

Trial Strategy Using Social Media Analytics: Not Just For High Publicity Cases

BY DIANA GRENINGER AND AMY SINGER

Today's online environment has brought about new possibilities and along with it, new terms. For years, trial consultants have had the option to conduct Face-to-Face Focus Groups and Online Research. Now, with the unprecedented influence of Social Media, trial consultants can take Online Research to another level with Social Media Analysis.

Social media, in short, is the use of web-based and mobile technologies to turn conversation into an interactive dialogue. Trial consultants can use a workbench to analyze content based on specific criteria they desire to use. On that workbench, trial consultants can identify Phrase Clouds (new topics or phrases that are used). Trial consultants can then analyze and evaluate data by trends, such as source, author, comment or time period. They can also start to notice social influence (by media source, topic, phrase cloud and author) and be able to perform a sentiment analysis (by topic, phrase cloud, source and author). Social Influencers won't go unnoticed as they are the key drivers of conversation about trial consultants' "mark" or criteria.

According to Nielsen's third quarter social media report, "social networks and blogs reach nearly 80 percent of active U.S. Internet users and represent the majority of Americans' time online." Almost a quarter of the time these Americans spend online is passed on social networks and blogs, "Whether it's a brand icon inviting customers to connect with a company on LinkedIn, a news ticker promoting an anchor's Twitter handle or an advertisement asking a consumer to 'Like' a product on Facebook, people are constantly being drive to social media." (Nielsen). Needless to say, Americans feel more comfortable than ever sharing their thoughts, opinions and personal lives with millions on-line.

Nielsen's study, prompted curious individuals to do some searches on their own. Brand consultant Jeff Bullas pulled together a list of twenty stunning social media statistics. Among them, one out of nine people on the earth (roughly 750 million out of 6.94 billion people) are on Facebook; each user spends roughly fifteen and a half hours on the site, each month. There are over 2.5 million websites integrated with Facebook. "YouTube generates 92 billion page views per month...Wikipedia hosts 17 million articles... Twitter is handling 1.6 billion queries per day... Google+ was the fastest social network to reach 10 million users at 16 days" (Bullas) It's fair to say these statistics speak for themselves.

Casey Anthony's trial grabbed the attention of thousands of viewers across the nation. Unlike previous high publicity cases, viewers were not only getting information via televised, printed and on-line news; viewers were able to watch the entire trial online and freely share their comments with thousands of other avid watchers. Trial Consultants, Inc. followed every post, tweet and blog regarding this

case. As a result, we gained great insight into social media analytics as an innovative trial strategy. We discovered that social media can be used not only for brand research (such as when Starbucks creates a Facebook page that allows users to rate their products and ad campaigns), but also in litigation.

It is estimated that there were over 40,000 online posts regarding the Anthony trial. Orlando's WFTV blog alone was receiving more comments than the moderators could go through, receiving over 5 comments per second from viewers at one point. This was the first case where social media mining, farming and analytics were pro-actively used. When social media was in its infancy, private investigators began using Social Media Mining as part of their strategy; this however was being used in a very passive manner. This year in the Anthony trial, Trial Consultants, Inc. was able to incorporate Social Media Farming by taking information that was publicly shared by potential jurors and avid viewers in a more pro-active manner, using that information to make suggestions to the defense team. For example, as soon as we started seeing a pattern of negative comments about George Anthony, we advised the defense attorneys to start asking him tough questions, thereby focusing the negative attention on him while diverting it from Casey Anthony. Finally, we were able to then look at the trends within the blog comments and analyze the results which led to a successful defense tactic.

While it is obvious how Social Media can be advantageous in high publicity cases, how else can it be used? What if an attorney could get the same type of responses on a regular vehicular tort case that leads to a few broken bones, or on a case involving construction defect, or any type of case for that matter? With the right workbench, they can!

Imagine a program (or a mobile app) where attorneys can submit videos of opening statements (from both sides), witness interviews, depositions, pictures, etc. and get responses from hundreds of already active social media users online. Sure, you might think that only someone who has been involved in a car accident will want to share their opinions loud and clear but you'd be surprised. Many Americans already participate in online surveys to get a few Amazon bucks or airline miles, so why not give them richer content? We have developed a litigation social network web application that will allow attorneys to capture people's opinions and reactions in real time. This program will analyze any slice of data such as (but not limited to) a preselected portion of ADR/trial stimulus: depositions, demonstrative evidence, videotaped or live testimony or the complaint. (Wizpor™) Such a program can then organize comments and generate invaluable results.

We've all seen the success and popularity of Facebook. Part of that success can be attributed to Facebook's ever evolving features. In an article posted to Website Magazine, Michael Garrity highlighted that "After unveiling new privacy features last month that are reminiscent of Google+ Circles, Facebook posted on their blog today about the new subscribe feature which is said to make it easier for you to alter your News Feed to block specific content, specify which friends you want to see more content from (and which you want less of) and hear directly from people you're 'interested in but don't know personally,' artists or politicians." (Garrity) In other words, Facebook is constantly moving to keep up or stay ahead of the competition.

Furthermore, Facebook has given marketers the ability to do something else with it: use it as a real-time focus group. Dave Williams, who runs a technology and media company, explained in an article posted to Ad Age Digital that Facebook's 'Like' feature, allows its members to associate themselves with specific brands, activities, entertainment choices and so forth. In turn, the 'Like' feature allows marketers to target specific users for their product advertisement, making marketing dollars go further and attaining impressive results. (Williams)

Social Media Analytics is the answer when it comes to the future of litigation research. It has proven success in market research and it can now be used for a multitude of industries. While Face-to-Face focus groups have been getting the job done, it is well understood that it usually takes more than one group to produce valid results; according to an article by Elle Esse Smith on Chron News website, “market researchers know they’ve reached a point of saturation when no new responses are heard during the group session.” (Elle Esse Smith) Concurrently, traditional online research tends to be limited to the amount of questions and responses. Alternatively, social media analysis removes the barriers created by time and space while bringing a vast amount of feedback from users and/or participants. Below you will find a chart comparing the differences, similarities and advantages of face-to-face (F2F) focus groups, traditional online research and social media analysis.

***Face to Face Focus Groups vs. Online Focus Groups
vs. Social Media Analysis***

How do each compare? What are the advantages of each?

	F2F	Online	Social Media Analysis
Information	Qualitative	Quantitative	Quantitative
Participants	Pre-screened	Random quota sample	Random quota sample based on topic
Interaction	Controlled	Uncontrolled	Medium Control
Moderation	Moderated	Little or no moderator interaction	Can moderate depending on cyber network
Place and Time	Limited	Unlimited	Unlimited
Attorney Interaction	YES	NO	YES
Interaction between participants	YES	NO	YES
Visual Stimuli	YES	YES	YES
Monitoring of Non-verbal Cues	YES	NO	NO
Statistical Analysis	NO	NO	YES
Rationale	When you want to see real time reactions of participants who can meet at a specific time and location. Allows you to change direction or focus at any point and test different approaches.	When you want multiple opinions and reactions of participants who cannot meet at a specific time and location. Allows you to get candid opinions of participants who are comfortable in their own environment.	When you want multiple opinions of participants who cannot meet at a specific time and location. Allows you to change direction or focus at any point and test different approaches.
First Started	In the 1950's	Widespread in mid to late 1990's	2011
Acceptance of Methodology	Almost 100% accepted, often seen as a preferred method.	Mostly used in high-tech applications. Acceptance is growing.	Too early to judge.

T H E J U R Y E X P E R T

Richest Expression, Greatest Results for Interpretation	Body language, facial expression, in addition to questionnaires and discussion.	Most personal expression is lost. Difficult to interpret based on words or even emoticons.	Free response allows participants to emphasize their thoughts or feelings.
Workbench/Stimulus Materials	Unlimited types of stimulus materials.	Limited to words and few pictures.	Video Streaming allows unlimited types of stimulus materials
Following the Thread of the Conversation	Not a problem.	Sometimes difficult as online participants can respond at the same time as each other or veer off to different subjects.	Difficulty depends on analytic tool used.
Amount of Information	Unlimited within time and space	About 1/3 less words per unit time.	Unlimited.
Technology Bias	None	Yes	Yes
Honesty of Responses	Participants may encourage each other but not all will give candid opinions.	Full due to anonymity.	Not concerned.
Set-up	Hard. Must obtain place and participants who are willing and able to attend at specific time.	Easy.	Extremely Broad. Can create and upload all content. Can mine existing data as well.
Show-up Rates	50-80%	<50%	Unknown
Ability to Reach/Recruit	Poor. Reason why phone and online groups were invented.	Better than F2F but not nearly as good as SM due to acceptance and show up rates.	Easiest. Can be used in all cases, not just high profile.
Opportunity for Dominators to Sabotage Group	Can be difficult to control as you would not want to kick someone out of an already small group.	The person who types the fastest wins. Voice dictation allows someone to type 3 times as fast as regular folks. It is easy to kick someone out without hurting the sample size.	Same as online. It is easy to kick someone out without hurting the sample size.
Turnaround for Recruiting, Executing and Reporting on Groups.	The slowest of the 3 methods.	Much superior to F2F.	Likely to become the most superior out of the 3.
Bias Issues	Lower potential for bias than online as one can recruit as diverse of a group as desired.	Higher opportunity for bias as there is a low recruitment rate.	Highest opportunity for bias as one cannot control the participants who chose to comment about specific issues.
Personal Questions Can Be Addressed While Remaining Anonymous	NO	YES	YES
Sampling Advantages	Notorious Problems within F2F groups	Many advantages due to anonymity	The sample is in the comments.

T H E J U R Y E X P E R T

Availability of the Technology to the Participants	Participants might not show up due to weather, traffic, car problems, etc.	Over 70% of Americans have a computer at home	
Conversation Flow	Usually natural but easy to break into side conversations or feel ignored.	Parallel typing creates a disjointed conversation by nature.	
Possible Recruiting Bias to Self-Selected Participants	Most F2F groups are not self-selected. Some facilities to offer that option but should be avoided.	Often participants self-selected when they chose to sign up on a website. Can be avoided as recruitment procedures are available.	
Difficulty of Getting In-Depth Information	Known for its effectiveness in getting in-depth information.	Least effective way as participants can refuse to answer or give short answers.	Not as good as F2F, however, easy if accessing discussion groups. If moderating, participants can be probed or encouraged to provide more in-depth information.
Participation Issues	Show up rates is usually unpredictable. Once warmed up, participants are usually extremely involved.	Respondents often lose interest and drop out mid-research. No-shows are high.	None.
Group Control Issues	Groups can get out of hand but it's up to the moderator to keep everyone from talking at once, etc.	Amount of text streaming can be overwhelming to moderator and respondents.	Text streaming can be overwhelming but not when participants are forced to classify posts into different categories.
Skills Needed to Participate	Speak clearly and understand language of discussion.	Almost completely dependent on typing skills. Must have ability to log on and follow participation instructions on a computer.	
Novelty Effect on Recruitment Rates	This is the oldest method. Some people are tired of having to travel to facilities to be able to participate in groups.	Higher acceptance rates due to convenience.	Should be highly accepted. Already creating a lot of interest.
Client Novelty Effect	Tried and true method.	Has become widely accepted over the last few years.	Becoming widely accepted.
Travel Time and Expenses	YES	NO	NO
"Sensitive" Topics	Hard to get participants to open up.	These methods create ideal environment for participant to open up due to group support effect and anonymity.	
Participation on Respondents' Schedule	NO	YES – Participants can chose to respond at their own convenience	Somewhat, depending on type of group/website
Ability to Moderate	Likely the easiest method	Fairly easy as moderators do not have to think as quickly on their feet, although they do have to process a lot of information at once. Not a problem for experienced moderators.	

Psychological Safety of Participants	Lowest of the 3 as participants can be easily intimidated by other participants looking at them. Even experienced moderators have to work hard to make participants open up.	Equally high as participants can't even hear each other's tone of voice.
Immediate Transcripts	Takes a few days to organize results.	Available during session.

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