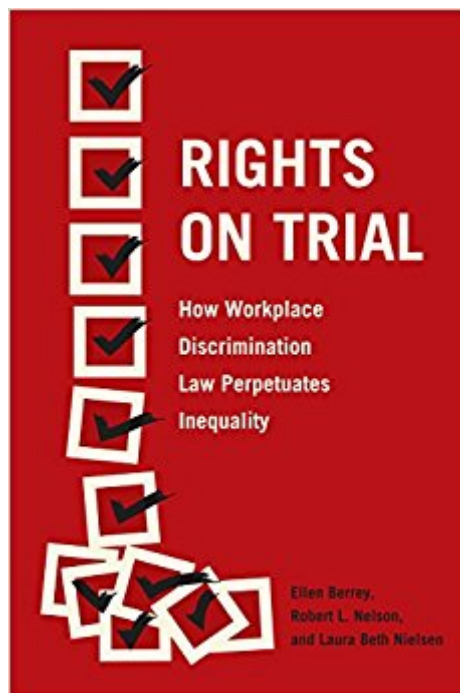




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Rights On Trial: How Workplace Discrimination Law Perpetuates Inequality



Synopsis

Gerry Handley faced years of blatant race-based harassment before he filed a complaint against his employer: racist jokes, signs reading “KKK” in his work area, and even questions from coworkers as to whether he had sex with his daughter as slaves supposedly did. He had an unusually strong case, with copious documentation and coworkers’ support, and he settled for \$50,000, even winning back his job. But victory came at a high cost. Legal fees cut into Mr. Handley’s winnings, and tensions surrounding the lawsuit poisoned the workplace. A year later, he lost his job due to downsizing by his company. Mr. Handley exemplifies the burden plaintiffs bear in contemporary civil rights litigation. In the decades since the civil rights movement, we’ve made progress, but not nearly as much as it might seem. On the surface, America’s commitment to equal opportunity in the workplace has never been clearer. Virtually every company has antidiscrimination policies in place, and there are laws designed to protect these rights across a range of marginalized groups. But, as Ellen Berrey, Robert L. Nelson, and Laura Beth Nielsen compellingly show, this progressive vision of the law falls far short in practice. When aggrieved individuals turn to the law, the adversarial character of litigation imposes considerable personal and financial costs that make plaintiffs feel like they’ve lost regardless of the outcome of the case. Employer defendants also are dissatisfied with the system, often feeling “held up” by what they see as frivolous cases. And even when the case is resolved in the plaintiff’s favor, the conditions that gave rise to the lawsuit rarely change. In fact, the contemporary approach to workplace discrimination law perversely comes to reinforce the very hierarchies that antidiscrimination laws were created to redress. Based on rich interviews with plaintiffs, attorneys, and representatives of defendants and an original national dataset on case outcomes, *Rights on Trial* reveals the fundamental flaws of workplace discrimination law and offers practical recommendations for how we might better respond to persistent patterns of discrimination.

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Customer Reviews

“Berrey, Nelson, and Nielsen draw on a wealth of data in this carefully researched story of how litigation comes to be, how cases move through the legal system, and the grave costs incurred on both sides. As the authors convincingly show, rather than enhancing workers’ rights, employment discrimination litigation often reinforces the very hierarchies it was intended to diminish. This is a fascinating study, well researched, written, and argued.” (Elizabeth Hirsh, University of British Columbia)

“Rights on Trial is a stinging indictment of the failure of employment civil rights law to address discrimination in the workplace. It is a landmark analysis, the clearest and most well-documented account of claimants’ hurtful experiences in claiming and litigating against discrimination. It is incredibly important and should be widely read.” (Charles R. Epp, author of *Pulled Over: How Police Stops Define Race and*

Citizenship) “Rights on Trial embarks on a thorough exploration of civil rights in the world of employment litigation on a quest to uncover how this system of rights-based litigation actually works and, in truth, whether it does. The book shines a bright light on the practical application of the law through real-life narratives and presents brilliant, insightful, and thought-provoking avenues for change. Rights on Trial is innovative, educative, and relevant.” (Judge Bernice B. Donald, Sixth Circuit Court of Appeals)

“Berrey, Nelson, and Nielsen offer stunning empirical evidence of how antidiscrimination law is structured to produce outcomes that are often anything but just. Rights on Trial is a masterful contribution to our understanding of how law often reproduces the very problems it seeks to resolve.” (Osagie K. Obasogie, University of California, Berkeley) “Rights on Trial is a brilliant, shocking indictment of our legal system. Berrey, Nelson, and Nielsen use quantitative data on discrimination suits and in-depth interviews with plaintiffs, employers, and lawyers to detail why the system is fatally flawed. People who face discrimination at work rarely complain, and when they do, they don’t find coworkers to join them or lawyers to represent them. Few win anything, and those who do are forced from their jobs and often end up destitute. Riveting interviews show that plaintiffs who were hopeful that the law would protect them feel disrespected by the courts and lose faith in our form of government. Meanwhile, failed lawsuits encourage employers to believe that their workplaces are free of discrimination.” (Frank

Dobbin, Harvard University)

Ellen Berrey is assistant professor of sociology at the University of Toronto and an affiliated scholar of the American Bar Foundation. She is the author of *The Enigma of Diversity*. Robert L. Nelson is professor of sociology and law at Northwestern University and the MacCrate Research Chair at the American Bar Foundation. Laura Beth Nielsen is professor of sociology at Northwestern University and research professor at the American Bar Foundation.

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