# Who Wins in Appellate Court?

Carolyn Dapper

**Abstract:**

Although the United States judicial system has been traditionally understood as the protector of representative minority rights, the reality of the United States judicial system is not so equitable: typically, those who understand themselves to be in the lower rungs of the social hierarchy have difficulty transforming grievances into claims and experience a disproportionate amount of failure if they should reach the courts at all—or so the counternarrative goes. This study utilizes the Songer Appeals Court Database to find *who* brings cases to appeals court most often and *what* influences their likelihood of success. In particular, the variables of race, income, and counsel type are used in a quantitative analysis comprised of descriptive statistics, difference in proportion tests, and linear regression to demonstrate that although poor, nonwhite racial minorities find themselves in appeals court more often, they experience a statistically significant disadvantage in the final decision of their appeal.

Who are the squeakiest wheels and which ones get the grease? Ideally, in the U.S. court systems every individual would experience equal opportunity to file claims, appeal decisions, and receive fair treatment before the law. This kind of neutrality, however, might be all but wishful thinking: there are a myriad of factors which influence who feels equipped to bring claims to court, for which kind of grievances they feel entitled to redress, and the relative success they enjoy as a result, all of which say a great deal about individuals in particular and legal systems at large. In this way, there are two sides to consider when evaluating the courts which this paper hopes to consider: first, who feels able to even bring their claim to court and what influences this self-evaluation, and second, do the courts favor any particular group once they reach the courts?

The first criterion massively filters the global population of possible claims to produce only a small number of appellants willing or able to bring appeals forward. In order for an individual to bring a claim to court, they must undergo a kind of transformation that Felstiner et al. (1980) call "Naming, Blaming, and Claiming," wherein an individual says to themselves that a particular experience has been injurious (naming), they then transform that perceived injurious experience to a grievance when they attribute an injury to the fault of another individual or social entity (blaming), and finally voices this grievance to the person or entity believed to be responsible and asks for some remedy (claiming). At each stage in this process, however, a multitude of factors influence the outcome of this transformation. In Felstiner et al.'s Pyramid of Disputes, they describe factors that influence the filtering process by which cases do or do not ascend the courts system, which include: the discretionary power of lawyers, sense of entitlement to enjoy certain experiences and be free from others, relative power of those individuals, the relationship between and characteristics of the two parties, the scope of the grievance, the

objectives sought by each party, choice of mechanism for redress, the ideology and culture of law, and the institutions themselves.

There is a large body of sociolegal literature that examines how the choice of frame an individual adopts to understand a possible grievance likewise effects the course of action they take in pursuing redress (Levitsky 2008). They might adopt a legitimating frame, reinforcing an incident as inevitable or valid and discouraging action (Gamson et al. 1982); a collective action frame that informs them about what kind of action is possible, who might be to blame, and what collective rights might be invoked to redefine the status quo (Snow and Benford 1992); or an injustice frame, which leads individuals perceive those rights as being violated and deserving of redress (Gamson 1992). Individuals typically must experience what Gamson calls "hot cognition" within an injustice frame in order to be morally outraged to a degree that demands mobilization (Gamson 1995). Furthermore, Americans in particular are slow to perceive injury because "the individualism celebrated by American culture, inhibits people from acknowledging—to themselves, to others, and particularly to authority—that they have been injured, that they have been bettered by an adversary"—referred to as the "Cult of Competence" (Felstiner et al. 652).

In addition, minorities and underrepresented groups have even more preventing them from utilizing grievance filing processes: "the ability or willingness of people to identify a problem, blame someone for it, and mobilize action or launch a dispute is socially patterned with vulnerable, stigmatized, and/or self-blaming populations facing daunting barriers" (Calavita and Jenness 2103, 51). One's understanding of their relative position in social hierarchies informs them about their relative power, how the state understands and values them, and heavily influences their cost/benefit analysis of using courts as an efficient or even possible method to seek redress for their injuries. An individual who has been routinely stigmatized, oppressed,

excluded, or devalued by the state might make a negative assessment about their ability to bring claims forward and how likely that same state is to provide proper recourse. Furthermore, other research has shown (Galanter 1974) that income level effects success rates in a very practical way as there are substantial financial constraints these individuals might need to overcome to gain access to the courts: one must possess adequate funds to secure an experienced lawyer, you might have to take off work, secure childcare, and travel to the courts, or else settle for an oftentimes less devoted defense or decide not to pursue the matter in court.

If these barriers arise at the initial stages of the court systems, they are multiplied tenfold at the appeals level; the pyramid of disputes narrows a great deal. It takes a particular kind of individual to reject a decision handed down by the court and decide to pursue the matter further, sacrificing more resources and overcoming more ideological or cultural barriers. The filtering process is not simply a reflection of the appellant's lack of resources or willingness, but merely a reflection of common legal norms: many cases at this stage in the legal system simply settle outside of court rather than continue on through the courts. Additionally, the nature of the original decision might simply rule out any further legal challenges as the appellant must find an error in the original ruling that would justify an appeals hearing.

This paper seeks to answer the question, then: who are these appellants and what degree of success do they experience when they appeal lower court decisions? An analysis of what kinds of cases, appealed by what kind of appellants, with what kind of defense, and with what degree of success will provide an interesting look into the legal system, legal mobilization, and the culture of appeals. In this study, I take a look at a sample of federal appellate court cases across seven decades using difference in proportions tests and regression analyses to draw conclusions about how variables like race, income, and counsel affect the success appellants experience when they appeal their cases.

## Data

In this study I use the U.S. Appeals Courts Database from the University of South Carolina's Judicial Research Initiative, funded by the National Science Foundation, led by David Songer. The database contains information about appellate cases in every federal circuit from 1925 until 1996, including basic characteristics about the case, like its history, origin, date, circuit, and various citation information; detailed participant information, like the type of litigants, number, and counsel; issue coding, which categorizes the types of case issues brought forth, according to a categorization format traditionally used in public law studies found in the Spaeth Supreme Court Database (2016).

The sample of cases was taken from every case that appeared in the *Federal Reporter* that possessed a decision and at least one reason for that decision. Cases were randomly sampled from 1925 – 1988, with fifteen selected each year from 1925 – 1960 and thirty from 1961 – 1988. I am only concerned with appellants who are what the data set refers to as "natural persons," as opposed to businesses, interest groups, state and federal government agencies, and so on. For this reason, I created my own dataset consisting of only natural persons, which brought the original dataset from 18,195 observations to 10,720 observations. I then created a number of datasets: one which contained only ascertained race (1,304 observations), one with only ascertained income (4,436 observations), and one with both race and income ascertained and only definitive decision (729 observations).

The three explanatory variables I use in this research are: race, income level, and type of counsel, while the outcome variable is the decision the courts reached. The race and ethnic identity variable is coded as Caucasian, Black, Native American, Asian, Hispanic, and other. The income level variable is coded as: not ascertained; poor; wealthy; and other, which includes

those neither below the poverty line nor in the wealthy category—which I refer to as "middle."

For both of these variables, coders were asked to separate those who had a clear indication of

race or income level in the court opinion and those who are presumed to have a certain race or

income level. For the sake of simplicity, I grouped these two categories to create unified racial

and ethnic groups and levels of income.

The outcome variable is the decision made by the appeals court and is categorized as

reversed or affirmed. As these are appellate cases, "reversed" indicates that the appellant won

their appeal, "affirmed" indicates a loss. Simplifying the decision into two dichotomous

categories from their original coding scheme, which included ten different categories like stay,

vacate, reversed and remanded, reversed in part, and so on enables clearer analyses of appellate

results. A more detailed explanation of coding and categorization of the variables can be found in

Appendix A.

## Methods and Findings

In this study, I used preliminary, exploratory methods in order to visualize the data

followed by difference in proportion tests to measure the significance of the findings, and

concluded with four regression models to better understand the relationship between variables.

Figure 1 illustrates the answer to my first question, which is which racial groups brought appeals

to the circuit courts most often and what degree of success did they enjoy? This figure

demonstrates the percent of appellants in each racial group whose case was affirmed by the

appeals court, meaning the appeal was denied, and the percent of appellants whose case was

reversed, signifying a successful appeal. What is immediately and surprisingly clear is the ratio

of white to nonwhite appellants, with Hispanic appellants comprising the largest portion of

appellants overall. This finding directly conflicts with my hypotheses and the indications found

in sociolegal literature that would predict that racial minorities would be less likely to bring their claims to appeals court while whites would feel more empowered to do so, comprising a greater percent of the appellant population. However, the cause of this finding remains unclear, as there could be any number of variables that filter out one racial group over another, as previously discussed. It could very well be that white appellants simply experience a greater degree of success in the lower courts and thus have less of a need to appeal their cases. Alternatively, the type of counsel that different racial groups utilize in the lower court might influence the likelihood of their settling out of court rather than pursuing redress in appeals court, meaning whites not only have less need to appeal lower court decision but have counsel that allows for alternative methods of settling claims that filters them out of appeals court to a greater degree.

This figure can still offer some useful insight however, as it is also clear that for every racial group, appeals are typically denied more often than they are reversed. Furthermore, it appears that Hispanic appellants experience a greater degree of failure while Caucasians seem to experience a closer degree of success and failure, which would align more closely with the original theory and literature.

**Figure 1: Appellate Court Decisions by Racial Group**
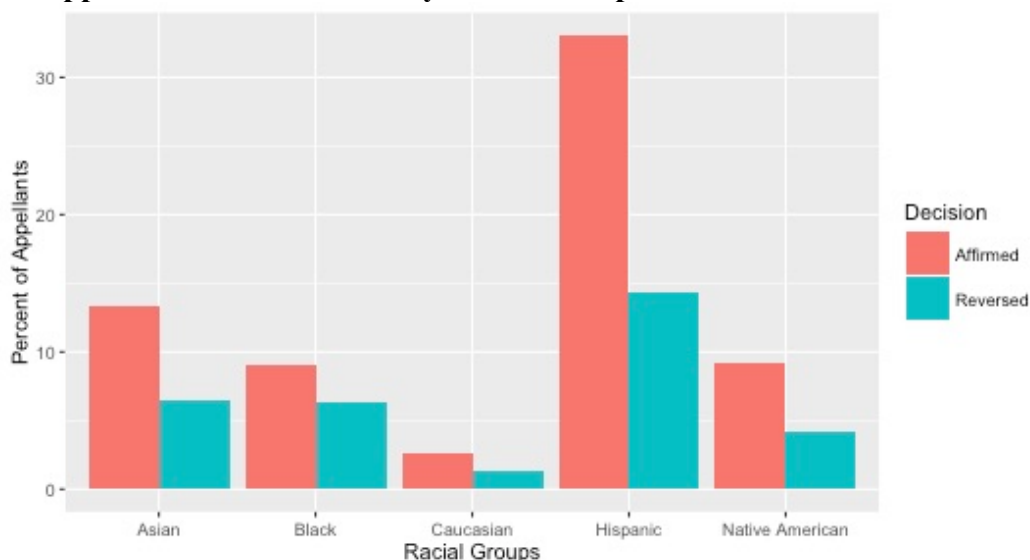
Since these relationships are not, in fact, evidently clear nor evidently significant at first glance, I next employed difference in proportions tests to find whether the difference in success and failure was statistically significant for each racial group, the results of which are found in Table 1. The results show that the difference in proportion of wins to losses for Black appellants is quite significant at the 95% confidence level, while the difference in the Hispanic appellant ratio is the second-most significant and although it does not quite reach the standard 0.05 threshold, it is relatively significant.

**Table 1: Difference in proportions test between *racial groups***

|  | Total Affirmed | Total Reversed | p.value |
|---|---|---|---|
| Caucasian | 35 | 18 | 0.96 |
| Black | 118 | 83 | 0.006 |
| Asian | 174 | 85 | 1 |
| Hispanic | 431 | 186 | 0.07 |
| N. American | 119 | 55 | 0.80 |
| Total: | 887 | 427 | |

I employed identical methods for my second explanatory variable: income. Figure 2 illustrates the percent of appellants whose cases were affirmed and reversed, separated by income level. Again it is clear that more cases were affirmed than denied and here it seems that the wealthy experienced a closer rate of success and failure, while the middle class and the poor seem to receive a 2:1 denial rate.

**Figure 2: Appellate Court Decisions by Income level**
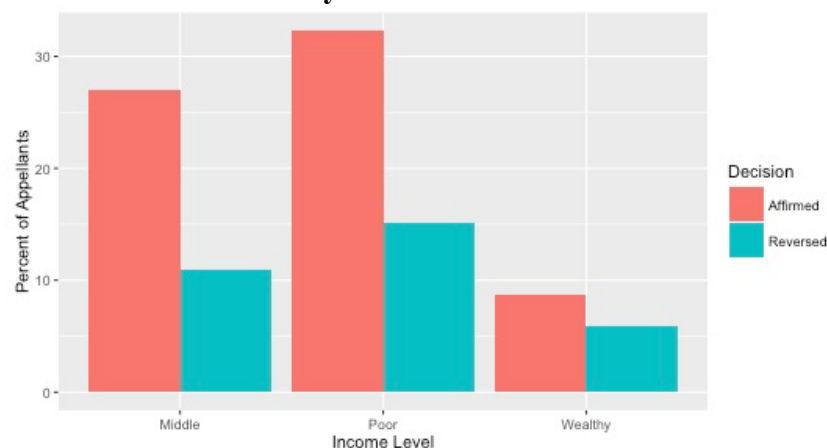
To determine whether or not the difference in ratio of success to failure for each income level was statistically significant, I performed a second round of proportion tests which can be found in Table 2. These tests found that although the relationship between case reversal and affirmation look similar between the poor and middle income appellants, the difference was only statistically significant for the middle income and wealthy appellants. These findings do seem to indicate that wealthy appellants experience a more even relationship between success and failure in appeals court and that proportion is indeed significantly different from the other proportions, which would support the hypothesis that income level does influence success in appellate courts. These tests yielded more significant results, which suggest that income level might be the better explanatory model in evaluating appellate court decisions.

**Table 2: Difference in proportions test between *income levels***

|  | Total Affirmed | Total Reversed | p.value |
|---|---|---|---|
| Poor | 1433 | 671 | 0.85 |
| Middle | 1198 | 488 | 2.2e-16 |
| Wealthy | 383 | 263 | 4.31e-07 |
| Total: | 3014 | 1422 |  |

While these tests do seem to make it clear that the level of income influences an appellant's success in appeals courts, it is not as clear how income is interaction with decision outcomes. One clear explanation is income's relationship with counsel type, as the ability to attain a private attorney or the necessity of relying on a public defender might greatly effect the outcome of an appellant's case. Accordingly, I employ a number of models to see how the degree of influence race and income is influenced once counsel type is controlled for. Table 3 contains four regression models: the first, second, and third are merely the decision by race, income, and counsel type, respectively. The baseline for these regressions are Caucasians of middle income with no counsel, while the dependent variable is measured by a dummy variable, where 1 indicates a reversal (success) and 0 indicates an affirmation (failure). By transforming

ethnicity, income, and counsel type into factor variables, we can use a linear model to see the

influence each variable has on the likelihood of success an individual has in appeals courts.

**Table 3: Regressions of Race, Income Level, and Counsel Type**

| | Dependent Variable: Reversed Decision Dummy (1 = Reversed) | | | |
|---|---|---|---|---|
| | (1) | (2) | (3) | (4) |
| Intercept | 0.46 | 0.36 | 0.27 | 0.31 |
| | (0.09) | (0.06) | (0.08) | (0.14) |
| Black | -0.04 | | | -0.19 |
| | (0.11) | | | (0.10) |
| Asian | -0.12 | | | -0.02 |
| | (0.10) | | | (0.11) |
| Hispanic | -0.11 | | | -0.17 |
| | (0.10) | | | (0.10) |
| N. American | -0.07 | | | -0.13 |
| | (0.11) | | | (0.11) |
| Poor | | -0.05 | | -0.06 |
| | | (0.08) | | (0.08) |
| Wealthy | | 0.03 | | 0.11 |
| | | (0.07) | | (0.07) |
| Court Appointed Public Defender | | | -0.07 | -0.06 |
| | | | (0.10) | (0.10) |
| Government | | | 0.49 | 0.51 |
| | | | (0.25) | (0.25) |
| Interest Group | | | 0.49 | 0.48 |
| | | | (0.25) | (0.25) |
| Private | | | 0.13 | 0.17 |
| | | | (0.08) | (0.09) |
| R2 | -0.0006 | 0.001 | 0.02 | 0.57 |
| N | 724 | 724 | 724 | 724 |

Although linear models are quite problematic given the type of data utilized, this regression can nonetheless impart some useful information for the purposes of this study. The numerical value for the point estimates provided for each variable mean essentially nothing, apart from a general indication of negative and positive correlation. The standard error contained in parentheses below, coupled with the estimates, however, do permit some general assumptions about the statistical significance of each variable. The results of the first regression demonstrate that for every nonwhite racial group there is in fact a negative relationship with case reversal, although not significantly so. As anticipated, the second and third regressions find that there is also a negative relationship between lower income and reversal, as well as between court appointed counsel and reversal. These results are not statistically significant, however, until the fourth regression upon which time all are controlled for simultaneously. Through this final regression, it appears that the likelihood of case reversal for Black and Hispanic appellants are significantly influenced for the worse. Furthermore, appellants with private counsel do appear to have a significantly better outcome in appeals courts and although wealth does not appear to be significant in this regression, is can still be inferred that those with greater wealth are more likely to obtain private counsel and thus more likely to be met with success in court.

## Conclusion

The findings in this study, by way of descriptive statistics, proportion tests, and regression analyses do support the theory that race, income, and counsel to indeed influence the success appellants experience when bringing claims to appeals court. This analysis demonstrated that contrary to preliminary theoretical predictions in this paper, nonwhite racial minorities find themselves in appeals court to a greater degree than their white counterparts, although this phenomenon might be explained by greater rate of success found in lower courts that drives

down the need to appeal rulings in appellate court. The proportion tests utilized in this study found that the difference in proportion of appeal reversal to affirmation was statistically significant for racial groups, but to a greater degree across income levels, indicating that income might be the more powerful explanatory variable. Last, a series of regressions demonstrated that there is a negative correlation between case reversal and racial minorities, to a significant degree once income and counsel type is controlled for. Furthermore, the possession of private counsel does significantly increase the likelihood of appeal reversal, all of which confirm the theory that racial minorities do experience a lesser degree of success in appeals courts, an effect that is compounded by income and counsel type.

## References

Calavita, Kitty and Valerie Jenness (2013) "Inside the Pyramid of Disputes: Naming Problems and Filing Grievances in California Prisons." *Social Problems* 60:50-80.

Galanter, Marc. "Why the Haves Come Out Ahead: Speculation on the Limits of Legal Change." *Law & Society Review* 9: 95-160 (1974).

Gamson, William A. (1992) *Talking Politics.* New York: Cambridge Univ. Press.

---- (1995) "Constructing Social Protest," in H. Johnston & B. Klandermans, eds., *Social Movements and Culture.* Minneapolis: Univ. of Minnesota Press.

Gamson, William A., et al. (19982) *Encounters with Unjust Authority.* Chicago: Dorsey Press.

Felstiner, William, Richard Abel, and Austin Sarat. (1980) "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming." *Law & Society Review* 15: 631-654.

Levitsky, Sandra R. (2008) "What Rights?: The Construction of Political Claims to American Health Care Entitlements." *Law & Society Review* 42: 551-590.

Spaeth, Harold J., Lee Epstein, Andrew D. Martin, Jeffrey A. Segal, Theodore J. Ruger, and Sara C. Benesh. (2016) "Supreme Court Database," 2015: 2. http://Supremecourtdatabase.org

Snow, David, & Robert D. Benford (1988) "Disrupting the 'Quotidian': Reconceptualizing the Relationship Between Breakdown and the Emergence of Collective Action," *3 Mobilization: An International J.* 1-22.

Songer, Donald R. (2015) "United States Courts of Appeals Database Phase 1, 1925-1988," http://dx.doi.org/10.3886/ICPSR02086.v1

**Appendix 1:**

        As outlined in the following table, the race, income, defense, and decision were coded into complex categories that contained more specificity than was required in this study. In order to maximize observations and thus the power of findings, observations with assumed race or income level were grouped together with those with specific indications of wealth and race. For the sake of simplicity, decision was likewise grouped together into categories of simply affirmed and reversed.

| Original Coding | Grouped Categories |
|---|---|
| **Race and Ethnicity**<br>- Not ascertained<br>- **Caucasian**: specific indication in opinion<br>- **Black**: specific indication in opinion<br>- **Native American**: specific indication in opinion<br>- **Native American**: assumed from name<br>- **Asian**: specific indication in opinion<br>- **Asian**: assumed from name<br>- **Hispanic**: specific indication in opinion<br>- **Hispanic**: assumed from name<br>- Other | **Race and Ethnicity:**<br>- Caucasian<br>- Black<br>- Native American<br>- Asian<br>- Hispanic<br><br>"Other" and "Not Ascertained" removed. |
| **Level of Income**<br>- Not ascertained<br>- **Poor** and wards of the state (e.g., welfare or food stamp recipients, patients at state mental hospital; not prisoners unless specific indication that poor).<br>- **Presumed Poor** (e.g., migrant farm worker)<br>- **Presumed Wealthy** (e.g., high status job, like: medical doctors, executives of corporations that are national in scope, professional athletes; upper 1/5 of income bracket).<br>- **Clear indication of wealth** in opinion<br>- **Other**: above poverty line but not clearly wealthy (e.g., public school teachers, federal government employees). | **Level of Income:**<br>- Poor<br>- Middle (formerly "other")<br>- Wealthy<br><br>"Not Ascertained" removed |
| **Decision**<br>0. Stay: petition or motion granted<br>1. Affirmed<br>2. Reversed<br>3. Reversed and remanded<br>4. Vacated and remanded<br>5. Affirmed in part and reversed in part<br>6. Affirmed in part, reversed in part, and remanded<br>7. Vacated<br>8. Petition denied or dismissed<br>9. Certification to another court | **Decision**:<br>- Reversed: 2, 3, 4, 7<br>- Affirmed: 0, 1, 8<br><br>5, 6, and 9 removed. |

| Counsel Type | Counsel Type: |
|---|---|
| - None | - None |
| - Court Appointed | - Court Appointed or Public Defender |
| - Legal aid or public defender | - Private |
| - Private | - Government |
| - Federal Government | - Interest Group |
| - State or local government | |
| - Interest group, union, professional group | "Other or not ascertained" removed. |
| - Other or not ascertained | |