

Getting the Most Value Out of Your Survey Expert

A Q&A on Legal Surveys with Dr. Joel Steckel, Professor of Marketing, Stern School of Business, New York University

This interview was conducted by Shelley Schussheim, Vice President of Applied Marketing Science, a legal survey firm based in Waltham, MA, with which Professor Steckel is affiliated.

What types of cases do you feel are most strengthened by the use of survey data?

Any case where the outcomes rest in part on what a consumer, producer or other interested party thinks.

What if you don't have the time or budget to conduct a survey?

These days, with advances in technologies, surveys can often be performed in much tighter time frames and consequently at a lower cost than was possible just a few years ago. If time constraints absolutely preclude a survey, I believe that opining can be a useful way to go. I don't think it's the strongest evidence you get, because the difference between getting someone to opine and actually doing a study is the difference between science and opinion.

Under what circumstances might you not recommend a survey?

I wouldn't recommend a survey in cases where the outcome is not related to the opinions of consumers or other parties. For example, some antitrust cases can be supported (or refuted) based on sales response to price changes. On the other hand, the definition of

a relevant market may best be viewed as how a consumer characterizes the competition.

What is the most unusual or challenging circumstance in which you have conducted survey research for a case?

Typically a case in which the respondents are hard to come by are the most difficult. Generally, this is the case if they must be highly trained professionals, have very specific knowledge, or be familiar with some sort of specialized jargon. We have interviewed people in some pretty unusual places – car shows, rodeos, operating rooms, parking garages – whatever is needed to get the job done.

How important is it for an expert to have knowledge of the industry at hand before embarking on a particular case?

It may have some value to understand the consumer behavior patterns in the industry. However, a little knowledge can also be a dangerous thing if it leads to pre-formed opinions and beliefs in the mind of the researcher. Then the researcher no longer becomes an independent investigator.

What are some of the different work styles and models of working you espouse?

I think a lot is driven by personality, and a lot depends on attorney preference. There are two basic models that I've used. One is where the testifying expert is the link between the research, the research implementers, and the attorneys. So in this case communication goes through the expert. In the second scenario, we work together as one big happy family.

Are there any caveats you would give to attorneys in working with survey experts?

I think it can be dangerous when the attorney tries to micromanage the expert, or perform parts of the expert's job. In both these instances, the expert may come to believe that the work has not been done clearly under his own direction. I think there's a fine line between having the legal team guide some of the issues and telling you exactly how each process should be done.

Are there different issues to consider in preparing for jury trials?

Yes, definitely. One criteria for all research – I even tell this to my Ph.D. students – is that you should be able to explain the research question and the research results to your grandmother, and have her understand it. You have to be able to explain it simply, and to the best of your ability, relate it to their own experience. For example, in one case I was asked about the external validity of a study, and my response was that I'm not the ultimate arbiter of whether the situation captures the essence of real-life usage. To me, it seems it does, but I think that the men and women of the jury are better judges. Would they answer these questions in the same way that they would behave in a real marketplace? There was nothing the opposing side could do to counter that approach. He couldn't say "well, no, they wouldn't." He had to just move on.

How do you determine what type of market research support you need for a case?

Ultimately what guides the level of support is the research question that needs to be answered. Once that has been determined, the level of support needed to answer that question can be estimated, based on the timing of the project, the background information required to construct a valid survey, the amount of legwork to get a survey up and running,

and the level of detail required in collecting, organizing, and analyzing the data.

What are the main benefits of the relationship between the expert and the market research firm? How does the research firm add value?

As the person responsible for the design and implementation of the study, the expert does the actual testifying. The firm implements the study. The firm brings to the table a great deal of experience in design and implementation. I think the relationship with the firm improves the expert, because while I'm primarily an academic, research is the firm's entire "raison d'être," if you will. So the firm makes the expert a better expert, and in addition, the firm does the actual implementation more efficiently and effectively.

Anything to avoid in working with a research firm?

The biggest danger is not working together closely. The research firm must always work under the direction of the expert, because ultimately the expert has to sit on the stand and tell the truth. And the expert has a reputation as a scientist that means an awful lot to him or her.

What do you recommend to make the expert-market research-attorney triangle work effectively?

Communication about expectations is vital, in particular with regard to timing. Total honesty on all sides is also important. Research is a search for truth. And a study that is grounded in a search for truth – not in a search to prove a point – is a study that is easily defensible in a litigation context.

What special considerations are there in performing a survey in the tight time frames of required of legal cases?

You have to adhere much more to a KISS strategy: Keep it simple, stupid. The research questions that you can get effective answers to are the simple ones. They're geared more toward "what do you think?" questions – questions of opinion rather than prospective behavior. There's a hierarchy: questions of knowledge, then opinion, and finally, prospective behavior. It's easier to elicit knowledge than to elicit opinion. And it's easier to elicit opinion than to examine prospective behavior. The farther down that hierarchy you go, the more pre-testing is required, and the more difficult it is to construct an appropriate research study. So the shorter the time frame, the more you have to focus on knowledge relative to opinions and prospective behavior, and opinions relative to prospective behavior.

Do you always have the discretion to choose whether you're going to go after knowledge, opinion or prospective behavior, or does it depend on the legal issues and what the case is about?

Sometimes it depends on the legal issues involved. If you're given a tight timeframe and you need to focus directly on one aspect of prospective behavior, it can be very difficult. However, there's always room for discussion. If an attorney calls us with an extremely tight time frame, we will listen and try to help in any way if we can. **IPIT**



Joel Steckel, marketing professor at New York University, is an expert in market research, marketing strategy, and methodologies for measuring consumer preference and behavior. He is co-author of the widely-used textbook Marketing Research, as well as dozens of journal articles in such publications as Marketing Science, Journal of Marketing, Management Science, and Journal of Retailing. He has also served on the editorial boards of Marketing Science and the Journal of Retailing. Professor Steckel has served as an expert witness on matters involving product disparagement, merger proposals, trademark infringement, and other commercial litigation. He is supported by Applied Marketing Science (www.ams-inc.com), a leading market research firm specializing in litigation.

Joel Steckel: jsteckel@stern.nyu.edu

Shelley Schussheim: sschussheim@ams-inc.com



Applied Marketing Science, Inc.
303 Wyman Street, Waltham, MA 02451
tel: 781-684-1230
fax: 781-684-0075
web: www.ams-inc.com