

A person in a blue shirt and dark suit jacket is holding a pen. In the foreground, a gavel with a black handle and a gold band is resting on a black base. The background is slightly blurred, showing a desk with papers.

Beware of "Participation Deception" in Your Surveys and Mock Trials

Prepared by:
Dr. Ken Broda-Bahm
Persuasion Strategies - a service of Holland & Hart LLP

LORMAN[®]

Published on www.lorman.com - July 2019

Beware of "Participation Deception" in Your Surveys and Mock Trials, ©2019 Lorman Education Services. All Rights Reserved.

INTRODUCING

Lorman's New Approach to Continuing Education

ALL-ACCESS PASS

The All-Access Pass grants you **UNLIMITED** access to Lorman's ever-growing library of training resources:

- ☑ Unlimited Live Webinars - 120 live webinars added every month
- ☑ Unlimited OnDemand and MP3 Downloads - Over 1,500 courses available
- ☑ Videos - More than 1300 available
- ☑ Slide Decks - More than 2300 available
- ☑ White Papers
- ☑ Reports
- ☑ Articles
- ☑ ... and much more!

Join the thousands of other pass-holders that have already trusted us for their professional development by choosing the All-Access Pass.



Get Your All-Access Pass Today!

SAVE 20%

Learn more: www.lorman.com/pass/?s=special20

Use Discount Code Q7014393 and Priority Code 18536 to receive the 20% AAP discount.

*Discount cannot be combined with any other discounts.

Beware of “Participation Deception” in Your Surveys and Mock Trials

Written by Dr. Ken Broda-Bahm

Imagine that you receive a phone call and the voice on the line offers participation in a research project, and also offers pay. Then, the caller walks you through a series of questions to determine your eligibility, and it becomes clear what the “right” answer is. And let’s say you could use the money. Do you shade your answers to lean toward what you think they’re looking for? Now, I like to think that readers of this blog, many of them lawyers, are more honest than the average person, so perhaps the answer is “probably not.” We know, however, that average citizens aren’t always truthful: as many as [80 percent](#) will lie to their doctors about nutrition and exercise, for example. So, if they’re being recruited for a venue survey, or a mock trial or a focus group, will they lie about factors that should determine their eligibility?

The answer is that many of them will try. Recent research confirms that if compensation is at stake, then a portion of the potential participants will lie. In one of the first studies to focus specifically on the prevalence of deception to win eligibility, Philadelphia-area medical educators and practitioners ([Lynch et al, 2019](#)) asked about participants’ recent flu vaccination in a survey of 2275 American adults, soliciting research participants

without offers of payment or with varying amounts of payment to see the conditions under which participants would lie in order to secure participation in the study. They found deception rates ranging from 10.5 percent to 22.8 percent. That suggests that deception should be a significant concern regarding both data quality as well as confidentiality when it comes to pretrial research. In this post, I will look at what can be done about it.

Guard Against Deception

When conducting research related to litigation, it is essential to screen participants. Naturally, you want people who are jury-qualified in the venue, and you also want to eliminate people who know too much, who are connected in some way to the parties or the law firms, or who have other characteristics that would make it unlikely that they would sit on the actual jury. When conducting that screening, you need to rely on the honesty of the answers you get. So how do you know it is honest? It's never 100 percent, but there are several steps you can take to make your screening as robust as possible.

Don't Signal the Right Answer. Taking the example used in the study, the question, "Have you had a flu shot in the last six months?" strongly implies that you are looking for people who have. To avoid signaling that, it is better to ask, "When, approximately, did you have your last flu shot," and screen out individuals who answer that it was longer than six months ago or "never." Questions that

are open-ended or give more response options are going to be more reliable than a “Yes/No” question where the correct response is “Yes.”

Include Decoys. If you only ask about the parties involved in the case, then a potential participant might guess at what the case is about. That is why we will always include decoys in the screener. We will ask about the people and companies involved, but we will also include other names, including some very familiar ones like “Coca-Cola.” That not only keeps potential participants from guessing about the nature of the project, but it is also a way to flush out the dishonest. Someone who says they have never heard of the Coca-Cola company, for example, might not be telling the truth.

Ask More Than Once. We don’t just screen once when research participants are recruited by phone, we screen on-site as well. So if people are going to lie, they at least have to lie consistently, and as any prosecutor will attest, a surprising number of people are not able to do that. In addition, screening on-site is a good check against any unscrupulous market-research recruiter who signals the correct answer during the screening process in order to boost their recruiting quotas.

But Don’t Worry About Higher Pay

It is intuitive to think that a higher rate of pay would equal a higher risk of deception. After all, if more is at stake,

then wouldn't participants have a greater incentive to lie. But that is not what the researchers found. They tested payments varying from \$5, \$10, and \$20 for a short study, and saw no significant relationship between the amount paid and the resulting deception. That top end compares to the \$20 per hour that we generally use for compensation in our own research. That is important, because we have found that you need to pay a decent rate in order to get better commitment levels and greater representativeness in your recruited pool. If you pay only a minimum wage equivalent, then you will only get minimum-wage workers who will not be comparable to your actual jury.

With all that said, most potential mock jurors or other research participants are going to try to be honest, and I am happy to say that we have never had a known instance of participant dishonesty posing a threat to the confidentiality of a project. Still, you don't know what you don't know. So it pays to take every precaution.

For questions regarding this update, please contact: Dr. Ken Broda-Bahm
Persuasion Strategies 555 17th Street Suite 3200 Denver, CO 80202
Holland & Hart, 1800 Broadway, Suite 300, Boulder, CO 80302
Email: KBrodabahm@persuasionstrategies.com
Phone: 303.295.8294

This update is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author. This update is not intended to create an attorney-client relationship between you and Holland & Hart LLP. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.

The material appearing in this website is for informational purposes only and is not legal advice. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship. The information provided herein is intended only as general information which may or may not reflect the most current developments. Although these materials may be prepared by professionals, they should not be used as a substitute for professional services. If legal or other professional advice is required, the services of a professional should be sought.

The opinions or viewpoints expressed herein do not necessarily reflect those of Lorman Education Services. All materials and content were prepared by persons and/or entities other than Lorman Education Services, and said other persons and/or entities are solely responsible for their content.

Any links to other websites are not intended to be referrals or endorsements of these sites. The links provided are maintained by the respective organizations, and they are solely responsible for the content of their own sites.