with the shift in policy from period 2 to period 3, the plea agreements would more closely reflect an expected sentencing outcome for all defendants, thus dramatically reducing the possibility that defendants are offered incorrectly tailored plea agreements that subsequently affect their sentencing outcomes.

IV. EMPIRICAL ANALYSIS

4.1 The San Diego Case

In order to test the model and the expectations that result from it, I am going to exploit a novel policy feature in the County of San Diego, the approval of a mitigation specialist position within the county's Public Defender's Offices.

The conditions for this change began in 2020, because it was the first time in decades that Democrats controlled the San Diego Board of Supervisors. The change allowed for a board more receptive to progressive ideas, like mitigation. Because the Board of Supervisors' permission is required for the Human Resources creation of a new county job, this shift created an opening for the Office of the Public Defender to push for the creation of a new position, "mitigation specialist". This person would have a psychology and social work background and be able to prevent mitigation for clients in a more specialized manner than attorneys and investigators (See

Appendix D for a description of the job position). Thus, on May 10, 2022, the position of “mitigation specialist” was formally created (See Appendix E for Board minutes).

This unique feature enables us to conduct a quantitative analysis of the recent post and pre-periods of mitigation specialists that mirror periods 2 and 3 of the model.

4.2 Data Collection

I will use a quantitative methodology to test the hypotheses that result from the three expectations of the model. For my data analysis, I will use randomly selected court cases from before and after Mitigation Specialists were hired (05/10/2022).

The independent variable in this investigation is the date of a case. Because cases vary in length, I am choosing to record the first date that a case was filed/opened to control for the case’s date. The dates of the cases range from 12/22/2017 to 3/17/2023. The dependent variable is the final sentencing outcomes. In most case files, the final sentence is found in an “Abstract of Judgement” form (see Appendix F for an example). The final sentence will be collected from the Judgement Minute Orders when there is no Abstract of Judgment.

4.3 Limitations

The data collection here had major limitations. First, there was a large bureaucratic barrier to collecting the necessary data. This was because the necessary data points were not available online, nor was it possible to view the case files online. The only way for that data to be collected was to go to the San Diego Superior Court in person, request case files, and search through them to collect the data points. However, because of the court’s limit of 10 cases per request, the court clerks taking the time to find the physical cases, me waiting in a queue with the rest of the public, and my ability to look through the pages in the cases, this was a slow process. Therefore, with the time constraints of this thesis, I could only collect a total of 112 cases. The

small sample size of my data makes it difficult to have a high confidence in the results that the analysis henceforth yields. In an ideal world, I would have been able to collect data from hundreds of cases. Additionally, because the change in policy occurred semi-recently, there was a smaller sample size for the post-period data. This was exacerbated by the fact that many of the cases I requested from the post-May 2022 era had not concluded/gone to sentencing because the length of cases can vary greatly. The newness of this policy also means that this policy may not have had enough time to take full effect. While acknowledging these limitations, data analysis could have interesting results and, at the very least, could produce a methodology framework for similar analysis.

Expectation 1:

H_1 : More cases go to trial in the period before mitigation specialists than after.

First, we would expect to see fewer cases went to trial after 2022 than before. Through data collection, the following was found

	Number of Cases that Went to Trial
Pre-period	2
Post-period	1

Figure 2

In general, it is unsurprising that only 3 of the 112 cases collected went to trial, as over 95% of cases typically end with a plea agreement. And while this data would point to a verification of the expectation, the data is far too small to be conclusive. More data is needed to test this hypothesis. However, the practice is useful because it details how to test this important implication of changing mitigation practices.

Expectation 2:

H_2 : Sentences are lower after mitigation specialists are implemented in the Public Defender's Office.

Next, we would expect to see that of the cases that go to trial; the sentences are lower in the period after the 2022 change than before. To test this, we will use a scatter plot to visually and quantitatively determine any significant differences between the contrasting periods. However, because the cases pulled from the courthouse were randomly selected, the type of criminal case was not controlled for. Therefore, in order to prevent the data from being dramatically skewed from the differences in the types of cases (think the difference between a murder case and a theft case), the sentencing outcomes will be modeled as a function of the middle guideline sentence divided by the final sentence. See Appendix G for how the middle guideline was determined. Additionally, it should be noted that probation outcomes were set as zero in this plot. This is because probation outcomes could not be included in the same set of outcomes, because 2 years of probation is very different from 2 years in prison. Probation could also not be excluded from the outcomes because it shows an important change in sentencing outcomes. Therefore, when there was a probation outcome, the sentence is 0 years in prison. Although this is an imperfect measure (because there is a difference between no sentence and probation, or even 3 years of probation and 1), it is the most effective way to simultaneously measure a difference across prison and probation outcomes.

A visual inspection of the scatter plot reveals that after 2022, sentences overall tend to be lower than the middle outcomes (< 1). This could mean that in many of these cases charges were dropped between the charges and the plea agreement, the cases had mitigating factors, or a

combination of the two. When looking at the overall appearance of the scatter plot, there seems to be a decrease in the adjusted sentencing outcomes after 5/10/2022.

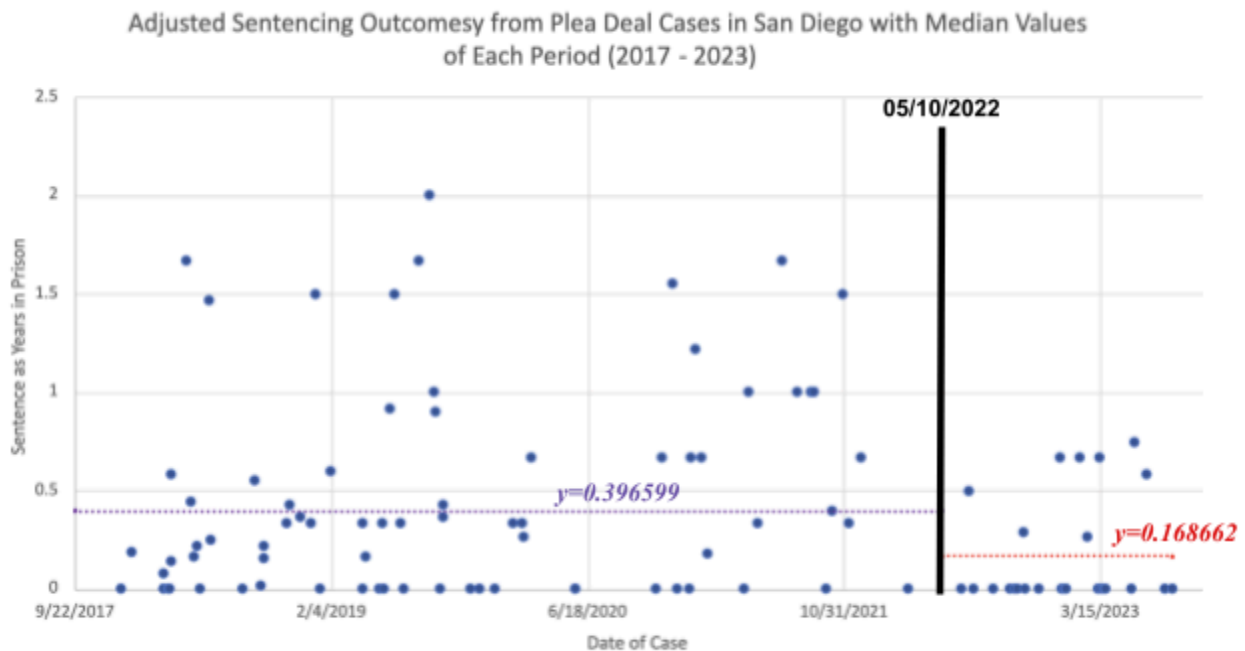


Figure 3

A comparison of the mean sentences of the pre- and post periods reveals a decrease in the mean sentence (See Figure 3 above). The mean adjusted sentence in the period before Mitigation Specialists is 0.396599. The mean adjusted sentence in the post-period is 0.168662. This difference of 0.227937 shows that in this given data, the sentences were lower in the post-period than the pre-period, as predicted.

Expectation 3:

H_3 : Variance in sentencing is lower in the period after the introduction of mitigation specialists than before.

Last, we would expect to see that in cases with plea agreements, the variance in sentencing is lower after the 2022 policy change than before. To test this, the means and medians

of the average middle guidelines were compared with the final sentencing outcome. Then, the difference is found by subtracting the final sentence from the guidelines. Showing how much the final sentences varied from the guidelines. The results are below:

All Data:

	Middle Guidelines	Final Sentence	Difference
Mean	6.57843137	1.72881373	4.84961765
Median	4	1	3

Figure 4

Before Mitigation Specialists

	Middle Guidelines	Final Sentence	Difference
Mean	7.07894737	1.96063158	5.11831579
Median	4	1.333	2.667

Figure 5

After Mitigation Specialists

	Middle Guidelines	Final Sentence	Difference
Mean	5.11538462	1.05119231	4.06419231
Median	4	0	4

Figure 6

From this, we see that there has been a mean and median difference between the middle sentencing guidelines and the final sentence across both periods. Looking at the contrasting two periods, we see that the difference between the mean middle guidelines and the mean final sentences is higher in the pre-period than in the post-period. However, the difference between the median guidelines and sentences is lower in the pre-period than in the post period. This is due to the higher number of probation sentences in the post-period (which can be seen as the 0 median

final sentence). Therefore, in the median, there is a larger difference between the guideline and final sentences because of the high frequency of probation outcomes.

To further test this hypothesis, the variation was measured by subtracting each case's final sentence from its middle sentence guideline. This was then plotted on a line. The positive y values mean that the actual sentence was lower than the guidelines, and the negative y values mean that the sentencing outcome was higher than the middle guideline. See Figure 7:

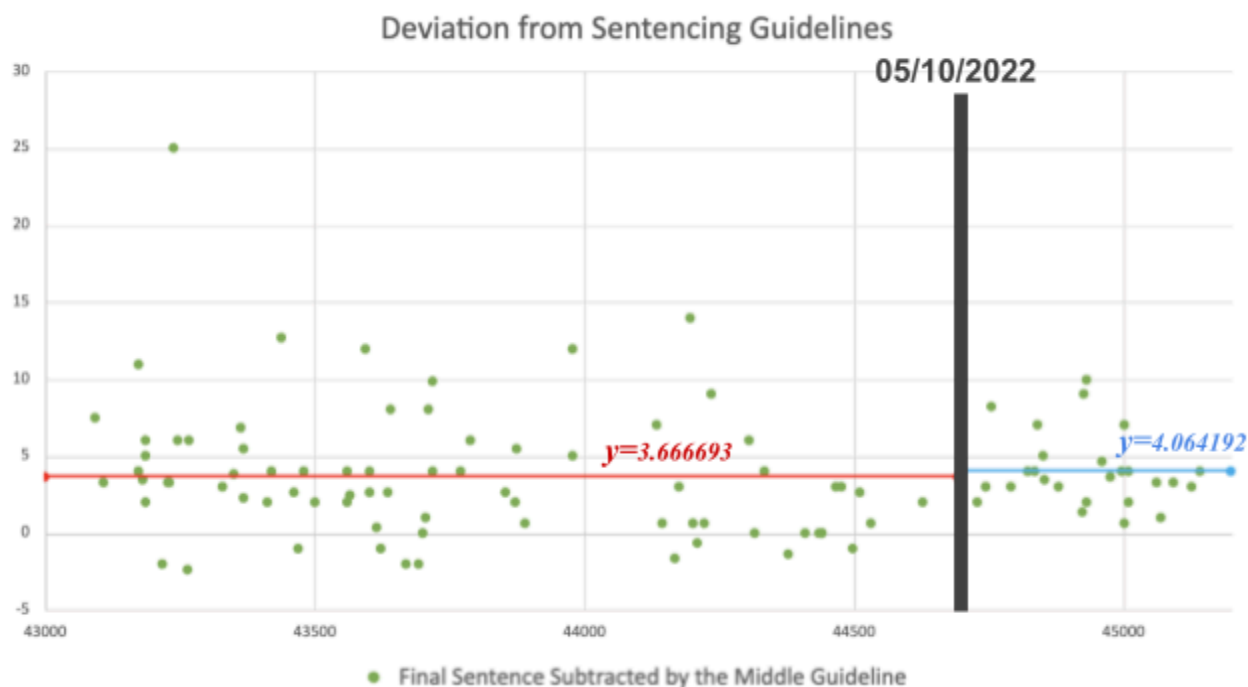


Figure 7

The plot reveals that the mean number of years a sentence deviated from the middle sentence in the period before Mitigation Specialists was 3.666 years less than the middle sentence. The mean number of years that the sentence deviated in the post-period was 4.064 years less than the middle sentence. This shows that contrary to the expectation, the variance would be lower, and the variation from the middle guideline sentence was actually higher.

In an ideal world, I would have had enough data points to perform a regression analysis. If this were the case, I would control for the age, race, and gender of defendants. This would

allow me to control for confounding variables that may have impacted sentencing outcomes.

While I did collect this information for each case, there is simply not enough data to make the regression analysis findings useful for this study.

V. CONCLUSION

Mitigation remains a secretive and difficult process to study, especially with attorney-client privilege and the bureaucratic barriers to the accessibility of information. However, with an overwhelming number of cases ending in plea agreements and counties like San Diego approving funding for mitigation specialists within Public Defender offices, the widely unexamined role of mitigation laws and local policies for mitigation specialists continues to be a simultaneously important and difficult to uncover topic. Therefore, the aim of this paper was to examine the mechanisms behind plea agreements in a changing world where mitigation laws not only exist, but funding has been allocated to mitigation specialists. This paper proposes a completely novel series of models that show the motivations, decisions, and probable outcomes of prosecutors and defense attorneys in three periods: before mitigation laws, after mitigation laws, and after mitigation laws and mitigation specialists. The formulated formal models resulted in some surprising expected outcomes. Most significantly, the second period (after mitigation laws were enacted but before the Public Defenders had mitigation specialists) resulted in the perverse consequence of disproportionately burdening defendants for whom the law was meant to relieve. This made the outcomes of the third period's model (after the introduction of mitigation specialists) even more interesting because it implied that the existence of mitigation specialists would reduce the number of cases that go to trial, sentences would be lower, and variation between sentences would decrease. Through an empirical analysis of these expectations, I found that there could be some evidence suggesting a reduction in the number of

cases that go to trial and the sentences are lower. However, the qualitative analysis suggested that contrary to the model's expectation, the variance from the sentencing guidelines was higher in the period after mitigation specialists, than before. It is significant to note that this was because many of the cases in the post-period resulted in a probation sentence, not prison. Therefore, this shows that there is actually more weight to the expectation that sentences would be reduced.

Although the results of the empirical analysis were interesting and supported two of the three expectations yielded from the formal model, it cannot be entirely relied upon. This is because there were major limitations in this paper's data collection and analysis. There were simply too few cases for the findings to be statistically significant. For an analysis to be more convincing, future research needs hundreds more cases than those used here.

Therefore, the implications of this paper are that it sets forth a novel model for understanding how actors will make decisions in a plea deal negotiation process where mitigation and/or mitigation specialists are involved. Additionally, this paper creates a framework for further investigation of the empirical results of plea agreement cases where mitigation specialists have been introduced.

Because so many cases never go to trial, much about the American criminal justice system remains behind closed doors. Thus, in the sparse field of criminal mitigation policy literature, this paper hopes to crack open the door slightly and contribute to the growing research into the efficacy and effects of such policies.

Appendices

Appendix A

Cal Rules of Court, Rule 4.423

This document reflects first and last orders received through September 8, 2023. Rules are current through September 8, 2023.

CA - California Local, State & Federal Court Rules > CALIFORNIA RULES OF COURT > Title 4. Criminal Rules > Division 5. Felony Sentencing Law

Rule 4.423. Circumstances in mitigation

Circumstances in mitigation include factors relating to the crime and factors relating to the defendant.

(a) Factors relating to the crime Factors relating to the crime include that:

- (1) The defendant was a passive participant or played a minor role in the crime;
- (2) The victim was an initiator of, willing participant in, or aggressor or provoker of the incident;
- (3) The crime was committed because of an unusual circumstance, such as great provocation, that is unlikely to recur;
- (4) The defendant participated in the crime under circumstances of coercion or duress, or the criminal conduct was partially excusable for some other reason not amounting to a defense;
- (5) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime;
- (6) The defendant exercised caution to avoid harm to persons or damage to property, or the amounts of money or property taken were deliberately small, or no harm was done or threatened against the victim;
- (7) The defendant believed that he or she had a claim or right to the property taken, or for other reasons mistakenly believed that the conduct was legal;
- (8) The defendant was motivated by a desire to provide necessities for his or her family or self; and
- (9) The defendant suffered from repeated or continuous physical, sexual, or psychological abuse inflicted by the victim of the crime, and the victim of the crime, who inflicted the abuse, was the defendant's spouse, intimate cohabitant, or parent of the defendant's child; and the abuse does not amount to a defense.
- (10) If a firearm was used in the commission of the offense, it was unloaded or inoperable.
(Subd (a) amended effective March 14, 2022; previously amended effective January 1, 1991, July 1, 1993, January 1, 2007, and May 23, 2007.)

(b) Factors relating to the defendant Factors relating to the defendant include that:

- (1) The defendant has no prior record, or has an insignificant record of criminal conduct, considering the recency and frequency of prior crimes;
- (2) The defendant was suffering from a mental or physical condition that significantly reduced culpability for the crime;
- (3) The defendant experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence and it was a factor in the commission of the crime;

- (4) The commission of the current offense is connected to the defendant's prior victimization or childhood trauma, or mental illness as defined by section 1385(c);
- (5) The defendant is or was a victim of intimate partner violence or human trafficking at the time of the commission of the offense, and it was a factor in the commission of the offense;
- (6) The defendant is under 26 years of age, or was under 26 years of age at the time of the commission of the offense;
- (7) The defendant was a juvenile when they committed the current offense;
- (8) The defendant voluntarily acknowledged wrongdoing before arrest or at an early stage of the criminal process;
- (9) The defendant is ineligible for probation and but for that ineligibility would have been granted probation;
- (10) Application of an enhancement could result in a sentence over 20 years;
- (11) Multiple enhancements are alleged in a single case;
- (12) Application of an enhancement could result in a discriminatory racial impact;
- (13) An enhancement is based on a prior conviction that is over five years old;
- (14) The defendant made restitution to the victim; and
- (15) The defendant's prior performance on probation, mandatory supervision, postrelease community supervision, or parole was satisfactory.

(c) **Other factors** Any other factors statutorily declared to be circumstances in mitigation or which reasonably relate to the defendant or the circumstances under which the crime was committed.

(Subd (c) adopted effective January 1, 2018.)

History

Rule 4.423 amended effective March 14, 2022; adopted as **rule** 423 effective July 1, 1977; previously renumbered effective January 1, 2001; previously amended effective January 1, 1991, July 1, 1993, January 1, 2007, May 23, 2007, January 1, 2017, and January 1, 2018.

Deering's California Codes Annotated

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End of Document

This law specifies the three main factors that can be considered as mitigating factors in criminal sentencing: (a) Factors relating to the crime, (b) Factors relating to the defendant, and (c), Other factors.

Appendix A also shows that Circumstances in mitigation became effective in California Courts on July 1, 1977.

Appendix B

Scenario 1 Proof

Defense Attorney

At the start of the model, D has two options: accept or reject the plea deal. When D accepts the plea, their outcome is:

$$-x.$$

When D rejects the plea deal, their outcome is:

$$\text{Probability of guilty} \cdot (-z - c) + \text{Probability of not guilty} \cdot (-c)$$

Which can be simplified to:

$$-zg - c$$

Therefore to determine the x values that D will accept, an inequality weighing the two choices is created. This reveals that D will accept any x that satisfies:

$$x \leq zg + c$$

And D will reject any x that satisfies:

$$x > zg + c$$

Prosecutor

In order to determine what P will offer as x , we determine first that the highest x value that D will accept is x^* , where $x^* = zg + c$. Therefore if P 's offered x is greater than x^* , P knows that D will always reject. When D rejects, P 's value is:

$$\text{Probability of guilty} \cdot (z - c) + \text{Probability of not guilty} \cdot (-c - l)$$

Which simplifies to:

$$g(z + l) - c - l$$

Therefore, because

$$zg + c > g(z + l) - c - l$$

Simplified to:

$$2c > -l(1 - g)$$

Therefore, we can expect that P would prefer to make the best offer that D will accept over an offer that D is guaranteed to reject.

Finally, this equilibrium is unique because P will not offer any more or less than x^* . First, P will not deviate from x^* to a higher offer, because they know that D will reject. Thus, P can improve their utility by improving their offer. P will not deviate from x^* to a smaller offer. Suppose P offers $x^* - k$, then P gets k less, than if he had offered x^* . Thus, P can improve their utility by improving their offer.

Appendix C

Scenario 2 Proof

Defense Attorney

Sympathetic: A sympathetic D at the beginning of the model, given an x has two choices: either accept the x where the outcome $= -x$ OR they can reject where the outcome $= g(\underline{z}) - c$.

Therefore, a Sympathetic D accepts when:

$$x \leq -g(\underline{z}) + c$$

Non-Sympathetic: A Non-Sympathetic D at the start of the model, given an x has two choices: either accept the x where the outcome $= -x$ OR they can reject where the outcome $= g(Z) - c$.

Therefore, a Non-Sympathetic D accepts when:

$$x \leq -gZ + c$$

Prosecutor:

P 's best offer, under the assumption that D is Sympathetic is:

$$\underline{x} = -g\underline{z} + c$$

P 's best offer, under the assumption that D is Not Sympathetic is:

$$X = -gZ + c$$

P prefers to offer X over \underline{x} when they believe that the defendant is not sympathetic. This is because:

$y^*(P\text{'s value given that } D \text{ rejects the settlement and } D \text{ is sympathetic}) + (1-y)(D\text{'s expected value given that } D \text{ accepts the settlement}) > \underline{x}$

Which can be written as:

$$y > \frac{zg - Zg}{zg - Zg - 2c + g - 1}$$

CONCLUSION

Defense Attorney

Sympathetic:

Given P 's offer of \underline{x} , the Sympathetic D will accept because:

$$\underline{x} < -g\underline{z} + c$$

Given P 's offer of X , the Sympathetic D , must reject because:

$$X > \underline{x}$$

Non-Sympathetic:

Unlike, the Sympathetic D , the Non-Sympathetic D will accept P 's offer when P offers both \underline{x} and X . This is because:

$$\underline{x} < -g\underline{z} + c \text{ and}$$

$$X \leq -gZ + c$$

Therefore, if P offers \underline{x} there will always be an acceptance. But, if P offers X , only the Non-Sympathetic D will accept.

Finally, we must show that this equilibrium is unique. P will not deviate from offering either \underline{x} or X . Firstly, P will not offer any higher x value than \underline{x} if P believes the D is sympathetic. P will not offer a higher x value than X if they believe the D is non-sympathetic, because D will reject it. P will not offer $x > X$, because no defendant will accept the offer, and P can improve their utility by improving their offer. P will also not offer any x that is:

$$\underline{x} < x < X$$

Because if a D is sympathetic, they will reject the offer. If a D is non-sympathetic, they will accept the offer, but P will lose $X - k$. Thus, P can improve their utility by improving their offer to X . Lastly, P will not offer anything less than \underline{x} . Because when they offer $\underline{x} - k$ P gets k less, than if he had offered \underline{x} . Lastly, P will not offer:

Appendix D

CLASSIFICATION PURPOSE AND DISTINGUISHING CHARACTERISTICS

Mitigation Specialist works as an integral member of a multi-disciplinary legal defense team and is responsible for developing mitigation strategies that influence client-centered resolution of pending criminal cases and performing complex and sensitive professional level case management and investigative work to support Public Defenders in effectively representing clients.

Positions in this class are allocated only to the Department of the Public Defender. This is a professional journey level class that will assist attorneys in contributing to defense strategy by providing both supportive evidence and a detailed, documented personal history of the defendant and mitigation themes, attending key court dates, supplying information to the court, and/or providing testimony.

EXAMPLES OF DUTIES

The examples of functions listed in this class specification are representative but not necessarily exhaustive or descriptive of any one position in the class. Management is not precluded from assigning other related functions not listed herein if such functions are a logical assignment for the position. Reasonable accommodations may be made to enable qualified individuals with disabilities to perform the essential functions of a job, on a case-by-case basis. Essential Functions

1. Assists attorneys in investigating, analyzing, developing, and presenting mitigation evidence. Mitigation evidence to include a defendant's physical condition, mental health, social environment, family upbringing, educational background, economic circumstances, employment background, addiction issues, and the overwhelming impact of trauma.
2. Interviews clients and relevant persons in a culturally competent and trauma informed manner.
3. Gathers and summarizes social history records, conducts interviews with persons with relevant knowledge about the client's early childhood development, education, and employment, as well as their medical and mental health histories, and reports to attorneys all aspects of a client's personal history.
4. Locates and conducts witness interviews to discover information to assist the attorney in advocating for pretrial release and develop all mitigating circumstances in the client's life to assist at trial and sentencing.
5. Consults with experts and members of the defense team to determine what experts might be consulted and potentially retained to evaluate the client for substance abuse or mental illness.
6. Develops and maintains relationships with clients, their family members, local social service providers, and pretrial service officers.
7. Assists in the development of defense themes of mitigation and alternative sentencing plans, as well as assisting in identifying appropriate witnesses to testify in court.
8. Assists the attorney in court when requested, including preparing sentencing presentations and testifying.
9. Works directly with representatives of other criminal justice agencies to divert public defender clients from the criminal justice system whenever possible.
10. Maintains sufficient knowledge of current research and trends in areas such as substance abuse, mental health, and effects of incarceration.
11. Additional work as assigned.

Mitigation Specialist Job Description. Retrieved from:

<https://www.governmentjobs.com/careers/sdcounty/classspecs/newprint/1478517>.

Appendix E

25. SUBJECT: AMENDMENTS TO THE COMPENSATION ORDINANCE (4/26/2022 - FIRST READING; 5/10/2022 - SECOND READING) (DISTRICTS: ALL)

OVERVIEW

The proposed amendments to the San Diego County Compensation Ordinance are part of the ongoing efforts to manage and maintain a skilled, adaptable and diverse workforce dedicated to sustaining operational excellence and serving the public. This action amends the Compensation Ordinance by: 1) establishing the Urban Forestry Coordinator classification to be used by the Planning & Development Services Department within the Land Use and Environment Group (LUEG), the Mitigation Specialist classification in the Office of Public Defender within the Public Safety Group (PSG) and the Senior Deputy Public Administrator/Guardian classification to be used by the Aging & Independence Services Department within the Health and Human Services Agency (HHS). All three positions are in the Classified Service; 2) retitling one classification in the Unclassified Service, from Director, Office of Environmental and Climate Justice to Chief Sustainability Officer in the Land Use and Environment Group; 3) amending section 1.13.3 to increase the rates for County-owned residences maintenance charge that is deducted from employee's biweekly compensation for employees who reside in specific living quarters; and 4) amending section 5.11.1 of the Compensation Ordinance effective July 1, 2022, to allow employees in the Deputy Sheriff (DS) and Sheriff's Management (SM) bargaining units to participate in the previously established Employee Recognition and Awards Program.

Tuesday, April 26, 2022

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RECOMMENDATION(S)

CHIEF ADMINISTRATIVE OFFICER

1. Approve the introduction of the Ordinance (first reading):
AN ORDINANCE AMENDING THE COMPENSATION ORDINANCE AND
ESTABLISHING COMPENSATION.
2. If, on April 26, 2022, the Board takes action as recommended in item 1 then, on May 10, 2022 (second reading):
Submit ordinance for further Board consideration and adoption on May 10, 2022 (second reading).

Pages 43-44 of the County of San Diego Board of Supervisors Meeting Agenda Minutes from April 26, 2022. Accessed:
<https://www.sandiegocounty.gov/content/sdc/cob/bos-document-search.html>.

Appendix F

**FELONY ABSTRACT OF JUDGMENT—DETERMINE
SINGLE, CONCURRENT, OR FULL-TERM CONSECUTIVE COUNT FORM**
(Not to be used for multiple count convictions or for 1/3 consecutive sentences)

CR-290.1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
SAN DIEGO

PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: [REDACTED] DOB: [REDACTED] CASE NUMBER: [REDACTED]

AKA: [REDACTED] CII NO. [REDACTED] BOOKING NO. [REDACTED] ☐ NOT PRESENT

FELONY ABSTRACT OF JUDGMENT
☒ PRISON COMMITMENT ☐ COUNTY JAIL COMMITMENT ☐ AMENDED ABSTRACT

DATE OF HEARING: 05-12-22 DEPT. NO. 1103 JUDGE: RACHEL CANO

CLERK: M. MARTINEZ REPORTER: C. PETTIS CSR14272 PROBATION NO. OR PROBATION OFFICER: [REDACTED] ☐ IMMEDIATE SENTENCING

COUNSEL FOR PEOPLE: [REDACTED] COUNSEL FOR DEFENDANT: [REDACTED] ☐ APPOINTED

By: M. Martinez, Deputy

1. Defendant was convicted of the commission of the following felony:

COUNT	CODE	SECTION NUMBER	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO./DATE/YEAR)	CONVICTED BY	TERM (L./M./Y)	SERIOUS FELONY	VIOLENT FELONY	TIME IMPOSED (YRS. MOS.)
1	PC	459/460	Burglary, Burglary of First Degree	2019	4/11/22	JURY	X	M		4 0

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed, "S" for stayed, or "PS" for punishment struck. DO NOT LIST ENHANCEMENTS FULLY STRICKEN by the court.

COUNT	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	TOTAL

3. ENHANCEMENTS charged and found to be true FOR PRIOR CONVICTIONS OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed, "S" for stayed, or "PS" for punishment struck. DO NOT LIST ENHANCEMENTS FULLY STRICKEN by the court.

ENHANCEMENT	TIME IMPOSED, "S," or "PS"	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	TOTAL

4. Defendant sentenced: ☐ to county jail per PC 1170(h)(1) or (2) ☐ per PC 667(b)-(i) or PC 1170.12 (strike prior) ☒ to prison per PC 1170(a) or 1170(h)(3) due to ☒ current or prior serious or violent felony ☐ PC 290 or ☐ PC 186.11 enhancement ☐ PC 1170(a)(3). Pre-confinement credits equal or exceed time imposed. ☐ Defendant ordered to report to local parole or probation office upon release.

5. FINANCIAL OBLIGATIONS (plus any applicable penalty assessments):
 Restitution Fine(s): \$600 per PC1202.4 (b) forthwith per PC 2085.5 if prison commitment \$600 per PC 1202.45 suspended unless parole is revoked.
 \$ per PC 1202.44 is now due, probation having been revoked.
 Restitution per PC1202.4 (f): ☐ \$ ☒ Amount to be determined to ☐ victim(s) ☐ Restitution Fund
 * ☐ Victim name(s), if known, and amount breakdown in item 8, below. * ☐ Victim name(s) in probation officer's report.
 Fine(s): \$ per PC 1202.5. \$ per VC 23550 or days ☐ county jail ☐ prison in lieu of fine ☐ concurrent ☐ consecutive
☐ Includes: ☐ \$ Lab Fee per HS 11372.5(a) ☐ \$ Drug Program Fee per HS 11372.7(a) for each qualifying offense.
☒ Court Operations Assess.: \$ 40 per PC 1465.8. ☒ Conviction Assess.: 30 per GC 70373. ☐ Other: \$ per (specify):

6. TESTING: a. ☒ Compliance with PC 296 verified b. ☐ AIDS per PC 1202.1 c. ☐ other (specify):

7. IMMEDIATE SENTENCING: ☐ Probation to prepare and submit a post sentence report to CDCR per PC 1203c. Deft's Race / National Origin BLK

8. Other orders (specify):

9. TOTAL TIME IMPOSED: 4 0

10. ☐ MANDATORY SUPERVISION. Execution of a portion of the total jail time imposed in item 9 is suspended and deemed a period of mandatory supervision under PC 1170(h)(5)(B) as follows: Suspended portion: Served forthwith:

11. ☐ This sentence is to run concurrent with (specify): 12. Registration Required: ☐ per (specify code section):

13. Execution of sentence imposed: a. ☒ at initial sentencing hearing. b. ☐ at resentencing per decision on appeal. c. ☐ after revocation of probation.
 d. ☐ at resentencing per recall of commitment. (PC 1170(d).) e. ☐ other (specify):

DATE SENTENCE PRONOUNCED	CREDIT FOR TIME SPENT IN CUSTODY TOTAL DAYS	ACTUAL LOCAL TIME	LOCAL CONDUCT CREDITS	TIME SERVED IN STATE INSTITUTION
5/12/22	417	209	<input type="checkbox"/> 2933 <input type="checkbox"/> 2933.1 <input checked="" type="checkbox"/> 4019	DMH [] CDCR [] CRC []

15. The defendant is remanded to the custody of the sheriff ☒ forthwith ☐ after 48 hours excluding Saturdays, Sundays, and holidays.
 To be delivered to ☒ the reception center designated by the director of the California Department of Corrections and Rehabilitation.
☐ county jail ☐ Other (specify):

CLERK OF THE COURT: I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE: [REDACTED] DATE: 5/12/22

This form is prescribed under P.C. 1213.5 and satisfies the requirements of PC 1213 for determinate sentences. Attachments may be used but must be referred to in this document.

**FELONY ABSTRACT OF JUDGMENT—DETERMINE
SINGLE, CONCURRENT, OR FULL-TERM CONSECUTIVE COUNT FORM**

Form Adopted for Mandatory Use
Judicial Council of California
CR-290.1 (Rev. July 1, 2012)

Page 1 of 1
Penal Code,
§§ 1170, 1213, 1213.5

Appendix G

In order to quantify the middle guideline, the middle sentencing guidelines per each charge listed for each case was added together. For example, in one case a defendant had two charges: VC10851(a), PC496d. The sentencing guidelines for these three charges were: 16 months-2 years-3 years (written as the lower-middle-upper sentences). Therefore, the expected middle sentence, would be $2 + 2 = 4 \text{ years}$. The reason the middle sentence was selected was because, according to the California sentencing laws, the middle sentence represents the presumptive sentence, while the other options are, the upper sentence for cases with aggravating circumstances, and the lower sentence for cases with mitigating factors.

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