

Double Standard on Appeal:
An Empirical Analysis of Employment Discrimination Cases
in the U.S. Courts of Appeals

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EXECUTIVE SUMMARY

This report compares how plaintiffs and defendants in employment discrimination cases fare on appeal. It uses official government data from the Administrative Office of the United States Courts. The Administrative Office collects data on every federal case in both the district courts and the courts of appeals, categorizing them in over 90 case categories. One of the largest case categories is Category 442, employment discrimination cases. We have linked the data from district courts and appellate courts, which allows us to examine how employment discrimination cases fare on appeal compared to other cases.

We find that employment discrimination plaintiffs do dramatically worse than defendants on appeal. Indeed, the differential between plaintiff and defendant success rates is greater in employment discrimination cases than any other category of civil cases. Specifically:

- § Employment discrimination plaintiffs are far more likely than defendants to be reversed on appeal. When an employment discrimination defendant wins at trial and the case is reviewed on appeal, only 5.8 percent of those judgments are reversed. By contrast, when an employment discrimination plaintiff wins at trial and the case is reviewed on appeal, 43.61 percent of those judgments are reversed. See Figure A.
- § The 43.61 percent reversal rate of plaintiff trial victories is greater in employment discrimination cases than in any other category of cases except “other civil rights” cases. See Table 1.
- § The 5.8 percent reversal rate of defendant trial victories is smaller in employment discrimination cases than any other category of cases except prisoner habeas corpus trials. See Table 2.
- § The resulting gap between reversal rates of plaintiffs and defendants (37.81 percentage points) is larger for employment discrimination cases than any other category of cases, including civil prisoner cases. See Table 3.
- § This huge gap in reversal rates occurs in all federal circuits in all regions of the country. See Table 4.
- § A similar gap exists between plaintiff and defendant reversal rates for appellate review of cases decided before trial. See Figure B. This gap in pretrial reversal rates is larger in employment discrimination cases than any other category except other civil rights and prisoner civil rights and habeas cases. See Table 5.

I. Request for this Report

We have prepared this report at the request of Mehri, Malkin & Ross, PLLC, and Cochran, Cherry, Givens, & Smith. The subject of how employment discrimination and other civil rights cases fare on appeal has been a matter of scholarly inquiry for us for some time. We co-authored an article on the subject in 1989,¹ building on our earlier empirical work of civil rights cases.² One of the present authors co-authored a forthcoming article comparing how plaintiffs and defendants fare on appeal.³ Much of the data in this report is analyzed there. The other present author filed a related report for Mehri, Malkin & Ross in the recent fairness hearing for *Ingram v. The Coca-Cola Company*, a race discrimination class action.

II. Background and Training of Authors

Theodore Eisenberg is the Henry Allen Mark Professor of Law at Cornell Law School. He received a J.D. from the University of Pennsylvania in 1972. In 1973 he was law clerk for Chief Justice Earl Warren of the United States Supreme Court (retired), and then joined Debevoise as an associate. He joined the law faculty at UCLA Law School in 1977, and has been a professor at Cornell Law School since 1981, where he teaches Civil Rights, Employment Discrimination, Constitutional Law, Bankruptcy, Tax, and Empirical Studies. He has been a visiting Professor at Stanford Law School and Harvard Law School. He is the author of *Civil Rights Legislation* (4th ed. 1996) and *Bankruptcy and Debtor-Creditor Law* (2d ed. 1988). He is a renowned scholar on empirical studies of the legal system.

Stewart J. Schwab received a J.D. from the University of Michigan in 1980, and a Ph.D. in Economics in 1981. He served as a law clerk for Judge J. Dickson Phillips, Jr., of the United States Court of Appeals for the Fourth Circuit, and for Justice Sandra Day O'Connor of the United States Supreme Court. Since 1983 he has been a Professor at Cornell Law School, where he teaches employment law, law and economics, torts, corporations, and empirical studies, among other courses. Schwab has been a visiting Professor or scholar at the University of Michigan Law School, University of Virginia Law School, Duke Law School, Wolfson College (Oxford University), Victoria University (Wellington, New Zealand), and Australia National University. He has served

¹See Theodore Eisenberg and Stewart J. Schwab, What Shapes Perceptions of the Federal Court System?, 56 Univ. Chi. L. Rev. 501 (1989) (comparing constitutional tort and other litigation at the appellate and district court levels).

²Theodore Eisenberg and Stewart Schwab, The Reality of Constitutional Tort Litigation, 72 Cornell L. Rev. 641 (1987); Theodore Eisenberg and Stewart Schwab, The Importance of Section 1981, 73 Cornell L. Rev. 596 (1988); Stewart J. Schwab and Theodore Eisenberg, Explaining Constitutional Tort Litigation, 73 Cornell L. Rev. 719 (1988). See also Orley Ashenfelter, Theodore Eisenberg, and Stewart J. Schwab, Politics and the Judiciary: The Influence of Judicial Background on Case Outcomes, 24 J. Legal Stud. 257 (1995).

³Kevin M. Clermont & Theodore Eisenberg, Plaintiphobia in the Appellate Courts: Civil Rights Really Do Differ from Negotiable Instruments, Univ. Ill. L. Rev. (forthcoming).

as Chair of the Law and Economics Section of the American Association of Law Schools. Schwab is a member of the American Economics Association, the American Law and Economics Association, and the American Arbitration Association. He is a co-author of *Employment Law* (Lexis Law Publishing 3rd ed. forthcoming 2002) (with Willborn and Burton) and *Foundations of Labor and Employment Law* (Foundation Press 2000) (with Estreicher). He has published many articles in the fields of employment law, employment discrimination law, and law and economics.

III. The Administrative Office Data

The federal court system consists of three layers. Cases begin in the trial courts, called “district courts,” of which there are 94 throughout the country. If the parties do not settle the case, the district court judge issues a judgment for the plaintiff or the defendant, in some cases before trial in what is called summary judgment, and in other cases after a judge or jury trial. After the district court judgment, the losing party may appeal the decision to the circuit court of appeals. The district courts are grouped into 12 circuit courts. Losers in the court of appeals may request review by the Supreme Court, but the Supreme Court grants review in only a small fraction of the requests.

Whenever a case is filed in federal district court, the plaintiff fills out a form of basic information about the case, including the category of claim. Again at the termination of each case, and on appeal, a form is filled out. The court clerks send the forms to the Administrative Office of the U.S. Courts. These forms are then assembled by the Federal Judicial Center and disseminated by the Inter-University Consortium for Political and Social Research. All the data in this report come from this source. As the codebook for this data set explains, “The purpose of this data collection is to provide an official public record of the business of the federal courts.” Federal Judicial Center, *Federal Court Cases: Integrated Data Base, 1970-1997, Codebook for Civil and Appellate Data, 1996-1997*, available at <<http://www.icpsr.umich.edu/index.html>> (ICPSR Project number 8429).

The Administrative Office data include the “nature of suit” category for each terminated case. There are over 90 categories in all, although many of them contain only a few cases. One of the largest categories is Category 442, “Civil Rights: Employment.” Category 442 includes most employment discrimination cases in the federal courts, including race, sex, and other discrimination claims filed under title VII of the Civil Rights Act of 1964, age discrimination claims filed under the Age Discrimination in Employment Act, and disability claims filed under the Americans with Disabilities Act. The data do not allow one to analyze just title VII cases or just ADA cases.

Since 1988, the Administrative Office has recorded the underlying district court docket number on all appellate cases. This has allowed us to link the district court and appellate cases and examine how cases fare on appeal. Fiscal year 1997 is the latest year currently available. Thus, all data in this report cover the years 1988-1997.

This report analyzes reversal rates on appeal. We define reversal rates as the percentage of appellate decisions reversing the district court judgments out of all appellate decisions with a decisive outcome. The Administrative Office coding system

gives 7 possible appellate outcomes on the merits: (1) Affirmed-enforced; (2) Dismissed-Frivolous; (3) Reversed-Vacated; (4) Affirmed in part and Reversed in part; (5) Remanded; (6) other; and (7) Missing or out-of-range. We defined the appellate outcome as affirmed for values 1 or 2, reversed for values 3, 4, or 5. We deleted from our analysis the few cases without clear outcomes (codes 6 or 7).

In this report, the analysis for all the tables but Table 5 is limited to appeals in which the district court made a judgment after a jury or bench trial. These are cases that survived the pretrial screening and can be considered nonfrivolous cases with a genuine factual issue, in which the parties had their day in court. Table 5 examines the appeals of pretrial judgments. The comparisons between employment discrimination and other cases are qualitatively similar in the cases after trial and the pretrial cases.

It is important to emphasize that this data set comes from official government statistics covering all cases in the federal courts. It is not a mere sample of cases. It covers all decisions of the courts, not just the published decisions. No data set is perfect, of course. But this data set gives the best available overview of the activities of the United States courts.

IV. Results

A. Double Standard on Appeal

In employment discrimination cases, we find that appellate courts are far more likely to reverse a plaintiff victory at trial than a defendant victory. Figure A illustrates this basic finding. Of all the cases in which appellate courts review a defendant trial victory, they reverse only 5.8 percent. By contrast, appellate courts reverse 43.61 percent of the plaintiff victories at trial that are reviewed. Thus, employment discrimination plaintiffs have much more difficulty maintaining their trial victories on appeal than defendants do.

The fact-intensive nature of employment discrimination cases makes it especially surprising that appellate courts so often reverse plaintiff trial victories. Employment discrimination cases typically involve subtle questions of employer intent, where credibility of witnesses is especially important. One would think that when a plaintiff in such a case has convinced the factfinder of the defendant's wrongful intent, that finding should not be readily overturned on appeal.

Further, this comparison of appellate reversal rates is for cases in which a district judge has issued a judgment after a judge or jury trial. All these cases have survived pretrial screening. To get to trial, they must be nonfrivolous and present genuine issues of fact. Even for cases that get to trial, related Administrative Office data for 1978 - 1997 show that employment discrimination plaintiffs win only 26.8 percent of their trials. This is much lower than the overall plaintiff win rate of 44.2 percent.⁴ Thus, the huge 43.61

⁴See Stewart J. Schwab, How Employment Discrimination Cases Fare in the Federal Courts: An Empirical Analysis (May 19, 2001) (report filed in the fairness hearing for *Ingram v. The Coca-Cola Company*, Northern District of Georgia).

percent reversal rate of plaintiff victories in employment discrimination cases cannot be explained as appellate courts correcting cases that slipped through the system without scrutiny.

B. Reversal Rates When Defendants Appeal

Table 1 reports all trials in all case categories in which the plaintiff received a judgment, the defendant appealed, and the appellate court affirmed or reversed. It shows that trial judgments for plaintiffs are reversed more often in employment discrimination cases than in any other category of cases (except category 440: Other Civil Rights, which includes such cases as police brutality and school desegregation actions). Employment discrimination plaintiffs who win at trial and whose cases are appealed are reversed 43.61 percent of the time. Even prisoner civil rights and habeas plaintiffs have an easier time holding their trial victories on appeal than do employment discrimination plaintiffs.

C. Reversal Rates When Plaintiffs Appeal

Table 2 reports the other side--when the defendant wins a trial, the plaintiff appeals, and the appellate court affirms or reverses. Employment discrimination plaintiffs are less successful at reversing adverse trial judgments on appeal than plaintiffs in all other case categories save prisoner habeas corpus cases. A tiny 5.8 percent of trial judgments for defendants are reversed when plaintiffs appeal. Only the wardens in prisoner habeas corpus petitions are better able to hold their trial judgments on appeal than an employer in a discrimination case.

D. Gap in Plaintiff and Defendant Reversal Rates

The gap in reversal rates between discrimination plaintiffs and defendants in their trial judgments is astounding. As reported in Table 3, the gap between defendant and plaintiff success on appeal is larger in discrimination trials than in any other category of case, including civil prisoner cases.

E. Comparison Among Circuits

Table 4 shows the reversal rates in employment discrimination cases by circuit. It shows, for example, that from 1988-1997 the First Circuit (comprising Maine, Massachusetts, New Hampshire, Rhode Island, and Puerto Rico) has never reversed an employment discrimination case in which the defendant employer won at trial. By contrast, of its 14 decisions where the plaintiff had won at trial, the First Circuit reversed six of them (42.86 percent).

Table 4 reveals that the tremendous gap between plaintiff and defendant reversal rates is a nationwide phenomenon. The circuits are uniformly reluctant to reverse trial judgments for defendants--ranging from the inexorable 0 percent in the First Circuit to 10.61 percent in the 9th Circuit. All circuits are much more likely to reverse trial judgments for plaintiffs than defendants, with the most extreme being the 60.87 percent reversal rate of plaintiff trial victories in the Fifth Circuit (comprising Texas, Louisiana, and Mississippi).

F. Reversal Rates of Pretrial Judgments

So far, this report has limited its analysis to appeals of cases in which there was a trial. Table 5 looks at appeals of pretrial judgments. In pretrial cases, comparisons between case categories must be made with caution, because some cases decided before trial have little merit. Nevertheless, the huge disparity between plaintiffs and defendants persists in employment discrimination appeals that were decided below on a pretrial motion. Employment discrimination defendants appealing adverse pretrial motions often get the judgment reversed (44.74 percent of the time), while employment discrimination plaintiffs appealing adverse pretrial motions rarely get the judgment reversed (11.03 percent). The resulting gap in reversal rates of 33.71 percentage points is more than double the gap in all cases, and is higher than all other categories of cases except FELA cases, prisoner cases, and other civil rights cases. Thus, the same basic pattern appears in appellate review of pretrial cases as it does in appellate review of tried cases. There is an astonishing gap between plaintiff and defendant reversal rates that is much higher than other cases.

V. Conclusion

The official data of the United States Courts reveal that employment discrimination plaintiffs fare miserably on appeal. Appellate courts seldom reverse a case when the employer won at trial (only 5.8 percent of their decisions reviewing this type of case are reversals). By contrast, appellate courts are quick to reverse trial judgments for employees (43.61 percent of their decisions reviewing this type of case are reversal). This huge gap in reversal rates is larger in employment discrimination cases than any other type of case.

The dramatic gap in reversal rates in employment discrimination cases is a nationwide phenomenon, because it exists for all circuits throughout the country. A similar gap exists when the appellate courts review district court decisions decided before trial. Of the appellate decisions reviewing pretrial decision for employees, 44.74 percent are reversals. Of the appellate decisions reviewing pretrial decisions for employers, only 11.03 percent are reversals.

The gap raises the specter that appellate courts have a double standard for employment discrimination cases, harshly scrutinizing employee victories at trial while gazing benignly at employer victories at trial.

Table 1
Reversal Rates When Defendants Appeal
Plaintiffs' Victories at Trial
By Case Category
U.S. Courts of Appeals
1988-1997

RANK	CASE CATEGORY	REVERSAL RATES WHEN DEFENDANTS APPEAL PLAINTIFFS' VICTORIES AT TRIAL (%)	NUMBER OF DEFENDANTS' APPEALS
1	440 Civil Rights Other	48.04	204
2	442 Civil Rights Employment [Discrimination]	43.61	266
3	370 Torts Fraud	41.38	29
4	365 Torts Product Liability*	38.19	144
5	550 Prisoner Petitions Civil Rights	37.70	61
6	362 Torts Medical Malpractice	37.04	27
7	530 Prisoner Petitions Habeas Corpus	35.00	20
8	850 Securities, Commodities, Exchange	34.29	35
9	790 Labor Laws Other	33.33	27
10	710 Labor Laws Fair Labor Standards Act	32.43	37
11	340 Torts Marine	32.35	34
12	840 Property Rights Trademark	31.43	35
13	360 Torts Other Personal Injury	29.88	164
14	110 Contracts Insurance	29.87	154
15	890 Other Statutory Actions	29.69	64
16	870 Tax Suits	27.50	40
17	720 Labor Laws Labor/Mgt Relations Act	27.27	22
18	OTHERS	26.60	297
19	190 General Contract	26.25	419
20	791 Labor Laws ERISA	26.00	50
21	350 Torts Motor Vehicle	24.07	54
22	120 Contracts Marine	21.43	28
23	140 Negotiable Instruments	20.93	43
24	330 Torts Federal Employers' Liability	16.67	24
	ALL CASES	32.53	2,278

*This category includes the Administrative Office's seven other product liability categories (## 195, 245, 315, 345, 355, 368, & 385).

Source: Adapted from Kevin Clermont & Theodore Eisenberg, Plaintiphobia in the Appellate Courts: Civil Rights Really Do Differ From Negotiable Instruments, *Illinois Law Review* (forthcoming 2001) (using linked database from Administrative Office of U.S. Courts district court and appellate court databases).

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Table 2
Reversal Rates When Plaintiffs Appeal
Defendants' Victories at Trial
By Case Category
U.S. Courts of Appeals
1988-1997

RANK	CASE CATEGORY	REVERSAL RATES WHEN PLAINTIFFS APPEAL DEFENDANTS' VICTORIES AT TRIAL (%)	NUMBER OF PLAINTIFFS' APPEALS
1	850 Securities, Commodities, Exchange	26.00	50
2	710 Labor Laws Fair Labor Standards Act	25.64	39
3	140 Negotiable Instruments	25.00	12
4	370 Torts Fraud	23.08	26
5	840 Property Rights Trademark	22.58	31
6	OTHERS	21.92	365
7	190 General Contract	19.88	327
8	890 Other Statutory Actions	19.64	112
9	790 Labor Laws Other	18.18	33
10	791 Labor Laws ERISA	17.39	92
11	120 Contracts Marine	17.14	35
12	110 Contracts Insurance	16.74	221
13	870 Tax Suits	15.87	63
14	340 Torts Marine	15.46	97
15	440 Civil Rights Other	13.86	671
16	362 Torts Medical Malpractice	12.61	111
17	365 Torts Product Liability*	12.36	267
18	360 Torts Other Personal Injury	11.48	270
19	720 Labor Laws Labor/Mgt Relations Act	10.81	37
20	330 Torts Federal Employers' Liability	10.64	47
21	350 Torts Motor Vehicle	09.70	134
22	550 Prisoner Petitions Civil Rights	06.41	936
23	442 Civil Rights Employment [Discrimination]	05.80	1,000
24	530 Prisoner Petitions Habeas Corpus	05.65	124
	ALL CASES	12.04	5,100

*This category includes the Administrative Office's seven other product liability categories (## 195, 245, 315, 345, 355, 368, & 385).

Source: Adapted from Kevin Clermont & Theodore Eisenberg, Plaintiphobia in the Appellate Courts: Civil Rights Really Do Differ From Negotiable Instruments, *Illinois Law Review* (forthcoming 2001) (using linked database from Administrative Office of U.S. Courts district court and appellate court databases).

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Table 3
Differences in Reversal Rates
When Defendants and Plaintiffs Appeal a Verdict after Trial
By Case Category
U.S. Courts of Appeals
1988-1997

RANK	CASE CATEGORY	DIFFERENCES IN PLAINTIFFS' AND DEFENDANTS' REVERSAL RATES
1	442 Civil Rights Employment [Discrimination]	37.81
2	440 Civil Rights Other	34.18
3	550 Prisoner Petitions Civil Rights	31.29
4	530 Prisoner Petitions Habeas Corpus	29.35
5	365 Torts Product Liability*	25.83
6	362 Torts Medical Malpractice	24.43
7	360 Torts Other Personal Injury	18.40
8	370 Torts Fraud	18.30
9	340 Torts Marine	16.89
10	720 Labor Laws Labor/Mgt Relations Act	16.46
11	790 Labor Laws Other	15.15
12	350 Torts Motor Vehicle	14.37
13	110 Contracts Insurance	13.13
14	870 Tax Suits	11.63
15	890 Other Statutory Actions	10.05
16	840 Property Rights Trademark	08.85
17	791 Labor Laws ERISA	08.61
18	850 Securities, Commodities, Exchange	08.29
19	710 Labor Laws Fair Labor Standards Act	06.79
20	190 General Contract	06.37
21	330 Torts Federal Employers' Liability	06.03
22	OTHERS	04.68
23	120 Contracts Marine	04.29
24	140 Negotiable Instruments	-04.07
	ALL CASES	20.49

*This category includes the Administrative Office's seven other product liability categories (## 195, 245, 315, 345, 355, 368, & 385).

Source: Adapted from Kevin Clermont & Theodore Eisenberg, Plaintiphobia in the Appellate Courts: Civil Rights Really Do Differ From Negotiable Instruments, Illinois Law Review (forthcoming 2001) (using linked database from Administrative Office of U.S. Courts district court and appellate court databases).

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Table 4
Reversal Rates in Employment Discrimination Cases
When Plaintiffs and Defendants Appeal a Verdict After Trial
By Circuit
U.S. Courts of Appeals
1988-1997

CIRCUIT	REVERSAL RATES WHEN PLAINTIFFS APPEAL DEFENDANTS' VICTORIES AFTER TRIAL (%)	REVERSAL RATES WHEN DEFENDANTS APPEAL PLAINTIFFS' VICTORIES AFTER TRIAL (%)
D.C.	1.96 (51)	40.00 (5)
1ST (MA, ME, NH, PR, RI)	0.00 (14)	42.86 (14)
2ND (CT, NY, VT)	7.02 (57)	42.86 (7)
3RD (DE, NJ, PA, VI)	1.85 (54)	42.11 (19)
4TH (MD, NC, SC, VA, WV)	1.20 (83)	33.33 (21)
5TH (LA, MS, TX)	4.29 (163)	60.87 (23)
6 TH (KY, MI, OH, TN)	8.22 (73)	51.85 (27)
7TH (IN, IL, WI)	9.43 (53)	50.00 (34)
8TH (AR, IA, MN, MO, ND, NE, SD)	6.09 (115)	35.48 (31)
9TH (AK, AZ, CA, GU, HI, ID, MT, NV, OR, WA)	10.61 (66)	46.67 (15)
10TH (CO, KS, NM, OK, UT, WY)	7.29 (96)	47.37 (19)
11TH (AL, FL, GA)	6.86 (175)	35.29 (51)
TOTAL	5.80 (1000)	43.61 (266)

Number of cases in parentheses

Source: Linked database from Administrative Office of U.S. Courts district court and appellate court databases.

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Table 5
Differences in Reversal Rates
When Defendants and Plaintiffs Appeal Pretrial Verdicts
By Case Category
U.S. Courts of Appeals
1988-1997

RANK	CASE CATEGORY	REVERSAL RATES WHEN DEFENDANTS APPEAL PLAINTIFFS' PRETRIAL VICTORIES (%)	REVERSAL RATES WHEN PLAINTIFFS APPEAL DEFENDANTS' PRETRIAL VICTORIES (%)	DIFFERENCES IN PLAINTIFFS' AND DEFENDANTS' REVERSAL RATES
1	530 Prisoner Petitions Habeas Corpus	58.82 (170)	9.24 (5,236)	49.58
2	550 Prisoner Petitions Civil Rights	57.50 (40)	8.18 (10,055)	49.42
3	330 Torts Federal Employers' Liability	60.00 (15)	21.26 (174)	39.74
4	440 Civil Rights Other	46.50 (157)	12.54 (5,279)	33.96
5	442 Civil Rights Employment [Discrimination]	44.74 (76)	11.03 (4,025)	33.71
6	710 Labor Laws Fair Labor Standards Act	50.00 (42)	18.47 (157)	31.53
7	340 Torts Marine	37.50 (16)	14.98 (207)	22.52
8	790 Labor Laws Other	36.67 (30)	16.57 (344)	20.10
9	365 Torts Product Liability*	34.09 (44)	16.21 (759)	17.78
10	870 Tax Suits	32.41 (145)	16.71 (419)	15.70
11	791 Labor Laws ERISA	38.73 (173)	23.35 (818)	15.38
12	720 Labor Laws Labor/Mgt Relations Act	32.80 (125)	18.12 (585)	14.68
13	890 Other Statutory Actions	33.61 (366)	18.99 (1,364)	14.62
14	350 Torts Motor Vehicle	33.33 (18)	21.24 (226)	12.09
15	OTHERS**	24.51 (1,028)	16.32 (7,413)	8.19
16	370 Torts Fraud	20.83 (24)	17.24 (232)	3.59
17	190 General Contract	20.70 (604)	17.46 (1,781)	3.24
18	360 Torts Other Personal Injury	20.00 (40)	16.85 (1,300)	3.15
19	110 Contracts Insurance	21.86 (517)	18.72 (1,175)	3.14

Table 5, Continued				
Differences in Reversal Rates When Defendants and Plaintiffs Appeal Pretrial Verdicts				
20	850 Securities, Commodities, Exchange	26.23 (61)	25.00 (308)	1.23
21	120 Contracts Marine	23.21 (56)	22.08 (77)	1.13
22	840 Property Rights Trademark	28.33 (60)	31.11 (90)	-2.78
23	140 Negotiable Instruments	13.08 (107)	27.28 (72)	-14.20
	ALL CASES	29.05 (3,921)	13.09 (42,288)	15.96

Number of cases in parentheses.

*This category includes the Administrative Office's seven other product liability categories (## 195, 245, 315, 345, 355, 368, & 385).

**Includes Category 362 Torts Medical Malpractice, which had too few cases (only 7) where defendants appealed a pretrial motion to be included as a separate category.

Source: Linked database from Administrative Office of U.S. Courts district court and appellate court databases.

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Figure A
Reversal Rates in Employment Discrimination Cases after Trial Victory
U.S. Courts of Appeals 1988-1997

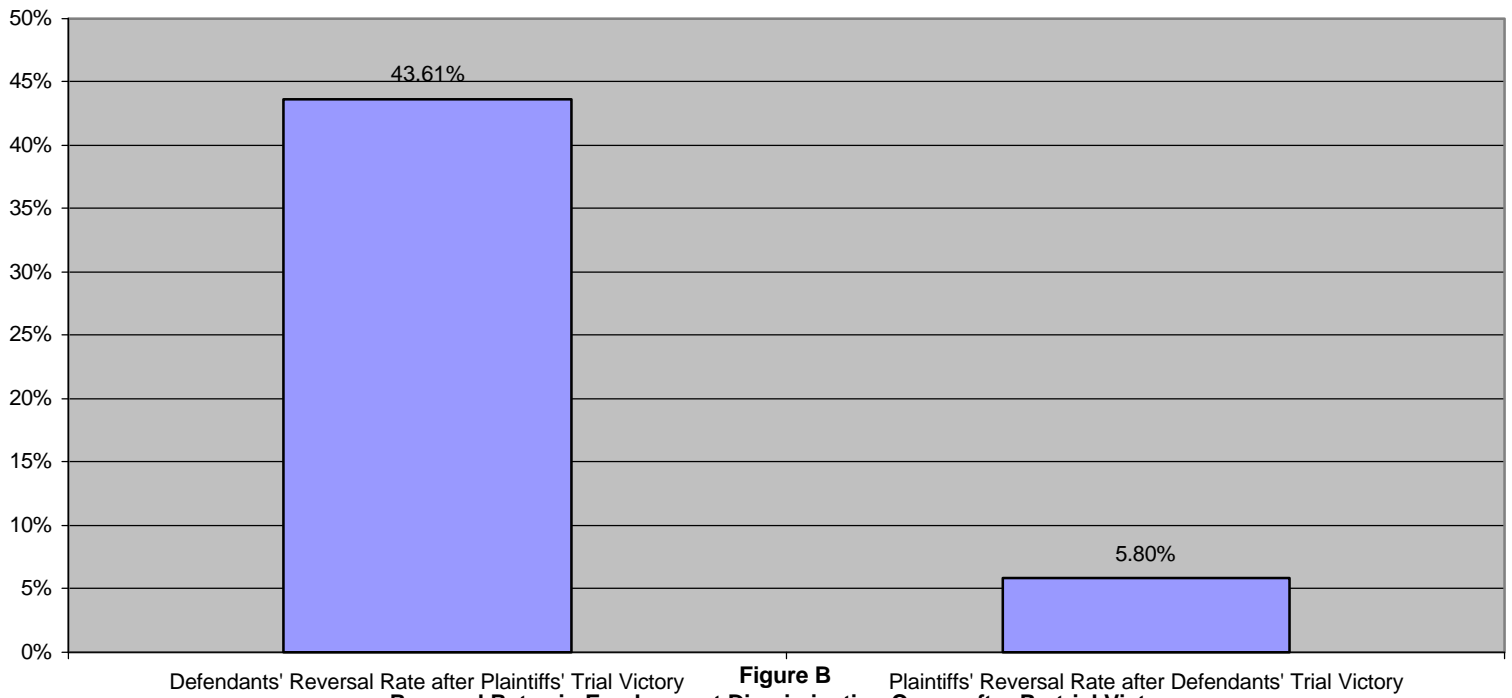


Figure B
Reversal Rates in Employment Discrimination Cases after Pretrial Victory
U.S. Courts of Appeals 1988-1997

