The second force is simple demographics in the form of an aging population that will mean increased demand for care services. If the job remains characterized by low pay, low status, and low skills, worker shortages are nearly inevitable. And in the "high touch" job of health aide, fewer options are available for capital substitution, despite the outsized attention that robotic "helpers" have received in the press. Finally, union activity is growing in the health care sector, particularly among low-wage workers such as health aides. This trend should help to ensure that workers receive expanded compensation in exchange for the expanded scope of their responsibilities.

Osterman's central theme is that health aides are not valued as players on the health care team. They are limited in the opportunities the job affords them to deliver quality services to clients. At the same time, this under-valuing restricts their ability to better their own circumstances in terms of the quality of their jobs. This system is not just an inefficient use of health care dollars but also undesirable for both workers and their clients. It is also unsustainable. Osterman offers a succinct road map to better understand this current system and, more important, he provides a direction on how to change it to the benefit of us all.

Carrie R. Leana
George H. Love Professor of Organizations and Management
Director, Center for Healthcare Management
University of Pittsburgh

Rights on Trial: How Workplace Discrimination Law Perpetuates Inequality. By Ellen Berrey, Robert L. Nelson, and Laura Beth Nielsen. Chicago: University of Chicago Press, 2017. 320 pp. ISBN 978-0-226-46685-9, $30 (Paperback); ISBN 978-0-226-46699-6, $30 (eBook).

DOI: 10.1177/0019793918764442

Rights on Trial describes a "paradox" in the United States, where a commitment to a system of civil rights laws to achieve workplace equality co-exists with continued deeply entrenched racial and gender inequality and ongoing "attacks on employment civil rights litigation from critics who decry such litigation as a frivolous, costly, excuse factory" (p. 9). Yet, as Ellen Berrey, Robert Nelson, and Laura Beth Nielsen explain, although employment discrimination law has been studied in many aspects, "there has been no comprehensive analysis of this system and its consequences for parties to litigation" (p. 10). *Rights on Trial* fills this gap, engaging in a comprehensive study of "how employment civil rights litigation works in practice" (p. 10). Using a mixed-methods research design, the authors examine the litigation process and whether "law [has] helped or hurt the struggle for workplace equality" (p. 10). This theoretical and methodological approach places the work squarely in the tradition of law and society scholarship, which "illuminates how law-in-action, as opposed to law-on-the-books, shapes the realization of rights" (p. 13).

Unlike studies that focus on written judicial opinions, Berrey, Nelson, and Nielsen use quantitative and qualitative data to examine the full range of case outcomes and parties' and attorneys' experiences with employment civil rights litigation. The authors developed two datasets, with the first consisting of statistical analyses of a random sample of 1,788 employment discrimination cases filed in federal courts during the period of 1988 to 2003. A second dataset consists of 100 in-depth interviews with plaintiffs, defendant employers, and the parties' lawyers, selected through a random subsample of cases in the four major types of claims (race, sex, age, and disability) and four case outcomes of greatest theoretical interest (dismissal, early settlement, late settlement, and trial). When feasible, the authors interviewed parties and lawyers involved in the same case.

The quantitative analysis shows how the litigation system works, including the types of discrimination claims filed, the percentage of cases that are settled or dismissed at different stages of the litigation process, the small percentage of cases that actually go to trial, and the even smaller percentage of claims that are successful at trial. This macro-level analysis contextualizes the qualitative data in the interview narratives. The analysis of the interviews, in turn, further explains the meaning of the statistical data and provides insight into the

experiences of the parties in the workplace and litigation that cannot be found in the quantitative data.

The key findings of the study show the damage resulting from the "deep contradictions in the American system of employment civil rights regulation and enforcement" (p. 260). The authors conclude: "[W]hile there is a shared commitment to nondiscrimination in the workplace, the system of employment civil rights litigation may in fact perpetuate, even exacerbate, workplace discrimination" (p. 260). They describe a "broader phenomenon of *reinscription*" and "the processes by which the ascriptive hierarchies that the law is intended to disrupt are reified and rearticulated through law in the workplace and in court" (p. 11). These findings of the study are groundbreaking and disturbing. Scholars and practitioners in the field of employment discrimination law are well aware of statistics showing that plaintiffs have an uphill battle in litigation. The results in *Rights on Trial*, though, go well beyond demonstrating flaws in the civil rights litigation system. Rather, they reveal a system that is undermining its own goals, and even exacerbating discrimination on the bases prohibited by the law.

A conclusion this strong requires a significant amount of supporting evidence. The authors provide persuasive analysis, carefully mining their quantitative and qualitative data to demonstrate the multiple factors that contribute to the failure of the litigation system and the reinscription of hierarchies of inequalities. At the macro level, the data show that only a small percentage of potential discrimination claims are ever filed, and of these, most are either dismissed in pre-trial hearings or settled for modest amounts at a median of $30,000 (pp. 62–63). Only 6% of lawsuits make it to trial, where plaintiffs win only one-third of the time, with relatively small awards, typically about $150,000 (p. 264). The authors conclude that the individualization of employment discrimination claims is a central contributing factor to these outcomes. This scenario plays out in multiple ways. Collective actions, including class action lawsuits, have a significantly higher success rate than do individual claims (p. 73). However, the courts have made group-based claims difficult to prove by narrowing the disparate impact theory of discrimination and by raising the standards for certification of class actions. Only 1% of all court filings are certified as class actions, whereas 93% of claims are filed by a single plaintiff, and 93% allege disparate treatment (pp. 15, 264).

The qualitative data reveal the negative impact of this structure on individual plaintiffs, beginning with employer-imposed waivers of litigation through mandatory arbitration agreements in non-union workplaces. The plaintiffs' interviews show how difficult it is for employees to find an attorney willing to take their case, in contrast to the well-funded legal representation of employers. In this unequal structure, plaintiffs describe the pressure they feel to settle cases for modest amounts, rather than face the personal and financial costs of continued litigation that presents overwhelming odds against them. The interviews reveal, as well, the dismissive responses that individual plaintiffs often receive, even in cases of overt discriminatory treatment. The reinscription thesis is supported, in part, by the way that employers and attorneys treat individual plaintiffs with skepticism infused with the same stereotypes that the law is aimed at eliminating. Coding of the interviews identified language and actions that fit patterns of stereotypes, such as perceptions that African Americans are uppity or lazy and African American women are bitchy, women are hysterical and irrational, people with disabilities are unable to work, and older employees resist change (Chapter 9).

As the authors show, one of the damaging effects of the individualized nature of employment discrimination claims is the failure of the law to address systemic problems of discrimination. The law, therefore, does not act to dismantle the deep-seated structural workplace inequalities that perpetuate discrimination on an individual and group basis. Collective legal actions could address structural discrimination by demonstrating the patterns of privilege and oppression that maintain inequalities, such as occupational segregation, and the ways in which racial, sexual, and other sorts of stereotypes keep individuals "in their place." As the authors show, with individual claims, employers and attorneys can treat each case as being disconnected from broader discriminatory systemic forces, even as they rely on stereotypes to justify adverse employment actions against the plaintiff employees.

Perhaps surprisingly, the authors do not propose dismantling the law, but they do find reform measures to be in order, including the expansion of collective action as a more effective means of addressing systemic discrimination. The authors are convincing in proposing reforms to strengthen enforcement of anti-discrimination laws through measures that support collective litigation, encourage affirmative action programs by employers, and provide

greater resources to the federal Equal Employment Opportunities Commission and state agencies. The authors are overly dismissive, though, of the potential of unionization to ameliorate workplace inequalities. The authors do not address the contractual protections employees gain through collective bargaining, including equal pay for equal work, transparent and fair promotions processes, and "just cause" provisions that protect employees from discipline or discharge based on race, sex, or other unfair or arbitrary bases.

An "Authors' Note" added as the book went to press emphasizes the need for empirical research on workplace discrimination in the current political and social context of the resurgence of overt racism, sexism, and xenophobia. Since the book's publication, revelations of severe problems of sexual harassment have raised further questions about the effectiveness of a legal system that leaves employees vulnerable to sexual exploitation in every type of workplace. *Rights on Trial* provides an important analysis that helps to explain why civil rights laws have not eliminated—or even significantly limited—such systemic inequalities.

Risa Lieberwitz
Professor of Labor and Employment Law
ILR School, Cornell University

A Decisive Decade: An Insider's View of the Chicago Civil Rights Movement during the 1960s. By Robert B. McKersie. Foreword by James R. Ralph Jr. Carbondale: Southern Illinois University Press, 2013. 288 pp. ISBN 978-0-8093-3244-1, $29.95 (Cloth).

DOI: 10.1177/0019793918764444

A Decisive Decade: An Insider's View of the Chicago Civil Rights Movement during the 1960s provides an eyewitness account of the civil rights movement and the fight for equality in Chicago in the 1960s. It reminds us with stark detail that the fight for racial justice was then, as it is now, as much an issue of the North as one of the South.

In addition to providing the reader with a first-person history of the civil rights struggle in Chicago, Robert McKersie asks, what is the personal responsibility of individuals in the struggle against hate and discrimination and for equal rights? How and in what ways do you contribute to ending discrimination? Do you work within your own group—a white person working with whites to support a black civil rights group to change the minds of other whites—or do you join as a participating member, as part of an inner circle as McKersie did, of the movement of black people to fight discrimination in the 1960s? Should you do both? Today, this question takes on added meaning juxtaposed against the resurgence (or maybe just a willingness to be more public) of the KKK, white supremacy, and neo-Nazi groups, and the continuing fight for equality involving blacks, Muslims, Latinos, Jews, women, and gay and transgender people, to name just a few examples.

In his book, McKersie reflects on his role in the civil rights movement in the North, both before and after the passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965. McKersie, a freshly minted PhD in Business Administration from Harvard with a focus on labor relations, moved to Chicago to join the faculty of the University of Chicago as an assistant professor. As a member of the First Unitarian Church of Chicago in 1962 and 1963, he became involved in an adult discussion group that focused on civil rights issues. He quickly took on responsibility as the group's convener, leading to his representing his church in the Coordinating Council of Community Activities Organization (CCCO), a Chicago civil rights activist organization.

During this period, CCCO and McKersie were involved in fights for equality in employment, housing, and education. With respect to education, the fight was to secure a quality education for the black children of Chicago, who were in segregated, overcrowded schools—some even had trailers for classrooms—with substandard textbooks and materials. The CCCO and other groups, after debate and discussion, pinned their strategy on improving the schools through the removal of Benjamin Willis as the Superintendent of Schools under Mayor Richard J. Daley. Willis was seen as the cause of their schools' dire situation and the obstacle to improving them. In October 1963 and February 1964, there were marches and school boycotts, with freedom schools set up during the boycott. These were followed by a