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The Impact of proposition 8 on felony plea bargaining in Santa Clara County

Tianna D. Nelson
San Jose State University

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The impact of Proposition 8 on felony plea bargaining in Santa Clara County

Nelson, Tianna Davidow, M.S.

San Jose State University, 1989

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THE IMPACT OF PROPOSITION 8 ON FELONY PLEA
BARGAINING IN SANTA CLARA COUNTY

A Thesis

Presented to

The Faculty of the
Administration of Justice Department
San Jose State University

In Partial Fulfillment
of the Requirements for the Degree
Master of Science

By

Tianna D. Nelson

May, 1989

APPROVED FOR THE
ADMINISTRATION OF JUSTICE DEPARTMENT

Dr. Harry E. Allen

Dr. Louis Holscher

George R. Overton, Attorney at Law

APPROVED FOR THE UNIVERSITY

ABSTRACT

THE IMPACT OF PROPOSITION EIGHT ON FELONY PLEA BARGAINING IN SANTA CLARA COUNTY

by Tianna D. Nelson

This research addresses Proposition 8's impact upon the felony adjudication process in Santa Clara County, California. Partially replicating a 1986 study conducted by McCoy and Tillman, it evaluates two particular Proposition 8 clauses: the ban on plea bargaining and the use of habitual offender sentence enhancements. The study examines the effects of these two clauses on Santa Clara County's Superior Court Review, a municipal court hearing designed to settle cases early through plea negotiations.

Findings indicate while Proposition 8 may have influenced changes in the contents of plea bargains, there has been little impact upon the use and frequency of plea negotiations. The habitual offender sentence enhancements, although used quite frequently as a tool for plea bargaining, are rarely imposed at sentencing.

The nature of the criminal justice system necessitates research on the effects of legal reforms imposed upon it. Understanding these effects is important to competently developing new reforms.

ACKNOWLEDGEMENTS

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Chapter One

Orientation to the Study

Introduction

In the early 1900's, legal scholars claimed that the criminal justice system had collapsed under the pressures of an ever-increasing "industrial society." Crime rates were soaring and there was a lack of resources to process efficiently those who had been apprehended. Apparently, the solution to heavy case-loads in the criminal courts, coupled with the need for expeditious and effective disposition of cases, was to be found in a phenomenon called plea bargaining. Neither plea bargaining nor the public criticism that has risen against it is a recent development in the American criminal justice system.

Prevalent in almost every jurisdiction in the United States, plea bargaining was once viewed as the result of the necessity to relieve congested court dockets as well as a desire by court officials to "individualize" justice (Nardulli, 1978). It appeared to be compatible with the goals of rehabilitation as well as retribution, allowing both to exist by not excluding either. In a system of determinate sentencing, plea negotiation permitted discussions between adversarial parties in their attempt to determine what was considered "fair."

"Plea bargaining"¹ was defined as something of a compromise between the criminal defendant and the prosecuting attorney and/or judge. A typical "plea bargain" usually took place outside of the courtroom. The defense council would approach the prosecuting attorney and, with the permission of the defendant, offer to plead his/her client guilty in exchange for some sort of sentence benefit or other compensation. These compensations resulted most often in the form of (1) a reduction in the number of counts of a particular offense; (2) a reduction in the number of various offenses charged (usually the defendant would plead to the most serious offenses, and some or all of the remaining charges would be dropped); (3) a reduction in the offense charged to a lesser offense in order to obtain a guilty plea; (4) a lessening in the length of the defendant's incarceration time; (5) a conditional plea based on the defendant's knowledge that incarceration time would be served in the local jail rather than a state institution; and (6) in the case of multiple sentences, each requiring its own incarceration term, the incarceration time could be structured such that the terms would be served concurrently as opposed to consecutively. These options, which essentially supplied the prosecuting attorney with tools for leverage in the bargaining process, have remained relatively the same. However, there are now additional

alternatives, which are discussed in further detail in Chapter Two.

Despite favorable explanations for plea bargaining, the idea of "bartering" or "crap-shooting" justice did not elicit plaudits from the public, nor did it produce complementary images of principal court participants. Questions arose concerning constitutionality, fairness, and the opportunities for misuse of prosecutorial power. Critics argued that justice had been sacrificed for administrative expediency:

...the system had become too self-contained;... prosecutors and judges were less concerned with substantive justice and community interests than they were with "keeping the cases moving" in a system overburdened with technicalities and procedural obstacles. The practical result ... was a system of justice that allowed serious criminals to evade the full force of the law (McCoy & Tillman, 1986, p. xi).

Lawmakers responded, and there is no better example of that response than in California. With a disquieted public, skeptical about its former commitment to the penal objective of rehabilitation, California officials put the "Public Initiative" into full force. In 1977, determinate sentencing abruptly replaced the indeterminate sentencing process, which had been in operation since 1917. The death penalty was restored in 1978. This crackdown resulted in overcrowded prisons with no funds to build new prisons but, in 1981, voters passed a referendum which approved

those funds. The public's concern, which then focused on victims' rights and victim compensation, was ultimately manifested in 1982, when:

Proposition 8 was used to end plea bargaining, increase sentence enhancements, and to reduce judicial discretion... (Davies, 1985, p. 8).

McCoy and Tillman state in their 1986 study that Proposition 8 marked a significant change in California's previous penological orientation. It was an attempt to shift from a model that emphasized treatment and rehabilitation to a more punitive model (McCoy & Tillman, 1986), and to attack imbalances in the system which appeared to favor defendants' rights over victims' rights. The present research is a continuation of their study, examining the general legal and organizational impact of Proposition 8 on California's criminal courts. Furthermore, in evaluating the impact of this reform, a broader issue is raised concerning the measurement of the effectiveness of any reform. When a reform is introduced into a pre-existing order of objectives, its success will be largely dependent upon (1) its relevance to the institution's goals, (2) its compatibility with those goals as well as other established political and social norms and practices, and (3) the resources needed for implementation. Thus, the possibilities for measuring

any reform's effectiveness are limited to what is practical rather than that which is merely theoretical.

Focus of the Study

This study represents both a qualitative and empirical evaluation of the impact of two sections of Proposition 8 on the felony prosecutorial process in Santa Clara County. This research is partially replicative of the 1986 McCoy and Tillman study, in that it evaluates the sections of Proposition 8 that address the "ban" on plea bargaining and the use of "habitual offender" sentence enhancements. The McCoy and Tillman study is an in-depth and sophisticated analysis of the effect these two Proposition 8 sections had on three California jurisdictions: Alameda County, San Diego County, and the part of Los Angeles County called the Compton District. The focus of this investigation will be on those plea negotiations that have taken place specifically in the part of Santa Clara County's felony prosecutorial process called the Superior Court Review (SCR) hearing, which was instituted in September of 1981 in order to relieve congested courts of unnecessary preliminary examinations and trials. SCR has been a "microcosm" of Santa Clara County's greater criminal justice system in that it combines arraignment, case discussion, pleading and, often times, sentencing into one hearing; it is further examined in Chapter Three.

Organization of the Study

In a state where major legislation has attempted to curtail plea bargaining, the process nonetheless continues unabated. Amidst California's efforts to control plea bargaining, many jurisdictions have undertaken measures which appear to bypass these controls. This study inspects those measures that occurred in Santa Clara County, and is divided basically into four sections. Part I of the study provides an introduction to the present research; outlines the various hypotheses to be explored; and supplies valuable information concerning previous research on the subject matter, in addition to historical and legal background of Proposition 8 and Santa Clara County's SCR hearing. The plea bargaining and offender enhancement clauses are briefly discussed in order to isolate certain loopholes that have allowed court practitioners to "plea bargain within the parameters of Proposition 8." Another objective of Part I is to display a comparison between the structural changes that occurred in Santa Clara County with those changes that McCoy and Tillman found in the jurisdictions of their study.

Part II of the study looks at the current plea bargaining practices occurring in Santa Clara County's SCR hearing. This section explains the methodology and assessment criteria utilized in evaluating the impact

of Proposition 8 on the rate of guilty plea certifications, on trial rates, and on those sentences specifically involving enhancements.

Part III addresses the hypotheses, summarizing the findings and results and comparing some of those results to the previous findings of McCoy and Tillman (1986). In the final section, conclusions encompassing the overall impact of Proposition 8 are offered. In addition, the broader question is addressed concerning the limitations of measuring the effectiveness of any legislative reform, realizing that what may be theoretically possible may realistically be impossible.

Hypotheses

To assess the impact of Proposition 8 on plea bargaining in Santa Clara County, four different hypotheses were developed. Since no previous research has been completed on Santa Clara County's felony prosecutorial process and no evaluations have been conducted on the impact that any previous legislation might have had on the existing legal structure, these hypotheses may appear somewhat rudimentary and simplistic. However, it must be remembered that the present research is preliminary and may provide a foundation from which further, more intricate research in this area may develop.

Assessment was based on the following research hypotheses:

- (1) The SCR hearing was created in the Santa Clara County jurisdiction in the Fall of 1981 in anticipation of and in response to limitations placed on the superior court plea negotiation process by Proposition 8, passed in June of 1982.²
- (2) The rate of superior court trials will increase as the rate of guilty plea certifications decreases.
- (3) Within the felony prosecutorial process, more defendants will plead than not plead at the SCR stage.³
- (4) The habitual offender enhancement will be used frequently in plea bargaining but not in sentencing (the 667(a) enhancement of Proposition 8 will be charged quite frequently but rarely imposed upon eligible defendants) (McCoy & Tillman, 1986).

Assumptions and Delimitations

Proposition 8 has now been in effect for almost seven years and Santa Clara County's SCR hearing procedures predated that by approximately six months. This study attempts to reveal the changes that have occurred in SCR as a direct result of Proposition 8's passage; however, the amount of time that has elapsed since its passage must be considered. The study does not evaluate nor does it intend to evaluate those factors outside of Proposition 8 which may have influenced adjudication procedures or which may have contributed to possible shifts in plea negotiations from superior to municipal court in the past seven years. Undoubtedly, court structures and proceedings vary in each jurisdiction and are subject to change. McCoy and Tillman suggest that factors such as the

values and history of courthouse work groups, political and cultural background of the people in a particular jurisdiction, and crime rates may affect felony adjudication differently in varying jurisdictions (McCoy & Tillman, 1986). Nevertheless, there are unifying factors such as the California Penal Code, common court procedures, and state legislation that allow for similarity amongst jurisdictions. Since this study is a partial replication the McCoy and Tillman research, it seems reasonable to assume that Santa Clara County, being a large urban area with a high volume of criminal cases similar to their chosen localities, is an ideal situation to study.

Data collected for the statistical analyses were acquired from court calendars, the Santa Clara County Criminal Justice Information Control (CJIC) computer system,⁴ and the California Board of Prison Terms. It is assumed that the felony cases under study are representative of the Santa Clara County felony caseload in general.

The study also has a qualitative element; material used for this particular analysis was primarily gathered from interviews and survey questionnaires. All respondents were aware of the research being conducted, so the survey data could be flawed by a possible Hawthorne effect. Honest and spontaneous responses were a primary objective but, considering the

delicate nature of this study, it is more logical to assume that the participants were inhibited and, thus, responded cautiously to the questions. The conclusions and final interpretations are a product of this study, and are limited to the Santa Clara County jurisdiction.

Unlike most previous research on plea bargaining, this study does not display the arguments in favor of or against plea bargaining. There are numerous variables, such as caseload pressure (Heumann, 1975; Feeley, 1975) and attorney type (Nardulli, 1986), that have been examined for their effects on plea negotiation processes. While this study does not deny that such relationships between plea bargaining and these variables may exist, their significance is still unclear.

The assessment examines the relationship between basically two variables. Proposition 8, a lengthy and somewhat ambiguous initiative, is the independent variable. The dependent variable is plea bargaining that occurs in SCR, a municipal court hearing that ordinarily precedes the preliminary examination and trial stages of the adjudication process. No sections or Proposition 8 other than the 1192.7 clause (the "ban" on plea bargaining) and the 667(a) clause (the habitual offender enhancements) are assessed in this study because it is assumed that these two sections will have had the greatest impact of existing

adjudication procedures. Outcomes of the evaluations of these clauses could well be beneficial to court personnel.

Importance of the Study

There have been no empirical or qualitative analyses of the plea bargaining process in Santa Clara County, nor of the influence that Proposition 8 has had on it. In a state where the public obviously disparages plea bargaining, and legislation has been approved to restrict it, plea bargaining prevails unabated with no impediments. Critics formally questioned whether plea bargaining was a tool that evaded justice; now they must ask if the criminal justice system is capable of surviving without it. The frequency with which plea bargaining is used suggests that it is not likely to be relinquished. Research is necessary to evaluate and monitor the effects and changes that legislation imposes upon the criminal justice system. These changes could have important policy implications for its present and future structure of the system. Understanding the influence of past legal reforms can markedly contribute to finding solutions to present day problems.

Perhaps the analyses that follow will be an impetus for further research of not only Santa Clara County's court system but also other California jurisdictions. Lawmakers may be aided in determining to

what extent legal reforms achieve their intended goals which, in turn, might influence their decisions in the creation of new reforms.

Footnotes

1. For the purposes of this study, plea bargaining is defined in concurrence with section 1192.7(b) of the California Penal Code:

Plea bargaining means any bargaining, negotiation, or discussion between a criminal defendant or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agreed to plead guilty or nolo contendere (no contest), in exchange for any promises, commitments, concessions, assurances, or considerations by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

2. This hypothesis cannot be tested empirically. Therefore, qualitative data collected by way of interviews and survey questionnaires are used to analyze and formulate conclusions and opinions as to whether SCR was created in response to Proposition 8's restrictions on plea bargaining.
3. Plea bargaining may occur at any municipal court stage in the felony adjudication process (re: Figure 3.1). However, SCR provides defendants with an opportunity to plead guilty in exchange for optimal sentence benefits and/or charge reductions. At the time of the SCR hearing, defense counsel make all defendants aware that their sentencing terms will not get any better after SCR.
4. Santa Clara County's CJIC system is the unified computer system used by various criminal justice departments, such as the Public Defender Office, the District Attorney Office, Probation, and superior and municipal courts. Specific information regarding defendants is available to individual departments based upon a department's authorized access. Data such as a defendant's pending and active court cases, history of a particular case, booking information, aliases, alcohol and drug lab results, housing (i.e. jail status), and court calendars may be accessed. However, the CJIC computer system does not provide "rap sheets" on offenders, nor is it linked with any local, state, or federal government agency

computer systems that maintain access to more
classified information.

Chapter Two
Review of the Related Literature
An Overview of Plea Bargaining

The plea bargain is the most common method used to obtain a conviction against criminal defendants in virtually every jurisdiction of the United States. As Albert Alschuler has argued, only the guilty plea system has enabled the courts to process their case-loads in the face of seriously inadequate resources. Despite this seemingly positive view, researchers have unmasked several alleged flaws in the plea bargain process: discrimination in convicting, sentencing, and incarceration rates (Welch, Spohn, & Gruhl, 1985); inequitable bargains (Welch, Spohn, & Gruhl, 1985); sacrifice of justice to administrative efficiency (Heumann, 1975; Harvard Law Review, 1970); misuse of prosecutorial power (Yale Law Journal, 1972; Alschuler, 1968; McDonald, 1985); involuntariness and coercion of the plea (Kipnis, 1976; Brunk, 1979); and unconstitutionality, specifically concerning the Fifth and Sixth Amendments of the Constitution (Yale Law Journal, 1972; Parnas & Atkins, 1978; Berger, 1976; Harvard Law Review, 1970). More recent research has concentrated on the equal treatment of parties, such as: the impact of attorney types on the plea bargains offered to their clients (Nardulli, 1986), and the relationship between a defendant's desire to plead and

the certainty of punishment (McCarthy & Lindquist, 1985).

Opponents of plea bargaining argue that disparities and preferential treatment do exist amongst minorities and women. These disparities have been noted in the type of bargain a defendant is offered, the willingness to bargain on the part of the prosecutor, leniency and severity of sentence, and conviction and incarceration rates. Welch et al. (1985) examined differences in convicting and sentencing male defendants in six locations and found that discrimination was directed against minorities, specifically in incarceration rates. However, the source of this discrimination was not clear. Questions of regional-patterned biases arose; possible discrimination in arrest rates was not examined nor was the sentence process itself considered as a source of discrimination. Furthermore, Welch et al. concluded:

...If judges do not discriminate against black defendants who insist on a trial, it seems unlikely that they would discriminate against those who plead guilty. The logical inference from these findings, then, is that racial discrimination occurs primarily as a result of the less favorable plea bargains made for blacks than for whites by defense attorneys and [the sentences offered by prosecutors to] blacks compared to whites (Welch, Spohn, & Gruhl, 1985, p. 76).

Yet these conclusions are based solely on speculation and lack empirical evidence to support them.

Spohn et al. (1985) uncovered evidence in their study that black males were significantly more likely to go to prison than white males or females. However, the results of the Spohn study are misleading. While some discrimination against black males may have been disclosed, there was no evidence that black females experienced discrimination. In fact, black females were treated as equally as were white males (the sample number of white females was too small to compare with the black females).

In another study concerning discrepancies in plea bargaining, Kipnis (1976) revealed statistics from the Administrative Office of the United States Courts that suggested that those defendants who exercised their constitutional right to a jury trial and were found guilty were receiving harsher sentences than those defendants who chose to plead guilty and give up that right. In response to this alleged discrepancy, Chief Judge Campbell conjectured in United States v. Wiley:

I believe, and it is generally accepted by trial judges throughout the United States, that it is entirely proper and logical to grant some defendants some degree of leniency in exchange for a plea of guilty (184 F. Supp. 679-N.D. Ill. 1960).

There is a plethora of research on the alleged flaws with plea bargaining, and the criminal justice system itself demands that proper attention be given to them. Opponents claim that bargain justice is a means

of administrative expediency that disregards the rights of the victim. Yet the criminal justice system is not a vehicle through which the public may justifiably impose the most severe punishment on every criminal defendant. Rather, the system is designed with the intention of finding and imposing the legal and most appropriate punishment for the crime. The very process of plea bargaining does not evade this intention but, rather, is amenable to it.

The research on the process of plea bargaining is almost as extensive as the recommendations suggested to reform and restrict it. Some states and counties have placed severe restrictions on or attempted to eliminate the process altogether. These include: the Office of the U.S. Attorney, Southern District, California; the state of Alaska; Multnomah County, Oregon; Maricopa County and Pima County, Arizona; El Paso, Texas; New Orleans, Louisiana; King County, Washington; and the state of California. However, research outcomes on plea bargaining are inconclusive. For example, while Alaska may have a very successful "no bargain" policy and Maricopa County (Arizona) may be able to eliminate the plea bargain without congesting its courts, predicting similar results of these policies in Detroit, Michigan, the boroughs of New York City, or any large urban county in California might be inaccurate. Evaluations of county and state plea bargain policies

are not generalizable beyond their own jurisdictions. Factors such as demographics, state budgets, crime rates, and differing county jurisdictional politics and policies must be considered when predicting the effects of legal reforms in other jurisdictions.

Most plea bargaining evaluations claim that caseload pressure predicts its prevalence (Alschuler, 1968; Heumann, 1975, 1978). In addition, there are numerous studies that assess other factors that influence case processing time (Mileski, 1971; Luskin & Luskin, 1986). Although this wealth of information provides us with greater knowledge and a better understanding of court processes, there remain several unanswered questions:

...the precise nature of the effects of caseloads on plea bargains remains uncertain. One reason for this has to do with the measures which studies employ to examine "adversariness," of the conflict present in the adjudication of criminal cases... Another major difficulty in research on plea bargaining and caseloads has been the non-delineation between the quality of plea bargaining, or the content of deals made, and the rate of plea bargains (Meeker & Pontell, 1985, p. 121).

Very few scientists have examined the effect that law might have had on caseloads. This point is important if we are to assess the relationship between caseloads and plea bargaining, and the relationship between plea bargaining and court adjudication processes. In fact, if caseloads do affect both the "qualitative as well as

quantitative aspects" of plea bargains, then understanding how caseloads can be "manipulated" by legislation is imperative in order to explain the effects of caseload on court adjudication processes.¹ The next section of this paper is devoted to the role that legislation has played in criminal court procedures in California.

Legislation and Plea Bargaining in California²

For years California's court practitioners have sought ways to unclog congested superior courts and, at the same time, remain faithfully responsive to a public demanding tighter controls on crime and tougher sentences for criminals. Recently, two major studies were conducted on the effects two pieces of legislation had on caseloads, plea bargains, and sentencing.

The first of these studies examined Section 17 of the Penal Code, a 1969 statutory amendment which allowed for "lesser" felonies (called "wobblers") to be processed as misdemeanors in lower-level courts.³ Meeker and Pontell noted in their study that 14,758, 22,234, and 32,168 cases between 1970 and 1972 had been shifted to municipal courts due to the changes in Section 17. They stipulated that if these cases had been forced to proceed through superior courts, disposition rates for those years would have increased 25%, 34%, and 41%, respectively. The researchers set out to "determine whether this shift and caused a corre-

sponding impact on caseloads and sentencing patterns." Using an interrupted time-series methodology, Meeker and Pontell found that: (1) a reduction in the amount of cases being fed into superior court occurred; (2) while the overall rate of plea bargaining remained relatively unchanged, there were significant changes in the type of plea bargains with defendants tending to plead slower; and lastly, (3) the severity of sentences appeared to be related to caseload patterns: as caseloads decreased, severity increased.

Unquestionably, these results may suffer from possible methodological errors. The interrupted time-series analysis is not perfect; critics have questioned its validity and other areas for which the design lacks control. Nonetheless, the Meeker and Pontell results are buttressed by the 1986 McCoy and Tillman study.

The McCoy and Tillman study examined the effects of Proposition 8, the "Victims' Bill of Rights," on felony plea bargaining in California.⁴ Similar to Meeker and Pontell, McCoy and Tillman employed an interrupted time-series design to analyze their data. Final interpretations about Proposition 8 have been expressed by the researchers:

Many of its provisions are exceptionally vague and open to a broad range of interpretation... we should be careful when we speak of the "success" or "failure" of Proposition 8 in achieving legal change.

Evaluations of similar attempts to change prosecution practices in other states have shown that such efforts often produce unanticipated consequences which may or may not be consistent with the ostensible goals of the reform measures (McCoy & Tillman, 1986, p. 5).

In examining the results of their study, one can easily understand what the researchers meant by their statement. If the 1192.7 P.C. section of Proposition 8 put a "ban" on plea bargaining, why then was and is it still occurring? If the 667(a) section of Proposition 8 was instituted with the intention of making habitual offender enhancements mandatory for felons with prior serious felony convictions, why are these offenders not receiving longer prison terms? In effect, McCoy and Tillman found that Proposition 8 had affected plea bargains and sentencing practices; however, it had not affected them in the way the researchers predicted. The results of the McCoy and Tillman research must be divided into two categories in order to observe the impact of each section separately.

The ban on plea bargaining. Section 1192.7 was added to the California Penal Code with the intention of preventing plea bargaining. The section reads as follows:

(a) Plea bargaining in any case in which the indictment or information charges any serious felony or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient

evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or a dismissal would not result in a substantial change in sentence.

(b) As used in this section, "plea bargaining" means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or considerations by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

In reading this, one would suspect that very little plea bargaining could occur within its parameters. Yet, "by referring to superior court 'informations' and 'indictments' but not to municipal court 'complaints'," Proposition 8 does not prohibit plea bargaining in the lower courts (McCoy & Tillman, 1986).⁵ Whether or not this loophole was intended by the creators of Proposition 8, the fact remains that it left an opening for court practitioners to continue plea bargaining.

McCoy and Tillman found that, statewide, Proposition 8 did cause a statistically significant increase in the use of certified pleas; however, it was perhaps only a slight increase beyond the level that would have been attained had Proposition 8 not been implemented. As far as jurisdictional results, the researchers found that the plea bargain clause affected each location in a different manner.

The Compton District and San Diego County appeared to have little impact on their plea bargaining processes. Alameda County, to the contrary, responded with a sudden shift of plea negotiations out of superior court and into municipal court. All three localities had certain "Pre-Trial" hearings in which felonies could be negotiated. The difference between these hearings was only semantic. McCoy and Tillman emphasize that what is important from this part of the analysis is not the shifts in certified pleas but, rather, that the substance of plea bargaining changed. Looking at the effects of the 667(a) P.C. section, this becomes apparent.

Habitual offender enhancements. In response to conservative "hardliners" who felt that habitual offenders were not receiving enhancements to their sentences, the 667(a) section was added to the Penal Code. This section states:

Any person convicted of a serious felony who previously has been convicted of a serious felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any serious felony, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively.

McCoy and Tillman hypothesized that the enhancement would be used extensively in the bargaining process but

rarely in sentencing. In other words, the enhancement would be frequently charged but, once charged, rarely imposed. The researchers believed that the 667(a) section would be utilized as a bargaining chip to get defendants to plead to higher terms and, in exchange for a plea, the 667(a) language would not be imposed.

Similar to the Meeker and Pontell findings, McCoy and Tillman found that the rate of plea bargaining had not been altered much by Proposition 8's clauses; however, the substance of plea bargains had changed. This change can be observed in the confirmation of McCoy and Tillman's hypothesis regarding the 667(a) section of Proposition 8. The 667(a) language was used as a bargaining instrument in all three locations of the sample. Although the new law was not charged often, it was used in plea bargaining. Furthermore, once charged, the enhancement was rarely imposed. This suggests that there was no restriction in the 667(a) clause to prohibit prosecutors from exercising their discretion to allege the enhancement or to drop it. The new law was being used by prosecutors as a tool to encourage pleas at both lower and upper court levels. The McCoy and Tillman data reveal that 42 percent of the defendants initially charged with the enhancement actually received the additional five years. The greater part of those habitual offender enhancements that were later dropped occurred before being proven in

court. Thus, prosecutors must have dropped the 667(a) language sometime during plea negotiations.

Conclusions and Implications

Previous research of the impact of legislation on plea bargaining processes in California is minimal, but the research that does exist strongly suggests that legislation does manipulate caseloads and plea bargains. As McCoy and Tillman stated in an aforementioned quote, we should remain cautious when evaluating the success or failure of any legal reform. Certainly, if the public were aware of the extent to which plea bargaining prevails, a majority of the voters would more than likely believe that Proposition 8 has failed to curtail plea bargaining. Additionally, those same voters might well agree that the sentence enhancements were a futile attempt to more severely punish and deter habitual offenders.

To the contrary, one might be able to console a dissatisfied and perhaps disillusioned public if it could be shown that Proposition 8, interpreted differently, is not completely fatuitous. McCoy and Tillman predicate that Proposition 8, although apparently more symbolic than substantial, has been an obstacle to plea bargaining. Court participants have been forced to plea bargain solely in municipal courts. In addition, the habitual offender enhancements, even when used as a bargaining chip, have forced felony

offenders to plead to higher terms in order to avoid the possible imposition of the sentence enhancements if convicted later on subsequent felonies. Therefore, offenders are serving longer terms on more serious charges. Recent statistics disclose that indeed more offenders are being sentenced to prison in California. Whether this is attributable to legislation such as Proposition 8 requires further examination. Nevertheless, these statistics cannot be denied.

The McCoy and Tillman study has been the chief impetus for the present research. The following chapters focus on the influence that Proposition 8 has had in restructuring the felony adjudication process of Santa Clara County. Santa Clara County's "former" adjudication process will be discussed, but primary emphasis will be placed on the county's unique solution to its problem of overburdened courts and the legal impact that Proposition 8 has had on that solution.

Footnotes

1. The Meeker/Pontell and McCoy/Tillman studies demonstrate that both rates of plea bargaining and the content of plea bargains are affected by legislation. In their studies, however, these changes in plea bargaining are a product of changes that occurred in caseload patterns due to implementation of criminal justice legislative reforms.

See Meeker, J. and Pontell, H. (1985). Court Caseloads, Plea Bargaining and Criminal Sanctions: The Effects of Section 17 P.C. in California. Criminology, 23, pp. 119-143; McCoy, C. and Tillman, R. (1986). Controlling Felony Plea Bargaining in California: The Impact of the "Victims' Bill of Rights." Bureau of Criminal Statistics.

2. A majority of this section is extracted from the Meeker/Pontell (1985) and McCoy/Tillman (1986) studies.
3. Passed in November of 1969, Senate Bill 1032 was introduced by Senator Robert Lagomarsino as an amendment to Section 17 of the Penal Code in an effort to "relieve overburdened superior courts of the state of California by allowing lesser felonies [defined as those] carrying alternative sentences of jail or prison [wobblers] to be adjudicated in the municipal courts at the discretion of the prosecuting attorney." Prior to this date, felonies could only be adjudicated in superior courts. Due to lack of resources, it was thought that this strain imposed on the superior courts would result in inefficient handling of cases. Section 17 is described in further detail in the 1985 Meeker and Pontell study, "Court Caseloads, Plea Bargains, and Criminal Sanctions: The Effects of Section 17 P.C. in California," Criminology, 23.
4. Other documents prepared on Proposition 8 that may be of interest include: the California Legislature Assembly Committee on Criminal Justice; the

Attorney General's Guide to Proposition 8; and the Assembly Republican Caucus "In Defense of the Victims of Crime: An Analysis of Proposition 8."

5. In municipal court, felony cases are first filed under a "municipal docket" number. When the District Attorney formally files a criminal "complaint," the case is assigned a municipal docket number for reference throughout the municipal court proceedings. If the felony case proceeds to trial, that trial takes place in superior court. Once a defendant is held to answer on a felony case in superior court, a new number called the "superior court information" number is assigned to the case for reference throughout the superior court proceedings. Since all felonies are sentenced in superior court, even if a defendant pleads guilty at a municipal court stage, when the case reaches the superior court level for sentencing, it will receive an associated docket number which is the information number used by the superior court.

Chapter Three

Methodology

In order to determine what effects Proposition 8 may have had on Santa Clara County's felony plea bargaining, it was necessary to collect important background information on both the county of Santa Clara and its felony court process.

Santa Clara County was chosen as the sample because it encompasses a large urban area with a high volume of criminal cases. Similar to Alameda County (one sample area of the McCoy and Tillman study), Santa Clara County has a diverse ethnic population comprising a large middle class Anglo and Black section, a recent influx of Asians into the city area, and a large Hispanic community. The county is composed of several cities including San Jose, Gilroy, Los Gatos, Santa Clara, Sunnyvale, and Palo Alto. San Jose dominates the handling of felony case adjudication. Santa Clara County has often been referred to as the "PCP (phencyclidine) drug capitol of the world," and most of its crimes are drug related.

The Santa Clara County jurisdiction has highly organized District Attorney and Public Defender offices. There are approximately 75 assistant district attorneys, 43 deputy public defenders, 33 felony judges, and up to 45 court departments available to process an 8,000 plus felony caseload per year.

Resources are obviously limited. Figure 3.1 represents a time line of Santa Clara County's felony adjudication process.¹ Optimally, a defendant is able to traverse the system in 30 days if a guilty plea is entered. If the defendant is held to answer in superior court and trial is executed, it takes minimally two and one-half times longer to traverse the system.

Before 1981, all felonies that were not settled at the plea stage of the adjudication process were sent to the preliminary examination stage.² A coalition of "regular" attorneys and a superior court judge recognized that an inordinate amount of time was spent on a number of felony cases that should have been "open and shut" cases. Superior court had become inundated with a number of needless cases that could have settled before the preliminary examination stage had there been available means to do so. After months of deliberation, the coalition of regulars (one public defender and one assistant district attorney, plus two superior court judges) finally reached a solution unique to Santa Clara County's problem of overburdened courts.

Santa Clara County's Superior Court Review (SCR)

In September of 1981, the Superior Court Review (SCR) hearing was instituted into Santa Clara County's felony adjudication process. SCR was to be the long-sought "opportunity" to settle cases early. Figure 3.1 exhibits the placement of SCR in the felony

FIGURE 3.1
FELONY ADJUDICATION PROCESS
SANTA CLARA COUNTY

adjudication process. Designed specifically for early settlement of cases and, hence, avoidance of unnecessary preliminary examination and trials, SCR has become somewhat analogous to the floor of a "stock exchange,"³ where incessant felony case discussions and negotiations ensue in an attempt to obtain compromise between adversarial parties.

Figure 3.2 represents the organizational structure of SCR. It appears to be informal and more or less non-adversarial, being conducted behind the doors of an SCR judge's chambers. There, prosecution, defense counsel, probation representative and superior court judge "individualize" justice to its greatest extent. Case after case is scrutinized in order to reach an agreement upon equitable bargains and, thus, felony case disposition (see Appendix A for a detailed explanation of SCR). Respondents agree that SCR has allowed for cases to traverse the system quickly, reduce the number of felony preliminary examinations and trials, and provide for early settlement on cases. Figures 3.3 and 3.4 present schematic displays of the percentage of cases that SCR received in 1986 and 1987, respectively.

Although there are other stages at which the defendant may plead, SCR is receiving a substantial caseload. SCR differs from other municipal court proceedings in its informality and its intent to

FIGURE 3.2
SUPERIOR COURT REVIEW
JUDGE'S CHAMBERS

FIGURE 3.3
SUPERIOR COURT FELONY DISPOSITIONS
SANTA CLARA COUNTY 1986

Source: Superior Court Clerk's Office, Santa Clara County Caseload Report 1986.

FIGURE 3.4
SUPERIOR COURT FELONY DISPOSITIONS
SANTA CLARA COUNTY 1987

Source: Superior Court Clerk's Office, Santa Clara County Caseload Report 1987.

determine the most appropriate sentence per case, as well as, the fact that a superior rather than municipal court judge participates in the proceedings. Other counties (such as Sacramento and San Mateo) have observed Santa Clara County's SCR hearing and instituted their own versions of SCR, and other jurisdictions have formal court hearings in which plea bargaining is the primary process. However, Santa Clara County is the sole jurisdiction known to have a probation officer participating in and a superior court judge overseeing this type of municipal court proceeding.

Once again, it is not the intent of this research to evaluate the SCR hearing nor offer opinions regarding its intentions and purposes. The underlying motivation for choosing SCR as the subject of this study was that it maintains a reasonably-sized caseload which would provide sufficient data, and SCR is unique and somewhat of a microcosm of the entire system, on which no previous research has been conducted. Analyzing the impact of Proposition 8 upon SCR could be an impetus for studying other legislative attempts to influence court processes and, more specifically, an inducement for criminal justice reformers in Santa Clara County to evaluate the impact of reforms such as instituting the SCR hearing in the felony adjudication process.

Treatment of the Data

Both statistical and qualitative data were collected on the Santa Clara County SCR court calendar for Department 10 in San Jose. Department 10 handles SCR cases on Wednesday, Thursday afternoons, and on Friday (if necessary) to process any remaining cases.⁴ For purposes of this study, observational data were gathered every Wednesday during the months of July, August, and September of 1988. Department 10's SCR calendar is only responsible for the adult criminal court cases referred from San Jose, Gilroy, Los Gatos, and Santa Clara. Palo Alto and Sunnyvale were excluded from the study because the cases which these jurisdictions refer to SCR are not part of Department 10's regular SCR calendar. Palo Alto and Sunnyvale SCR cases are heard in Palo Alto's superior court, which maintains its own SCR calendar and operates quite differently from its counter-part in San Jose (see Appendix B for more detailed explanation). Therefore, all data accumulated for this study are limited to those locations covered on Department 10's SCR calendar. As was stated earlier in this paper, it was assumed that the data collected from Department 10's SCR calendar between July and September of 1988 were representative of Santa Clara County's felony caseload in general.

In addition, background information and case processing data from 1980 to 1986 were assembled from court records. The research design thus includes both a descriptive survey technique and statistical time-series tests.

Qualitative analyses. Qualitative data were gathered by means of surveys and interviews. Interviews were conducted with deputy public defenders, probation officers, superior court judges, and assistant district attorneys. Eight interviews were executed; obtaining interviews from district attorneys was difficult, due to time and caseload factors. Therefore, observational and qualitative data may be somewhat incomplete and non-representative. All participants in the surveying process had either served on or were currently assigned to the SCR calendar in Department 10. Other information was readily available through the Santa Clara County Superior Court Clerks' Office and Planning Department.

Historical data were extracted from the Bureau of Criminal Statistics' reports and the Board of Prison Terms, headquartered in Sacramento, California. Current court calendars were obtained from the Santa Clara County's CJIC computer system, all of which were used primarily for conducting the statistical data analyses.

Statistical analyses. Information for the statistical analyses included felony cases that were potential superior court cases but that had received certified guilty pleas in municipal court hearings. Once gathered, the data were analyzed by a quasi-experimental interrupted time-series design. The results were then displayed in regression line-graph form. Unlike the McCoy and Tillman research, the ARIMA model for autocorrelation was not employed.

Autoregressive integrated moving average (ARIMA) models are particularly well-suited to the analysis and interpretation of the interrupted time-series design (Meeker & Pontell, 1985). With their vast amount of acquired data, McCoy and Tillman were able to employ the ARIMA model. Unfortunately, the ARIMA model and other associated statistical techniques are more readily conducive to a larger number of observations (McCain & McCleary, 1979; Meeker & Pontell, 1985). The observations collected for the present study were minimal, representing as little as six to nine points in time. Therefore, the ARIMA model was inappropriate for this research.

In using the interrupted time-series design, it would be useful to assume that each observed value is independent of all other observed values. However, time-series data mandate that each point in time be in some way affected by the preceding data point. The use

of certified pleas before and after the intervention of Proposition 8 suggests that the decision to use certified pleas was not a result of Proposition 8 but was a continuation of a long-term trend. In other words, all observations were connected, or autocorrelated in this study. McCoy and Tillman employed the ARIMA model to overcome any limitations placed upon their work by the interrupted time-series analysis. As before, the ARIMA model is a method beyond the scope of this research and more simplistic statistical approaches have been utilized to ascertain degrees of significance of autocorrelation.

Statistical tests utilized for this research varied according to the specific hypothesis. In addition to the interrupted time-series design and trend analysis, the Pearson Product Moment Correlation coefficient was employed. Since a major portion of the analysis is bivariate, and inferences from the obtained percentages are desired, the Pearson Product coefficient is appropriate in determining the significance of the findings.

Validity of the Interrupted Time-Series Design

As with any experimental design, the interrupted time-series design is not without weakness. Although this approach has been shown to be "uniquely suited to the study of legal interventions" and their impact on

existing social structures⁵, its critics detail several methodological problems, particularly with validity.

When interrupted time-series results are exhibited in regression line-graph form, careful visual inspection will reveal:

...particularly dramatic effects [if any exist]. Although this may be adequate to detect [these] dramatic effects, visual inspection has subjectivity problems when used to detect effects that are more subtle (Meeker & Pontell, 1985, p. 126).

Additionally, the internal validity of the interrupted time-series design is threatened by external factors beyond the researcher's control. The possibility that history, alternate legislation, changing social structures, or factors other than the suggested intervention may have influenced change in the dependent variable cannot be dismissed. It should be remembered that correlation does not necessarily indicate causation, nor should the two be equated. Given the very nature of the criminal justice system, a multiplicity of forces may be responsible for shifts and changes that occur within it. In short, causal connections based only on "before and after" techniques should be avoided.

Summary

The interrupted time-series design was the simplest method for determining what effects Propo-

sition 8 might have had on Santa Clara County's felony adjudication process, specifically in the SCR hearing. Realizing that both the SCR hearing and Proposition 8 were instituted roughly around the same time (approximately eight months apart), there was difficulty in isolating any single factor that may have influenced the observed trends. As can be seen in earlier sections of this paper, California has undergone several legislative changes, beginning in 1969 with the passage of Section 17 P.C.. In fact, in the past twenty years, California has shifted from a rehabilitative to a more retributive model of criminal sanctioning; this shift has kept the criminal justice system in a state of fluctuation responding to all sorts of legislation. Thus, the trends observed in this study could be attributable to factors other than Proposition 8, as will be discussed below.

Footnotes

1. Original by author.
2. In Santa Clara County, the preliminary examination is a "pre-trial"-type hearing in which the prosecution presents evidence to and calls witnesses before the court against the defendant. Defense counsel may then question the evidence and cross-examine the witnesses. The court decides, based on the prosecution's evidence, whether the case should be held over for trial in the superior court.
3. The term "stock exchange" is not an analogy that the researcher created, but is the expressed opinion of one of the SCR participant interviewees whose identity shall remain anonymous.
4. The SCR calendar in San Jose Department 10 is divided into four blocks. Wednesday morning's calendar covers San Jose's assault, burglary and theft, and sex cases. The Wednesday afternoon calendar devotes its time to all types of cases coming from Gilroy, Los Gatos, and Santa Clara but excludes San Jose (this block is commonly referred to as the "outlying court cases"). Thursday afternoon's calendar is the narcotics calendar, devoted solely to drug cases. Any cases that are not discussed on either Wednesday or Thursday, are carried over for processing on Friday.

Although observational data were collected for three months from the Wednesday calendar alone, these were not used in the statistical analyses. Observational data were gathered purely for purposes of understanding the operation and structure of SCR. Data used in all the statistical analyses were gathered from SCR court calendars which incorporated all SCR cases for three months regardless of day and time. Thus, conclusions and interpretations are not biased by the offense type or day and time the cases were heard.

5. Other studies that Meeker and Pontell refer to:

This design has been used to test and measure the impacts of new traffic laws (Campbell & Ross, 1968; Glass, 1968; Ross, Campbell, & Glass, 1970; Ross, McCleary, & Epperlein, 1982); the

impacts of decriminalization (Aaronson, Dienes, & Musheno, 1978; McCleary & Musheno, 1980); the impact of gun control laws (Deutsch & Alt, 1977; Hay & McCleary, 1979; Zimring, 1975); the impact of air pollution control laws (Box & Tiao, 1975); and the impact of organizational structure on the uniform crime reports (McCleary, Nienstedt, & Gruen, 1982).

Chapter Four
Santa Clara County's Responses to
Proposition 8's Limitations

Introduction

Within the California criminal justice system, legislative statutes coupled with individual jurisdictional policies have created a network of what appears to be independently operating court subsystems. Each jurisdiction represents a different subsystem, yet all are connected by a common procedural thread: the felony adjudication process. Although prosecutorial events may have varying names and/or legal definitions, these dissimilarities are at most semantic. In general, the felony adjudication process has three basic stages: (1) arraignment in municipal court; (2) pre-trial motions and hearings in municipal court; and (3) trial in superior court (McCoy & Tillman, 1986).

Most plea bargaining occurs in the municipal court stage before preliminary examination or other evidence-type hearings. Santa Clara County's felony adjudication process was displayed in Figure 3.1. Felony plea bargaining in Santa Clara may occur at the plea, SCR, and preliminary examination stages. However, it is the SCR hearing that has been specifically designed for the adversarial parties (prosecution and defense) to meet with the judge and a probation representative, to determine the most appropriate sentence per criminal

offense, as well as seek an acceptable sentence price for the defendant and state.

The following research questions concern the legal and organizational impact of Proposition 8 on Santa Clara County's felony adjudication process, particularly on the SCR procedure. These questions are examined below and the results displayed in such a manner as to provide a "profile" of the process of plea bargaining in Santa Clara County and the possible influences that Proposition 8 has had upon it. The profile attempts to identify certain patterns and processes of plea bargaining based on available empirical and qualitative evidence preceding and following the passage of Proposition 8.

Profiles are often either too vague and ambiguous, or to some extent reflect an educated guessing game (Holmes & DeBurger, 1988). It is not the purpose of this profile to identify all the potential factors that may have contributed to the observed changes in Santa Clara County's felony plea bargaining procedures since Proposition 8's passage. The profile created by this research cannot pinpoint Proposition 8 as the causal factor of recent trends in Santa Clara County's felony plea process but, by examining Proposition 8 as a possible determinant of these changes, the profile can and does narrow the field of possible determinants.

Organizational Responses to Proposition 8

As was stated above, all felony cases prior to 1981 that did not settle at the plea stage of Santa Clara County's felony adjudication process went to preliminary examination. Each year's increase of criminal cases brought with it a subsequent increase in preliminary examinations. Superior court participants recognized that a number of these cases could have been settled before the preliminary examination stage had there been an available process to do so. Many of these cases had either overwhelming evidence against the defendant, not enough evidence, or had defendants who were willing to waive their constitutional rights and plead guilty if their voluntary admissions (of guilt) would be compensated with sentence benefits.

It is the popular view of most court participants that the Superior Court Review (SCR) hearing was instituted for the reasons stated above: overburdened municipal courts, court time wasted on unnecessary preliminary examinations, and lack of a means to settle some "open and shut" cases. However, the institution of SCR in 1981 raises several questions, some of which allude to other possible explanations for its development.

The first question to ask is: If there had been a noticeable trend of increasing preliminary examinations, why did court participants not create SCR

earlier? A defense attorney, one of the founders of SCR, responded:

In 1981, the lack of resources to process cases became critical. For example, when I came here in 1976, I had a case where a woman got sentenced to 16 months in state prison. Everybody came to see the sentencing because, back then, women never received prison sentences. Now on a sentencing calendar, there'll be two "bus-fulls" of women going off to prison. Criminal case-loads were increasing tremendously, but the resources and manpower to process them remained relatively the same.

Nevertheless, SCR was instituted into the adjudication process six months before the Proposition 8 initiative passed. This timing suggests that anticipation of Proposition 8's passage could have prompted court officials to formally establish the SCR hearing. Although interview participants denied that SCR was created as a vehicle to circumvent the plea bargaining issues described in Proposition 8's 1192.7 clause, the majority of them acknowledged that the SCR hearing could have been perceived as such. SCR allowed for a greater amount of potential superior court cases to shift to municipal court for disposition. Since plea negotiating was to be banned in superior court, one could interpret the institution of another municipal court hearing into the felony adjudication process as an attempt to avoid its restrictions. This interpretation is further substantiated by the fact that SCR is

a hearing in which plea discussions are the primary emphasis.

The actual reasons for SCR's institution are probably a combination of both the need to relieve the courts that had become inundated with unnecessary preliminary examinations, as well as avoid Proposition 8's ban on plea bargaining in superior court. However, data to assess these reasons are based solely on the interpretations and opinions of court participants, and thus are bound by subjectivity problems.

The second issue raised by the development of the SCR hearing concerns its legality: Does SCR operate within the restrictive parameters of Proposition 8? Referring back to the 1192.7 section of the Penal Code, it is understood that plea negotiating is prohibited in any case in which "the indictment or information charges any serious felony" (see Appendix C for list of felonies defined "serious"). Informations and/or indictments are the numerical codes utilized by the superior court in reference to the criminal cases. As was stated in Chapter Two, when a felony case is in municipal court, the case is filed on a "complaint" (not an information). Although semantically deceiving, Superior Court Review is not a superior court hearing; it is a municipal court proceeding with a presiding superior court judge authorized to plead as well as sentence defendants. Felony cases may only be

sentenced by superior court judges; therefore, SCR essentially combines a three-step process into one court proceeding. Defendants are arraigned, pled, and often sentenced in SCR. As soon as the defendant accepts the prosecutor's offer in exchange for a guilty plea, the defendant's plea is formally recorded by the court, and the case is immediately assigned an information number for reference in superior court sentencing. Although SCR has the appearance of operating on a fine line regarding Proposition 8's plea bargaining restrictions, this fine line is a semantic one, not a legal one.

It may be presumed that SCR was the only organizational response in terms of the structure of the felony plea bargaining process that occurred roughly around the time that Proposition 8 passed. Whether SCR's institution was prompted by Proposition 8, however, is left to speculation.

Impact on Trial Rates and Guilty Plea Practices

As the second hypothesis suggests, if Proposition 8 were intended to place serious restrictions on plea bargaining, one would expect trial rates to surge and plea certifications to decrease in superior court. In addition, one should find that a large number of potential superior court cases were shifted to municipal court where plea negotiation practices were not under the same level of Proposition 8 pressures.

Trial rates. Table 4.1 and Figure 4.1 show the felony trial rates in Santa Clara County for the past eight years. The cells from 1983 to 1987 in Figure 4.1 represent the rate of trials since Proposition 8's passage in 1982. Contrary to predictions, the trial rate in Santa Clara County has not increased. In fact, not only has the number of cases going to trial decreased, but the trial rate has been steadily decreasing: down from 5.0 percent in 1983, immediately after Proposition 8, to 2.4 percent in 1987.

These results are similar to the statewide results found by McCoy and Tillman, although Santa Clara County's trial rates tend to be substantially lower than the overall rates for California. For instance, for the fiscal year of 1983/84, California's trial rate was 10.1 percent while Santa Clara County's was slightly under 5.0 percent. These results suggest that a great number of defendants are pleading guilty early, probably as a product of plea negotiations. If this is true, and the courts are operating within Proposition 8's restrictions on plea bargaining, then one would expect to see a substantial increase in the number of certified pleas in municipal court.

Guilty plea practices. Figure 4.2 displays the proportion of certified guilty pleas as a percent of superior court dispositions from 1980 to 1987 in Santa Clara County. Certified pleas include those cases

Table 4.1

TRIALS AS A PERCENT OF
SUPERIOR COURT CRIMINAL DISPOSITIONS
SANTA CLARA COUNTY, 1980-1987

Year	Total Dispositions	Total Trials	Percent Trials
1980-81*	3,997	254	6.4
1981-82*	4,730	225	4.8
1983	5,424	271	5.0
1984	5,870	268	4.6
1985	6,798	296	4.4
1986	7,337	240	3.3
1987	7,892	193**	2.4

Source: Santa Clara County Superior Court Clerk Office.

* Statistics from California Judicial Council for the fiscal year.

** Includes both court and jury trials.

FIGURE 4.1
TRIALS AS A PERCENT OF
SUPERIOR COURT CRIMINAL DISPOSITIONS
SANTA CLARA COUNTY, 1980-1987

Source: Santa Clara County Superior Court Statistics
* Represent fiscal years.

FIGURE 4.2
CERTIFIED GUILTY PLEAS AS A PERCENT OF
SUPERIOR COURT DISPOSITIONS
SANTA CLARA COUNTY, 1980-1987

Source: Superior Court Clerk Office, Santa Clara County
* Represent fiscal years.

where the defendant pled guilty as a result of a plea bargain, changed his/her initial plea during or after preliminary examination, or pled guilty on the condition that he/she would be diverted.¹ Figure 4.2 reveals that Santa Clara County, which already had a tremendously high certification rate, continued a slow but steady increase in the rate of certification. Thus a very slight but significant shift from superior to municipal court occurred.

Figure 4.3 shows Santa Clara County's rate of certified pleas as a percent of superior court dispositions, excluding the SCR caseload. The data reveal a substantial decrease in the percentage of certified pleas, suggesting that, had SCR not been established, an average of approximately 26 percent of the felony cases may have gone to preliminary examination or as far as superior court trial. If this type of change in certified pleas had occurred, Santa Clara County's trial rate would have been significantly higher during the years of 1983 to 1987.

Figure 4.4 imposes the results of the McCoy and Tillman study on the present study. Similar to the three locations of the original study, Santa Clara County has shown an increase in the use of certified pleas, especially with the institution of the SCR hearing. As McCoy and Tillman concluded, there has been an apparent migration of felony plea bargaining

FIGURE 4.3
CERTIFIED GUILTY PLEAS AS A PERCENT OF
SUPERIOR COURT DISPOSITIONS
SANTA CLARA COUNTY, 1980-1987
(excluding SCR dispositions)

Source: Superior Court Clerk Office, Santa Clara County
* Represent fiscal years.

FIGURE 4.4
 CERTIFIED GUILTY PLEAS AS A PERCENT OF
 SUPERIOR COURT DISPOSITIONS
 ALL FELONIES, 1980-1984
 ALAMEDA, SAN DIEGO, LOS ANGELES, AND SANTA CLARA COUNTIES

Sources: Santa Clara County Superior Court Clerk Office; McCoy and Tillman (1986); Controlling Felony Plea Bargaining in California: The Impact of the "Victim's Bill of Rights." Bureau of Criminal Statistics.

from superior to municipal court statewide, although individual counties appear to have shifted at different rates. These differences in response to Proposition 8 might be attributable to varying factors affecting the adjudication procedures in each individual jurisdiction, including: differing crime rates, demographics, political and historical backgrounds. These factors may very well provide a basis for understanding the "divergent responses to the new law observed in the quantitative data" (McCoy & Tillman, 1986, p. 26).

Having observed that Santa Clara County did indeed experience a slight shift of felony cases from superior to municipal court, it now becomes necessary to ask (1) where did this shift occur and (2) was this shift a significant one?

In Santa Clara County, the majority of certified pleas take place at two municipal court stages: the plea stage and the SCR stage (see Figure 3.1). Since SCR was not fully operative until 1982, most pleas before 1982 were occurring at the municipal court plea hearing, under the plea procedures described in Section 859(a) of the California Penal Code (see Appendix C for 859(a) P.C. procedures). Examining Table 4.2, the rate of plea certifications (under Section 859(a) P.C.) at the plea hearing has remained relatively constant at about 40 percent during the past five years. This rate of 40 percent is also consistent with the rate of plea

Table 4.2
COMPARISON OF PLEA CERTIFICATION RATES
SANTA CLARA COUNTY, 1983 - 1987

Year	Percent Plea Certifications	
	Section 859(a) P.C.	SCR*
1983	40	18
1984	41	24
1985	40	28
1986	42	31
1987	48	20

Source: Santa Clara County Superior Court Clerk Office

*SCR - Percentages include changes of plea, dismissals, diversions and section 17b P.C. dispositions.

certifications under Section 859(a) P.C. for 1980 to 1982, the years prior to Proposition 8. However, looking at the rate of plea certification at the SCR stage, a noticeable increase from 18 percent in 1983 to 30 percent in 1987 can be found.² Not only does this support the idea that a shift has occurred since the passage of Proposition 8, but that the shift appears to have taken place at the SCR stage. Figure 4.5 combines the results of Figures 4.2 and 4.3; the shaded area represents the potential of cases that would have gone to preliminary examination or trial had SCR not been implemented.

To determine the level of significance of the shift from superior to municipal court, the Pearson Product Moment Correlation coefficient was utilized. Although not as sophisticated as the ARIMA model used by McCoy and Tillman in their 1986 study, the Pearson Product validity coefficient provides some means for measuring the level of significance of the shift that occurred in Santa Clara County's felony adjudication process. The variation in plea certification rates was compared with the variation in trial rates in order to ascertain if correlation exists between them. A validity coefficient of .89 was found, reaching significance beyond the .01 level for 5 degrees of freedom. This finding suggests that (1) correlation does exist and (2) if Proposition 8 were one of the

FIGURE 4.5
 CERTIFIED GUILTY PLEAS AS A PERCENT OF
 SUPERIOR COURT DISPOSITIONS
 SANTA CLARA COUNTY, 1980-1987

Source: Superior Court Clerk Office, Santa Clara County

* Represent fiscal year.

**The shaded area represents an average of approximately 26 percent difference.

factors attributing to the shift of cases from superior to municipal court (where more cases could be settled by means of plea negotiation), then any variation in the rate of trials in superior court would in turn reveal a variation in the rate of plea certifications in municipal court. As was stated earlier, correlation cannot be equated with causation, thus Proposition 8 cannot be pinpointed as the factor responsible for the shift that occurred in Santa Clara County's felony adjudication process. Nevertheless, a strong argument can be made that it is one of the possible factors.

Guilty plea practices in SCR. A shift of felony cases from superior to municipal court occurred in Santa Clara County's felony adjudication process shortly after Proposition 8's passage, and it has been determined that this shift appears to have been associated with the SCR stage of that process. The SCR caseload has currently leveled off at approximately 30 percent of the total superior court felony dispositions. Considering that this shift has occurred, one would expect, as the third hypothesis stipulates, that more defendants will plead than not plead at the SCR stage.

Not only does SCR provide a second opportunity for defendants to plead early in the felony adjudication process, but SCR was designed in such a way that the prosecutorial sentencing offers may not become any more

beneficial along the adjudication path. Occasionally, better sentencing offers will appear after the SCR hearing; this is rare and tends to undermine the credibility of SCR which is known for offering defendants the most equitable and beneficial sentencing terms.

During the discussions between defendant and defense attorney, the attorney explains the potential maximum sentence and the generally better SCR sentencing terms that the prosecuting attorney is willing to offer under the guidance of the court. Since defendants are aware that the chances of receiving a "better deal" at future court dates are minimal, it seems reasonable to assume that more defendants would plead at SCR than not, due to their fear of receiving harsher sentencing terms later. Asking each and every defendant whose case came under study in this research whether he/she pled because of fear of losing the "best offer" was beyond the scope of this research. However, several studies have suggested that defendants do plead guilty for this reason (McCarthy & Lindquist, 1985; Brunk, 1979; Harvard Law Review, 1970).

Court calendars from Santa Clara County's Municipal Department 10 SCR hearing were examined for a period of three months in order to determine whether more defendants plead or do not plead at SCR. Findings

indicate that approximately 50 percent of the cases that reach SCR are actually settled there. However, the sample size is small and there are possible statistical variations and errors. Therefore, the hypothesis cannot be rejected. Perhaps a greater collection of historical data in addition to these recent data would provide an adequate sample size for further study.

Impact of the 667(a) Habitual Offender Enhancement

The fourth hypothesis addresses the issue of sentence enhancements under Section 667(a) of the California Penal Code. It was stipulated that the 667(a) clause, which was discussed in Chapter Two, would be used frequently in the plea bargaining process but rarely in sentencing.

Although the literature about plea bargaining often gives the impression that relations among prosecutors and defense attorneys are highly cooperative, such observations may put the plea bargaining cart before the "facts and law" horse. It is equally plausible that relations become cooperative as courtroom actors work together to resolve particular cases, but the raw materials with which attorneys work -- the provable facts in individual cases, applied to existing legal standards -- are carefully scrutinized with partisan eyes before they are placed upon the negotiating table. Plea bargaining, though cooperative in its methods, may be distinctly adversary in its underlying substance (McCoy & Tillman, 1986, p. 43).

It has been noted in several studies on plea bargaining that prosecutors often have the "upper hand"

or leverage in the plea bargain process. This leverage has been found in many forms, such as the prosecutor's willingness to negotiate, the content of the negotiation (i.e. charge reductions or sentence benefits), and the boost that certain laws provide, such as tougher sentence laws and sentence enhancement laws.

Laws increasing potential sentences benefit prosecutors by giving them more leverage, a stronger position in the negotiation process. When sentences suddenly increase, prosecutors find that defendants who formerly would have held out for better "deals" before pleading are now willing to plead early and to charges carrying much more severe sentences (McCoy & Tillman, 1986, p. 43).

The analysis of the 667(a) sentence enhancement has been divided into two sets of findings, qualitative and empirical.

Qualitative results. Interviews conducted on various court personnel confirmed that the 667(a) habitual offender sentence enhancement was used often in the plea negotiation process. Prosecutors willingly admitted that the 667(a) section (and 667.5(c), a three-year sentence enhancement for prior prison terms) could be powerful tools for leverage. One deputy district attorney stated that defendants who had previous serious felony convictions had Proposition 8 "hanging over their heads like an axe." A superior court judge agreed that offenses falling into the serious felony category designated in Section 1192.7 of

the Penal Code are a serious threat to repeat offenders, and those defendants who had these Proposition 8 prior convictions ("priors") on their records could be "hammered" with the five-year enhancement at any stage of the prosecutorial process.

Defense attorneys claimed that the language stipulated in the 667(a) clause was often charged as well as utilized as a "concealed weapon," one which the prosecutor could pull out of his/her pocket at any time. Despite the fact that the 667(a) language was used as a bargaining chip, most defense attorneys admitted that there were some types of offenses in which the language would never be dropped, such as sex crimes, rape, or homicide.

McCoy and Tillman found that the three jurisdictions of their study utilized the 667(a) enhancements in plea negotiations. However, the manner in which they were used was different. In San Diego, the enhancement for prior felony convictions was not alleged in the initial complaint but, rather, added to the information only after the case had been processed in the preliminary examination. The Compton District, on the other hand, emphasizes the settling of cases in superior court (see Figure 4.4), thus alleging the prior generally after the case has been sent to superior court.³ Alameda and Santa Clara Counties operate in much the same fashion. Both jurisdictions

have prosecutorial policies in which all enhancements are alleged at the time of the initial complaint or at the earliest plea hearing thereafter. Basically, Proposition 8 priors may be alleged or dropped during any time at the discretion of the prosecuting attorney. A deputy district attorney commented that the 667(a) clause is most often used as an effective lever if the prosecution is having "proof problems." After a defendant pleads to a negotiated settlement, the clause would be dropped. As in Alameda, some serious felony cases involving status-type offenders⁴ with several repeated convictions are handled by a unit in Santa Clara County's District Attorney's Office, called the "Career Criminal Unit." Cases that reach this unit are "no bargain" cases; these cases must be prosecuted in superior court. If a defendant chooses to plead guilty, such a decision would be a product of his/her own volition and not result from any plea negotiation or prosecutorial offer.

In sum, the 667(a) clause of Proposition 8 has been a bargaining tool for prosecutors in Santa Clara County as well as other jurisdictions throughout the state. Proposition 8 may not have altered the amount of plea bargaining, but it certainly influenced the process of plea bargaining by altering what could and could not be negotiated.

Quantitative results. Due to a lack of fiscal resources, data concerning the 667(a) clause of Proposition 8 were unavailable from the California Board of Prison Terms. Further, local agencies did not maintain the needed information. However, data on the 667.5(c) section of the Penal Code -- three-year sentence enhancement for defendants who previously served a prison term -- were available from the California Board of Prison Terms. Although statistical results may vary between the two sentence enhancements, the 667(a) and 667.5(c) P.C. sections are procedurally similar. Data on the 667.5(c) enhancement clause were analyzed in an effort to identify any possible trends in the utilization of sentence enhancement laws in Santa Clara County.

Before exhibiting the results of the analysis, it is necessary to display a comparison between the two enhancements, and then describe the method that was used to analyze them. The 667(a) clause, described in Chapter Two, states that any person convicted of a serious felony who has previously been convicted of a serious felony shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each prior conviction. "Serious felony" is defined according to Section 1192.7(c) of the Penal Code; a list of these felonies is displayed in Table 4.3.

In comparison, Section 667.5(c) states that (1) if a person is convicted of a new violent felony, in addition and consecutive to any other prison terms, the court shall impose a three-year term for each prior separate prison term served by the defendant; and (2) if the new offense is a non-violent felony requiring a prison sentence then, in addition and consecutive to any other prison term, the court shall impose a one-year sentence enhancement for each separate prior prison term. "Violent felony" and "Non-violent felony" are defined according to Section 667.5(c) of the Penal Code and are listed in comparison to the 667(a) P.C. felonies in Table 4.3. As can be seen in Table 4.3, the list of felonies termed "serious" in Section 667(a) P.C. is almost identical to those felonies termed "violent" in Section 667.5(c) P.C..

There are three major differences between Sections 667(a) and 667.5(c) P.C.. Section 667.5(a) is more restrictive than Section 667(a) in that it requires that the defendant have served a prior prison term. The Proposition 8 clause 667(a) encompasses a larger group of eligible defendants, requiring only that a previous conviction (regardless of whether a prison term was served) have been recorded.

Secondly, the 667.5(a) clause is less of an enhancement, mandating that only three years be served in addition to a defendant's present prison sentence.

Table 4.3

COMPARISON OF FELONIES
REQUIRING SENTENCE ENHANCEMENTS
SECTIONS 1192.7(C) AND 667.5(C)
CALIFORNIA PENAL CODE

Serious Felonies 1192.7(c) P.C.	Violent Felonies 667.5(c) P.C.
- Murder	- Murder
- Voluntary Manslaughter	- Voluntary Manslaughter
- Mayhem	- Mayhem
- Rape	- Forcible Rape
- Sodomy by Force	- Sodomy for Force
- Oral Copulation by Force	- Oral Copulation by Force
- Lewd Acts upon a child under 14	- Lewd Acts upon a child
- Felony Punishable by Death or Life Imprisonment	- Felony Punishable by Death or Life Imprisonment
- Felony in which Great Bodily Injury was Inflicted	- Felony in which Great Bodily Injury was Pled and Proved
- Felony in which Firearm was Used	- Felony in which Firearm was Pled and Proved
- Attempted Murder	- Robbery, Rape, or Burglary when Great Bodily Injury was Inflicted
- Assault with Intent to Commit Rape or Robbery	
- Assault with Deadly Weapon on Police Officer	
- Arson	

Table 4.3

COMPARISON OF FELONIES
REQUIRING SENTENCE ENHANCEMENTS
SECTIONS 1192.7(C) AND 667.5(C)
CALIFORNIA PENAL CODE

Serious Felonies 1192.7(c) P.C.	Violent Felonies 667.5(c) P.C.
<ul style="list-style-type: none"> - Burglary of Residence - Robbery - Kidnapping - Selling, Furnishing, Administering Heroin, Cocaine, or Phencycli- dine (PCP) to a minor - Any Attempt to Commit one of the Felonies Listed above with the Exception of Assault 	

Section 667(a) of Proposition 8 mandates that a five-year enhancement be served, in addition to the present sentence. Considering that the Proposition 8 enhancement is more severe and more people are eligible for it, one would expect it to be charged more often than the three-year enhancement stipulated in Section 667.5(a). In turn, if more defendants are charged, one would expect that more five-year enhancements would be imposed. Although statistics are unavailable for the five-year enhancement, other trends are noticeable in Santa Clara County's use of enhancement laws.

The fourth hypothesis posits that the 667(a) clause would be used extensively in plea negotiating but not in sentencing. In other words, the enhancement would be charged frequently but dropped later as a result of a plea negotiation, thus being infrequently imposed. This hypothesis was applied to the 667.5(a) enhancement for violent and non-violent felonies. In the years following Proposition 8, statistics were recorded on (1) defendants who were eligible for the 667.5(a) enhancement, (2) how many of those defendants were actually charged with the enhancement, (3) how many defendants' prior allegations were proven, and (4) the number of those defendants who actually had the enhancement in addition to their current sentences imposed by the court (McCoy & Tillman, 1986). The results of these statistics are displayed in Table 4.4 and 4.5.

For defendants who had served prior prison terms on violent offenses and were eligible to receive a three-year sentence enhancement, few were charged and only one person received the enhancement in the years 1982 to 1986. It could be that these defendants, who were equally eligible for the five-year enhancement under Section 667(a) of Proposition 8, received the five-year enhancement instead. However, if one examines Table 4.4, data on the number of defendants

Table 4.4

SENTENCE ENHANCEMENTS FOR PERSONS
SERVING PRIOR PRISON TERMS, VIOLENT FELONIES*
CALIFORNIA PENAL CODE SECTION 667.5(A)
SANTA CLARA COUNTY, JULY 1982 - JUNE 1986

Year	Cases	Eligible	Charged	Proven	Imposed
July 1982- June 1983	975	30	7 (23.3)**	1 (3.3)**	1 (3.3)**
July 1983- June 1984	958	35	3 (8.6)**	0 ---	0 ---
July 1984- June 1985	749	15	0 ---	0 ---	0 ---
July 1985- June 1986	1,137	19	1 (5.3)**	0 ---	0 ---

Source: California Board of Prison Terms

* Three-year enhancement for violent prior prison term can be imposed only when the offender currently stands convicted of a violent offense.

**Percentages in parentheses represent percent of eligible defendants.

Table 4.5

SENTENCE ENHANCEMENTS FOR PERSONS
SERVING PRIOR PRISON TERMS, NON-VIOLENT FELONIES*
CALIFORNIA PENAL CODE SECTION 667.5(B)
SANTA CLARA COUNTY, JULY 1982 - JUNE 1986

Year	Cases	Eligible	Charged	Proven	Imposed
July 1982- June 1983	975	262	147 (56.1)**	92 (35.1)**	81 (30.9)**
July 1983- June 1984	958	259	123 (47.5)**	71 (27.4)**	49 (18.9)**
July 1984- June 1985	749	161	64 (34.9)**	28 (17.4)**	21 (13.0)**
July 1985- June 1986	1,137	249	87 (34.9)**	50 (20.1)**	40 (16.1)**

Source: California Board of Prison Terms

* Prior offense was non-violent for which defendant served prison term; but, current offense is violent. Enhancement is a one-year consecutive term in addition to present sentence.

**Percentages in parentheses represent percent of eligible defendants.

eligible and actually charged, the statistics suggest that, at some time between the filing of the felony complaint and the plea stage, the allegations were dropped.

Table 4.5 reveals similar results. In the fiscal year of July 1982 to June 1983, 262 defendants were eligible for sentence enhancements, and only half of them were actually charged with the allegation. Of those eligible, only 31 percent had the enhancement imposed on their sentence. Additionally, between the fiscal years of July 1982 and June 1986, 24 percent of the new violent cases were eligible to receive sentence enhancements based on prior prison records. Of these 24 percent eligible, only 21 percent (191 of 931) actually had a sentence enhancement imposed. Unlike defendants in Table 4.4, very few of these cases were also eligible for a five-year enhancement under the Proposition 8 code because the prior conviction was a non-violent felony, many of which do not fall into the 1192.7(c) serious felony category. In other words, the majority of the cases in Table 4.5 were only eligible for the one-year enhancement; although the enhancement was frequently charged, it was rarely imposed.

It appears that Santa Clara County has a pattern of use with enhancement laws. This pattern seems to be one of using the enhancement frequently in plea bargaining, occasionally charging the allegation but rarely imposing the sentence enhancement. Unfortunately, the statistics presented on Section 667.5(a) and 667.5(b) P.C. cannot be

used to generalize about Proposition 8's 667(a) habitual offender enhancement.

Summary

It would appear that Proposition 8 did have some effect on Santa Clara County's felony adjudication process. Although there exists no statistical evidence that the SCR hearing was created in anticipation of and response to the restrictions outlined in Proposition 8, SCR forced organizational change upon the felony adjudication process by providing in and of itself another municipal court stage at which defendants could choose to plead early. In addition, SCR appears to have been the predominant municipal court stage to which superior court cases were shifted. The shift of felony cases from superior to municipal court was significant: 26 percent of superior court dispositions occurred in SCR. These could represent a large volume of trials.

Although Proposition 8 did not appear to limit the amount of plea negotiating occurring in Santa Clara County, it seems to have affected the content of plea bargains. Based on interviews with principal court participants, the qualitative evidence is that the habitual offender enhancement has been primarily used as a bargaining chip. Defendants have pled earlier to tougher sentences in order to avoid the "hammer effect" of the five-year enhancement for previous felony convictions that is mandated in the 667(a) clause of Proposition 8.

Unavoidable circumstances prevented accumulation of empirical evidence regarding the 667(a) clause. In order to determine whether enhancement laws were being used as bargaining tools rather than as stiffer punishments, analysis was conducted on the 667.5(a) P.C. and 667.5(b) P.C. prior prison term enhancements. Findings indicated a pattern of frequent charging but rare imposing of the sentence enhancement, suggesting that somewhere in the adjudication process the prior allegations were dropped. Considering the high guilty plea certification rate in Santa Clara County, it seems logical to suspect that the allegations were dropped in the plea negotiation process.

The results of this study are quite similar to those of the 1986 McCoy and Tillman study. They also found a shift of superior court cases into municipal court, and the use of the enhancement clause of Proposition 8 as a bargaining instrument. However, they addressed the issue of why prosecutors do not charge the enhancements more often. Having interviewed several court participants, one answer may be offered. In Santa Clara County, prosecutors who maintain a hardline view that the "just" punishment is the most "severe" punishment are seen as uncooperative with their co-workers and, especially at the SCR hearing procedure, they might be considered to be undermining the very nature of the system. Furthermore, defense attorneys who seek only the most lenient sentences would be viewed in the same manner, uncooperative and naive to believe that the

system could be manipulated to their advantage. McCoy and Tillman state:

Changes in sentencing standards can be neither too abrupt nor too radical a departure from existing standards, but instead must fit within the broad conceptions of "just deserts" held by the principal decision-makers in the process (McCoy & Tillman, 1986, p. 50).

Santa Clara County has conveniently adopted the measures of Proposition 8. It has maintained its high rate of plea certification but has managed to sentence its criminals within the boundaries of Proposition 8 as well as within its own sentencing norms. This has been effected through the use of the habitual offender enhancement as a negotiating lever.

Footnotes

1. The operational definition of "certified plea" in this study includes those cases in which the defendant pled guilty as a result of a plea negotiation at any municipal court hearing, changed a plea of "not guilty" to "guilty" as the result of some negotiated condition, or pled guilty under Section 17 of the California Penal Code.

For the fiscal years, 1980/81 and 1981/82, statistics were gathered from the Judicial Council Statistics. No operational definition was given for what they termed "certified pleas"; therefore, the results may be slightly distorted.

Diversion is defined as:

The official halting or suspension, at any legally prescribed processing point after a recorded justice system entry, or formal criminal or juvenile justice proceedings against an alleged offender, and referral of that person to a treatment or care program administered by a non-justice agency or a private agency, or no referral.

Allen, H. and Simonsen, E., Corrections in America: An introduction, 4th ed. (New York: Macmillan Publishing Company, 1986), 491.

2. Table 4.2 begins with the year 1983 because statistics were unavailable for the first year of SCR's implementation, which was 1982.
3. Information on San Diego County, Alameda County, and the Compton District was extracted for the McCoy and Tillman study.
4. The term "status-type offender" was used by a Santa Clara County deputy district attorney to signify certain habitual or career criminals that have repeatedly committed the same or similar crimes with a designated period of time set by the District Attorney's Office. These cases can only be processed in the so-called "Career Criminal Unit" and are almost never negotiated.

Chapter Five

Implications of Proposition 8 For Santa Clara County

This thesis has attempted to present both qualitative and empirical evaluations of the impact of California's Proposition 8 on the felony adjudication and plea bargaining procedures in Santa Clara County. The research explored the influence of two specific legal reforms introduced by Proposition 8: the "ban" on plea bargaining (Penal Code Section 1192.7) and the habitual offender sentence enhancement (Penal Code Section 667(a)). The analysis disclosed several interesting organizational and legal responses to Proposition 8, as well as some response patterns that appear to be impervious to the Proposition's reforms and restrictions.

The first item explored was Santa Clara County's structural responses to the limitations expressed in Proposition 8. Although no empirical evidence could be gathered to support the proposition that Santa Clara County instituted the SCR hearing into its felony adjudication process in anticipation of and response to Proposition 8, survey and interview data suggest that it could very well have been used "unintentionally" to avoid the plea bargaining issues outlined in Proposition 8's ban on plea bargaining. SCR, a municipal court hearing in which cases are settled

primarily by means of plea negotiations, received a substantial amount of potential superior court cases that were shifted from superior to municipal court shortly after Proposition 8's passage. Critics of Proposition 8 had predicted a surge of trials in jurisdictions throughout the state; however, data from both this study and the 1986 McCoy and Tillman study reveal that just the opposite occurred. Rather than a shift to superior court, the shift came from superior court and, instead of an increase in trial dispositions, more cases were settled by way of guilty plea certifications.

Plea bargaining, or plea negotiating as most attorneys prefer to call it, is by far the most prevalent method of case disposition in the criminal adjudication process. Just as taxes and death have taken their places as inevitabilities of life (Kaufman, 1977), plea bargaining has taken its place as an inevitability of the criminal adjudication process. If we could suppress the nefarious elements of plea bargaining and extract the beneficial elements of it, then plea bargaining might be more widely accepted as a positive as well as functional method of case resolution. Nevertheless, opponents of plea bargaining continue to argue that plea bargaining coerces defendants to waive their rights to trial and supports the idea of a "K-Mart" justice. Proponents rebut that

plea bargaining "individualizes" justice, and promotes administrative expediency and efficacy in clearing congested court dockets. Both groups fail to realize that if criminal justice practitioners attempted to abolish plea bargaining completely, as some jurisdictions already have, most jurisdictions would probably be overwhelmed by the resurgence of problems bargaining is designed to avoid. Despite legislative efforts to eliminate or even reduce plea bargaining, it seems to persist with an ever-increasing rate.

A second area examined in this study was the plea versus trial rate in Santa Clara County. A high plea certification rate was disclosed, averaging approximately 95 percent for the past seven years. After Proposition 8 was passed, the plea certification rate increased slightly, with most of the felony cases settling at either the 859 P.C. plea hearing or SCR hearing. Therefore, Proposition 8 had relatively little effect on the quantity of guilty plea certifications, most of which are the results of negotiations between prosecution and defense. Although the numbers of plea bargaining did not fluctuate much, the quality of individual plea bargains was significantly affected.

The final area of this explorative effort focused on the impact of Proposition 8's habitual offender sentence enhancement. Proposition 8's 667(a) clause

became, perhaps, the most acrimonious of California sentence enhancement laws. Other enhancements, such as Sections 667.5(b), 667.5(a), 12022.5 and 12022.7 of the Penal Code, called for an additional one, two, or three-year prison term consecutive to the defendant's current sentence.¹ However, the new enhancement mandated a five-year additional sentence for those defendants previously convicted of a serious felony.

Qualitative findings indicated that the new enhancement has become a powerful bargaining lever for the prosecution. It was also found that prosecutors used the enhancement, whether or not alleged, as an instrument to encourage defendants to plead to tougher sentencing terms in order to avoid the severities of the enhancement. It was also pointed out that, in Santa Clara County, certain felony cases (such as felony drunk driving cases and "career criminal" cases) were considered "no bargain" cases. In these types of cases, the enhancement, if alleged, would always be charged and rarely relinquished. Nevertheless, the Proposition 8 enhancement altered the content of plea negotiations, giving the prosecution just one more tool with which to work.

In order to support the qualitative data gathered on the 667(a) clause of Proposition 8, attempts were made to obtain statistical data for Santa Clara County's use of the enhancement. Unfortunately, this

information was unavailable. It was postulated in Chapter One that if the 667(a) enhancement were being used in plea negotiation, then it would be frequently charged but rarely imposed. Since data were not obtainable for the 667(a) enhancement, other sentence enhancements for Penal Code Section 667 were examined in order to determine if certain patterns might emerge in Santa Clara County's use of them. It was believed that other enhancements might also be used for bargaining purposes. Findings indicated that the sentence enhancement laws for prior prison terms (667.5(b) and 667.5(a) P.C.) were being charged but rarely imposed. This finding suggests that the Proposition 8 enhancement might also follow a similar pattern: used commonly in the plea bargain process but seldom for sentencing.

Implications and Recommendations for Further Research

From all indications, Santa Clara County was affected by the reforms of Proposition 8 but not in the way that researchers and critics of Proposition 8 had predicted. Plea bargaining was not reduced but, rather, persisted at its uniformly high rate. The enhancement law was not used as an enhancement but, rather more often as an instrument to induce defendants to accept more severe terms. Although the SCR hearing may appear to be a vehicle through which a number of potential felony superior court cases could be settled

early by means of plea discussion rather than preliminary examination or trial, the true purposes of its establishment are left to speculation.

Santa Clara County has learned to live with the restrictions and reforms of Proposition 8. Instead of deciding how to operate legally within the parameters of Proposition 8 or how to refrain from the extended use of plea negotiation, Santa Clara County has resolved to work with the reform instead of against it. Learning to live with it, just as the county has learned to live with plea bargaining as a means of case disposition, does not mean "accepting all its manifestations and worst features. Rather, it means systematically laboring to maximize its net benefits while minimizing its net costs" (Kaufman, 1977, p. 98). SCR has been a route through which Santa Clara County could relieve its overburdened superior courts as well as operate legally within the limitations imposed upon it by Proposition 8.

One study alone cannot provide adequate evaluation for a complicated legal reform such as Proposition 8, or a microcosmic system of felony case adjudication such as SCR. More jurisdictions should be studied in order to determine whether similar responses to Proposition 8 have occurred. More powerful statistical tests should be conducted in order to ascertain the significance of these responses.

Program evaluation and policy analysis of the Santa Clara County SCR procedure should be entertained by court practitioners. Such an analysis would extend valuable insight into the current practices and procedures of SCR, whether SCR has achieved its intended legal as well as political goals, or whether these goals have changed since SCR's institution in 1981. An evaluation and monitoring of the SCR procedures would provide principal court participants with an understanding of what type of cases settle at SCR; what type of cases should be sent to the SCR hearing and those that should not; to what terms defendants are willing to plead and why; and, in general, whether or not Santa Clara County's felony adjudication process could survive without SCR.

Further research on such innovations as SCR and such legal reforms as Proposition 8 is important to the development of future criminal justice reforms. As the orientation chapter to this study pointed out, the success of any reform is contingent upon three factors: (1) its salience to the institution's goals, (2) its compatibility with those goals, and (3) the resources needed for the implementation of the reform. In examining Proposition 8, its success (or lack of it) was found to be related to individual jurisdictions and the interpretation those jurisdictions imparted to it. For instance, in Santa Clara County, plea bargaining

became limited solely to municipal court proceedings. In other words, plea bargaining was no longer permitted in superior court. This restriction, however, did not eliminate plea bargaining. It is theoretically possible but realistically impossible for every felony case to go to trial. If one considers the backlog of cases awaiting trial in addition to the tremendous lack of resources to process these cases, the criminal justice system in Santa Clara County would collapse if all plea bargaining were to be abolished. Therefore, advertent evaluation is a necessity in order to determine what pragmatic results will be possible. The success of the reform may then be measured based on what is considered practical for an individual jurisdiction.

Unfortunately, it is not always possible for lawmakers to incorporate the intentions of the laws they create into the statute of the law:

...frequently the speed with which the reform is adopted precludes the careful analysis and deliberation that assures adherence to the principles of the reform; in some cases, it appears, the resultant legislation is more symbolic than substantial (Hepburn & Goodstein, 1986, p. 342).

Consequently, the laws are then interpreted differently by individual institutions and left open to a vast ocean of biases. It is these varying interpretations

accompanied by equally diverse biases that truly
circumscribe the potential for success of any reform.

Footnotes

1. These sentence enhancement laws and the terms and conditions under which they may be imposed are explained in further detail in the California Penal Code, 1988 Compact Edition.

APPENDIX A

The SCR hearing is held in the magistrate's chambers in a very informal setting. All participants sit relaxed before the judge who sits behind his office desk. Greetings and casual conversation occur over coffee since all participants are either friends or acquaintances. This usually leads to the opening discussions on a case.

There are basically three stages to the SCR proceeding. The first stage involves informal discussion about the case. The prosecutor presents his/her interpretation of the facts to the court (the judge), and then the defense follows with his/her interpretation. Next, the prosecutor suggests what he/she feels the criminal offense is worth in terms of either charge reductions and/or sentencing. Defense counsel begins the negotiation process and, the court and probation representative submit their recommendations for sentencing based on their knowledge of current Santa Clara County sentencing practices (this establishes a norm) as well as years of previous sentencing experience. Constant interaction is occurring between all parties for a greater part of the hearing. However, the final decision is left to the discretion of the prosecution and, the defense counsel must bring the proposed offer to the defendant.

Since the defendant is not present in the judge's chambers throughout these discussions, defense counsel meets with the defendant in an available courtroom outside the chambers to discuss the prosecutor's offer. This is the second stage of SCR. The defense attorney explains to the defendant his/her constitutional rights (jury trial, the right to remain silent, etc.) that the defendant must waive if he/she accepts the prosecution's offer in exchange for a plea of guilty. Defense counsel also outlines what the prosecution must prove and possible defenses should the defendant choose to go to trial rather than plead. The defendant is given time to decide whether or not to accept the offer, and therefore, plead guilty. Whether each and every defendant fully understands the circumstances of his/her plea is an issue beyond this investigation.

Should the defendant choose to accept the prosecutor's offer, the third stage of SCR is put into motion. This stage is more formalized: the court reporter and court clerk now enter the judge's chambers, and the plea is taken officially for the court records. The probation officer leaves the chambers and the defendant sits before the judge between defense attorney and prosecutor. All rights are formally waived, and the judge takes the plea and sets a sentencing date at which time the defendant will

officially receive the "indicated" sentence he/she was
"offered" at the SCR hearing.

APPENDIX B

The felony cases from Palo Alto and Sunnyvale that are referred to the SCR calendar are heard in Palo Alto's superior court. Although Palo Alto and Sunnyvale are part of the Santa Clara County jurisdiction, their individual facilities operate technically quite differently from their counter-part in San Jose. First, Palo Alto's SCR calendar only takes place on Monday afternoons before a superior court judge that is not an arraigning magistrate (such as the judge in San Jose). All pleas must be sent back to the municipal court and officially taken and recorded by a municipal court judge. The certification process is expounded upon in Section 859(a) of the Penal Code. Essentially, the municipal court judge takes the plea and returns an "indicated" sentence; the case is then set for review and sentencing before a superior court judge, where sentencing officially occurs.

Secondly, Palo Alto is much more formal in that discussions are heard much in the same fashion as a typical court hearing. Defendants are not interviewed by their attorneys the same day as the SCR hearing; in fact, defendants are not even transported to the SCR hearing. Instead, the case is referred back to municipal court at which time the defendant may choose to plead guilty or continue the case for preliminary examination.

Palo Alto does not have the same arrangements as San Jose, and cases do not settle as quickly, nor do the defendants have as much time to consider prosecutorial offers.

APPENDIX C

Serious felonies are defined in Section 1192.7(c) of the California Penal Code:

As used in this section "serious felony" means any of the following: (1) murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, or threat of great bodily harm; (5) oral copulation by force, violence, duress, menace, or threat of great bodily harm; (6) lewd acts upon a child under the age of 14 years; (7) any felony punishable by death or imprisonment in the state prison for life; (8) any other felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant uses a firearm; (9) attempted murder; (10) assault with the intent to commit rape or robbery; (11) assault with a deadly weapon or instrument on a peace officer; (12) assault by a life prisoner on a non-inmate; (13) assault with a deadly weapon by an inmate; (14) arson; (15) exploding a destructive device or any explosive with intent to injure; (16) exploding a destructive device or any explosive causing great bodily injury; (17) exploding a destructive device or any explosive with intent to murder; (18) burglary of a residence; (19) robbery; (20) kidnapping; (21) taking of a hostage by an inmate of a state prison; (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) any felony in which the defendant personally used a dangerous or deadly weapon; (24) selling, furnishing, administering, or providing heroin, cocaine, or phencyclidine (PCP) to a minor; (25) any attempt to commit a crime listed in this subdivision other than an assault.

Section 859(a) of the California Penal Code
states:

If the public offense charged is a felony not punishable with death, the magistrate shall immediately upon the appearance of counsel for the defendant read the complaint to the defendant and ask him/her whether he/she pleads guilty or not guilty to the offense charged therein and to a previous conviction or convictions of crime if charged; thereupon, or at any time thereafter, while the charge remains pending before the magistrate and when his counsel is present, the defendant may plead guilty to the offense charged, or, with the consent of the magistrate and the district attorney or other counsel for the people, plead nolo contendere to the offense charged or plead guilty or nolo contendere to any other offense the commission of which is necessarily included in that with which he/she is charged and to the previous conviction or convictions of crime if charged.

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