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Effective use of focus groups

CAN YOU IMAGINE IF YOU WERE ABLE TO HAVE A TRIAL, SEE THE RESULT, TURN BACK THE CLOCK WITH A CRYSTAL BALL, AND THEN GO TO MEDIATION? YOU CAN WITH A FOCUS GROUP

Victorious warriors win first and then go to war, while defeated warriors go to war first and then seek to win.

– Sun Tzu

Whether you are handling a civil case as a plaintiff or defense attorney, how often have you valued your case based on past verdicts, a mediator's analysis, or simply the available policy limits?

That is exactly what many trial attorneys have done for years, believing there was no other methodology. However, these methods ignore the most critical decider of a case's value: the jury. Can you imagine if you were able to have a trial, see the result, turn back the clock with a crystal ball, and then go to mediation? You can! The mechanism for this is the focus group.

Focus groups were first used in the 1940s for market research for radio soap operas. Since then, they have tested people's reactions to everything from pills to propaganda. In the legal field, many attorneys use jury consultants who conduct their own focus groups, but it is possible to conduct a focus group without a jury consultant and glean essential information to value your case.

The proper use of focus groups to test out your arguments is likely the smartest thing a trial attorney can do to prepare for the courtroom. No attorney wants a surprise at trial, but unless you vet your case in front of live people, you are setting yourself up to fail.

As a firm, we use focus groups quite often. They have helped us spot holes in our arguments, find areas we need to address in the evidence we present, and determine the potential "likeability" of our witnesses and clients, or simply get a different "read" on facts we have been living with for a long time.

Strategic tips for using focus groups wisely when preparing for trial or mediation include:

Tip 1: Use focus groups early

Don't wait until a month before trial. That won't give you enough time to make any necessary adjustments. In certain cases, we ask our attorneys to imagine it is three years from now, and they just lost the case in trial. What do they believe are the reasons they lost? Time is your best friend, so use it wisely! Give yourself at least six months before your trial date, and you'll be able to better determine the strengths and weaknesses of your case and get a sense of its potential value.

Tip 2: Organize your focus groups well

Putting a focus group together could cost you from nothing to \$50,000. Depending on the value of the case and its complexity, you can control how much you want to dedicate in resources to a focus group. Focus groups come in all different forms: online groups, in-person groups, and hybrid groups of varying sizes.



You can put together your own focus groups or use a jury consultant. Find what type of group works for you, and what gets you the results and information you want.

Focus groups can be as focused or as broad as you want them to be. The format, the issues addressed, the timing and the pace of information presented is dictated by what it is that you are trying to accomplish.

Tip 3: Follow a process that works

Follow a convenient and cost-effective model. Our focus groups have most definitely resulted in increased verdicts. The first step is to cultivate potential jurors from either the immediate community or from the community where the trial is being held. A more rural jury pool will impact your trial differently than one from a city such as Los Angeles. This can be done through the DMV database (jury consultants have access for you at a cost) or Craigslist (on your own).

When asking your potential focus group jury questions, get granular – not just age and occupation, but employment status, estimated annual salary, education, and even specific questions about whether they have experience with DUIs, head injuries, or any other circumstances relevant to your case and trial.

You should be willing to make a financial investment in those focus group jurors, meaning you'll have to pay them. At our firm, offering \$40-\$50/hour is sufficient to get a decent reply.

Tip 4: Size matters

You can choose to go with a full 12-person jury or limit the mock jury to five or six individuals. This allows time for more specific feedback and interaction with the mock jurors after you've made your arguments.

Tip 5: Time the process properly

Give yourself two to three weeks between the posting of the ad and the actual focus group, but once people respond to your ad you should reach out immediately to confirm their interest. A few days before the focus group takes place, email the participants a reminder, and confirm they'll be in attendance.

On the day of the focus group, have the mock jurors arrive about 30 minutes early and make it clear what you expect of them. Our firm also makes clear to the jurors what they should accept as "true" for the focus group or that they may have questions at the end but will need to make their decisions based upon the information provided.

Tip 6: Organize your process well

To execute a mock trial for a focus group, follow this agenda:

- Snap-shot – This starts with a simple, straightforward presentation of the facts by the attorneys.
- Timeline – Set up the case facts chronologically. Then present your case visually by using PowerPoint or by drawing it out. Finally, ask the group for open-ended feedback.

- Opening statement – Read the opening statement for the case and ask the participants to talk about what they think happened.
- Witness credibility – With the use of video depositions, we create four-to-six-minute clips of key witnesses to show to the group. Our attorneys then watch each video with the group, following each video with questions about first impressions, whether they believe the witness, etc. In this type of focus group, we take note of the verbal and non-verbal reactions to the witness testimony.
- Jury instructions/legal terms – Our firm posts one legal word, phrase, or jury question on a board or PowerPoint. Then, we ask the participants to share their own definitions and examples. Our attorneys gather the words and phrases used to explain the legal jargon and spend time learning from what the mock jurors did/didn't understand.

Throughout the process we ask questions, communicate with the jurors, and get the information we believe we need to be successful at trial.

- Bonus tip – Nondisclosure agreement
We have every mock juror sign a nondisclosure agreement before we start

our arguments. In an age of social media, the last thing any trial attorney wants is for vital information to be handed to defense attorneys on a silver platter.

If used properly, a focus group can be the tool that opens your eyes to serious challenges or even greater potential value of a case. Sometimes as attorneys we can have tunnel vision, and a focus group is a great tool to help you see outside your perspective. The goal of a focus group is not to reinforce your self-esteem, but to find the hidden underwater rocks that can sink your case. Focus on getting these results with focus groups, and your clients and colleagues will thank you.

Danny Abir is the managing partner of Los Angeles-based Abir Cohen Treyzon Salo, LLP, where he represents clients in the areas of property claim disputes, insurance bad faith, catastrophic personal injury, products liability, civil rights, as well as complex civil litigation. For more information, please visit www.actslaw.com.

