Creating a Defender-Driven Empirical Research Agenda

Janet Moore & Andrew Davies, reporting for the Indigent Defense Research Association
Janet.moore@uc.edu Andrew.Davies@ils.ny.gov

Public defenders who care about quality representation have concerns that keep them up at night and new ideas that get them out of bed in the morning. This paper and webinar discuss how defenders can turn those concerns and ideas into a defender-driven empirical research agenda. Unlike legal research, empirical research on public defense involves collecting and assessing data to address concerns, answer questions, and test new ideas about how public defense works and how it can be improved. Research questions can be as simple as "how long on average does it take to close a felony assault case?" They can be as complicated as "Would partnering with civil lawyers to prevent evictions reduce cases involving the criminalization of homelessness?"

The Indigent Defense Research Association (IDRA) is a virtual organization of defenders, researchers, teachers, and policy analysts. IDRA seeks to help defenders create and implement research agendas that address issues defenders care about most. Although there are many ways to create a defender-driven research agenda, we want to share methods that meet two top defender priorities: they are cheap and efficient. The first step is to brainstorm the research agenda. The second step is to reality-check the research agenda to see if in-house data and expertise can get the job done. The third step involves connecting with any necessary researcher assistance and establishing the terms of such a research partnership.

There are many examples of successful defender-researcher partnerships – too many to relate here. These partnerships have helped defenders to improve representation and to make the case for increased resources. These partnerships also can make systems more transparent and accountable to stakeholders, who include poor people who are charged with crimes and the communities that support them. Work product from such partnerships include recent "Delphi method" workload studies, data dashboards, and other materials cited in the references below.

Brainstorming a Defender-Driven Research Agenda

There are different ways to brainstorm a defender-driven research agenda. For example, NLADA's Marea Beeman and Tiffany Culley led a session with new defender leaders and managers where they asked participants to generate two types of research questions. The first type is 'descriptive' (how many? how much?). The second type is 'inferential' (what is the relationship between X and Y?). At this

meeting, defenders were most interested in questions about the relationship between various aspects of defense work and case outcomes. For example, they wanted data on whether and how social workers can improve case outcomes in order to justify adding that expertise to the defense team.

Janet Moore and Marla Sandys led a different exercise, sometimes called 'universal brainstorming,' with three different groups of defenders. One group included line defenders. The other two groups included defender managers. Like the NLADA meeting, the discussion began by introducing the concepts of empirical research and question-framing. Participants were then asked an open-ended question, 'what research questions would you ask if you could ask any question you wanted to ask and could get any data you wanted to get, plus all the research assistance you needed?' Participants wrote their questions on separate sticky notes – one question per note. Then they put all their sticky notes on a large piece of paper. After they read all the questions, they were asked to organize them into thematically similar groups. Finally, they were asked to rank the themes in order of priority. In this way, the groups quickly and efficiently generated a set of top-priority research questions.

The critical distinction of this brainstorming method is that all of this work to this point is done in silence. Silence is a great equalizer, especially when lawyers are involved. Silence allows all participants to generate their own ideas in their own words, and act on their own priorities, as opposed to having a recorder/reporter translate those words and priorities to fit the recorder/reporter's preconceptions. Separating practitioners into peer groups can be helpful for the same reasons. For truly open brainstorming, conveners may want to avoid the possible chill that can result from mixing line defenders, supervisors, and managers. On the other hand, mixing functions can be helpful (defenders, support staff, social workers, investigators). In-house information technology staff can also provide invaluable input and perspective.

In the groups that Janet and Marla worked with, the line defenders' top question was 'How do we stop clients from taking bad pleas because we can't get them out on bond?' Defender managers settled on 'How can we best support line defenders to do good work, and avoid burnout?' It is important to note, however, that all of these exercises were very preliminary and context-specific. The substantive focus of the questions might be different in the future, with different participants, or in different geographical locations. IDRA supports broad replication of these exercises, including repeating them over time in order to institutionalize the development and implementation of defender-driven research agendas. We believe that this work can help improve public defense in several ways, including by challenging stereotypes of the "Public Pretender," by opening new opportunities for self-examination and advocacy, and by increasing the acceptance of data collection and assessment as part of defenders' day-to-day activities.

Implementing a Defender-Driven Research Agenda

Because public defense is local, empirical research on public defense will be local as well. IDRA hopes to facilitate the sharing of locally-valuable information so that good ideas can be transferred more broadly. To that end, two sets of questions may be helpful as defenders reality-check and implement their research agendas. The first set focuses on reality-checking the agenda. The second set focuses on implementation.

Reality-Checking a Defender-Driven Research Agenda

The first question to ask after the open-ended brainstorming and prioritization is complete is whether the question has already been answered. This is the type of question that IDRA members may be able

to help defenders answer relatively quickly. The next concern is whether there is a practically feasible way to answer defenders' top-priority research questions. Particularly for descriptive questions (how many? How much?), in-house data collection and assessment capacity may suffice. For more complicated questions, assistance of a trained empirical researcher may be necessary. There are a number of helpful toolkits, listed in the references below, that can help defenders with this preliminary reality-checking. Some of these toolkits, such as North Carolina's Systems Evaluation Project, provide information on indicators of quality legal representation that include key performance indicators.

Before turning to the question of how to find and partner with a trained researcher, it is worth noting a few other preliminary reality-checking questions that are worth asking. First, defenders should be able to clearly articulate the impact they expect to see on quality of service from answering their top-priority questions, including expected impact on defenders' research capacity. Second, defenders will want to consider the potential political risks and benefits of addressing the research questions. Answering the latter question may affect whether defenders prefer to work with in-house research capacity, and keep the results in-house, versus developing partnerships with outside researchers who are likely to be more interested in the broader intellectual merit of the defenders' research questions and in publishing the research results.

Finally, defenders should consider the possible benefits of building lasting research partnerships. Those relationships are more likely when research questions are selected carefully, with buy-in from multiple constituencies, and hence are more broadly valued when the research agenda is completed. This cycle tends to foster further cooperation on other questions, building a culture change that fosters the continuation of the work.

Partnering with Trained Researchers

The following questions can be helpful to defenders in determining whether and under what conditions they want to work with trained researchers. These questions include: what kind of research assistance would be helpful; where can it be located (especially at low cost); what problems might arise in such partnerships; and how might those problems be prevented or addressed?

What kind of research assistance will be helpful?

Research personnel should have two sets of skills. First, they should be experienced analysts of secondary data. That is to say, they should be adept at taking data that may have been collected or recorded for other purposes and making inferences from it to answer new questions. Researchers with these skills should be able to use techniques known as 'machine learning' to explore information in large administrative datasets and derive useful descriptive information. Second, qualified researchers may need information technology skills for building new data collection tools (including but not limited to case tracking systems) which allow them to answer the questions that secondary data analysis cannot. These skills are likely to require at least a Master's degree, but students who are pursuing a PhD may be preferred because they may have a longer-term commitment to their academic program and to their research.

The best place to begin looking for qualified research help is through professors at a local college or university who can recommend, and ideally also supervise, qualified students. Geographic proximity can be very important in building a successful defender-researcher partnership. The following departments are good places to start:

- Criminal justice
- Public policy/public administration Psychology
- Social welfare/Social work (if strongly research oriented)
- Urban planning
- Economics
- Political science
- Sociology
- Public health

Defenders may be able to hire students with good quantitative skills. Some institutions award academic credit for such work. Others have formal inter-agency collaboration agreements that focus on courts research. In addition, nearly all institutions of higher learning have service learning requirements with corresponding administrative units; these may be helpful gateways for defenders seeking research assistance. Institutions of higher learning also are developing 'action research' centers that focus on facilitating community-based empirical research. Some of these centers support long-distance research, which may be necessary where defenders otherwise lack access to local research capacity.

Finally, defenders may be able to partner with local nonprofit research organizations outside the academy. These organizations sometimes undertake projects at low cost, or might work with defenders to apply for funding to support the research. Many personnel in these organizations have skills similar to those of university faculty and students. These organizations also do not pose the problem of having student workers who may leave the project before it is completed. In addition, these organizations are not concerned with publication of research results, which graduate students and professors often need from such partnerships.

What problems might arise in such partnerships, and how can they be prevented or addressed?

Defenders should anticipate and be patient with a language barrier that is likely to exist between defenders and researchers. These barriers can make it difficult for defenders to take even the most preliminary steps of identifying the types of data that are needed and where the data might be found.

Defenders will have concerns about issues of confidentiality and privilege related to the information needed to complete the research. University researchers will likely want to publish the results of their work. The conditions of data access, use, and publication need to be clearly established from the outset. University researchers are bound by ethical rules that address many of these concerns. For example, those rules may require that identifying information be destroyed and that all findings be reported in aggregated terms only. Nevertheless, all terms of researcher access to and use of data must be negotiated ahead of time. Defenders may not wish to provide complete access to particular data. They will want to have a clear agreement on what data will be made available; whether the findings of the research will be published; and in what venue and form such publication will occur.

Thus, defenders should negotiate memoranda of understanding that clearly address the agreed terms of the research project. If funding or other support is involved, defenders will want to establish a clear understanding of who is getting those resources, for what, and when the work is to be completed. Defenders may wish to draft or, at minimum, review any proposal, agreement, or report that a research partner sends to a funder. Researchers can protect defenders, for example, on some aspects of

disclosure and publication by building conditions into the funding agreement. In any event, defenders should seek the same level of direct access to, and communication with funders that researchers enjoy.

When problems are anticipated and prevented through such agreements, research partnerships can be sustained quite successfully through regular communication and renewed commitment to shared goals. These strategies might include non-traditional dissemination of information (that is, outside of the peer-reviewed publications that researchers typically pursue), and making a point of returning the research findings to the defender partners who created the research agenda.

How IDRA Can Help

IDRA members care about using data to improve the quality of public defense. We want to be helpful as defenders create, reality-check, and implement defender-driven empirical research agendas. To learn more about IDRA, please contact us using the information below:

Janet Moore, Associate Professor of Law, University of Cincinnati College of Law: janet.moore@uc.edu
Andrew Davies, Research Director, New York State Indigent Legal Services: Andrew.Davies@ils.ny.gov

Resources

Texas Indigent Defense Commission, Indigent Defense Data for Texas (2015)
http://tidc.tamu.edu/Public.Net/

Dottie Carmichael, *et al*., Guidelines for Indigent Defense Caseloads: A Report to the Texas Indigent Defense Commission (2015)
http://www.tidc.texas.gov/media/31818/150122_weightedcl_final.pdf

NCIDS, Performance Measures, Key Performance Indicators, and Toolkits (2015)
http://www.ncids.org/Systems%20Evaluation%20Project/PerformanceMeasures/PM_Links.htm

NCIDS: Building a Data Warehouse Toolkit (2014)
http://www.ncids.org/Systems%20Evaluation%20Project/DataWarehouse/TOC.html

NLADA, Basic Data Every Defender Program Needs to Track: A Toolkit for Defender Leaders (2014)
http://www.nlada100years.org/sites/default/files/BASIC%20DATA%20TOOLKIT%2010-27-14%20Web.pdf

NLADA & NCIDS: Toolkit: Building In-House Research Capacity (2013)
http://www.ncids.org/Systems%20Evaluation%20Project/CaseOutcome/EquipStaff/NLADA.pdf

NCIDS: The Challenge in Evaluating Indigent Defense: Innovation in the Art and Practice of Indigent Defense Services (2008)
http://www.ncids.org/Systems%20Evaluation%20Project/News_Updates_Products/N&U%20Links.htm

NCIDS: The Challenge: Evaluating Indigent Defense: Results from IDS Roundtable Discussions (2007)
http://www.ncids.org/Systems%20Evaluation%20Project/News_Updates_Products/N&U%20Links.htm