

Using Online Surveys to Conduct Jury Research

BY BRYAN EDELMAN

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Over the span of the last decade technological advances have created new ways to test case strategies and develop jury profiles. One development, which has been hotly debated, surrounds the increasing use of online surveys as an alternative to traditional modes of jury research. In 2002, nearly \$500 million was spent on online surveys. By 2009, that number exploded to \$2 billion (AAPOR). The shift away from traditional telephone methodologies can be attributed, in part, to the low cost and high degree of flexibility that online survey research offers.

The Benefits of Conducting Online Research

In addition to its low relative cost compared to telephone options, online survey platforms offer a high degree of flexibility and control over the presentation of information. For example, response bias can easily be addressed by rotating response options across participants, complex skip patterns can be built into the survey and verdict form, questions can be presented in a manner that precludes participants from reading ahead and can be tagged as “mandatory” to prevent missing data. Trial stories can be designed to be highly engaging and can incorporate photographs, diagrams, and videos. Furthermore, unlike telephone surveys participants can complete online research at a time that is most convenient to them. The convenience factor may help to improve response rates.

For decades, attorneys and trial consultants have employed telephone surveys as a means for devising jury profiles and refining strategies for jury selection. This approach can be traced all the way back to the 1972 trial of the Harrisburg Seven when social scientists used a telephone survey to identify important attitudes and experiences that proved invaluable during *voir dire*.

While telephone surveys have proved useful over the years, the method has several limitations. The number of background questions that can be asked over the telephone is limited and case descriptions must be kept brief. In contrast, online survey platforms afford the opportunity to collect a significant amount of case-relevant attitudinal, experiential, and demographic data; present an engag-

ing and detailed trial story; and provide key jury instructions and verdict questions with built in skip patterns. Furthermore, due to the convenience factor, online surveys can be considerably longer than the telephone option. Respondents often report positive experiences with well-crafted online surveys, which can take more than 20 minutes to complete: *“I was actually very impressed with the quality of this type of survey!”*

The Limitations of Online Research

Internet-based research has the potential to be a valuable tool for developing jury profiles and identifying complex relationships between verdict preferences, attitudes, and life experiences. However, there are also serious concerns about the validity of online survey research and the generalizability of results to the jury pool as a whole. Most telephone surveys employ a simple random sampling method, meaning that everyone in the population of interest (e.g., the jury pool) has an equal and known probability of being selected. As a result, inferences can be made beyond the sample. In contrast, most online surveys use a non-probability sampling technique based on “opt-in” panels. These panels are comprised of people who choose to participate in online survey research. When the individuals who join such panels are different in important ways from those who do not, samples are not representative of the jury pool.

Under the Hood: How Are Opt-In Panels Built?

The increase in online survey research has led to a growing demand for participants willing to take surveys. Companies are constantly working to build and maintain large opt-in panels to meet clients’ survey needs. When a panel is too small to meet demand, or is comprised of a large number of inactive members (i.e., those who do not respond to requests to complete a survey) vendors are forced to rely on a cohort of experts – known in the industry as survey crack heads – to complete survey projects. This can lead to biased results. As such, online survey vendors compete with one another to find participants willing to join their panels and take surveys.

Several different approaches are employed to build opt-in panels. Visitors can go directly to a survey provider’s website and join a panel. Online survey providers also advertise on websites with high traffic volume (e.g., news, special interests, and social media sites) and e-currency sites (e.g., PrizeRebel.com). Many of the larger vendors competitively bid on key words on search engines (e.g., Google) and place sponsored text ads in hopes of recruiting participants.

Borrowing from the online advertising model, vendors also develop networks of “publishers.” Depending on their agreements, publishers are paid a fee whenever a visitor joins a panel, clicks on an ad, or completes a survey. Agencies and affiliate networks offer an additional source of potential recruits. Agencies are hired to identify and place ads on websites expected to maximize returns.



the panel may be built from just one or two sources. Panels built largely from social media or online gaming websites should be viewed with caution.

The European Society for Opinion and Market Research (ESOMAR) has published the *26 Questions to Help Research Buyers of Online Samples*. This is a valuable resource, which provides guidelines for assessing the quality of opt-in panels.

How to Maximize the Value of Online Survey Research

Attorneys and trial consultants can take advantage of the flexibility offered by online survey platforms and limit threats to validity by using a simple random sampling technique to recruit participants. This approach has been successful in the past. For example, Trial Innovations recruited a random sample of jury eligible community members over the telephone and asked them to take a survey online for compensation. Participants were provided with a link that directed them to a survey, which included a juror eligibility section and lengthy “voir dire” component. Participants then read a detailed trial story, reviewed jury instructions, and rendered their verdicts. This approach helped to ensure that our sample was representative of the jury pool.

How Should Jury Consultants and Attorneys use Online Surveys?

Organizations such as the American Association for Public Opinion Research (AAPOR) and ESOMAR have made an effort to assess the strengths and weaknesses of the online survey method. AAPOR’s *Report on Online Research* concludes that results derived from non-probability samples (e.g., opt-in panels) should not be used to estimate population values. However, the results can be used to improve understanding of how “personal characteristics interact with other survey variables such as attitudes, behaviors, and intentions.”

These relationships can have practical value to jury consultants and attorneys. Online survey research can provide an affordable means for identifying important relationships between attitudes, experiences, and verdict preferences. These relationships can be used to develop jury profiles, jury questionnaires and oral *voir dire* scripts.

References

AAPOR, (2010). AAPOR Report on Online Panels, see: http://www.aapor.org/AM/Template.cfm?Section=AAPOR_Committee_and_Task_Force_Reports&Template=/CM/ContentDisplay.cfm&ContentID=2223

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