

THIRD CIRCUIT UPDATE

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2017 FEDERAL CRIMINAL DEFENSE TRAINING

LEWISBURG, PA

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Third Circuit Precedential Criminal Wins

January 1, 2016 to March 14, 2017

US v. Douglas, No. 15-1754 (Feb. 22, 2017). Error to apply obstruction-of-justice sentencing enhancement, where defendant missed original trial date due to emergency room visit and government failed to prove that the failure to appear was willful.

US v. Steiner, No. 14-4628 (Feb. 1, 2017). District court committed plain error when it sentenced the defendant as a guidelines career offender using a conviction under Pennsylvania's burglary statute. That statute is not divisible and thus the sentencing court was obligated to apply the categorical approach instead of the modified categorical approach it used. District court also erred in admitting under FRE 404(b) arrest warrant as "background," but this error was harmless.

US v. Mateo-Medina, No. 15-2862 (Jan. 9, 2017). District court plainly erred when it considered the defendant's bare arrests (arrests that did not result in convictions) in deciding his sentence. Important discussion of implicit-bias.

US v. Robinson, No. 15-1402 (Dec. 19, 2016). Remanding without analysis based on government's confession of error to determine if defendant was career offender.

US v. Bailey, 840 F.3d 99. Affirming, holding that a district court violated FRE 403 when it admitted evidence of the defendants' other bad acts but that the error was harmless given the overwhelming evidence of their guilt.

US v. Free, 839 F.3d 308. Vacating sentence, holding that the loss amount used to calculate the defendant's fraud sentence should have been the amount the creditors lost or the amount he intended to gain, not the total amount the defendant fraudulently concealed.

US v. Fulton, 837 F.3d 281. Affirming, holding that a district court committed obvious errors by admitting two police officers' lay-opinion testimony, but that the errors were harmless in light of other proof of the defendant's guilt.

US v. Dahl, 833 F.3d 345. Reversing under plain error where district court sentenced defendant as a sex-offender recidivist based on prior crime's actual conduct instead of applying categorical approach.

US v. Calabretta, 831 F.3d 128. Reversing a criminal sentence under plain-error review, holding that *Johnson v. United States* invalidates the residual clause of USSG 4B1.2 and that sentencing the defendant as a career offender was plain error.

US v. Dennis, 826 F.3d 683. Reversing criminal convictions arising from stash-house reverse sting, holding that district court erred in failing to instruct jurors on entrapment and that the error was not harmless.

US v. Vasquez-Algarin, 821 F.3d 467. Reversing conviction based on Fourth Amendment error, holding that officers entering a dwelling to arrest someone must at least have probable cause to believe the person both resides there and is then present.

US v. Lopez, 818 F.3d 125. Vacating conviction under plain error based on error in impeaching defendant with his post-*Miranda* silence.

Govt. of V.I. v. Mills, 821 F.3d 448. Affirming, holding that the prosecution committed severe and pervasive misconduct, but that the defendant was not entitled to a new trial because the evidence against him was overwhelming, his defense was implausible, and the court gave effective curative instructions. The court found three types of misconduct: urging jurors to convict Mills to protect themselves, urging jurors to convict based on bad conduct not relevant to the charged crimes, and displaying a photo of the victim's corpse during closing argument to evoke sympathy.

US v. Moreno, 809 F.3d 766. Applying plain-error review, the Third Circuit vacated a criminal defendant's sentence because the defendant's right of allocution was violated when the court permitted the prosecutor to vigorously cross-examine the defendant during his allocution.

HABEAS CORPUS

Brown v. Superintendent, 834 F.3d 506. Reversing denial of habeas relief based on *Bruton* error where redaction of the co-defendant's statement implicating the defendant was undermined by the prosecutor's closing argument that the defendant was the redacted name.

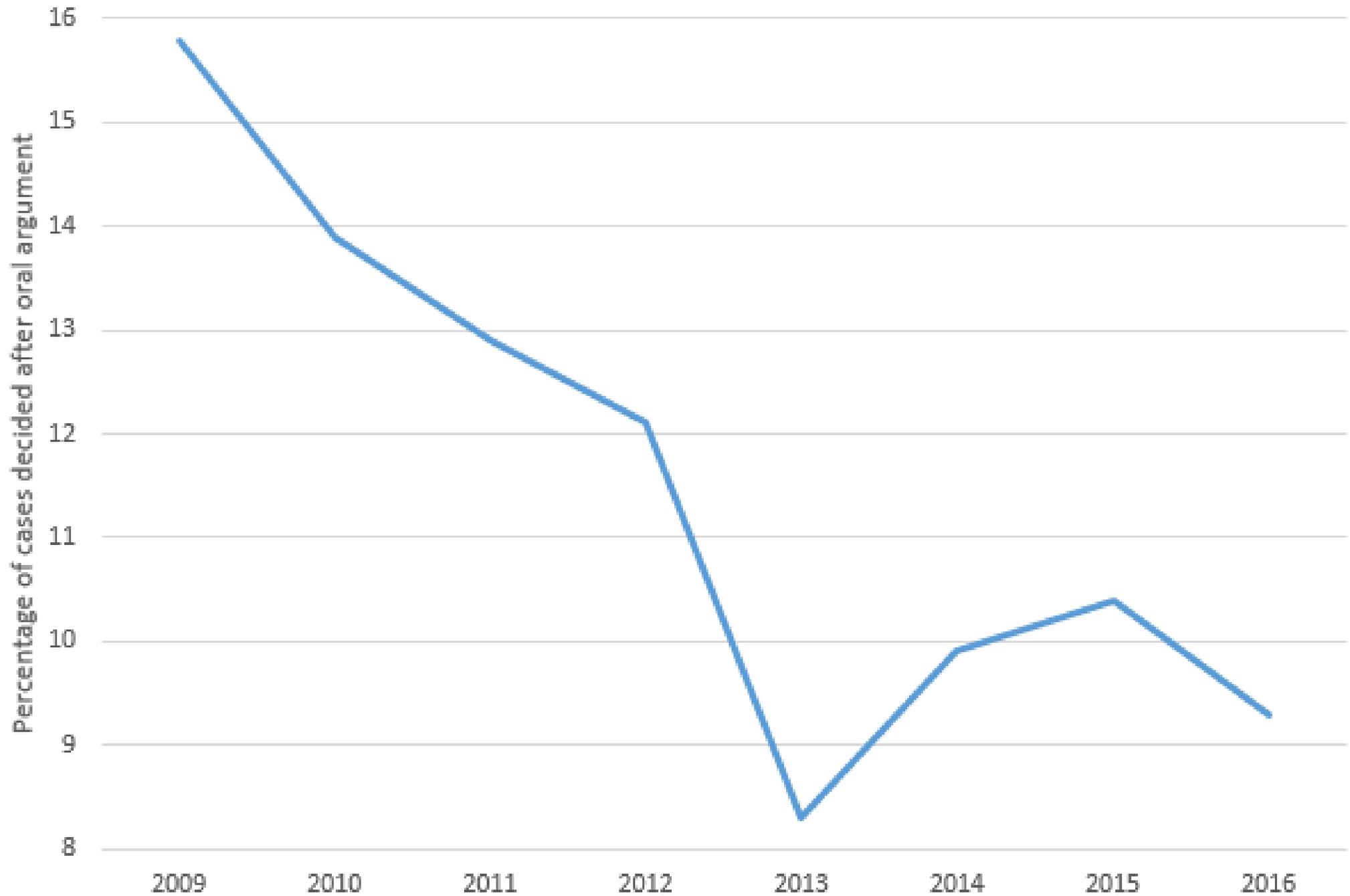
Dennis v. Secretary, 834 F.3d 263 (en banc). Affirming habeas relief for capital habeas petitioner based on prosecution suppression of exculpatory evidence. Important concurrence spotlighting problems with eyewitness testimony.

ALSO NOTABLE

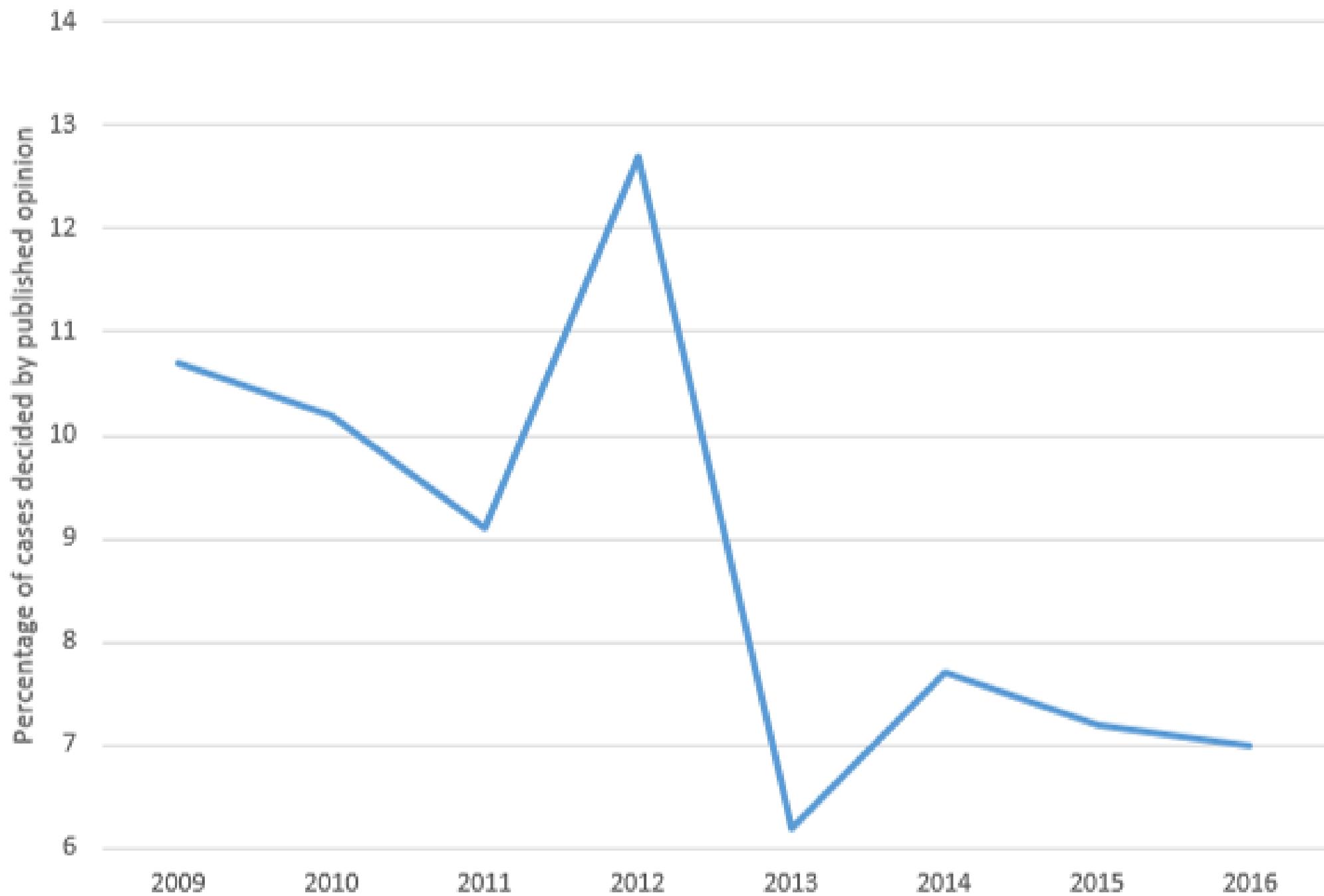
In re: Grand Jury Matter #3, No. 15-2475 (Jan. 27, 2017). District court erred in admitting attorney-client material – crime/fraud exception does not apply when the client thought about using the work-product to commit a crime but committed no actual act to further the fraud. Court has jurisdiction to hear an appeal from a grand jury evidentiary ruling because investigation is continuing, even though grand jury had already indicted the defendant.

US v. Kelly, No. 13-3513 (May 26, 2016) (opinion dissenting from denial of petition for rehearing en banc). Opinion for four judges arguing that circuit instructions unjustly expose mere drug purchasers to criminal liability as conspirators.

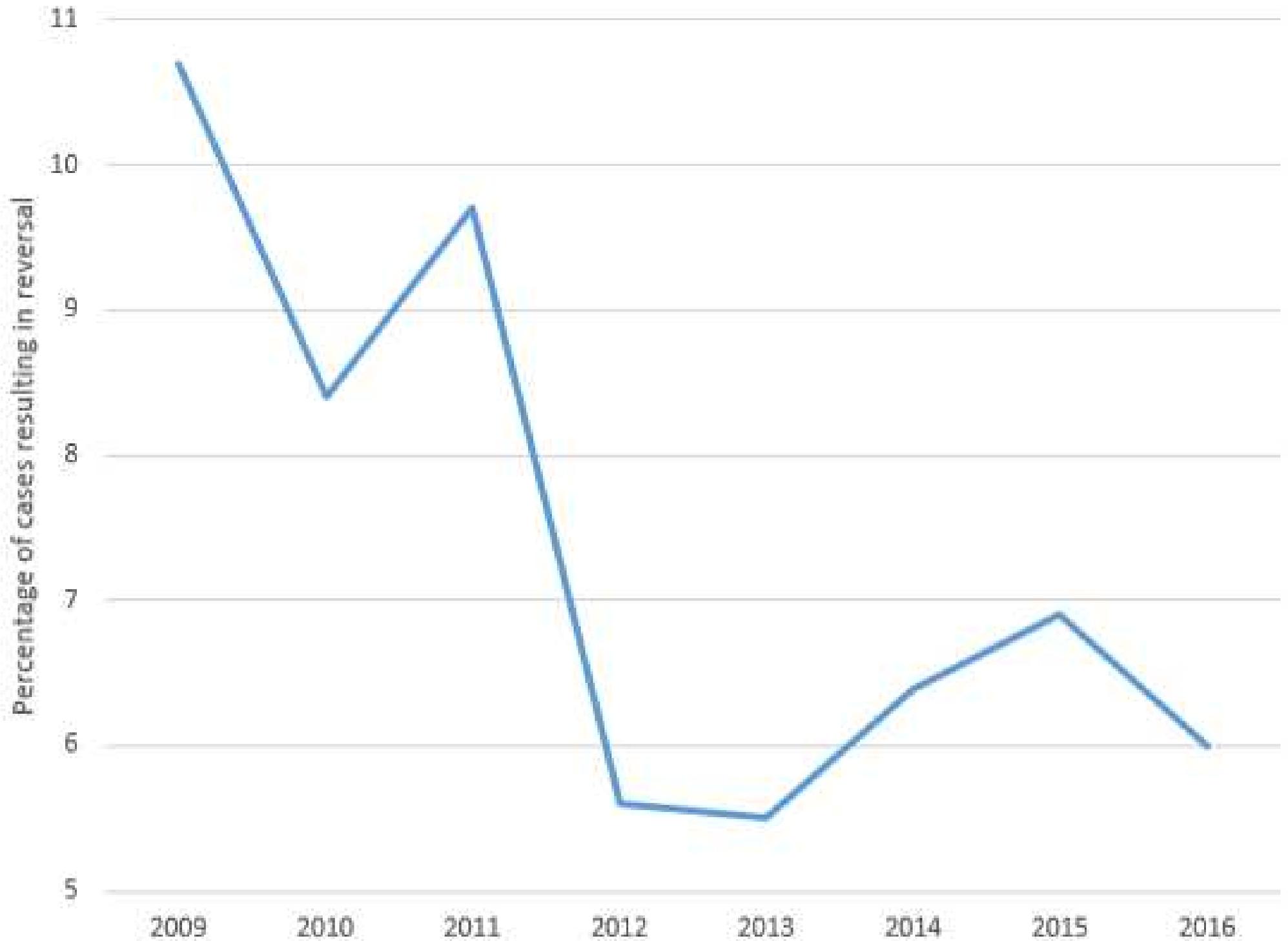
Third Circuit oral argument rate



Third Circuit published opinion rate



Third Circuit reversal rate



Women Judges by Circuit

