

Best practices for conducting secure and reliable online jury research

By Mary Malone

Online jury research is a practice growing in acceptance and is becoming an increasingly important weapon for litigators as they discover more about its effectiveness. In addition, because litigators can use this online tool to cost-effectively poll so many more jurors, legal professionals are using online panels for a much wider range of cases.

The barriers have fallen, in large part due to advances in web technology that ensure two critical aspects of online jury research: it can be done in a secure, highly controlled environment; and it delivers reliable data.

I spoke with Sharon Shofner-Meyer, President of [LookingGlass](#), an online jury research firm. Sharon is an experienced litigation attorney, litigation product designer and an expert in online jury research. She cautioned that while we're seeing a marked increase in its use, it is important to maintain credibility, usefulness and validity of doing such crucial research in an online environment.

"To put it bluntly, until recently you could not guarantee with total confidence that such sensitive research could be securely done online," Ms. Shofner-Meyer said. "But today, we've put in place such tools as user authentication, locked down servers, session management and encryption techniques that prevent hacking.

"All online jury research should be done behind firewalls and with password-protected log-ins," she added. In addition, video streaming is becoming an increasingly important tool for online jury research, particularly for lawyers who want to test out a variety of arguments in front of the mock jurors. "We can now ensure that no part of the study – video included – can be captured, forwarded or viewed in public places," Ms. Shofner-Meyer said.

The good news is that by putting in place careful safeguards and employing best practices, you can be assured you're get accurate and actionable results– results that are comparable to what you'd get using telephone or in-person mock juries.

Three major areas of concern

Ms. Shofner-Meyer indicated that the questions she hears most frequently all rise from the basic fact that with online jury research, you will not meet the mock jurors in person, interact with them, or see their behavior during the course of the research.

Specifically, those concerns are:

1. How do you know you're getting a sample that is representative of the jurisdiction where your case will be heard? Are the jurors who they say they are – since you never meet them face to face, how do you know they aren't misrepresenting themselves?
2. How can you glean the valid and actionable information via an online questionnaire? We've all seen online polls for everything from favorite movies to rating photos. Is that really a good method for jury research?
3. How can you be sure your jurors are engaged with the research and not just randomly filling in a survey? And is the data secured?

To help answer these questions, I turned to an expert, Dr. David Meder who is an independent trial consultant. He has a PhD in Psychology, with a specific expertise in online surveys and statistical analysis. Indeed he has consulted with Fortune 500 corporations and top law firms on the intricacies of online and in-person research for over 20 years.

He discussed a recent case (PL1) where online jury research was done, and provided key insights into the design and management of an online study and he specifically addressed the concerns mentioned above. In other words, was the data secured? The sample representative? The results actionable? The mock jurors engaged?

PL1 involved testing jurors' perceptions and attitudes about a products liability suit. The products liability suit was brought by a 35 year old man who claimed the medication he was prescribed as a teenager caused his arthritis as an adult. He claimed the drug company failed to warn of the dangers and to fully test the drug before and during its time on the market. The surrogate jurors were presented with the key issues and watched streaming video of the attorney's arguments.

"Overall, this is a stellar example of using best practices for online research – it's best in class not just in *jury* research, but any research. " Dr. Meder said. Let's look at why Dr. Meder came to that conclusion, and how this research overcame the most commonly heard objections.

Validating the jury – how do you know who you're getting?

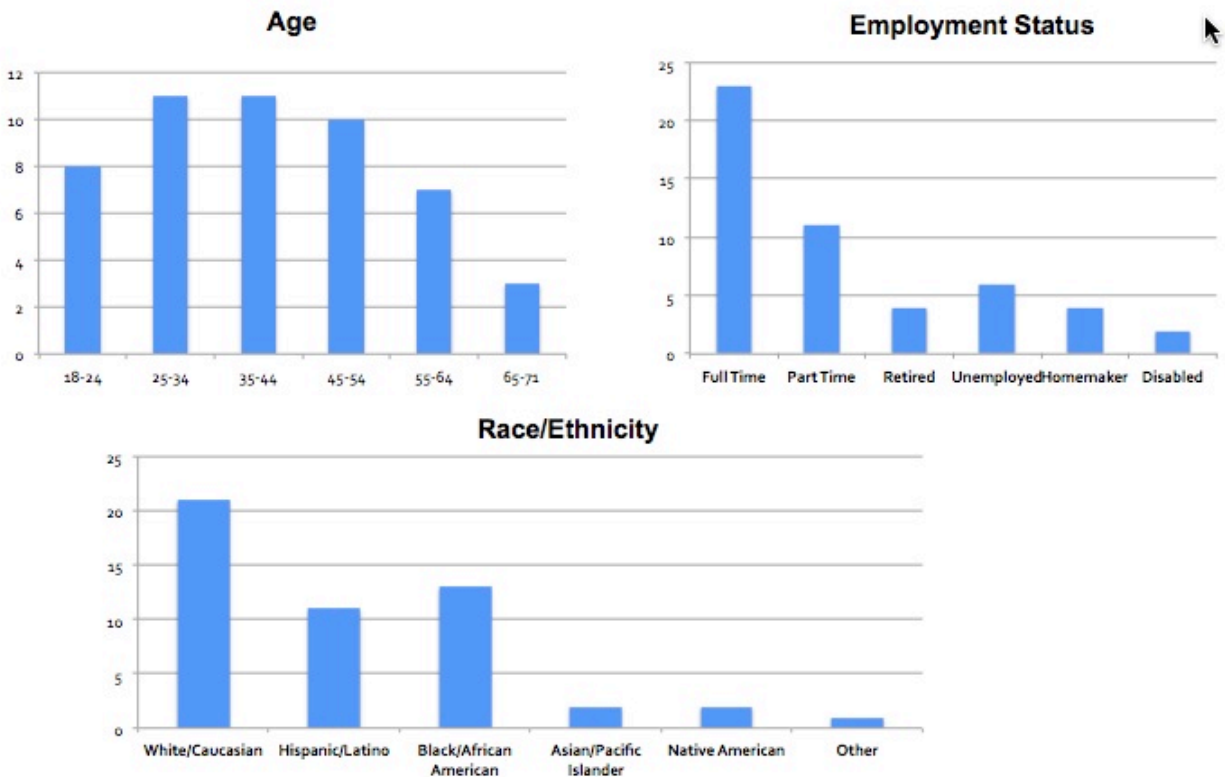
There seems to be an assumption that companies engaging in online jury research are just putting polls out on the Internet and hoping to get a bunch of responses back. That they're virtually casting a wide net to see what happens. After all, that is exactly how many surveys work on the web. Do you like X movie? Click here. Y restaurant? Click there.

But that's not what was done here. In this survey, the respondents were all recruited and screened by phone first. In addition, each individual was asked to provide personal information – driver's licenses for example – that could be cross-checked for age and residency. Also, people who make it to the pool are given password-protected access to the poll.

"That's critical to getting a representative sample," Dr. Meder said. "In this particular instance, they recruited by phone until they got the a representative sample of the venue as compared to census data (based on seven characteristics – gender, age, race/ethnicity, income, education, employment status, and marital status.) The fact that the information was crosschecked and the use of password-protected access to the system is above and beyond, " he added. "From a purely statistical standpoint, I am convinced this is a representative jury, which is critical for many reasons. Chief among them is accurate analysis of the results. You can say with much more confidence things like this particular argument resonates particularly well with this demographic profile." See PL1 Juror Pool below.

Lesson 1: don't poll randomly, as so many Internet surveys work. Recruit members the old-fashioned way, by calling potential jurors until you get a representative sample. Employ safeguards such as identity crosschecking and password protection.

PL1 Juror Pool: Illustration of 3 of the 7 Characteristics Used:



Quality in, quality out. Better questions, more useful results

How does a litigator construct their questions to get maximum value, deeper insights, and actionable information that can be used to greatest advantage at trial?

"The real Achilles heel in a good deal of jury research from my standpoint is crafting the online questions. It's an art and a science, and sometimes even jury experts don't get it right."

He pointed to the two mistakes he sees most frequently in polling of all types, from consumer testing to political candidate preferences: asking the questions too broadly, and presenting hard-to-measure options for the answers.

"If the question is too broad, the responses are hard to interpret. So for example rather than ask 'What's your general attitude toward pharmaceutical companies?' pose it this way: 'Do you think pharmaceutical companies are concerned for your safety?' or 'do you think they put profits before safety?'"

The more granular and specific the question, the more useful the results.

Similarly, the way the responses are designed is equally crucial to getting good data. "You don't want to have options like, a) 'I trust pharmaceutical companies; b) I think pharmaceutical companies are too big' c) Pharmaceutical companies should be highly regulated."

Instead, you want to offer respondents a continuum of options. "The best are either a numeric 0-5 scale, for example, or degrees of intensity (Strongly agree, Agree, Neither agree nor disagree, Disagree, Strongly disagree)."

So, according to Dr. Meder, online jury research can be a highly effective tool if done with the proper safeguards. "The possibilities are really exciting," he said. "For an analyst like me, the idea that you can quickly get a much bigger sample responding to well-crafted questions is the golden ring. It not only helps deliver more accurate results, but allows the use of more sophisticated techniques to really analyze the data."

Lesson 2: make sure that you design the study specifically for an online environment. Crafting questions and responses appropriately will allow you to take advantage of statistical tools like never before.

Juror engagement – are they really paying attention?

This issue goes to the heart of online research – by definition it's not face-to-face. You never meet the jurors in person, don't see them watching the video or taking the poll. So how do you keep them engaged and involved?

There are many ways to ensure an online juror is engaged – time limits, constant feedback, pop up questions, continuous reaction during video presentations. All are crucial to getting the best feedback.

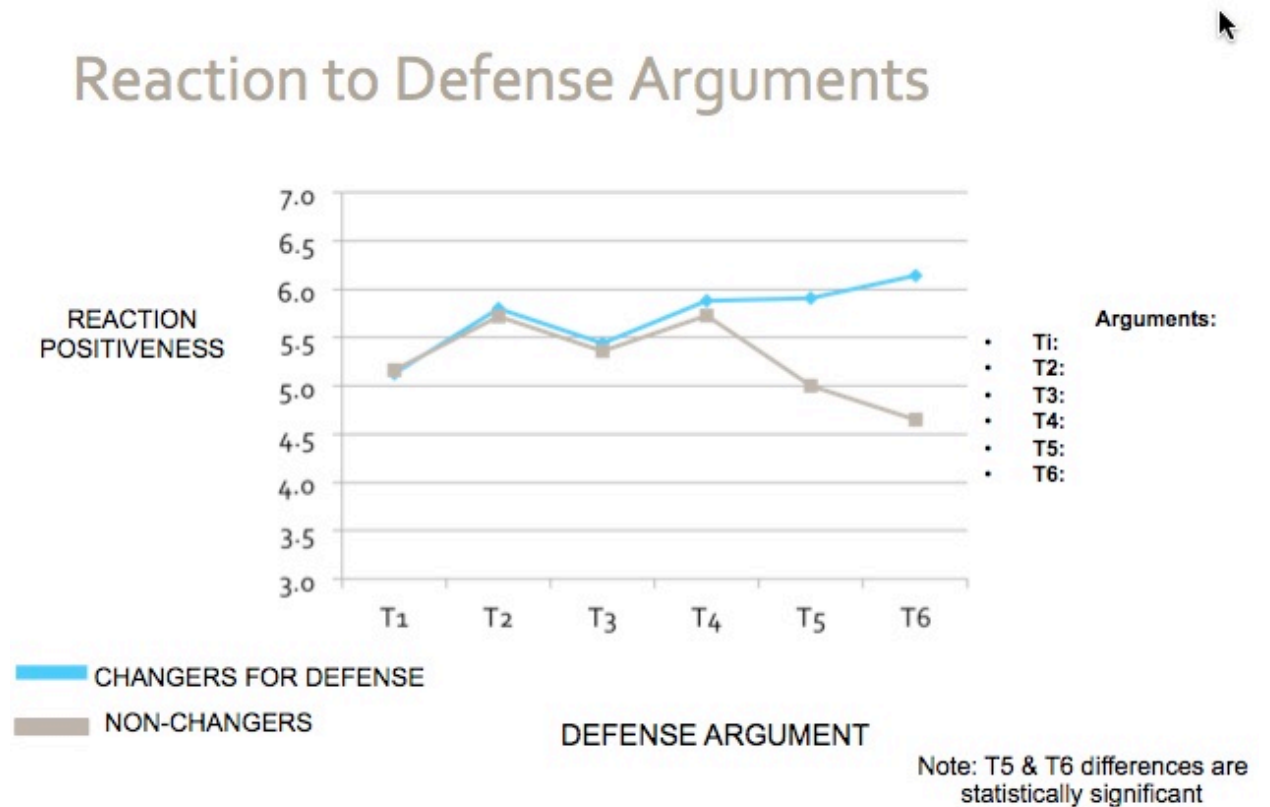
"Having time limits focuses your thinking and demands your attention better than probably any other tactic," Dr. Meder said. "It ensures the quality of the responses. You have to concentrate and focus, which induces honest impressions, and genuine feedback."

One of the most powerful capabilities of online jury research is for lawyers to digitally record a variety of arguments to see what resonates best – and with what type of jurors. Online jurors provide continuous reaction to the streaming video. The use of both traditional survey methods and continuous reaction data to plaintiff and defense arguments is also a very real advantage of using an online tool. See PL1 Continuous reaction data below.

Lesson 3: Employ methods to validate that mock jurors are paying attention. In addition to being able to efficiently capture the data, this approach enhances validity and the power of the feedback. By using two different methods (survey questions and continuous reaction data) the results can be compared for similarity. If the pattern is similar, confidence in the results increases and the richness of the feedback is improved greatly.

PL1 Continuous Reaction Data:

In the illustration below, the juror pool was split between those jurors that changed their opinions after they heard the defense arguments. As you can see, the data provided key information on which arguments (T5 and T6) were the most persuasive.



Conclusion

Experts agree that if using best practices and proper safeguards, online jury research can be a valuable tool for any litigation. Taking the time to make sure the proper security measures are in place to protect your clients sensitive data is imperative to maintaining confidentiality. Ensure the juror pool is a representative sample – the extra cost is worth the integrity of the results. And finally, make sure that you take advantage of advances in online research technology, like continuous reaction data, to enhance your research project. It is definitely time to explore this growing part of the litigation consulting market.

Mary Malone is a freelance journalist and has been writing about the legal profession for over 20 years.