

Focus Group Follies

By Jessica Hoffman, J.D., M.A.

You have an important case coming up – one that merits doing a few focus groups. Great! However, whether you decide to do an extensive mock trial or a simple half-day focus group, the costs can add up quickly. Focus groups and mock trials run anywhere from \$5,000.00 up to over \$100,000.00. The results can be immensely helpful in evaluating a case’s strengths and weaknesses, testing theories of a case, testing witness credibility, testing the effectiveness of exhibits, managing clients’ expectations, and preparing for mediation. The results can also be a waste of time and money if you run the focus group incorrectly. Regardless of the amount you pay, you want to get your money’s worth. There are certain mistakes I have seen attorneys frequently make, any of which will harm the reliability of the focus group results. To get the most out of your money, make sure that you and your consultant adhere to the following rules:

Recruit from the venue of the trial.

You may think there is little difference between people from Denver and Boulder and Lakewood, but the differences can be drastic when it comes to peoples’ values, lifestyles, beliefs and attitudes regarding your case. People from different cities or counties have different experiences with local hospitals, with politicians, with the types of people with whom they interact. These different living conditions create different belief systems and attitudes toward issues that may be a part of your case – even if you do not think they are. Therefore, whether recruited by yourself or a recruiter, focus group jurors should match the demographics of the venue where the trial is to take place.

Do NOT reveal that this is a focus group.

People think differently when they believe something is an exercise rather than the real deal. This is not due to an insensitivity or lack of effort toward your research goals – it is simple human nature. Although people will promise to give your case their utmost attention, they cannot control subconscious forces that trigger the brain to react differently when deciding on something real versus an exercise. If your focus jurors think that this is a dress rehearsal or that their opinions do not make a true impact, they will space out when you are talking, take fewer notes, voice their opinions less and give less thought to your case. If, however, jurors do not know that this is a focus group and believe that their opinions will have a real impact in a real case, they will put forth a wholehearted effort into making a sound decision. Make sure your consultant is not telling jurors that this is a focus group – do not include it in the recruiting materials, in follow up calls, on the signs at the focus group location, or at any time during presentations.

Do NOT reveal for whom you work.

Focus jurors are often curious about which side is yours. If they find out which side you are on, because either you or the consultant tells them or because the presentations do a poor job at masking sides, their opinions will be skewed. It is human nature to avoid offending other people. If jurors know for whom you work, they will withhold some opinions and choose their words carefully rather than being candid. Make sure your consultant is doing all he or she can to keep focus jurors in the dark about your role. Only once the focus group is over, can jurors know for whom you

work. This also means the consultant must be skilled enough at drafting scripts for the focus group such that there are no cues as to which side hired him or her.

Make the opposition's argument stronger.

The goal is not to win a focus group. To a large degree, it is irrelevant in whose favor the focus jurors decide. The purpose of a focus group is to find the weaknesses in your case. To do this, you must make the opposition's presentation stronger than your own. You will then find out the worst-case scenario, and you can prepare to fight against it. If you make your own presentation too strong, focus jurors may come to a decision quickly and have little discussion over the issues involved in the case. You need to see what possible arguments they could make against you so that you can counter them at trial.

Stick to the script.

I have seen it happen all too often. Attorneys will hire a consultant who spends hours of expertise time drafting scripts for a neutral statement, plaintiff's argument and defendant's argument to present to focus group jurors. The consultant meticulously crafts the script to portray information in a certain order, using certain words with certain goals in mind – after all, that is why you hired him or her. As soon as the attorneys get the scripts in hand and begin to present to the jurors, they revert to adversary mode, arguing off script, adding information, changing the wording, and adamantly trying to convince the jurors. In the courtroom, this is a highly admirable skill, but in research, it is costly. By veering off script, you not only throw away the money you paid a consultant to carefully plan the focus group, you also sacrifice any hope for valid results (see the rule below to understand why). Remember that a focus group is not a trial – it is okay for you to lose. It is okay that the consultant did not phrase the argument in the persuasive manner you want for trial. The goals for a focus group are much different from those at trial. Trust your consultant to have those goals in mind when creating the scripts and do not veer off track.

Always have a control group.

For every script you have, you must present to a minimum of two focus groups (the more the better). If you change your script – by adding information to address concerns of the first group, by testing different themes or by testing the addition of evidence that you are not sure is admissible – you ruin the reliability of the focus group. If you presented information in one sequence to one group

and change the information or sequence for a second group, then how do you know that the difference in result is due to the difference in information? It could also be due to a difference in jurors. Therefore, ALWAYS present the same exact script to at least two different groups of participants. That will account for any groups where there are one or two outliers who think differently than the majority of the population. If you want to test different themes or information and their impact on jurors, by all means, please do – just make sure to test each variation on at least two groups of participants.

By following these rules, you will ensure that your money and efforts are not wasted. Focus groups and mock trials are invaluable – but only if done correctly. Otherwise, they may be worthless or, worse, highly misleading.

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