

FOCUS GROUP BASICS

1. Why should an attorney use interactive focus groups?

To see the case through the eyes of your decision makers – the jurors. As a lawyer, you know too much about the law and about the way the legal system works to see your case the way real people see it. What matters to jurors is what really matters, not what you think matters. Do you know what matters to jurors? You need to find out.

2. What are the most important considerations when deciding to do focus groups, and when deciding what focus group company to use?

The most important considerations are: Do you want to simplify your case? Do you want to know where you should focus your time and energy in discovery and in your selection of experts? Is it possible there are things that will matter to the jury that you haven't thought of? Do you want to increase the chances you will win? Are there "legally insignificant facts" that can help or hurt your case?

If the answer to any of these is "yes" then you should do focus groups.

As for whom you should use, what matters most in getting valid and useful results is:

- a) Who is conducting the group and how are they doing it?
- b) How interactive is the group – is it a true "interactive focus group" where the jurors discuss the facts and evidence and "deliberate" or is it a "mock trial" where the lawyers present the case and the jury comments on the performance?
- c) What materials is your consultant willing to present to the jurors – video testimony, live testimony, demonstrative exhibits, Rules of the Road that they develop for you, etc.?
- d) How well are the goals of the group defined and how well are the presentation materials prepared?
- e) What are the demographics of the focus group jurors? Are the participants jury-eligible people who live in the venue where your case will be tried?

Preparing for and conducting focus groups correctly is a skill that develops over years of doing it. When you are shopping for a focus group company, ask out how much experience they have with cases just like yours, and check references. Poor preparation or biased presentation in focus groups can hurt you and your clients (see below).

3. How can focus groups hurt and how can they help?

Well-conducted interactive focus groups will give you information about how to make your case better. Some lawyers think of focus groups as (only) a way to evaluate their case; is my case a thumbs up or thumbs down? But timely, well-prepared and properly conducted groups can do much more than that.

Much of the success or failure of a group depends on how the preparation is done. Garbage in, garbage out – preparation is everything. You can't get valid results unless the right information is prepared in the right format and presented in the right order. "Right" means "that kind and amount of information presented in a certain order so that you maximize the discussions of the focus group jurors."

Can bad work hurt you? Yes – a case that is worked up wrong, presented wrong, conducted with the wrong people and conducted in an environment that discourages open expression of every thought (no matter how prejudiced or strange) or that indicates a bias will give you false information. Some of the true gems that emerge from a properly done focus group will give you your trial theme, important messaging, or tips about what you need from experts. It can be a gold mine, if done properly.

4. At what point during trial preparation do we recommend utilizing a focus group?

Ideally, early on – well in advance of the discovery cutoff, to guide your case preparation and discovery, followed by a second round after discovery is done, to help create or test the rules of the road you will use to frame your case, to find out what holes need to be filled, and to test specific themes and evidence. Beyond that, any time is better than no time, but the further from your trial date, the better.

5. How much information are you focusing at one time?

Groups can be done both as a broadly-based test of what works and what doesn't or what's important and what's not based on a broad spectrum, or to test narrow issues, such as how to minimize the attribution of fault to your client.

Part of the initial work-up with your focus group company is defining the goals for the groups. What do you want to learn? For example, sometimes lawyers seek to learn whether they have included all the essential parties (on both sides) or whether to drop claims or causes of actions. An experienced focus group developer will help the lawyer understand what is possible.

6. What size focus groups are most effective for different aspects of trial preparation?

Most of our groups are based on 8 jurors. Although you get more detailed information from 6 people, there is a "statistical" comfort that many lawyers find in having more than that. We believe you can't do a good interactive focus group – the way we define it – with more than 8 people because a larger group doesn't enable you to allow the participants to meaningfully participate and share their opinions about their case. For a larger sample, have us do

surveys tailored to your case in your venue to get a broader view of specific aspects of your case.

7. How do you know if your moderator is inadvertently injecting any bias to the focus group?

The most important thing in conducting a focus group is creating a neutral environment where jurors feel safe saying anything that is on their mind. It is VERY hard to create and maintain that environment, especially if the person moderating the focus group has a personal stake in the case. Jurors are extremely sensitive to the feeling that the moderator “wants” things to go one way or the other. They will give up their openness if they are “shut down” or if some opinions are being discouraged.

How do you know if your moderator is inadvertently injecting any bias? One way is if you feel too good about how it is going. We always tell the people we are working with that “I can make you feel good, or we can learn something useful.” If you are not feeling some pain, you either have a perfect case (unlikely) or an imperfect presentation.

8. What is the determining factor for you when considering using focus group information? In other words, do you take some info and leave some?

You have to be careful what you reject – we won’t say “the jury is never wrong” but just because you don’t like what you hear doesn’t mean it is wrong. You want to discover the flaws in your case so you can fix them, not so you can disagree with what the jurors are telling you.

You never know what gifts a focus group is going to give you – that’s why we do these. Keep an open mind. Golden nuggets can pop up anywhere in the process.

9. Have you ever seen focus group information hurt a case because of poor demographic planning for the focus group participation?

Yes. We know good trial lawyers who have done what they call a “focus group” using friends, relatives, neighbors, or staff, or who use a demographic sample that is not representative. For many reasons, the results you get under those conditions are suspect.

Another danger: do NOT do your groups in any venue other than the one where the case is pending. We have seen cases where the lawyers refused to do that, for what they thought were good reasons, and the case resulted in a defense verdict for reasons that would have been discovered had the focus groups been conducted in the actual venue. Regional attitudes and regional knowledge exist, and make a difference.

10. How much does groupthink come into play and how is a good moderator able to offset it?

“Groupthink” can occur in two ways. The first is the influence of strong jurors vs. weak jurors. Strong (assertive, decisive, loud) jurors have much more influence on the outcome of a case than you might think. A strong juror or jurors will push other jurors to vote their way.

The second groupthink factor is the jurors’ desire to avoid conflict with each other. This can result in compromises that aren’t necessary – jurors are supposed to debate the issues, but most want to be within the “norm” and don’t want to be outliers or in conflict with their fellow jurors or their community (although they are perfectly comfortable being in conflict with *you!*). In session, the moderator can let groupthink develop, to feel the trend, or break it up, by supporting the dissenters. Which you choose depends on the goals for the groups. Remember, groupthink happens with juries at trial. Why not use your focus group to explore what happens with groupthink on your case – how to break it up, how to feed it, and where it goes?

11. What tips would you share with other lawyers considering using focus groups?

Properly prepared and executed focus groups are expensive, and the time necessary to understand what you learn and incorporate that learning into your case is considerable. You might feel “I can’t justify the money (or the time) for focus groups for this little case.” But how much does it cost to lose? There is another way to look at the costs – if you have a drawer full of similar cases, you can pick one and learn things applicable to all (and divide the costs across multiple cases)

12. What other obstacles present themselves when analyzing the focus group data?

Applying what is learned is sometimes more of an obstacle than analyzing what is learned. Applying the information to your case is hard work! The best use is to take your notes, our report, and the video, and sit down and re-write your case plan or discovery plan or, if you are that far along in the case re-write voir dire, opening or closing. Focus group jurors can give you the themes and language you need to connect with your ultimate jury. If you hire us, your interactive focus group package includes a Debriefing Session where we work with you and your key team members to analyze what we learned from the interactive focus groups and how to use that information to strengthen your case.

13. What important issues or questions should attorneys be made aware of or consider that hasn’t been covered before?

Interactive focus groups are a great client education tool! If you have a client who says, “we can’t lose” or “this is a million dollars case,” or “the jury will never convict me,” watching an interactive focus group will give them a more realistic view of the possibilities. They are also very valuable for the evaluation of witnesses, through live testimony or video from depositions or interviews.