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Abstract

In the American white-collar fraud prosecution system, attorneys stand between fraudsters and criminal justice. Based on the theory of access literature, this manuscript explores whether attorneys' selection moderates the relationship between severity of crime and criminal sentence. Collected data from 1,872 white-collar crimes between 2002 and 2020 prosecuted in San Antonio, Texas, test this hypothesis. Findings evidence that attorneys' selection influences up to 10 percent of the criminal sentence (+,- 64 days). Socioeconomic control variables result in statistical significance, while demographics lack this condition. These findings suggest that fraudsters have incentives to maximize the defrauded amount to gain higher-quality legal access to maintain the ambiguity of the legitimacy of the sources while minimizing criminal sentences if any. A supplementary statistical analysis enhances the reliability of the findings.

Keywords: attorneys; white-collar fraud; criminal sentences; theory of access

Introduction

In the financial fraud criminal process, defendants have the right to select a lawyer to represent them during litigation. Criminology literature argues a moderation effect of legal access (access to quality attorneys) between the severity of the crime and the jail sentencing (e.g., Hagan and Palloni, 1999; Peterson and Krivo, 2005). Legal access attenuates the positive relationship between the seriousness of criminal allegations over penal sentences. These observations mostly rely on how the social disadvantages of limited access to high-quality defense attorneys influence longer jailing sentences. However, it remains unclear whether these results could extend to white-collar crimes because fraudsters have broader access to higher legal defense.

Fraud literature explains unique differences between white-collar wrongdoings and traditional criminal activity. Although fraud is a form of crime, semantically (and legally), fraudulent behavior is formally defined as the illegal obtention of monetary benefits or another form of assets through intentional misleading or deception (Holmes, Lippman, and Grimmer, 2021; Reurink, 2018). In this sense, fraudulent activities substantially differ from other types of crimes. For example, fraudsters may not physically harm others (or their assets) to perpetrate the crime, like in larceny or burglary cases (Mustaine and Tewksbury, 1998; Shover, 1991). However, the most pronounced difference in fraud is the illegal obtention of economic benefits that increase the patrimony of the fraudster. Once the criminal act faces the justice system, fraudsters may utilize their illegally obtained profits to financially compensate for lawyers' fees promoting higher legal access and potentially influencing the sentencing process.

This study's primary motivation and objective is to dissipate controversies on whether defendants' selection capacity influences the prosecution process during financial fraud severity and criminal sentencing. To perform this inquiry, the central research question is, do attorneys moderate the relationship between white-collar fraud severity and criminal sentencing? The selected theoretical approach to answering this question relies on the fundamentals contained in the theory of access, where individuals shape the outcome of their decision based on sacrificing some of their available resources (Ribot and Peluso, 2003). The hypothesis, supported by this framework, theorizes a moderation effect of lawyers over the relationship between fraud severity and jail sentence.

The hypothesis test of the moderation effect of attorneys in the criminal fraud process relies on a unique dataset publicly available. The consulted data represents all the white-collar convictions in San Antonio, Texas-Bexar County, from 2002 to 2020. The collected information includes fraudster demographics (control variables), attorney (moderator), severity

of defrauded charges categorized by the Texas Penal Code (independent observation), and jail sentence (dependent observation), including the amount of the personal recognizance bond (PR Bond). This set is suitable for analysis because the city contains a population with a wide diversity of economic and demographical characteristics representative of the country (e.g., Kreuter, Harris, Matlock, and Lacey, 2001; Sutton, 2008; Walsh, 2011).

The testing process contains several statistical techniques for testing moderation. A bootstrapping-based methodology represents the central approach recommended by Hayes (2012). In addition, the method includes basic statistics, regressions, Pearsons' and Spearmans' bivariate correlations, and Ordinary Least Squares (OLS) to expand visibility between the dynamics of the variables.

Sections with deeper details represent this study's structure. The first part expands on the theoretical approach and introduces the theorized hypothesis. The subsequent segment provides the characteristics of the selected data and the applied methodology. Statistical results and the implications of the findings conclude the manuscript.

Hypothesis Development

To address the study's central objective, this segment theorizes the hypothesis of the moderating influence of attorneys in financial fraud crimes based on the fundamentals contained in the theory of access. This sociological framework is suitable because legal access to justice depends on the characteristics and circumstances attributable to each individual (Ribot and Peluso, 2003). In this sense, the unit of analysis—selection of the attorney, focuses on understanding specific factors that promote this decision, including their influence on modifying an expected outcome—the criminal sentence.

Ribot and Peluso (2003) elaborate on the principles behind the theory of access. This theoretical approach formally considers the ability of individuals to benefit themselves based on their available resources, legally or illegally obtained. Under this theoretical framework, illegal access refers to using assets outside the law's scope to modify a specific outcome. Although the term 'illegal' comes at the end of a judicial process, this theory also refers to the potential ambiguity in the legitimacy of the origin. This theory elucidates that individuals possessing illegal resources are willing to use them to maintain the ambiguity of the source that grants them control.

This study hypothesis supports that fraudsters seeking control pervasiveness are willing to sacrifice some of the illegally obtained profits to keep the ambiguity of the legitimacy of the source. The theorized mechanism to this end refers to the selection of competent lawyers capable of mitigating legal-process uncertainty as a moderating component. Several

reasons support a moderation effect of attorneys' selection to maximize the ambiguity influencing criminal sentencing. These central characteristics of lawyers focus on the influence of attorneys' knowledge in the judicial process.

In order to manage legal ambiguity, evidence suggests that attorneys develop insight information about court prosecutors' behavior (Boylan, 2005; Sklansky, 2018). This information derives from previous experiences acting as prosecutors themselves or as defendant attorneys. This characteristic allows them to design efficient strategies to minimize the criminal sentence based on the understanding of the personality and competencies of the U.S. Attorneys. The most prominent example is whether or not to recommend to their defendants the acceptance of a plea-bargaining deal (McAllister and Bregman, 1986; Pezdek and O'Brien, 2014). By developing this skill, attorneys act in the best interest of the client by minimizing the sentence based on the prosecutor' selection.

An alternative characteristic of attorneys to manage ambiguity represents juror selection and eloquence of the closing statement skills. Attorneys have the capacity to select those who will conform jurors in any given trial. The selection process relies on demographical factors such as gender, political affiliation, race, ethnicity, or age to influence the court decision (Diamond et al., 1996; Moran and Comfort, 1982; Olczak, Kaplan, and Penrod, 1991). Schmid and Fiedler (1996) argue that lawyers manage their tone according to this demographical aspect to maximize the verdict influence. Evidence suggests that in the closing statement process, attorneys have developed communication skills by incorporating in the speech sophisticated linguistic techniques associated with the use of rhetorical wording, emphasis, and pauses (Hamlin, 1985; Rappaport, 2017). By doing so, attorneys increase the likelihood of effectively influencing ambiguity over the criminal sentencing process.

Although these competencies apparently have a positive association with attorneys' quality and correlate orthogonally with legal fees (Rubinfeld and Scothmer, 1993; Helland and Tabarrok, 2003), Orozco (2010) argues that the knowledge they develop instead serves as an intangible reputational asset that helps them to differentiate their service from others. This helps these professionals to avoid pricing, marketing, and years of experience competition (Sabis and Webert, 2001; Ulmer 2012). Therefore, based on these qualitative characteristics and the correlation with legal fees, this theorization process relies on the reasonable expectation that the attorney's selection moderates the relationship between the severity of a fraudulent crime and the criminal sentence.

In summary, based on the theory of access approach, the theorized moderating effect of attorneys between severity of fraud and criminal sentence relies on the fraudster's behavior to manipulate their sentencing with legal access. In this

sense, fraudsters have the motivation to select specific legal services because of attorneys' influencing capacity over the judicial process. This study's hypothesis formally states the following:

H_1. Defense attorneys moderate the positive relationship between the severity of fraud and the criminal sentence.

Data and Methodology

This section details the study's collected data and applied methodology for testing the hypothesis of the influence exercised by attorneys in moderating the relationship between the severity of fraud and the criminal sentence. In brief, the data section elaborates on the consulted sources, the observed variables, and their measurement. An individual segment describes the statistical methodological approach for assessing moderation.

Collected Data

The central hypothesis of this study explores the moderation effect of attorneys over the relationship between severity and criminal sentencing. The selected data represents the white-collar criminal cases between 2002 and 2020 in the City of San Antonio, Texas (Bexar County). The timeframe begins in 2002 to match the enactment of the Sarbanes-Oxley Act and the corporate governance levels this regulation promotes (Romano, 2004). Also, the selection of this region is because of the balance of demographical and geographical characteristics among the population. Ratios of ethnicity, economic circumstances, gender, education, and population density have one of the higher levels of diversity in the United States (Kreuter, Harris, Matlock, and Lacey, 2001; Sutton, 2008; Walsh, 2011). Therefore, the sampled region closely approximates the national standards. Records can be consulted in the Bexar County judicial archives.

The observed white-collar criminal frauds represent crimes related to identity theft, false insurance claims, transactions involving securities, credit card misusage, financial statement tampering, and unlawful wire transfers as defined in fraud-related literature (Reurink, 2018). Based on this search criteria, Bexar County judges processed 1,960 cases in the studied timeframe. However, not all of these cases qualify for analysis because, in eighty-eight legal instances, defendants opted for *pro se* representation (self-defending). By excluding these processes, the total number of valid observations ascends to 1,872 criminal cases.

In terms of the collected data, the public archives contained this study's central variables and several additional observations related to the severity of fraud and sentence. The hypothesis focuses on observing the moderation of attorneys influencing the criminal process. In this sense, the moderator variable (*Attorney*) represents the unique identification number attributed to each lawyer provided by the State Bar of Texas—a categorical variable.

The variable that measures the severity of the fraud (*Severity*) corresponds to the Texas Penal Code classification for criminal offenses (Texas House of Representatives, 1994). The state judicial system assigns low, moderate, high, and highest severity. The low-category allegations refer to punishments under the State Jail Felony. Moderate and High represent allegations with second-degree and third-degree felonies, respectively. The highest severity of the accusations corresponds to first-degree felonies. The measurement of the variable *Severity* assigns the values low=1, moderate=2, high=3, and highest=4. In terms of the variable *Sentence*, the measurement of this variable corresponds to the criminal sentence associated with each case measured in years.

To add reliability, several collected observations serve as control variables in this study. Previous suggest the inclusion of control variables in assessing the explanatory factors in connection with white-collar crimes and criminal sentencing (e.g., Blickle et al. 2006; Holtfreter 2005). For example, the variable *Ethnicity* accounts for social biases related to justice inequality. The variables *Age* and *ZipCode* include socio-economic demographical data. The inclusion of *PRBond* measures previous criminal records because, in the U.S. judicial system, the amount of the bond orthogonally correlates with the frequency of the penal process of each individual. The last variable, *Year*, represents the evolutionary component of white-collar crimes and their associated criminal punishment.

Methodology

This study's hypothesis centers on the moderation effect of attorneys influencing the relationship between the severity of fraud and criminal sentences. The first stage assesses the direct paths between the variables. This task consists in using an OLS regression methodology. The process includes a bivariate regression within the study's central observations and a multivariate analysis of the control variables. The OLS methodology relies on the software package SPSS version 26. The following equation states the multiple regression model.

$Sentence_i = i + \beta_1 Severity_i + \beta_n Controls_{\ i,n} \ldots$ Equation 1

The second stage of testing moderation involves analyzing the influence of the variable *Attorney* in connection to the study's observed variables (*Severity* and *Sentence*). Hayes (2012) establishes the statistical foundation for this analysis. The theorized hypothesis mainly studies a moderation (*Attorney*) effect. In this sense, the condition of the moderator exists when regardless of the relationship between two variables (*Severity and Sentence*), a third variable (*Attorney*) interacting with the explanatory variable (*SeverityXAttorney)* contains a statistically significant coefficient explaining the study's central observation (*Sentence*). These conditional values result from testing the regression coefficients using a bootstrapping

technique included in the tool PROCESS 4.0 added in the software SPSS 27. Equation 2 illustrates the statistical bootstrap model.

$$Sentence_i = i + \gamma_1 Severity_i + \gamma_2 Attorney_i + \gamma_3 Severity_i \times Attorney_i + e \ldots \text{ Equation 2}$$

Supplementary Methodology

This study adds a supplementary methodology to increase the reliability of the findings. The extra-analysis consists in replacing the variable *Attorney* with randomly generated values. By doing so, the studied model isolates the unique attributes of the moderator by disregarding potential statistical estimation biases (Barry et al., 2002). The analysis uses the replaced randomly generated variable using the abovementioned bootstrapping technique.

Findings

This section elaborates and reports the key findings subtracted from the collected data and the methodological analysis described in the previous section. The first segment presents the basic statistics from the collected variables. The following segment details the OLS regression results. The final portion details the hypothesis testing results.

Basic Statistics

The collected data shows 1,872 white-collar fraud criminal cases between 2002 and 2020. The basic statistics are presented in Table 1. On average, the sentence for each of these judicial processes is for approximately 643 days ($SD_{Sentence}$=910 days) in jail. The maximum penalty is for 30 years in a maximum-security penitentiary. On 355 legal trials, accusers were innocent. Regarding attorneys' basic statistics, the total number of legal defendants reaches 319 practice professionals. On average they represented 5.86 cases (SD=2.66). The severity per attorney averages 2.48 (from 1 to 4; SD=.55). Overall, the sentences per lawyer ascends to 631 days (SD=656.2). Table 1 Panel B presents deeper details of these statistics.

The studied legal cases are identity theft, insurance fraud, securities, and others related to financial statements. Regarding the severity of the fraud, on average, cases were classified between moderate and high ($M_{Severity}$=2.4, $SD_{Severity}$=.71). The majority of the cases have moderate severity (Moderate=1,324; Low=8; High=292; Highest=247). Males represent 58.8 percent of the observations (Females=41.2 percent). Most defendants identified with the white ethnicity (963), followed by the Hispanic (649) and African-American (246) communities. On average, the age is 45 (SD_{Age}=11.29). Table 2 displays Pearson's and Spearman's bivariate correlation coefficients.

OLS Regression Results

The first stage of testing this study's hypothesis involves assessing the direct effect between the independent and dependent variables. To do so, a bivariate OLS regression analysis estimates the regression coefficients (β), the statistical significance (P-value), and the explanatory power between the variables (R-square). Model 1 in Table 3 displays this information.

Results from the bivariate regression indicate a positive and significant association between the severity of the fraudulent crime and the criminal sentence ($\beta_{Severity}>0$; P-value<.001). The explanatory power of this model is 14 percent of the variability. The statistical confidence of this model exceeds 99 percent reliability [$F(1,1871)=304.4$; P-value<.001].

The following methodological stage consists in analyzing the OLS multiple regression indicators. From this process, the regression coefficient between the Severity and Sentence has positive and statistical significance ($\beta_{Severity}>0$; P-value<.001) in the presence of the control variables. The rest of the regression coefficients are positive and significant, with important exceptions (P-value<.005). *Ethnicity* and *Age* lack explanatory power over the *Sentence* (P-value>.05). The variable Year negatively correlates with the dependent observation ($\beta_{Year}=-.11$; P-value<.001). The complete model explains 27.3 percent (R-square) of the variation of the criminal sentence with higher than 99 percent reliability [$F(7,1864)=100.2$; P-value<.001].

Hypothesis Test Results

The study hypothesis theorizes a moderating effect of attorneys in the criminal process in prosecuting white-collar crimes. Results derive from using a bootstrap methodology where the categorical variable refers to the moderator *Attorney* between the explanatory relationship of *Severity* over *Sentence.* Findings presented in Table 4 refer that the direct path from Severity to Sentence is positive and statistically significant ($\beta_{Severity}>0$; P-value<.001). The regress coefficient from *Attorney* and *Sentence* also has positive statistical values ($\beta_{Attorney}>0$; P-value<.005). The regression coefficient from the interaction term between *SeverityXAttorney* and the dependent variable (*Sentence*) also results in positive statistically significant values ($\beta_{SeverityXAttorney}>0$; P-value<.001), explaining 37.5 of the variability with more than 99 percent reliability. To assess moderation, the conditional values of the regression coefficient of the interaction term from the bootstrapping methodology should have statistical significance. Based on these indicators, the hypothesis of the moderation attorneys between white-collar crimes and the criminal sentence is fully supported. Therefore, attorneys' selection could predict up to (+,-) 10.1 percent of the variability (ΔR-square=(.375% - .273%) or an average of (more or fewer) 64 days in prison after being convicted of a fraudulent white-collar crime.

Supplementary Analysis Result

The additional analysis to increase the findings' reliability consists of replacing the moderator with a randomly generated variable. Findings are consistent by applying the statistical bootstrapping technique to assess the moderation influence. Results from this process indicate that the random variable lacks explanatory power (P-value>.05) between severity of white-collar crimes and criminal sentences. The model predictability (R-square=.375) and the relationship between the study variables ($\beta_{Severity}$=473.38; P-value<.001) do not change in the presence of this artificially generated variable. Therefore, this supplementary analysis contributes to isolating the central statistical results of this study.

Discussion

The collected data reveals an important phenomenon occurring in the white-collar criminal prosecution process and the involvement of attorneys. Results from testing a moderation hypothesis indicate that attorneys influence the positive relationship between the severity of the crime and the sentence. Attorneys' selection explains approximately 10 percent (or +,- 64 days) of the variability of the jail sentence. This observation contains and expands multiple dimensions of the fraud deterrence literature.

The first contribution refers to access to legitimate defense access. White-collar crimes contain certain particularities not observable in other types of delinquencies (Holmes, Lippman, and Grimmer, 2021). Crumbley and Ariail (2020) propose a model for understanding fraudsters by analyzing the incentives and motives rather than demographics or context (fraud triangle). This manuscript supports this notion by providing evidence that fraudsters have incentives to maximize the fraudulent amount to afford and obtain a higher quality of legal access that translates into lower associated sanctions. The defrauded amount, although it represents the object of the crime, also signifies the fraudster's incentive to lower (or avoid) criminal charges because that is how they could maintain the ambiguity of the legitimacy of the source.

The second notion expands the literature on the sanctioning process and fraud deterrence, where the judicial system has failed to reduce the occurrence of this crime (Billings, Crumbley, and Knott, 2021). Related literature promotes that governments model social behavior based on the type of sanctioning mechanisms (Drezner, 2011; Lektzian and Souva, 2007). Attorneys' selection can bias the efficiency of authorities' efforts to deter white-collar crimes. Lower, or absence, sanctions for fraudulent behavior compromises the judicial system's effectiveness in deterring others from engaging in this crime. Therefore, the systemic frequency of fraud disassociates from the judicial sanctioning efforts by attorneys' selection.

An alternative explanation for the observed moderation influence of attorneys could rely on client selection experience. Although possible, highly experienced lawyers may influence lower penalties by accepting only cases with higher probabilities of success using minimal resources. Meanwhile, low-quality legal access with less professional experience would result in more substantial sentences. This logic would explain lower sentences for severe fraudulent crimes. However, this logic may not necessarily apply to legal cases with low severity with observable higher criminal penalties.

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TABLES

Table 1: Basic Statistics

Panel A: Sentences	M	SD	Q1	Q2	Q3
Sentence (days)	643	910	30	240	837
Severity (Low=1 to Highest=4)	2.4	.718	1	2	3
Age (Years)	45.1	11.29	37	44	52

Panel B: Sentences by Attorney (N=319 lawyers)	M	SD	Q1	Q2	Q3
Cases per attorney	5.86	2.66	1	4	8
Severity per attorney (1 to 4)	2.48	.55	1.6	2	2.66
Sentence per attorney (days)	631	656.2	176	478	847

Panel C: Fraudsters' demographics					
	Male	Female	Total	%Male	%Female
Gender	1,100	772	1,872	58.8%	41.2%
	White	Hispanics	African-American	Other	Total
Ethnicity (cases)	963	649	246	14	1,872
	Insurance Fraud	Identity theft	Securities	Others	Total
Type of fraud (cases)	207	1,158	327	180	1,872
Criminal sentence (average in days)	889	593	1,243	1,825	
	Low	Moderate	High	Highest	Total
Severity (cases)	108	1,225	292	247	1,872

Table 2: Pearson’s and Spearman's Bivariate Correlations

	1	2	3	4	5	6	7	8	9	10
Sentence	--	.275**	-.045	-.013	-.013	.038	.027	.597**	.264**	-.135**
Severity	.374**	--	-.014	-.055*	-.055*	-.074**	-.010	.061**	.173**	.237**
Attorney	-.023	.006	--	-0.029	-.029	-.121**	.041	-.028	.052*	.199**
Gender	-.009	-.056*	-.008	--	.076**	-.001	-.006	.013	-.035	-.047*
Ethnicity	-.009	-.056*	-.008	.076**	--	-.001	-.006	.013	-.035	-.047*
Age	.079**	-.048*	-.085**	-.018	-.018	--	.027	.029	-.067**	-.518**
ZipCode	.055*	.007	.019	-.011	-.011	-.077**	--	.006	-.067**	-.046*
Fine	.355**	.069**	-.037	.023	.023	.027	.025	--	.200**	-.167**
Bond	.169**	.092**	.032	-.034	-.034	-.096**	-.007	.196**	--	.117**
Year	-.069**	.198**	.149**	-.022	-.022	-.587**	.080**	-.088**	.131**	--

Pearson's correlation coefficients in lower diagonal. [*= P-value<.05 (2-tailed); **= P-value<.01 (2-tailed)]

Table 3: OLS Regression Results

	Sentence	P-value	SE	Sentence	P-value	SE
Severity	.374	.000	27.192	.368	.000	25.81
Ethnicity				.007	.742	24.52
Age				.038	.121	1.976
ZipCode				.057	.004	.001
Fine				.298	.000	.021
PRBond				.095	.000	.000
Year				-.110	.000	3.309
R-square	.14			.273		
F	304.4	.000		100.2	.000	
N	1,872			1,872		

Table 4: Moderation Test Results

	Sentence	P-value	SE	LLCI	ULCI	Sentence	P-value
Intercept	643.3	.000	19.51	605.11	681.67	643.55	.000
Severity	474.9	.000	27.19	421.63	528.31	473.38	.000
Attorney	.234	.004	.000	.000	.000		
SeverityXAttorney	.327	.002	.000	.000	.000		
Random						-8.133	.2269
SeverityXRandom						-9.437	.3235
R-Square	.375					.375	
F (3,1868)	102.13	.000				102.13	.000
N	1,872					1,872	