



Junk In, Junk Out: The Science of Focus Groups

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

Focus groups are easy to put together, right? They seem to be as simple as gathering people in a room, presenting your case and asking for feedback or letting the participants deliberate. What you may not see behind the scenes are the many scientific variables the organizer controls in order to produce meaningful, valid results. If you watch video of deliberations from two different focus groups, one with and one without scientific principles behind them, the video will appear the same. Either way, you will see a group of people talking about your case and throwing out ideas that you may or may not have considered. The difference is that one group can be very misleading while the other provides reliable data. Below are a few of the scientific variables that go into creating a reliable focus group:

1. Have a Control Group. For every script you want to test, you need to run it by a minimum of two separate groups of jurors. You may remember from high school science classes that you always need to have a control group. Otherwise, how do you know to what you are comparing the results? You can have one group that is thrown off by one or two outliers (jurors who have unique experiences or personalities that greatly affect the group dynamic and direction). Without a second group to compare it to, you will never know that your results are skewed. Attorneys often ask me if I can change the script for the second group or add a new argument. I always advise against this. It is extremely helpful to test different scripts to find out which variables affect the decision-making process, but you must test each script with at least two groups. Otherwise, how will you know if the change in deliberations is a result of the change in the script or if you simply had one outlier group? This brings me to my next principle...

2. Test One Variable At a Time. If you test more than one thing at a time, there is no way to decipher a causal relationship between a variable and a result. For example, if you want to test how jurors will react to your presentation of the case and your demeanor as compared to an aggressive defense attorney, you cannot also test the way jurors will respond to the evidence itself. You need two different focus groups to test these two variables. If you are testing the story of the case and the evidence, you need to have one neutral person present the evidence so that personality is not an additional variable. If you have already tested how jurors will react to the case itself, then you can run separate focus groups to test how your presentation style impacts jurors by presenting your case in an adversarial manner and having someone else play the role of a defense attorney.

3. Recruiting Matters. Any study that you test by recruiting college students is invalid. The results are reliable only if you are testing what college students will do, but you cannot extrapolate the results to the rest of the population. College students think differently from people who are married and settled down, or those who did not have money for college. The same goes for recruiting any group of people. If your jurors come solely from unemployment agencies, your friends or family, law partners or even Craigslist, your results can be misleading. If you find out, for example, that people who regularly browse and respond to an ad on Craigslist respond to your case in a certain way, you will never know if people who do not use computers or who are not looking for small side jobs will respond differently. Those very people may be part of your actual jury. The most reliable method of recruiting is always random recruiting. Match the demographics of your trial venue as best as possible. The

more closely you can match those demographics and the more random the recruiting is the more reliable your results will be in predicting what an actual jury will do with your case.

4. Do Not Blow Your Cover. In some focus groups, this does not matter. If you do a product focus group for a new Dell laptop and you want to find out how people react to it, the fact that the participants know Dell is sponsoring the focus groups is likely irrelevant. In law, however, there are very different stigmas attached to plaintiffs and defense attorneys. If jurors know which side is sponsoring the focus group, they will unconsciously process that information and view the case through a biased lens. Make sure a neutral person presents the information and that there is no mention of your role or your firm name. Do not assume that simply because you do not advertise,

jurors will not know who you are. Despite admonitions at the start of a focus group, jurors will Google your firm name during breaks and find out that a plaintiff's firm is putting on the focus group.

There are many more nuances to putting on a scientifically valid focus group - one that will give you information that is helpful without misleading you. Even the methodology of drafting the scripts and deciding on an order, phrasing and leaving out evidence, has scientific reasons behind it. How you ask jurors questions throughout the focus group also has validity implications. These more intricate variables take years of experience to learn. The principles mentioned above hopefully seem straightforward. Just remember, junk in, junk out. ▲▲▲

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Who Are We?

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During the extensive give-and-take with the referenced speakers at the seminar, it seemed that our community understood and resonated with the desire to be the "truth teller," but that while we strive toward that goal, many things can easily distract us including:

- The expectations of others
- Fear of rejection
- Fear of failure
- Communication barriers
- Managing client expectations
- Client management challenges
- The press of time management

These issues circle back to the purpose I stated initially for this column: To bring us back to our motivations in representing people. What are our goals? It helps to sort out in advance

what our goals are, for example, to be the truth teller rather than to conform to the image of the closed down, unavailable and sharp "lawyer-like" advocate. If we, each of us, stakes out our ground well in advance, it will be easier to hold that ground when the challenges of the litigation process, from every possible angle, work to chip away at that solid ground of "the truth teller."

Is this important to you?

Endnote

¹ *Harder to Breathe* by Maroon 5:

And like a little girl cries in the face of a monster that lives in her dreams.

Is there anyone out there 'cause it's getting harder and harder to breathe."

(Watch for events of your favorite attorney band, Phoenix Rising).

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