

Unit 3 Reading Assignment:
Please read Chapter's Six and Seven

Chapter Six
Justice on the Bench?
Trial and Adjudication in Criminal Court

Learning Objectives

1-3

After reading this chapter:

LO 06-01 You should be able to discuss the role of the jury and explain how the U.S. Supreme Court has interpreted the requirement that jurors be chosen from a random cross-section of the population.

LO 06-02 You should be able to explain how race and ethnicity continue to be taken into consideration during the jury selection process.

LO 06-03 You should be able to evaluate competing arguments regarding the peremptory challenge and whether it should be eliminated.

LO 06-04 You should be able to explain the concept of jury nullification and assess competing arguments regarding the legitimacy of race-based nullification.

LO 06-05 You should be able to clarify why Randall Kennedy asserts that playing the race card in a criminal trial is “virtually always morally and legally wrong.”

Chapter Notes

While chapter 5 focused on reforms to the pretrial stages of the criminal justice system, chapter 6 focused on reforms to trials themselves. Reforms adopted voluntarily by the states or mandated by appellate courts have made it increasingly unlikely that African-American and Hispanic defendants will be tried by all-white juries. An important caveat, however, concerns the use of racially motivated peremptory challenges. Supreme Court decisions notwithstanding, prosecutors still manage to use the peremptory challenge to eliminate African Americans and Hispanics from juries trying African-American and Hispanic defendants.

The authors spend time fleshing out this caveat, noting the vast array of racially neutral procedures that still result in disparities in trial processes. Prosecutors’ “racially neutral” explanations for strikes alleged to be racially motivated, with few exceptions, continue to be accepted at face value. Coupled with anecdotal evidence that prosecutors are not reluctant to “play the race card” in a criminal trial, these findings regarding jury selection suggest that the

process of adjudication, like the pretrial process, is not free of racial bias.

Similar to arguments made in earlier chapters, the authors assert that the system has moved away from systematic discrimination, but still suffers from disparities for people of color. Researchers have demonstrated that court processing decisions in some jurisdictions reflect racial discrimination, whereas decisions in other jurisdictions are racially neutral. Researchers also have shown that African Americans and Hispanics who commit certain types of crimes are treated more harshly than whites, and that being unemployed, having a prior criminal record, or being detained prior to trial may have a more negative effect on court outcomes for people of color than for whites. The authors therefore conclude that the court system of today, though not containing systematic discrimination as it has in the past, is now characterized by contextual discrimination.

Chapter 7

Race and Sentencing: In Search of Fairness and Justice

Learning Objectives

After reading this chapter:

LO 07-01 You should be able to explain why racial disparity in sentencing does not necessarily signal the presence of racial discrimination in sentencing and discuss the five explanations for racial disparities in sentencing.

LO 07-02 You should be able to clarify why crime seriousness and prior criminal record are not necessarily racially neutral factors.

LO 07-03 You should be able to discuss and evaluate the conclusions of recent reviews of research investigating the effects of race/ethnicity on sentencing and explain how research in this area has evolved over time.

LO 07-04 You should be able to answer the question “When does race (and ethnicity) matter in sentencing?”

LO 07-05 You should be able to explain why some researchers argue that race/ethnicity, age, and sex are a “volatile combination” in the context of sentencing decisions.

LO 07-06 You should be able to discuss differences in research findings regarding sentences imposed on whites and those imposed on African Americans, Hispanics, Asian Americans, and Native Americans.

LO 07-07 You should be able to explain how the race of the victim affects sentencing decisions.

LO 07-08 You should be able to discuss the focal concerns perspective and explain how judges' focal concerns may lead to unwarranted disparities in sentencing.

LO 07-09 You should be able to explain the difference between direct and indirect race effects and discuss the consequences of cumulative disadvantage.

LO 07-10 You should be able to evaluate competing arguments regarding similarities and differences in the sentencing decisions of African-American and white judges.

LO 07-11 You should be able to discuss the crack-powder cocaine disparity, explain its relationship to racial/ethnic disparities in sentencing, and explain how it was recently modified by Congress.

Chapter Notes

Although a number of studies have uncovered evidence of racial discrimination in sentencing, others have found that there are no significant racial differences. The failure of research to produce uniform findings of racial discrimination in sentencing has led to conflicting conclusions. Some researchers assert that racial discrimination in sentencing has declined over time and contend that the predictive power of race, once relevant legal factors are taken into account, is quite low. Other researchers claim that discrimination has not declined or disappeared but simply has become subtler and difficult to detect.

The authors argue that the latter explanation is more convincing—although sentencing in most jurisdictions is not characterized by systematic discrimination, racial discrimination in sentencing has not been eliminated. Judges continue to take race into account either implicitly or explicitly in sentencing. This is evident especially in interracial contexts, when the offender is a person of color and the victim is white.

It thus appears that although flagrant racism in sentencing has been eliminated, equality under the law has not been achieved. Today, whites who commit crimes against racial minorities are not beyond the reach of the criminal justice system, African Americans suspected of crimes against whites do not receive “justice” at the hands of white lynching mobs, and racial minorities who victimize other racial minorities are not immune from punishment. Despite these significant changes, inequities persist. Racial minorities who find themselves in the arms of the law continue to suffer discrimination in sentencing.