AAPOR Statement on Protecting Respondent Confidentiality in Litigation Surveys

Background

Survey research offers multiple, practical benefits in both litigation and non-litigation contexts, particularly where information must be gathered from a large number of individuals and analyzed. According to the *Federal Reference Manual on Scientific Evidence*, (3rd Ed., at 417): “[O]ne of the advantages of a survey is that it avoids a repetitious and unrepresentative parade of witnesses.” Accordingly, numerous courts have acknowledged the value and usefulness of surveys.

The American Association for Public Opinion Research (AAPOR) strongly opposes the release of personally-identifying information from surveys in litigation (and other) contexts.

In the context of litigation, a party to a case may try to obtain the names and contact information for respondents to an opposing party’s survey to discredit the survey through respondent depositions. Or one party to the case may sponsor a “survey” solely for the purpose of identifying class members who will subsequently be subpoened for deposition testimony. These practices not only violate the promise of confidentiality that is made to respondents when they agree to participate in a survey, but they may also have a chilling effect on respondent participation in research and undermine the public interest in the ability of surveys to elicit accurate information from respondents.

AAPOR’s Position

The AAPOR Code of Professional Ethics and Practices explicitly calls for the protection of identifying information about survey respondents. This ethical obligation is not relieved when survey results are proffered in a legal proceeding. AAPOR urges all researchers to comply with its strict standards for protecting survey respondents’ privacy and confidentiality. It strongly condemns the practice of seeking such information in a litigation context. Courts have also acknowledged the importance of respondent confidentiality and generally agree that the industry’s ethical standards for confidentiality should be respected.

AAPOR believes confidentiality of survey respondents’ identities must be preserved to avoid harming the vital public interest in promoting survey research. AAPOR’s emphasis on respondent confidentiality is consistent with generally accepted standards and guidelines for survey research that ensure reliability and accuracy. These professional standards, adopted and implemented by AAPOR and other professional societies such as the Council of American Survey Research Organizations and the American Statistical Association, reflect the fact that confidentiality represents an important element of survey design.

Survey respondents are more likely to be “neutral witnesses” and to give accurate, unbiased information if they are assured confidentiality. Often, individuals will not participate in a study if they think the information will be used for any purpose other than research. Furthermore, even if some people agree to participate without the promise of confidentiality, the researcher cannot guarantee that those people form a
representative sample of the total population that is to be sampled. Thus, confidentiality not only helps to ensure unbiased responses, but also contributes to a representative sample.

When information about populations rather than individuals is relevant in litigation, a normal part of the foundation for admissibility is the requirement that the survey evidence be reliable. Since confidentiality of respondents’ identities is essential to reliability, if there is no confidentiality, then there is no foundation for admissibility and the judicial process cannot benefit from the information provided by surveys. Because survey research plays an important role in both litigation and non-litigation contexts, the loss of the survey as a research tool deprives society of an important method of data collection. No other tool permits researchers to obtain similar data, and without that data, many issues affecting public and private interests cannot be comprehensively and intelligently analyzed.

AAPOR believes that excellence in survey practice requires that survey methods be fully disclosed—reported in sufficient detail to permit replication by another researcher—and that all data (subject to appropriate safeguards to maintain privacy and confidentiality) be fully documented and made available for independent examination. To promote that practice, AAPOR has established an exemplary and comprehensive list of discoverable information (encompassed in its Code of Professional Ethics and Practices and the Transparency Initiative) that nonetheless excludes the identity or identifying characteristics of respondents. AAPOR urges all researchers to comply with its disclosure standards.

According to the Federal Reference Manual on Scientific Evidence (at 418) “[T]he need for surveys and the availability of other means to examine and ensure their trustworthiness argue for deference to legitimate claims for confidentiality in order to avoid seriously compromising the ability of surveys to produce accurate information.” AAPOR agrees.

**We Can Help**

AAPOR members who require assistance to protect respondent identities in a litigation setting should contact Rich Morin at rmorin@pewresearch.org to explore whether an *amicus* brief filed by AAPOR is appropriate.

It is our obligation to do everything we can to protect the identities of our respondents and AAPOR supports the efforts of our members to meet this obligation.