

A woman in a business suit is speaking, gesturing with her hands. The background is a blurred office setting. Overlaid on the image is a line graph with several colored lines (orange, blue, green, red) showing fluctuating data trends. The overall color scheme is dominated by red and orange tones.

A Guide To Dial Testing For MOCK JURIES & TRIAL RESEARCH



DISPELLING ASSUMPTIONS & MITIGATING UNKNOWNNS

In the world of litigation, unknowns are a reality. But for litigators and their clients, dial testing research offers unique capabilities that, when done right, can prove or disprove client assumptions and mitigate the key unknowns that can make or break a client's case. For this reason, jury consultants and litigators have relied upon dial testing as an integral part of their trial preparation for more than three decades.



HOW TO USE THIS PLAYBOOK

This Playbook is intended for jury consultants or litigators using, or evaluating the use of, dial testing methods and tools in their research. Our goal is to offer you a practical and informative guide that provides an understanding of the applications and benefits of dial testing, and arms you with field-tested advice and tips from experienced researchers who have been effectively using dial testing tools and the methodology for years.



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BACKGROUND

Dial testing tools and methods for capturing and analyzing continuous, moment-to-moment responses in focus groups were introduced in the 1980s, gaining momentum as a way to gauge feedback on political messaging during the 1985 presidential election campaign. The Perception Analyzer system was introduced that year as one of the first technologies for collecting and reporting on continuous audience response.

Since its introductory use for political research, the application of dial testing has broadened to encompass many other types of research, including media and advertising research, product and services marketing research, sales presentation research, speaker coaching, and, of course, litigation and jury research.

In 2014, Dialsmith first introduced tools for conducting online dial testing, which can be used to test recorded video and audio. Instead of turning the knob on a physical dial, respondents move an on-screen slider controlled with a mouse (on traditional computers or laptops) or a finger swipe (on touchscreen devices such as tablets and smartphones) to provide continuous feedback while viewing and/or listening. The system polls the slider position every second and records the data upon completion of the exercise. Similar to PA, aggregated moment-to-moment results are displayed as lines overlaid on top of the media. The tools have evolved to support additional features such as “Tune Out” or hotkey buttons, pop-up questions during the media evaluation, and seamless pairings with various survey platforms and other online services, such as customer insight communities and virtual focus groups.



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WHY DIAL TESTING?

If you're new to dial testing or have a client who is, the "Why dial testing?" question is where the conversation typically starts. Here are **five key benefits** that dial testing experts point to (and you can to) to answer the *Why?* question.

Pinpointing the Magic Moments

Recall-based research asks participants to neatly sum up their range of emotions and opinions into one retrospective conclusion. And, as its name implies, is conducted after a respondent's exposure to a message, ad or program, and after seeing other messages, ads and programs. While it provides valuable insights, recall is only part of the equation. Lost in the method are those true, in-the-moment nuances that are vital to a more holistic view of a respondent's opinion.

That's why In-the-Moment methodologies are so valuable to researchers. MtM data provides a respondent's continuous, second-by-second, emotional response to visual or audio stimulus, whether it's a speech, TV ad or program, or litigator's opening or closing arguments. Researchers can get as granular as needed with the data without making sacrifices to the overall quality of the research results.

Overcoming "Groupthink"

Dial testing technology can help overcome "groupthink" in a live group setting. According to Dr. Ali Goode, Partner at [house51](#) and expert in the psychology of learning and memory, "In most situations people tend to avoid sticking out from the crowd or refrain from contributing if they hold a minority opinion in the group. This can especially have a negative impact on research relying on recall methods.

With MtM techniques, individualized responses can be collected using the Perception Analyzer dials. And as long as people know their views are not being immediately broadcast to the group, they can report in anonymity, reducing the effects the group or others in the group may have on them."

"In most situations people tend to avoid sticking out from the crowd or refrain from contributing if they hold a minority opinion in the group."

Dr. Ali Goode, Memory Expert and Partner at [house5](#)

WHY DIAL TESTING?

Blending Quantitative and Qualitative Data

For decades, market research had two unique silos, qualitative research and quantitative research, and researchers aligned themselves to one or the other. More recently, researchers have begun to realize the immense value of blending the two approaches.

As Monica Zinchiak, owner of Z. Research Services, explained in her Marketing Insights article, “The allure of statistical significance, conjoint analysis or regression analysis is compelling—not to mention the power of a representative sample. Yet quantitative research findings tell the researcher only part of the consumer’s story.

Bringing the numbers to life—collecting the meaning behind the statistical values—is the power qualitative research can provide after the survey findings have been tabulated. It’s knowing that your brand is losing traction with consumers while also understanding why people are behaving this way. The insight of the latter makes the former more informative and actionable.”

With its ability to facilitate the instant collection and real-time display of quantitative results within qualitative research settings, MtM is a popular method for researchers looking to implement a blended qual-quant approach. Moderators and researchers can use the real time, MtM data to focus in on specific content or messages or adapt new strategies on-the-fly to drive deeper and more focused qualitative follow up discussions and interviews.



WHY DIAL TESTING?

Mitigating the Risk of Memory Bias and Flawed Recall

Market research has traditionally relied upon recall-based methods of gathering information and feedback from respondents. These methods ask respondents to remember and report on how they felt or what they were thinking at some point in the past. As mentioned earlier, these methods are problematic, as memory has proven to be malleable and recall unreliable.

“When you get out there in the real world and start asking questions, you have no other option than to take someone’s word for it. In that scenario, memory can cause all sorts of problems.”

Dr. Elizabeth Loftus, Distinguished Professor at University of California, Irvine

“When you start digging into how customers respond to questionnaires and surveys, you start seeing how wrong customers can be...I see that flawed memory, and the decisions we as marketers make based on it, can have a huge business impact—on both the top and bottom line.”

Elizabeth Merrick,
Head of Customer Insights Analytics at Nest



Moment-to-Moment essentially takes flawed recall and memory bias out of the equation with its ability to capture and record real-time feedback, in the moment, as respondents are viewing, listening and experiencing. The results are a real-time “snapshot” of how respondents feel or think at that moment as opposed to relying on them to remember how they felt at some point in the past.

[Learn more about flawed recall and memory bias and how it can impact qualitative research.](#)



WHY DIAL TESTING?

Visualizing the Data | Facilitating Storytelling

Researchers are tasked with presenting results across organizations—in many cases, to stakeholders who are not “numbers people.” Infographics and data visualization in research reporting have become more standard requirements. MtM is beneficial in this regard through its ability to display results in a clear, intuitive and visual manner.

As Growth Hacking Strategist and Serial Storyteller

[Kristin Luck](#) verifies, “Dial testing is amazing at determining what specific points are resonating with your target audience... it was instrumental in nearly every trailer and TV test I conducted during my entertainment research years. Its ability to visualize results in an intuitive and compelling way makes it a valuable component to successful reporting and storytelling.”



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Data from the Perception Analyzer dials are delivered as a line chart overlaid on top of a video of the test stimuli. Each line in the chart visually represents the aggregated mean score for the total group or for a specific subset.

As the video plays, researchers and their stakeholders can easily see if the lines are going up (typically a positive reaction), going down (typically negative) or holding steady. Moderators, researchers and their clients can view the results in real time as the dial testing is happening. For many clients, it's as dynamic an experience for them as it is for the respondents in the focus group.

Lara Giese, President of Advanced Trial Services, adds, “Once clients see the research method in action and witness the visual overlays and response lines, Moment-to-Moment becomes very convincing. They immediately see and understand the value of the data and the power of the methodology to be able to decidedly recognize the strength and weaknesses in the presentation of arguments in a case.”



“Once clients see the research method in action and witness the visual overlays and response lines, Moment-to-Moment becomes very convincing.”

Dr. Lara Giese
Expert Jury Consultant and President of Advanced Trial Services

DIAL TESTING: THREE OPTIONS

Let's take a deeper look at the three ways dial testing can be done:

1

IN-PERSON



2

ONLINE



3

HYBRID





IN-PERSON DIAL TESTING

In-person dial testing takes place in a live focus group or event setting. With in-person groups, a moderator runs the session. Each respondent (or mock jurist) is given a PA dial, which is used to respond to a variety of question types as well as give continuous, real-time, moment-to-moment feedback to live or recorded presentations, arguments and/or testimony.

The Technology

The Perception Analyzer (PA) is a portable, dial testing system that can be set up in virtually any testing environment. It can be used with groups of 10 (or less) up to 100 (or more). The PA system consists of three components: dials, console and software. Respondents hold the dial and turn a teardrop-shaped knob to indicate a response to a multitude of question types. The dials use a radio frequency to wirelessly communicate and send data to the console and the software, allowing for real-time collection of feedback from respondents.

Dial data can be polled after each question or continuously every second for moment-to-moment testing. Results can be viewed in real-time during the session. At the end of the session, data are compiled in the PA software and delivered as charts, crosstabs, video/audio overlays and raw data files.

PA hardware and software have gone through numerous iterations and upgrades since its initial release. The current hardware, Model V, retains the teardrop shaped dial but also includes a more modern analog screen and buttons that can be used to confirm a response or indicate a specific moment of inflection. The software has been updated to optimize and streamline project set up, and support high-resolution displays.

How It Works

Questions and test media are programmed into the PA system in advance. The dials are designed for ease of use and to fit comfortably in a participant's hand. The values on the dial screen change depending upon the type of question that is programmed and the answers available to the participant. For example, if a yes/no question is asked, then the screen will indicate only two answer options, "Yes" or "No," for discrete choice/categorical questions, the screen would reveal the numbers associated with each of the answers the participant could select. In the case of a moment-to-moment exercise, the dial screen reveals the full numerical range of the scale being used for the exercise, typically 0 to 100 or 0 to 10.

Each participant receives a dial for the duration of the session. The privacy and immediacy of the dials allow participants to answer more honestly and minimizes the impact of groupthink. With results immediately available, researchers and moderators can respond quickly to adapt new strategies, guide group discussions and explore new ideas. And the software is flexible enough to allow real-time analysis and/or export data to your analytic software of choice.

IN-PERSON DIAL TESTING



DIAL TESTING CRITICAL TO OVERCOMING ASSUMPTIONS AND DELIVERING HARD TRUTHS

IN BRIEF

Dial testing has played a critical role in the 500+ mock jury projects Dr. Laurie Kuslansky has conducted. She credits dial testing for its ability to credibly challenge client assumptions and alleviate the burden from her and/or the attorneys to deliver what are sometimes “hard truths” to the client.

RESEARCHER

Laurie Kuslansky, Ph.D., Expert Jury Consultant, with 30+ years of consulting on both civil and criminal litigation cases.

CHALLENGE

Dr. Kuslansky’s trial consulting clients typically hold strong assumptions as to where they stand with their case heading into their consulting engagement. In such situations, where the stakes are so high, it can be difficult to break through clients’ assumptions and pre-conceived positions.

HOW DIAL TESTING HAS HELPED

During the mock exercise, each juror is given her/his own handheld dial that is used to answer questions posed by Dr. Kuslansky. Various question types can be asked, including discreet choice, intensity scale, tradeoffs/conjoint and moment-to-moment. Answers to each question are tabulated and displayed instantly for both Dr. Kuslansky and the client to see.

Dr. Kuslansky adds, “The real-time nature of having the results right there for you to view is absolutely thrilling for clients. It really helps to get a grip on the reality of what’s happening in the mock and how participants are reacting. We then have the opportunity to incorporate what we see in the data into the next presentation or next set of instructions or additional questions we present to the jury.

RESULTS

In a mock trial she ran for a securities-related case, Dr. Kuslansky remembers that the dial testing data showed that there was almost no way for her client to win. The client team threw everything they had at the mock jury, and the data were still so consistently negative toward the client – every single position, theory, credibility, everything. The results made it clear that her client would lose badly. There was no course correction that would save the client. So the risk, even if had they made great strategic steps, was huge. The research made it so clear that the client settled the next day, saving them the additional legal costs and exposure from a trial.

“I tell my clients that if you want the most return for your trial consulting investment, it’s pennywise but pound foolish to cut something so integral to getting good data. The data we get from the dial tests are the glue of the mock exercise.”

Dr. Laurie Kuslansky, Expert Jury Consultant





ONLINE DIAL TESTING

Online dial testing can be used to test a variety of recorded video or audio content. Conducting dial testing online offers the benefit of shorter turnarounds and eliminates the costs and time investment associated with travel and facilities.

The Technology

Similar to in-person dial testing, researchers can use online dial testing to collect continuous, moment-to-moment feedback from respondents while they are viewing/experiencing some form of messaging, content or media. But there are some distinct differences. Respondents doing online dial testing are in their homes or other locations and accessing the dial testing tools via the Internet. Instead of a handheld dial, respondents use an onscreen slider to simulate a handheld dial. On screen, the slider is located in close proximity to where the test content is being viewed, so respondents can move the slider along the scale without interrupting their viewing and/or listening.

Advances in online dial testing have made it easier to pair with other online research tools and platforms. So, researchers are conducting online dial testing in conjunction with online surveys, as a component of virtual focus groups, integrated into online research communities, and more.

Security and privacy should always be a consideration when conducting online studies, and with the confidentiality requirements inherent in litigation research, security and privacy is paramount. To this point, the service and technology partners researchers choose to work with, must be able to have both the technology and the protocols in place to address these confidentiality requirements, and researchers need to ask the right questions during the vetting process to get the information they need to assure themselves and their clients.

How It Works

Dialsmith's online dial testing tools use an on-screen slider that respondents continuously move using a mouse or finger swipe (on touchscreens) to indicate how strongly they feel—either positively or negatively—in response to what they are seeing and hearing. The more the slider is moved to the right, the stronger the positive feeling. The more the slider is moved to the left, the stronger the negative feeling. The scale labels can be customized based on the question being asked to the respondents about the media item. Typical labels include: Dislike/Like, Disagree/Agree, Not Interested/Very Interested. The online dial testing tool records the slider position every second and then calculates average mean scores second-by-second for the total respondent group, as well as any sub-groups that are configured.

ONLINE TRIAL RESEARCH: WHY PRIVACY AND SECURITY CAN'T BE AN AFTERTHOUGHT.



ONLINE DIAL TESTING

ONLINE DIAL TESTING WINNING OVER JURY RESEARCH CONSULTS AND THEIR CLIENTS

IN BRIEF

Dr. Katherine Vinson is a social psychologist with a specialty in juror behavior and more than a decade of litigation experience. For years, in-person dial testing has been a mainstay of her research approach. In 2020, with the pandemic bringing a sudden halt to in-person research, Dr. Vinson and Vinson & Company needed to quickly pivot to find online alternatives to keep their research moving forward.

Vinson & Company partnered with Dialsmith to migrate their research fully online. Her approach included integrating online dial testing with follow-up virtual deliberation groups. Both Dr. Vinson and her clients have been equally impressed with the quality and richness of the results they've gotten from their online groups.

CHALLENGE

Vinson & Company are widely considered the “founding fathers” of trial research. The firm has been doing litigation consulting work for more than 35 years. Safe to say, they do what they do—mock juries with dial testing—and they do it really well. But 2020, like for many businesses, brought abrupt change.

Suddenly, the in-person methods that the firm had refined and perfected over the past three decades had to fundamentally change in order to keep research moving forward. At the same time, client expectations didn't change. As Dr. Vinson notes, “Many of our clients are repeat clients, and they're used to seeing the moment-to-moment when we do in-person research. So, when we do this research online, they expect the moment-to-moment results to be there. If they're not, it's a problem.”

HOW DIAL TESTING HAS HELPED

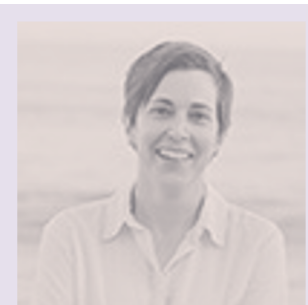
Vinson & Company relied on Dialsmith to recruit the online respondents and vet them with tech checks so they're ready to go when they enter the session. After a brief intro, respondents are given a block of time to do online dial testing sessions where they'll evaluate recorded opening statements, witness testimony, and closing statements. Respondents typically rate the videos on a 0 to 100 scale on how helpful or not helpful the information is. Respondents are also asked survey questions between the videos as well as after they've viewed the testimony and statements.

Dr. Vinson is able to review results from the online dial tests and survey questions with her clients during the session break and use that information to determine the makeup of the breakout deliberation groups for the afternoon sessions. Results are also analyzed to develop juror profiles and understand which types of jurors will be helpful to the client and which will not.



“Many of our clients are repeat clients, and they're used to seeing the moment-to-moment when we do in-person research. So, when we do this research online, they expect the moment-to-moment results to be there. If they're not, it's a problem.”

Dr. Katherine Vinson, Senior Litigation Consultant, Vinson & Company





ONLINE DIAL TESTING



ONLINE DIAL TESTING WINNING OVER JURY RESEARCH CONSULTS AND THEIR CLIENTS (cont.)

RESULTS

After the session is completed, Dr. Vinson reviews the moment-to-moment results focused on data splits based on final verdict. “We can see the lines for the plaintiff jurors and the lines for the defense jurors. We can then go back and look at each of those videos and see where the spikes and drops are to find out what specific arguments were helpful for the plaintiff. What resonated with plaintiff jurors? What did defense jurors like, what the defense jurors didn't like. It's all right there in the lines.”

Prior to her first online study, Dr. Vinson had concerns about the level of engagement and participation by the respondents in comparison to her in-person sessions. But she's been pleasantly surprised.

“My biggest fear doing (online) was you're giving us people, sitting behind a computer screen, watching videos, and then you're expecting them to participate in terms of grading the video and answering questions and deliberating. When you're doing it in person, you could see who's not paying attention; you can chat with them and you can remind them that they do need to pay attention. But the level of participation online was a lot higher than I anticipated.”

Vinson & Company' clients had high expectations going into the online studies, but some hesitations as well. They've been won over by her results. “Our clients have been very pleased... very happy. Going into the project, they had no idea what to expect, but seeing it and being able to participate in it... they've been pleasantly surprised.”



HYBRID APPROACH

A hybrid approach pairs both in-person and online dial testing in one study. With a hybrid approach, researchers will typically use online dial testing to filter through a larger number of concepts, messages or arguments, ferreting out the one or two options that perform the best. From there, researchers will conduct in-person dial testing during live focus groups to refine and fully optimize the final option.

USING ONLINE DIAL TESTING TO DRIVE DEEPER IN-PERSON QUAL.



MORE



GETTING & PRESENTING RESULTS



Instructing a Dial Testing Focus Group

Moderator instructions play a critical role in ensuring optimal results from your dial testing session. Here are some pro tips on how to best instruct a dial testing focus group:

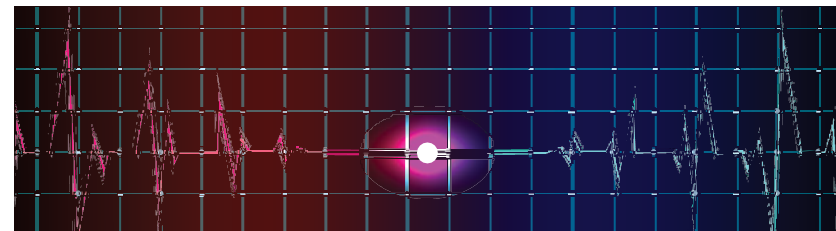
- 1 Have a dial in your hand while running through instructions to visually demonstrate what you're talking to the group about.
- 2 Advise to keep both hands on the dial throughout the viewing/listening session in order to mitigate delays in having to reach for or reposition the dial.
- 3 Instruct the group to make sure they are continuously reacting to what they see and hear. The system collects information from the dial every second so we need them to move the dial throughout based upon what they are thinking at that particular moment. Caution them not to wait until the end to respond.
- 4 Advise to keep their attention on the media while they are dialing. There is no need to look at the number on the dial as they are dialing as we are more interested in the range a respondent is dialing as opposed to any specific number.
- 5 Speaking of range, instruct the group to use the full range of the dial when responding and not be shy about dialing way to the right if they feel strongly positive, or way to the left if they feel strongly negative.
- 6 Advise them to be sure they start the session with their dial in the middle position—typically at 50. Remind them that 50 represents the starting position for each test segments and also represents a neutral opinion.

GETTING & PRESENTING RESULTS

Setting Expectations

As with any research project, it's important to understand what types of results you can expect. With MtM, respondent sentiment is quantified using a customizable scale—typically 0 to 100 with 50 indicating a neutral opinion. The sentiment represented at each end of the scale is best represented by “black and white” oppositional concepts such as like/dislike, strongly agree/strongly disagree, etc. with the positive concept represented by the top of the scale (100) and the negative concept represented by the bottom of the scale (0). Moving the dial further in either direction indicates a stronger preference towards one of the concepts. The dial position is polled every second for each respondent.

Both in-person and online, results from dial testing are displayed as a line graph overlaid over top of the test material. The lines represent aggregated data from the dial responses. Different lines on the graph represent selected subsets, which can be based on a specific demographic or can be a calculated subset, such as “male, single, age 18 to 24,” or “women, married, age 28 to 42, at least one child.”



FLATLINING – WHAT DOES IT INDICATE?

Flatlining in MtM refers to periods of time when no dial activity occurs. According to Neil Griffiths of London-based research agency Blinc Partnership, flatlining occurs when:

- **Participants are disengaged or distracted**
- **Audience is so wrapped up in the experience they forget to record their reactions**
- **Content is not noticeable or noteworthy**
- **Overall messaging is not working**



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GETTING & PRESENTING RESULTS

Interpreting Results

As with all research, dial testing results should be viewed and evaluated within the context of the study.

Here are three factors that experts suggest keeping in mind when analyzing the moment-to-moment results:

1

ACCOUNT FOR YOUR SCALE. With a scale of 0 -100, you're more likely to see larger inflections in the data. This allows you to focus on bigger swings of opinion and not quibble over the difference between one or two points. Smaller scales, such as one to five, allow less inflection and may be more difficult to interpret differences of opinion.

2

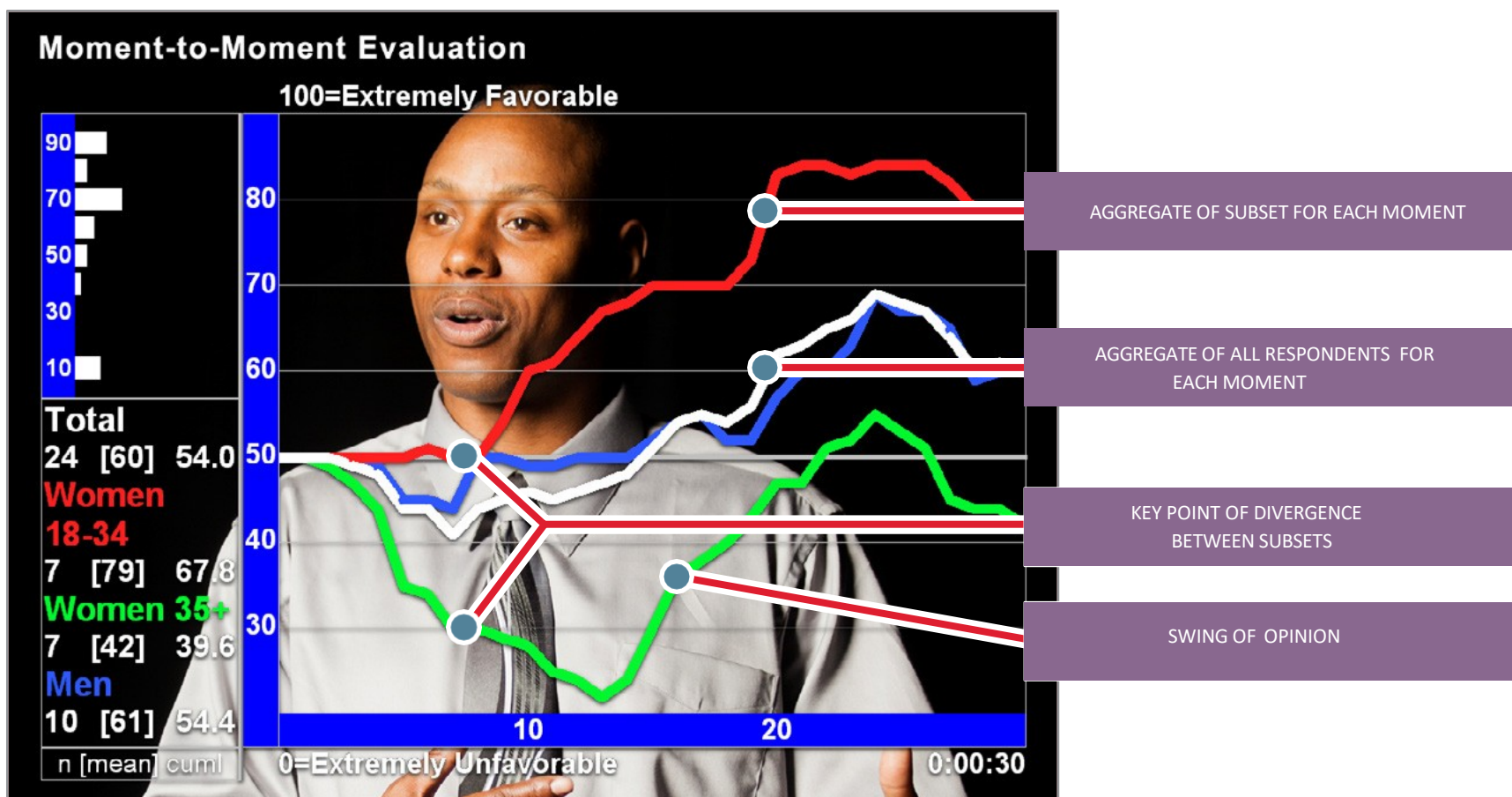
KEEP INFLECTIONS WITHIN CONTEXT OF PREVIOUS RESPONSES. Dial testing results are aggregated totals, so typically the greater the sample group, the less the intensity and abruptness of the inflections. Don't expect to see dial results hit 100 or drop to 0. In some cases, a line that goes up and holds at 60 could indicate a very positive result or one that drops and sticks around 40 could indicate a negative one. Dramatic inflections in the lines indicate moments or segments that require further investigation.

3

HELP TEMPER CLIENT RESPONSE. Neil Griffiths of Blinc Partnership advises being sensitive when presenting MtM results to clients, particularly those in creative fields. "They have deep emotional bonds to their ideas and work, and when they see a response line that 'dies' or goes flat, it can be disappointing for them. In those situations, I explain that the work as a whole isn't 'bad,' there just maybe certain sections that need revision in order to better engage and/or resonate with the audience."

GETTING & PRESENTING RESULTS

Interpreting Results



WHO IS DIALSMITH?

Dialsmith is a Portland, Oregon-based technology company that develops products and services for research, audience engagement and live event scoring. We are pioneers in the development of tools for capturing and displaying continuous and moment-to-moment feedback and are the worldwide marketers, sellers and service providers for The Perception Analyzer, Perception Analyzer Online, and Slidermetrix. Featured on CNN, FOX News, Food Network, and others, Dialsmith's Perception Analyzer tools are the gold standard for dial-based focus group testing, public opinion polling and audience engagement.

To learn more, visit www.dialsmith.com.

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Laurie Kuslansky, Ph.D., Expert Jury Consultant, Laurie Kuslansky & Associates

Dr. Kuslansky specializes in the full range of jury research; she has consulted on cases involving insurance coverage; breach of contract and fraud; securities fraud; employment and labor relations; intellectual property; product liability; and much more. Given her 32 years of trial experience, Dr. Kuslansky is often invited to speak to litigators and experts, both nationally and internationally.

Dr. Elizabeth Loftus, Distinguished Professor, University of CA-Irvine

Dr. Loftus is a psychologist and noted expert on human memory. For the last 30 years, her research has focused on the malleability of memory. A distinguished professor at the University of California-Irvine, Loftus holds faculty positions in Psychology and Social Behavior; Criminology, Law, and Society; and Cognitive Sciences. She's published more than 20 books (including the award-winning "Eyewitness Testimony") and more than 500 scientific articles.

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Dr. Katherine Vinson has over 10 years of litigation experience and is a social psychologist with a specialty in juror behavior and decision making. Her expertise is based on measures of juror attitudes, experiences, and behaviors which are used to develop jury prediction models. She has experience in major commercial litigation including the Lucent Technologies securities litigation, and contract matters involving CSX, DirecTV and Quest.

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