

Plaintiffs face greater obstacles in discrimination suits, study shows

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(Phys.org) -- University at Buffalo Sociology Professors Ellen Berrey, PhD, and Steve G. Hoffman, PhD, have co-authored a study that shows plaintiffs' limited resources and tumultuous experiences in employment discrimination lawsuits lead them to see this litigation as profoundly unfair.

The study shows that both defendants and plaintiffs question the fundamental fairness of employment discrimination litigation. But employer-defendants tend to have more resources to manage litigation challenges better than those bringing charges.

"We wanted to hear, from actual people involved in employment discrimination lawsuits, what litigation was like for them," says Berrey, assistant professor of sociology at UB and a faculty affiliate of the American Bar Foundation (ABF). "There was one point that nearly everyone agreed on: that litigation is unfair.

"Beyond that, their experiences couldn't have been more different. For plaintiffs, litigation is expensive and can bring real personal hardships. Many end up divorced, depressed, even bankrupt. Employers do not like litigation either, but they usually have the resources and expertise to keep these cases under control."

The study, "Situated Justice: A Contextual Analysis of Fairness and [Inequality](#) in Employment Discrimination Litigation," published in *Law and Society Review*, is based on a national random sample of

employment civil rights cases and 100 interviews with plaintiffs, defendants, and lawyers who were involved in discrimination suits. *Law and Society Review* is considered the most-prestigious law and social science journal in the U.S.

Co-authored with Laura Beth Nielsen, a [sociologist](#) from the Northwestern University and a research professor for the ABF, the study identifies stark differences in how plaintiffs and employer-defendants experience employment discrimination litigation and assess the fairness of law.

Plaintiffs and defendants, according to the study, agree that the legal process is unfair, but find unfairness only in what is to their particular disadvantage. While plaintiffs begin the process optimistically, the study finds, they face significant obstacles in properly defending their claims. Contrary to their expectations, they rarely get a final ruling based on the substantive merits of a case.

These experiences cause them to view the process as unfairly biased in favor of defendant-employers. Yet, employer-defendants find unfairness in the fact that an employee has the power to initiate what they consider a "meritless" suit against the company to which they are required to respond.

The conclusions in "Situated Justice" are amplified by the innovative use of embedded audio in the online version of the published article. Twenty-two audio interviews with the actual plaintiffs and defendants in the cases studied, whose identities have been disguised, can be accessed by viewing the on-line article.

"Online media are an exciting new venue for social scientists," Berrey says. "They enable us to see and hear our evidence in different ways, which actually can strengthen our arguments. And they provide a great

platform for sharing research-based insights.

By visiting the American Bar Foundation project website Civil Rights in their Own Voices or viewing the article [online](#), available through 2012, people can listen plaintiffs and defendants discussing the unfairness of employment discrimination litigation.

"You can literally 'hear' our argument in their voices," Berrey says.

"We have a fundamental problem with the legal system," says Hoffman. "The primary way that the law deals with discrimination at work -- litigation -- is considered unfair by both parties, and winning in litigation requires considerable financial and legal resources."

Provided by University at Buffalo

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