

A Matter of Life and Death: Relevance and Rigor in Continuing Professional and Continuing Higher Education in the Pursuit of Justice

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Abstract

In recent years, advances in the “hard sciences” coupled with the increasing incidence of post-conviction exoneration of accused parties have forced a new criminal investigation paradigm on law enforcement practitioners, a paradigm for which they are inadequately prepared by either their formal education or continuing professional education. The increased reliance on tangible, scientific evidence is a contemporary complexity of practice that must be addressed by programs of higher education if we are to meet our obligation, as educators, to provide a sound body of relevant knowledge for the practice of the discipline. This paper explores the need for the reform of curricula in criminal justice programs to make room for this new, inter-disciplinary, investigative paradigm, to protect the rights of the accused, and to better serve society by restoring confidence in the criminal justice system.

Introduction

On January 31, 2000, Governor George H. Ryan of Illinois declared a death penalty moratorium for Illinois inmates. In his press release, Governor Ryan stated "I now favor a moratorium, because I have grave concerns about our state's shameful record of convicting innocent people and putting them on death row..."(Ryan, 2000). It is well documented that, since the 1977 reinstatement of the death penalty in Illinois, twelve inmates have been executed while thirteen have been exonerated. Mistaken eyewitness identification, false or coerced confessions, the use of jailhouse informants, inadequate defense counsel, police misconduct, and overzealous prosecutors have all been cited as reasons for conviction of the innocent. In a subsequent March 9, 2000 press release Governor Ryan said, "I can draw only one conclusion: our system is broken..."(Ryan, 2000). The clear implication for law enforcement professionals is that there will be a greater reliance on scientific forensic evidence in the future due to the failure of the traditional paradigm of criminal investigations.

Problem Statement

There have been 104 persons exonerated by DNA evidence since 1989 when DNA was first used for such a purpose (The Innocence Project, 2002). This fact, in addition to bold action such as Governor Ryan's moratorium, has apparently caused public support for the death penalty to waver. A recent Gallup poll indicates that public support for the death penalty has fallen from 80 percent in 1994 to 66 percent (The Nation, 2000). Yet, prosecutors have been able to block post-conviction testing because thirty-three states have statutes of limitation of six months or less for bringing new evidence of innocence (Longley, 2000).

Since the death penalty was reinstated in 1977, the number of murders has dropped more than 18 percent, while the number of persons sentenced to death has risen over 700 percent. A quantitative analysis of archival homicide, death penalty, and exoneration data yielded the following results: an inverse correlation was found between the number of homicides committed and the number of those executed, and linear correlations were found between the number of persons on death row and the number executed, and the number of those executed and the number exonerated by DNA evidence. In short, as more defendants are sentenced to death and executed for fewer crimes, more are found to be innocent (Rodriguez, 2002).

In a recent qualitative pilot study, conducted by the author, several sobering issues were revealed. Participants included supervisors of field forensic investigations units and directors of training in law enforcement agencies. The participants unanimously agreed that, in their experience, the curricula of undergraduate and graduate higher education programs in criminal justice are not relevant to the actual practice, particularly in the area of investigations, due to a

lack of emphasis on the relationship between the physical and natural sciences and the investigation of crime. Even worse, field supervisors and training directors find severe deficiencies in law enforcement continuing professional education, citing a lack of confidence in training due to low student performance expectations, disinterested instructors, and a propensity for law enforcement agencies to design training to reduce liability rather than improve the administration of justice, including technological advances as they relate to the investigation of crime (Rodriguez, 2001b).

Three times in the last two years, the author has been involved in investigations where circumstantial evidence met the traditional investigation paradigm of motive, means, and opportunity, which was sufficiently compelling to ensure conviction for a charge of homicide. In all three cases, however, detailed analysis of the physical evidence and reconstruction of the events that occurred not only proved that these "perfect suspects" were not guilty of homicide, but also that the deaths were, in fact, suicides. These facts, coupled with the state's dismal record of convictions in capital cases, indicate that it is not only likely that others are incarcerated for murders that they did not commit, but also that some may be incarcerated where no crime was committed at all.

A tremendous need exists for highly skilled field forensic investigators. According to the membership directory of the International Association for Identification, there are only twenty-four individuals in the State of Illinois who have attained a Senior Crime Scene Analyst credential, less than half of whom are engaged in field investigations. When balanced against the annual total of index offenses reported to the Illinois Uniform Crime Report, which has exceeded half a million crimes annually for the last decade, it is evident that it is unlikely that any individual crime in Illinois will be investigated by a highly competent forensic field investigator, hence the reliance on the sort of evidence cited as justification for the death penalty moratorium. Criminal defendants suffer most when prosecutions are not based on indisputable physical evidence, as it is just as likely that exculpatory evidence will be missed as proof of guilt (Rodriguez, 2001b).

Could, as suggested by Governor Ryan, the increase in all areas of forensic analysis be influenced by a fundamental shift in the investigations paradigm toward a greater reliance on physical evidence? If so, it is clear that forensic services must be expanded to meet the growing needs of law enforcement agencies. Given that laboratory directors cite a lack of trained personnel as one of the main barriers to expansion and that only one of the ten public forensic laboratories offers services in crime scene investigation and computer crime investigations, it is also clear that the implications for higher education and continuing professional education are significant (Rodriguez, 2001a). The question then is whether institutions of higher education and law enforcement training agencies are equipped or motivated to meet the challenge of providing broad based forensic science programs necessary to serve the criminal justice system, criminal defendants, and the public, who are the main stakeholders.

Clearly, the traditional investigation paradigm of establishing motive, means, and opportunity, as is currently taught in both preservice and continuing law enforcement training, is, as Governor Ryan suggests, broken. This failure has broad implications for adult educators involved in the education and training of law enforcement officers. If, as adult educators, we are concerned with respecting what students know, making curriculum relevant to students, meeting student needs, and fostering social justice, we must be willing to engage in research that improves the practice of the professions we serve.

The Politics of Change

The first step is to recognize that criminal justice is a field of practice that is largely diverse and, necessarily, multi-disciplinary. A distinction must be made between the fields of criminal justice and criminology. The primary focus of criminology is the study and explanation of crime as a social phenomena, while the main focus of criminal justice studies is on the agencies designed to deal with crime (Zalman, 1981). As a field of practice, criminal justice higher education should be

based on a needs assessment of the profession and respond accordingly, essentially practice informing theory (Vella, 1994). However, there is vagueness and confusion in these programs because of a need for a fundamental self-evaluation and self-definition identified more than twenty years ago (Morn, 1980).

If, as Pollack (1996) suggests, the main obligations of a scholar are to speak truth to power and consider the political consequences of their work, then we must set aside the chauvinisms of academic discipline and entrenched theoretical frames to critically reflect on the consequences of choices in curriculum selection. Curriculum is the nexus through which power in academia is deployed by determining the manner in which and condition on which knowledge is selected, organized and evaluated. Curriculum selection defines the boundaries of what is to be known, what knowledge is of most worth, creates a lens through which problems are defined, and, ultimately, provides a basis for reflection on practice. (Popkewitz, 1997). However, when the lens is rose colored because there is a fundamental chasm in the notion of the worth of knowledge between practitioners and academicians, we must critically reflect on whose interests are being served.

Historically, criminal justice and applied criminology programs grew out of the discipline of sociology toward a more career oriented perspective to improve practice. Sociologists criticize the symbiotic relationship between the practice of criminal justice and criminal justice as an academic discipline as a corruption of the discipline that has inhibited academic inquiry (Farrell & Koch, 1995). The development of criminal justice programs as separate departments has caused some to urge sociology departments to "strengthen their political positions on campuses by fostering administrative protection of the discipline (Fabianic, 1991).

Can Practice Corrupt Academic Integrity?

Is consideration of the problems and needs of the practice of a discipline a corruption of the academic integrity of the discipline? Is academic inquiry inhibited when that inquiry is focused on the needs of practitioners? Should academic knowledge be produced and curriculum be designed to meet needs of practitioners and, by extension, the needs of the larger society or to strengthen the political positions of academic department departments in decline? All of these questions can be answered by a critical reflection on whose interests are served and the goal of knowledge. The goals of knowledge production and research should be to serve society and social justice, not to gratify the self-serving interests of academic departments or entrenched research interests of individual academicians.

The political and social consequences of curriculum selection in criminal justice programs have not been good given the sorry state of criminal investigations culminating in the lack of justice found in even the highest profile cases that involve the imposition of the penalty of death. Practitioners indicate that the responsibility, at least in part, may be the irrelevance of their formal education to the practice of their profession. If curriculum is truly the lens through which problems in practice are addressed, and the results are poor because of a lack of clarity of vision, then it would seem that this might be an opportune time to seek a vision test to obtain a more effective prescription. If we do not, we will continue to send the academic equivalent of Mr. Magoo into the field to practice the profession.

Contemporary criminal justice programs are most often organized within one of two orientations. The social justice/criminology orientation emphasizes social inequities based on race, gender, or class and the theoretical biopsychosocial causes of crime. Law enforcement administration oriented programs emphasize organizational theory, management theory, and civil and criminal liability. Criminal justice practitioners have no authority to institute social programs to redress social inequities, nor are most promoted to managerial positions.

The practice of criminal justice, however, is primarily responsible for promoting safety, the investigation of crime, including the individual motivations that precipitate a crime, and protecting

the constitutional rights of individuals. Social scientists may not believe that the investigation of crime is a worthy, rigorous academic discipline, however, the reality is that a criminal investigation is or should be viewed as a serious qualitative and quantitative research project that includes structured interviews, axiological coding, and triangulation, as well as the collecting and analysis of data in the form of physical evidence. The difference is that in criminal investigations, unlike most social science research, we cannot accept that we may be wrong five percent of the time.

A successful criminal investigation involves an appropriate synthesis of investigative theory and methodology with scientific theory and methodology across the broad array of disciplines in the field. The scientific forensic examination of the crime scene is dependent on a broad knowledge base across academic disciplines. Key analyses in these investigations include bloodstain pattern analysis, trajectory analysis, wound ballistics and pattern analysis, serological examination, gunshot residue analysis, and firearms examination. These analyses are based on and, therefore, require specific knowledge of the academic disciplines of physics, trigonometry, forensic pathology, biology, chemistry, and criminalistics. The identification, preservation, collection and analysis of physical evidence is a complex task that requires a broad knowledge base that is lacking in contemporary criminal justice programs, hence the lack of relevance identified by practitioners

According to Mezirow (1997), meaningful learning comes as a result of new information fitting into well-developed symbolic frames of reference. Law enforcement officers develop their frames of reference through years of formal observation and lived experience, during which they define their own understanding of subject matter mastery and necessary competencies, as well as goals and objectives to attain them. It is the responsibility of adult educators to recognize the learner's goals and objectives, respect what they already know, and find ways for learners to reach their goals and objectives in an autonomous, socially responsible manner, consistent with the universal values of truth, justice and (literal) freedom (Mezirow, 1997). If practitioners question the relevance of criminal justice programs and programs of continuing professional education, while the innocent are being convicted, the current social construction of these programs should rightfully be questioned with the goal of visioning different frames and assumptions to construct change by balancing practitioner's understanding of mastery with those of higher education and in-service trainers (Sissel, Hansman, & Kasworm, 2001).

Conclusions

If, in our role as adult educators, we are to meet the needs of students by providing a sound body of knowledge for practice that involves these contemporary complexities, academia and trainers must respond in kind. Academic leadership should be exercised to conduct a needs analysis addressing the following issues:

1. To identify deficiencies of formal education and continuing professional education courses and programs as perceived by practitioners of field forensic investigators.
2. To determine if higher education and continuing professional education meet the tests of the theoretical frameworks of immediacy, relevance, and accessibility as defined by the field of adult and continuing education.
3. To describe fundamental discrepancies in the synthesis of theory and practice.
4. Advocate institutional policy changes or new programs that adequately meet the needs of practitioners of criminal and field forensic investigations.
5. Clarify the harm to society due to a lack of properly educated and trained forensic investigative personnel.
6. Advocate social action to improve and reform formal and informal forensic learning.
7. Balance their findings against the lived experience of practitioners.

Practitioner Driven Content

Practitioners identify four content areas to make undergraduate criminal justice curriculum relevant to practice; criminal investigations, the physical and natural sciences, psychology, and mathematics (Rodriguez, 2001a).

The criminal investigation field should include courses in methods of criminal investigation; qualitative research, constitutional law, and accounting to more effectively pursue white-collar crime, which currently receives little scrutiny, notwithstanding the reality that such crime has a much larger economic impact and negatively affects more victims than street crime.

The physical and natural science field should, according to practitioners, be comprised of courses in biology, physics, chemistry, pathology, and criminalistics, including labs, as well as computer science. Computers are a fact of life in our society, having served productively in commerce, education and improving access to information for individuals the world over. They are also quite adaptable to criminal enterprise. Law enforcement suffers a tremendous deficit of personnel formally trained to conduct competent investigations involving computers. The public suffers from the shortfall as crimes involving computers go undetected or unpunished, creating additional victims (Rodriguez, 2001a).

Relevant courses in the psychology field encompass abnormal psychology and deductive criminal personality profiling to ascribe personality traits and develop interview strategies from offender behaviors defined at the crime scene.

Trigonometry is an indispensable tool for the forensic investigator, used to make calculations in bloodstain pattern analysis, trajectory analysis, and traffic accident reconstruction. Quantitative analysis skills are necessary to calculate probability in scientific examinations, as well as conduct independent research. Both should be included in the mathematics field.

The Need for Boundary Crossing

This proposal is an inter-disciplinary solution for an inter-disciplinary field of practice to, ultimately, put the justice back in criminal justice. With apologies to sociologists and theoretical criminologists, crimes are not solved, nor individual justice found with a survey instrument, frequency distribution table, or cross tabulation. Those tools have utility in defining and theorizing about social phenomena that contribute to delinquency and criminality, essentially the tools of justice in theory. The criminal justice practitioner requires a different set of tools, qualitative inquiry skills, the microscope, the calculator, serological examination, and global pattern analysis; these are the tools of justice in practice.

The inter-disciplinary approach has the effect of aiming knowledge along different trajectories toward a common target, the betterment of society by providing justice. Such a comprehensive approach, however, requires a significant commitment to boundary crossing, an epistemology that must overcome serious challenges (Sion, 2002). To successfully advocate for such an interdisciplinary approach will require the recruitment and support of a complex web of allies from several academic departments, which necessitates a willingness to work with others on their terms, while emphasizing that their goals are consistent with the goals of the program (Tuckett, 2001).

Implications for Adult Educators

Professors of adult education may be uniquely positioned to facilitate the accommodation and negotiation with competing traditional academic disciplines necessary for this type of curricular redesign, as they come to the table with a perspective of permeable boundaries to provide salient programs for learners (Sissel, Hansman, & Kasworm, 2001). Given the historical neglect of the needs, interests, and experience of adult learners in higher education, coupled with the reality of increasing college degree requirement for law enforcement officers and the realization that half of all students enrolled for credit in U.S. colleges and universities are over the age of twenty-five should motivate faculties of adult education to become involved (Keith, 2001; Sissel, Hansman, and Kasworm 2001)

By linking practice to theory to refine theory and practice, adult educators, through curricular redesign, can play an important role in the administration of justice. The need is clear and must be

addressed through research and action. Revamping curriculum in continuing higher education programs for adult law enforcement professionals is quite literally a matter of life and death. If there is any doubt, recall the 104 residents of death row exonerated by scientific physical evidence.

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