The CrimCon Controversy: An Essay Addressing IRB Approval, Informed Consent, and the Interpretation of Results

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In “COVID-19 and academia: Considering the future of academic conferencing,” Reinhard, Stafford, and Payne (2021) present findings based on an analysis of video- and audio-recorded CrimCon presentations. The study’s ethics are questionable. A concern is that the investigators did not seek the informed consent of participants. In this essay, we discuss the federal human subjects regulatory definition of “human subjects,” and explain how it substantiates our concern in light of the facts.¹ Key among them is that a coinvestigator, Payne, was also on the board that organized the conference, the Criminology Consortium. As such, he was involved in the development and dissemination of communications about the conference’s purpose and envisioned tenor. Moreover, we show that the investigators’ critique of presenters, in their article, is antithetical to the inclusive messaging used to promote the conference.

The study

The definitions of “research” and “human subjects” are the bedrock of federal human subjects regulations. Both must be present for an IRB to assert its authority over a proposed study. Reinhard, Stafford, and Payne’s (2021) study is “research,” no doubt. Disputed is whether their research involves “human subjects.” To examine that, we first quote The Department of Health and Human Services’ (DHHS, in effect on July 18, 2018) definition of the term:

(e)(1) *Human subject* means a living individual about whom an investigator (whether professional or student) conducting research: (i) Obtains information or biospecimens through intervention or interaction with the individual, and, uses, studies, or analyzes the information or biospecimens; or, (ii) Obtains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens. (p. 5)

At least one of the study’s authors, Payne, contends on Twitter that IRB approval (and informed consent) was unnecessary for their study to be conducted:

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Based on those tweets, Payne misunderstands the definition of “human subjects.” He states “[t]his research was not human subjects research, because none of the information used was private.” The public forum is relevant, but not the sole factor. Interaction between researcher and subject matters, too. When a researcher interacts with research participants (see e.1.i, above), what they are doing is, by definition, human subjects research. The DHHS (in effect July 19, 2018) defines interaction as “communication or interpersonal contact between investigator and subject” (p. 5). By virtue of a researcher’s interaction with a (potential) research participant, the former may affect the latter’s decision to participate or the nature of their participatory behavior.

Here, it becomes relevant that a coinvestigator, Payne, was a member of the conference’s organizing board. This group actively sought submissions for the virtual conference by communication via email, Twitter, and, presumably, word-of-mouth. To be clear, “communication” need not be directed at someone in particular. Nor does there need to be two-way exchange. By (co-)authoring tweets like those below, Payne communicated with people who would become participants—not only in CrimCon, but also in the study.

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Furthermore, when Payne interacted with the subject pool, he conveyed a particular expectation about the conference’s tenor: less “stuffy,” allowing presenters to be “as creative with their 10 minutes as they can be,” and an opportunity to “try something new.”

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That communication led potential presenters (and thus potential participants) to perceive CrimCon as an inclusive space. Presenters may have gone into it differently, or not at all, if they had known a board member would be doing the study. As a case in point, consider the following chain of tweets. They occurred shortly before the conference, showing a clear disconnect between the conference's purported inclusivity (see above), Payne's mindset, and participant's expectations:

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The article

Our other concern is the authors' normative evaluation of the findings and their implications. The tone is paternalistic, laden with gender inequalities. Their discussion reinforces oppressive structures that women, transgender, non-binary, and gender-non-conforming folks face in academic spaces. For example, one paragraph focuses on conference "professionalism":

Presenters should also be aware that they need to be mindful of "regular" presentation etiquette (Pfeifer et al., 2014), as well as virtual-specific presentation etiquette. In other words, we believe there are more ways that a presentation can be done poorly when it is done virtually. Among the sample of 53 panels, there were many observed shortcomings of presentations that are worth mentioning. First, follow ordinary presentation best-practices, such as keeping presentation slides succinct and visually clear (Pfeifer et al., 2014). Practice effective communication and emphasize the research that is being showcased by the

presentation, not the decades of past research that audience members may already know. Presentations should reflect formally conducted research, not “ad hoc talks” (Mueller et al., 2004; Pfeifer et al., 2014, p. 262; and others also note this problem). It is easy to read from notes during a virtual presentation, but that is distracting for the virtual audience, still conveys that the presenter is unprepared, and discourages engagement. Second, acknowledge that a virtual presentation may need adjustments compared to an in-person presentation. Camera placement was very distracting and poorly thought-out in some circumstances during the conference. Audience members should view a presenter on a parallel plane horizontally, not looking up or down at a presenter. Additionally, we believe that presenters should be mindful of the background when giving presentations. Attempting to minimize distractions or unprofessional objects observable from the camera is desirable. The authors of this study do not believe it takes a great deal of technical savvy to excel at virtual presentations; it just takes preparation and access to adequate facilities that may have been difficult for some presenters during 2020. If the presentations are over a specific video conferencing platform, practice using that platform before you give a presentation whenever possible. (p. 12)

Evaluations of “professionalism” have a disproportionate impact on early career academics, gender-marginalized scholars (e.g., trans, nonbinary, gender nonconforming), and those of color (Boppre, forthcoming). Moreover, the COVID-19 pandemic has disproportionately impacted women academics, contingent faculty, and graduate students (see Collins et al., 2020; Gould, 2020; Hennessee, 2020; Madgavkar et al., 2020). Therefore it is problematic, to say the least, for the authors to make thinly-veiled recommendations that suggest someone is “unprofessional” because they cannot provide a distraction-free environment, they do not have access to the cutting-edge technology, or they are working within a setting that does not measure up to archaic and androcentric ideals of the ivory tower.

Concepts like “presentation etiquette,” “effective communication,” “camera placement,” and minimizing “distractions or unprofessional objects” are inherently gendered. They maintain the ivory tower’s status quo of paternalistic hegemonic masculinity. Many (if not all) contemporary discussions surrounding what is (not) “professional” stem from the olden days of academia: a predominately white, androcentric, heteronormative space (see Beemyn, 2019; Chesney-Lind & Chagnon, 2016; Machado-Casas et al., 2013; Pizarro, 2017 for discussions of the racial and gender make-up of academe).

Contemporary expectations of marginalized scholars cannot be separated from the ivory tower in which those are embedded (Reed et al., 2021). White, heterosexual, and gender privilege “are built into the institutional bedrock of the ivory tower” (Reed et al., 2021, p. 4). The university is a microcosm of society, which reproduces social inequalities related to sex, race, gender, sexual orientation, cisnormativity, and disability, to name a few (Nelson & Lambert, 2001). In fact, the literature highlights how marginalized scholars are pressured to fit androcentric white molds under the guise of “professionalism” (Boppre, forthcoming; Daly et. al., forthcoming).

The authors “professional” suggests represent an(other) effort to pressure (marginalized) scholars to conform to historical white-straight-cis-male standards. They fail to acknowledge their own positionality and privilege, which are needed to build a transformative and inclusive environment (Freire, 1996; hooks 1984, 1994). It is unsurprising, given that all authors are male, that they conveyed but failed to acknowledge a gendered and paternalistic overtone. This phenomena has a name: privilege hazard (D’Ignazio & Klein, 2020).

Concluding thoughts

CrimCon was advertised as an inclusive space—conscious of the challenges associated with working from home during a pandemic. Then, ironically, one of the major figures behind the conference, Payne, and his coauthors interpreted its proceedings as a show of unprofessional presentations. Their evaluations of, and recommendations for, professionalism are not neutral. Rather, they disproportionately target the actions of people unlike themselves. That goes to show why marginalized criminologists must have a seat at the table and be *heard*.

We share CrimCon’s and ...*Qualitative...Criminology*’s support of open access to scholarship in the field. It is a noble pursuit. Yet it is one that may quickly be diminished by circumstances like those surrounding CrimCon. We hope that this does not have a chilling effect on the momentum of the open access movement in criminology and criminal justice. The implication of this is that we should do better, not that we should tuck and run.

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Code of Federal Regulations

45 C.F.R. § 46.102 (e) (1).

45 C.F.R. § 46.102 (e) (3).

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Footnotes

1. We do not seek to assign blame to the study's investigators or the IRB that, according to Payne, concluded the study did not require IRB approval. [↵](#)