

Ten Tips for Successful Focus Groups

1. **Do interactive focus groups, not a mock trial.** Many people use the terms “focus group” and “mock trial” interchangeably. However, they are actually quite different. A “mock trial” is a dress rehearsal for trial where the lawyers play the parts of witnesses and lawyers for each side. They make their presentations while the jurors watch. Only at the end are jurors allowed to deliberate or speak. Mock trials are most helpful close to trial and/or as a way to practice voir direct. “Interactive focus groups,” on the other hand, require no presentation by the lawyers. Instead, the jurors are given bits and pieces of evidence, testimony, jury instructions, and demonstrative exhibits throughout the course of the session and talk about what they see, think, feel, and understand. The lawyers watch the entire process and benefit from hearing the jurors’ comments in real time. During breaks, the lawyers and trial consultant decide which additional pieces of evidence and information to test and focus on.
2. **Do the focus group as early as possible.** *It is never too early to conduct an interactive focus group!* Many lawyers are now focusing their cases before they even file suit or file a notice of claim. The earlier you focus your case, the sooner you learn what the problem spots are with your case and/or your client. This enables lawyers to focus their discovery in the areas that are most crucial while avoiding wasted time and money on issues that aren’t relevant or helpful to the jury. Doing a focus group early also enables the lawyers to think critically about their case from the very beginning so that they streamline their case development and focus on what really matters.
3. **Expose all your weaknesses and warts.** Every case, and many clients, have weaknesses or warts. Although it is tempting to ignore them or assume they won’t matter, it is much better to embrace them at the focus group. Don’t shy away from the things that trouble you about your case or clients. Instead, expose them at the focus group and see what real people think. Do these weaknesses hamper their ability to understand or care about your case? Or do they enable the jurors to identify with your client? Remember, if you don’t test it, you can’t fix it.
4. **Explore different theories of liability.** Your case may involve complicated issues of medicine, science, physics, or intellectual property. There may be many things the opposing party did wrong, and you may be tempted to explore all of them at trial. This is nearly always a mistake – and nearly always unnecessary. One advantage of focus groups is that the jurors will often tell you what your case is about. They will help you discover themes and theories that resonate with them so that you can better refine your case for trial.
5. **Don’t prepare your client in advance.** Your clients are permitted to participate in the focus group too. Even if they’ve already been deposed and you’ve talked to them about their testimony, you may be surprised at how well (or poorly) they do in front of live jurors who ask them questions. When people get nervous, or get too comfortable, we see how they are likely to perform at trial. To give yourself the best indication of what your client will do when stressed or nervous, don’t prepare them for the focus group. Instead, just let them speak to the jurors without any preparation. What you see might surprise you – or make you realize that they will take more preparation than you expected. After the focus group, you will have the benefit of the videotape and juror evaluations of your client so that you can prepare for trial.

6. **Keep an open mind.** Trial work isn't for the faint of heart. You have to believe in your case and your cause, regardless of what the media, public opinion, and opposing parties tell you. Focusing on the result and the righteousness of your cause is what enables you to take the risks you do. However, at a focus group, you must strip away all of your bodyguards and approach the experience with a completely open mind. Be open to what the jurors say about your case, your client, your witnesses, and your themes. It is when your mind is open that you learn how to succeed.
7. **Be receptive to change.** Quite often, you think you know what your case is about. However, focus group jurors will often tell you that they think your case is about something else. Sometimes this is because your case is too complicated, and they have discovered an easier theme. Other times, it is because the theme jurors choose is more acceptable or palatable for them. Jurors will also accept or reject your witnesses and demonstrative exhibits. Although it is difficult to exclude things you've worked on, sometimes it is necessary to be willing to change things about your case in order to win.
8. **Listen, listen, listen.** The benefit of interactive focus groups is that the jurors get to talk – a lot. You will be amazed at the level of dedication that these jurors bring to your case, the passion they exhibit, and the willingness with which they devour your case. Lawyers always learn something new, discover a question they hadn't thought of, or hear a sound bite that can become a trial theme. If you want to know what real people think about your case, all you have to do is listen. If you want to know what to do about the problems in your case, just listen. The focus group jurors will tell you and give you a chance to make the necessary changes in your case.
9. **Remember – to win the trial, you must often lose the focus group.** Admittedly, interactive focus groups are a gut check. It is difficult to listen to people tear into you, your clients, and your case when they don't know the years of work and suffering that have occurred already. The focus group experience can be discouraging and disheartening at first, but there is nothing more valuable to enable you to learn what needs to be changed in order to win. All cases have weaknesses; all cases can use some polishing. Focus groups let you know where to spend your time and effort so that you can present your best case at trial.
10. **Conduct a second set of focus groups later in the case.** If you do a set of interactive focus groups early in your case, you will learn what real people think about your case, what they need to know in order to understand your case, and how they value your case. All of these things are crucial as you think critically about your case, develop the case through discovery, and prepare for trial. Doing another set of focus groups closer to the close of discovery will enable you to see which additional pieces of evidence you need to gather, test your demonstrative exhibits, watch your witnesses testify, and make those last changes you need to proceed to trial with confidence.