

DRAFT – NOT FOR QUOTATION, CIRCULATION, OR REPRODUCTION

USING MODIFIED GROUP-LEVEL ASSESSMENT  
TO GENERATE DEFENDER-DRIVEN RESEARCH AGENDAS

*Janet Moore*  
*Associate Professor*  
*University of Cincinnati College of Law*  
*Post Office Box 210040*  
*Cincinnati, Ohio 45221-0040*  
*513.600.4757*  
[janet.moore@uc.edu](mailto:janet.moore@uc.edu)

&

*Andrew Davies, Ph.D.*  
*Director of Research*  
*Office of Indigent Legal Services*  
*80 South Swan St., Suite 1147*  
*Albany, New York 12210*  
*518.461.1889*  
[Andrew.Davies@ils.ny.gov](mailto:Andrew.Davies@ils.ny.gov)

*July 23, 2016*

USING MODIFIED GROUP-LEVEL ASSESSMENT  
TO GENERATE DEFENDER-DRIVEN RESEARCH AGENDAS

*Janet Moore*<sup>\*</sup> & *Andrew Davies*<sup>†</sup>

ABSTRACT

Empirical researchers are undertaking new data-informed analysis of public defense, which includes efforts to refine the definition and assessment of quality representation. These new research agendas raise their own empirical questions. For example, what data, methodologies, and theories underlie and help explain research agenda formation? Do these new research agendas align with the research priorities of public defenders and the communities they serve? Should they do so? This pilot study begins to explore such questions by asking public defense providers for their views on the top-priority issues that empirical research should investigate in order to improve public defense. The study engaged 71 Mississippi public defense providers in a modified group-level assessment (GLA), which is a qualitative, participant-centered method of social science inquiry. Study goals included facilitating defense providers' identification of empirical research priorities, comparing provider perspectives based on role and experience level, and assessing the utility of GLA in this setting. GLA was productive. With little variation across role or experience level, the prioritized research topics included resource disparities between defense and law enforcement, formation of positive attorney-client relationships, optimizing outcomes for clients, and analyzing system pathologies ranging from policing to corrections. Longer-term goals for this pilot study include encouraging further development of mixed-method approaches for eliciting and analyzing similar data, and building a national data set of research agendas that incorporate perspectives of public defense providers as well as of people who need public defense representation. Such a data set can facilitate cross-jurisdictional and longitudinal content analysis of these "defender-driven" research agendas, partnerships with researchers to refine and implement the agendas, and greater reflexivity in the field regarding agenda formation. Project background, methodology, preliminary results, and limitations are discussed.

---

<sup>\*</sup>Associate Professor of Law, University of Cincinnati College of Law. Email: janet.moore@uc.edu

<sup>†</sup>Research Director, New York State Office of Indigent Legal Services. Email: Andrew.Davies@ils.ny.gov

**USING MODIFIED GROUP-LEVEL ASSESSMENT  
TO GENERATE DEFENDER-DRIVEN RESEARCH AGENDAS**

*Janet Moore\* & Andrew Davies†*

INTRODUCTION

This pilot study raises and begins to address some baseline questions about new efforts to conduct data-informed analysis of public defense,<sup>1</sup> including empirical research aimed at refining the definition and assessment of quality representation.<sup>2</sup> These baseline questions are as follows: how do funders and researchers identify and prioritize questions, topics, and agendas for this new field of inquiry? What theories, methods, and data are considered in generating these research agendas? Do these approaches optimize available resources to improve public defense? Should they do so? More specifically, to what extent do—and should—these new research agendas align with priorities of the people who have the most skin in the game, that is, public defense providers and people who need public defense representation?

Our pilot study begins to explore these questions by using community-based participatory research<sup>3</sup> to tap the perspectives of 71 Mississippi public defense providers on the top-priority

---

\*Associate Professor of Law, University of Cincinnati College of Law. Email: janet.moore@uc.edu

†Research Director, New York State Office of Indigent Legal Services. Email: Andrew.Davies@ils.ny.gov

<sup>1</sup> We define key terms capaciously. “Data” means “information.” “Empirical research” includes inquiries by communities and practitioners as well as professionals with specialized research training. As a research field, “public defense” includes people who need public defense representation, *see* Janet Moore, Marla Sandys, & Raj Jayadev, *Make Them Hear You: Participatory Defense and the Struggle for Criminal Justice Reform*, 78 ALBANY L. REV. 1281, 1281-1291 (2015), as well as all system structures (local, state, and federal, whether managed by the judiciary or an independent commission), delivery modes (salaried, private appointed, and private contract counsel), and personnel (attorneys, investigators, managers, and staff). *See, e.g.*, Andrew Lucas Blaize Davies & Alissa Pollitz Worden, *State Politics and the Right to Counsel: A Comparative Analysis*, 43 L. & SOC. REV. 187 (2009). Equally fair game are forces that affect public defense through discretionary decision-making (*e.g.*, various publics, media, legislators, police, prosecutors, prison officials, probation and parole officers). *See id.*

<sup>2</sup> *See, e.g.*, Andrew L. B. Davies, *How Do We “Do Data” in Public Defense?*, 78 ALBANY L. REV. 1179 (2015); Nadine Frederique, Patricia Joseph, & R. Christopher C. Hild, *What is the State of Empirical Research on Indigent Defense Nationwide? A Brief Overview and Suggestions for Future Research*, 78 ALBANY L. REV. 1317 (2015); Cynthia G. Lee, Brian J. Ostrom & Matthew Kleiman, *The Measure of Good Lawyering: Evaluating Holistic Defense in Practice*, 78 ALBANY L. REV. 1215 (2015).

<sup>3</sup> *See, e.g.*, KAREN HACKER, COMMUNITY-BASED PARTICIPATORY RESEARCH \_\_\_\_ (2013); THE SAGE ENCYCLOPEDIA OF ACTION RESEARCH \_\_\_\_ (David Coughlin & Mary Brydon-Miller, eds., 2014).

empirical research questions that should be investigated in order to improve public defense. The exercise involved a modified group-level assessment (GLA), which is a qualitative, participant-centered method of social science inquiry.<sup>4</sup> GLA is a systematic approach to what community-based participatory researchers call “problem identification” or “problem diagnosis.”<sup>5</sup> Such methods of identifying the problems most salient in a community, and working with the community in developing action plans to ameliorate those problems, distinguish community-based participatory research from other types of research.<sup>6</sup>

Our choice of this data-collection method is informed by democratic theory and a related focus on equality in the generation and administration of law.<sup>7</sup> Our goals span several levels and time frames. Immediate goals include facilitating identification of empirical research priorities by defense providers, comparing their perspectives based on role and experience level, and assessing the utility of GLA for generating such data. Longer-term goals include refining social science research methods<sup>8</sup> to elicit and analyze different perspectives on priorities for public defense research, including perspectives of public defense providers as well as of people who need public defense representation. Exploring these seldom-heard perspectives can yield what we call “defender-driven” empirical research agendas. Such a data set would support additional analysis,

---

<sup>4</sup> See Lisa M. Vaughn & MaryAnn Lohmueller, *Calling All Stakeholders: Group-Level Assessment (GLA)—A Qualitative and Participatory Method for Large Groups*, 38 EVAL. REV. 336 (2014); see also Part III, *infra* (discussing this study’s modified GLA method).

<sup>5</sup> Anne E. Brodsky & Elena A. Welsh, *Applied Research*, THE SAGE ENCYCLOPEDIA OF QUALITATIVE RESEARCH METHODS 18 (Lisa M. Given, ed. 2008), DOI: <http://dx.doi.org/10.4135/9781412963909.n12>.

<sup>6</sup> *Id.*

<sup>7</sup> See Janet Moore, *Democracy Enhancement in Criminal Law and Procedure*, 2014 UTAH L. REV. 543, 563-573.

<sup>8</sup> See, e.g., John W. Creswell & Vicki L. Plano Clark, *DESIGNING AND CONDUCTING MIXED METHODS RESEARCH* \_\_\_\_ (2011); see also Janice Morse, *Principles of Mixed Methods and Multimethod Research Design*, in *HANDBOOK OF MIXED METHODS IN SOCIAL AND BEHAVIORAL RESEARCH* 190 (Abbas Tashakkori & Charles Teddlie eds. 2003) (distinguishing mixed methods and multimethod analyses).

including cross-jurisdictional and longitudinal content analysis as well as comparison with research agendas generated by drawing upon other data, methods, and theories.

In addition, by exploring defender-driven research agendas, we seek to empower broader engagement with expressed concerns and priorities in ways that have both inherent and instrumental value. At minimum, investigating these concerns and priorities increases general knowledge in the field.<sup>9</sup> This line of investigation also may make public defense research more relevant to practitioners<sup>10</sup> and low-income communities, in part by facilitating partnerships with trained researchers to refine and implement research agendas. Resulting advances in knowledge may advance efforts to clarify the definition of quality public defense and related measures for quality assessment.<sup>11</sup> Greater clarity on these points could, in turn, improve key components of public defense systems. Examples include hiring, training, and evaluation processes, performance in areas such as defendant-attorney communication, case investigation, and advocacy, and perceptions of system fairness and legitimacy.<sup>12</sup>

To the extent that these developments support and empower attorneys in their work, they may increase motivation and happiness in the profession.<sup>13</sup> At the same time, empowering defenders to examine themselves through research may encourage the development of a more self-

---

<sup>9</sup> See, e.g., IAN LOADER & RICHARD SPARKS, PUBLIC CRIMINOLOGY? 38-56 (2011) (summarizing debates over the public purposes of social science).

<sup>10</sup> A recent request for proposals from the U.S. Department of Justice Bureau of Justice Statistics reflects a similar goal by seeking to supplement prior national surveys by incorporating defender perspectives in design of future surveys. See <http://www.bjs.gov/content/pub/pdf/spddssol.pdf>.

<sup>11</sup> See, e.g., Christopher Campbell, Janet Moore, Wesley Maier & Mike Gaffney, *Unnoticed, Untapped and Underappreciated: Clients' Perceptions of their Public Defense Attorneys*, 33 BEH. SCI. & L. 751 (2015).

<sup>12</sup> See, e.g., Devon Johnson, Edward R. Maguire, & Joseph B. Kuhns, *Public Perceptions of the Legitimacy of the Law and Legal Authorities: Evidence from the Caribbean*, 48 L. & SOC. REV. 947 (2014); Liana Pennington, *A Case Study Approach to Procedural Justice: Parents' Views in Two Juvenile Delinquency Courts in the United States*, 55 BRIT. J. CRIMINOL. 901 (2015); Campbell, et al., *supra* note 11, at \_\_\_\_.

<sup>13</sup> See Lawrence S. Krieger & Kennon M. Sheldon *What Makes Lawyers Happy? A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. L. REV. 554 (2015).

reflective, candid, critical, and so higher quality, advocacy community. Similarly, we want to provoke professionals in the field of public defense research to reflect deeply and systematically on the purposes of their own work, specifically, by turning the same social science tools that the field uses to examine public defense upon the field itself.<sup>14</sup>

Bourdieu described this type of critical self-analysis within research fields as “epistemic reflexivity.”<sup>15</sup> We agree with Wacquant that such investigation into the “political economy of ... knowledge”<sup>16</sup>—that is, distributions of power between and among researchers, research subjects, research fields, and the wider world—is not “an option (like vitamins in an intellectual smoothie) ... [but] an indispensable ingredient of rigorous investigation and lucid action.”<sup>17</sup> We view it as imperative for professionals engaged in research on public defense to undertake both “critical analysis of the research tradition[s]” involved in the field, as well as more narrowly tailored analysis of “the application of tradition by the researcher” in particular projects.<sup>18</sup>

As an ethnography of research and researchers, such critical analysis includes unpacking and airing of the baggage (individual and collective preconceptions, unspoken assumptions, cognitive and other biases) that accompanies any empirical question or agenda.<sup>19</sup> To be clear, the

---

<sup>14</sup> These aims are informed by engagement in the subject research community and by our roles as co-conveners of IDRA, the Indigent Defense Research Association. IDRA is nationwide, virtual community of researchers and practitioners who focus on using data to improve public defense. IDRA rhymes with “Hydra,” to denote an entity that is many-headed, fierce, and resilient, see <http://www.theoi.com/Ther/DrakonHydra.html>, and reflects our interest in interdisciplinary and cross-functional collaborations that bridge theory and practice.

<sup>15</sup> PIERRE BOURDIEU & LOÏC WACQUANT, AN INVITATION TO REFLEXIVE SOCIOLOGY 36-39 (1992).

<sup>16</sup> Loïc Wacquant, *From ‘Public Criminology’ to the Reflexive Sociology of Criminological Production and Consumption: A Review of PUBLIC CRIMINOLOGY?* by Ian Loader and Richard Sparks, 51 BRIT. J. CRIMINOL. 438, \_\_\_\_ (2011).

<sup>17</sup> *Id.* at 439.

<sup>18</sup> Yves Dezalay & Mikael Rask Madsen, *The Force of Law and Lawyers: Pierre Bourdieu and the Reflexive Sociology of Law*, 8 ANN. REV. LAW SOC. SCI. 433, 437 (2012); *id.* at 448 (“This is not an operation that is done once and for all but is instead an ongoing measure for questioning findings and the way they are gathered.”).

<sup>19</sup> *Id.*; cf. DANIEL KAHNEMAN, THINKING, FAST AND SLOW (2011) (analyzing cognitive bias); Tigran Eldred, *Prescriptions for Ethical Blindness: Improving Advocacy for Indigent Defendants in Criminal Cases*, 65 RUTGERS L. REV. 333 (2012).

object is not to engage in “academic navel-watching.”<sup>20</sup> Epistemic reflexivity requires identifying and analyzing networks of power relations and corresponding structures, systems, institutions, and personnel that shape research, researchers, and subjects of research.<sup>21</sup>

Our study takes a preliminary step toward developing this type of systematic analysis in the field of empirical research on public defense. To our knowledge, no other project has collected the pilot data necessary for examining the nature of the problems we seek to address, and for beginning to formulate potential solutions. The discussion unfolds as follows. Part I provides the project background by summarizing problems and opportunities in the field of empirical research on public defense. Part II explains the pilot study method and underlying theory. Part III presents preliminary results. Part IV discusses the study’s implications and limitations. The paper concludes by identifying avenues for further research.

---

<sup>20</sup> See, e.g., Anthony Bottoms, *Comment on Promise and Performance in British Criminology*, 29 BRIT. J. SOCIOL. 503 (1978); Karl Maton, *Pierre Bourdieu and the Epistemic Conditions of Social Scientific Knowledge*, 6 SPACE & CULTURE 52 (2003). For related concerns about legal scholarship, see, e.g., Harry T. Edwards, *Another Postscript to the Growing Disjunction between Legal Education and the Legal Profession*, 69 WASH. L. REV. 561, 565-566 (1994).

<sup>21</sup> Wacquant, *supra* note 16; see also V. LAWRENCE NEUMAN, SOCIAL RESEARCH METHODS: QUALITATIVE AND QUANTITATIVE APPROACHES 100 (7<sup>th</sup> Ed. 2011) (describing factors leading to dominance of positivist social science over earlier and “largely qualitative ... applied local studies conducted by social reformers,” including “competition among researchers for prestige and status ... the need for funds from ... e.g., Ford Foundation ... university administrators who wanted to avoid unconventional politics ... and the information needs of expanding government and corporate bureaucracies.”); cf. Gabriel J. Chin, *Agenda Setting as a Tactic in Institutional Criminal Defense*, 41 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 29, 32-36 (2015) (discussing possibilities and limitations in tactical agenda formation for public defense practices).