

Focus Groups – How to Deal with Case Issues

Richard A. Hall, IV, Esq.

Dolce Panepinto, P.C.

Buffalo

What is a legal focus group?

A legal focus group is a collection of individuals brought together to hear facts, evidence, and arguments regarding a pending or potential lawsuit. The group of people should match the demographics of the community where a lawsuit and/or trial is located. Feedback is solicited from the group by a moderator or presenter. This feedback assists with discovery, depositions, and trial. A more formal definition from Merriam Webster's online dictionary states that a "focus group" is a noun describing "a small group of people whose response to something (such as a new product or a politician's image) is studied to determine the response that can be expected from a larger population." The Small Business Encyclopedia defines a focus group as follows:

"A focus group is a marketing research tool in which a small group of people (typically eight to ten individuals) engages in a roundtable discussion of selected topics of interest in an informal setting. The focus group discussion is typically directed by a moderator who guides the discussion in order to obtain the group's opinions about or reactions to specific products or marketing-oriented issues, known as test concepts. While focus groups can provide marketing managers, product managers, and market researchers with a great deal of helpful information, their use as a research tool is limited in that it is difficult to measure the results objectively. In addition, the cost and logistical complexity of focus group research is frequently cited as a deterrent, especially for companies of smaller size. Nonetheless, many small businesses find focus groups to be useful means of staying close to consumers and their ever-changing attitudes and

feelings. By providing qualitative information from well-defined target audiences, focus groups can aid businesses in decision making and in the development of marketing strategies and promotional campaigns.”

Focus groups can provide vital information and a glimpse into the minds of a potential jury pool. Done correctly, a focus group can provide well-reasoned honest opinions about the issues in your case. This information is important for all stages of litigation. Focus groups help develop an insight into juror beliefs, opinions, and their overall rationale for making decisions.

Why do focus groups?

Focus groups provide useful insight into community values, opinions, and viewpoints. While you can't expect the exact same reactions from an actual jury, what you can count on is gaining an understanding into what will resonate with a jury.

Many lawyers assume they know what persuades a jury, in reality they simply guess. Focus groups help take the guess work out of a trial and can provide a clearer roadmap to success. Focus groups not only gives insight into what it will take to persuade a juror but also what it will take to change their minds on issues. .

The following is a short list of just a few areas ripe for focus group testing:

Should the case be sued? Defended? How? Why?

What evidence will persuade?

What information is missing?

What more information does the jury need to see?

Is your witness credible?

Is your witness's story believable?

Is there something about your witness that bothers the jury?

What is your witnesses' body language saying?

What other witnesses do they want to hear from?

Does your client's body language say anything positive/negative?

Are your demonstratives really all that demonstrative?

Is the story of your case really as compelling as you think it is?

Is my opening really conveying what I think it is?

Where do I get focus groups participants?

- Facebook
- Craigslist
- Employment Agencies
- College campus job placement office
- YouTube ads
- Senior Centers
- Church bulletins

Who do I get for my focus groups?

You want the focus to match the demographics of a common jury as much as possible. The goal is to get a focus group with varying ages, races, genders, employment and economic backgrounds. You want to avoid focus group professionals and repeat focus group participants as much as possible.

How much do I pay focus groups participants?

Pay well and feed them. You want to attract people to take time out of their busy schedules. If you're looking to match the demographics of a wealthier area, your focus group pay should match the pay in that area. It's not uncommon for focus group pay to range from \$100-300 per-person per day. Also, including a small meal and/or snacks is a must.

What types of focus groups are there?

Concept: a brainstorming session to gain an understanding of the underlying concepts in your case.

Narrative: Read short narrative with facts and circumstances. Ask who, where, why, when, how type questions.

Timeline: Read narrative in the form of timeline. Ask what happened, when and why type questions.

Opening Statement: Present opening. Ask follow-ups to determine the level of understanding and/or confusion.

Trial: Run condensed trial. Ask follow-ups to determine the level of understanding and/or confusion.

Demonstrative: Test your demonstratives until they need no explanation.

How do I prepare for a focus group?

Preparation is key. Know what you want to achieve and what your goals are before starting any focus group. Know what facts you want to disclose and when. Unlike a Survey in which you can come up with questions in advance and have potential jurors fill out the survey, a focus group is interactive and only preparation will help you take full advantage of what the group has to offer.

Should I have focus group rules?

Yes, the following rules should be stated at the beginning of the focus group, these rules can help with effective facilitation of the group.

1. Cell phones off-not just silenced. If simply silenced, most focus groups participants can still check e-mail, send texts, etc. Let them know that you will be taking breaks and they can access their phone during any and all breaks.
2. One at a time. Tell the group that you need to hear everyone's comments clearly and that becomes difficult if more than one person speaks at a time.

3. No interrupting. Let the group know that in order to hear everyone's comments please wait until one person has completed their comments before beginning yours.
4. No bad opinions. Tell the group that all opinions and comments are welcome and that there is no such thing as bad or dumb opinions in this focus group. Follow this up by saying that if they are thinking it, then someone on the jury will be, too.
5. Confidentiality. Explain that everything they hear must be kept confidential and that by participating they are promising to keep the information they learn to themselves.
6. Breaks. Make sure you explain when and how long breaks will be taken.
7. Bathrooms. The most asked question from focus participants: "Where's the bathroom?" Make sure you explain where the bathroom is at the beginning of the session.
8. Length. Explain how long the focus group will go and how many cases will be discussed.

How long should the focus group last?

The length will depend heavily on the type of focus group you are running and how many cases or issues you are planning on presenting. However, the typical focus group lasts 4-6 hours and a 10-15-minute break should be taken a few times during each focus group.

If you are planning a 4-6 hour group, your introductory remarks should be limited to 15-30 minutes, the presentations should last no longer than one to two hours, and the remaining time should be reserved for focus group discussion.

Where should focus groups be conducted?

Focus groups are best conducted at a site that is not associated with you or your firm. Hotels and conference centers are the ideal location. However, this is not always practical or affordable and therefore focus groups can be effectively carried out in your office under the correct circumstances.

When should focus groups be conducted?

When considering a time to start your focus group it is best to consider what hour suits your demographics. If you're looking to include people with jobs a start time between 9:00-5:00 will exclude most of those people. Therefore, it is best to start most focus groups after 5:00 p.m. preferably at 6:00 p.m.

Presenting: The importance of a seating chart.

Use of a seating chart will help the presenter interact with the focus group participants on more direct level. For example, the chart allows the presenter to refer to the participants by their first name. The chart should also include demographic information for each participant.

Presenting: Staying Unbiased.

The presenter must remain unbiased throughout the proceeding. Even a little bias can impact the opinions of the focus group. Presenters should not inject their opinions, feelings, or notions into the process. Treat everyone's opinions or statements equally and avoid giving weight to an opinion. For example, avoid statements like, "good point" or "I agree with you" or "I like what you're saying". Also, be cognizant of body language. Avoid things like frowning or shaking your head in agreement/disagreement.

Presenting: Getting Everyone Involved.

Some focus groups members will have strong opinions and great feedback but simply don't like to talk. The presenter must make sure to get these quieter participants involved and attempt, sometimes repeatedly, to get them talking and express themselves.

Presenting: Controlling the Group

One of the most common problems in a focus group is the one or two people who attempt to dominate the conversation and in effect control the discussion. The presenter cannot let this occur and must work hard to control the group so that everyone feels free to get involved in the group discussion.

Presenting: Guide the Discussion

The presenter's main job is to guide the conversation while at the same time staying out of the conversation. The presenter directs the topics to be discussed and moves the group through each topic once the conversation on the previous topic is exhausted.

Post Focus Group: Case Weaknesses

A focus group can help determine case weaknesses. Lawyers sometimes lean heavily on facts and arguments they find persuasive without ever knowing if that same fact or argument is truly persuasive to the average person. What some lawyers miss is that certain facts/arguments are simply rejected by people even if those facts/arguments are logical and reasonable. For example, many lawyers love catching someone in a lie and then proceed to hang their hat on the lie, they build arguments around the lie and depend on that lie to make their case. Focus grouping that lie often leads to the realization that the lie will not carry the day and will not be anywhere near as persuasive

as the lawyer hoped. The focus group reveals the rationale for negative responses to issues in a case and helps build alternatives or highlight other facts that are helpful to building a successful argument.

Post Focus Group: Case Strengths

Focus groups can also help point out the true strengths of a case. Once the focus group reveals the facts they find persuasive, arguments can then be built on those facts. Unnecessary facts and arguments can be removed from your case and the emphasis can be on the important facts and issues that actually persuade.

Post Focus Group: Memo

Immediately after every focus group a memo should be done summarizing the focus group's opinions and laying a game plan for the next focus group.

Sources include:

Focus Groups: Hitting the Bull's-Eye by Phillip Miller and Paul Sceptur

The “Why” and “How” of Focus Group Research by Douglas L. Keene

How to Do Your Own Focus Groups: A Guide for Trial Attorneys by David Ball

Focus Group Strategies: Winning and Successfully Settling Jury Trials by Ami Gordon &
Robert Gordon

LINK TO POWERPOINT PRESENTATION:

<https://prezi.com/view/2FnsDjgFC3EEuQhyYuLc/>