



Pretrial Research:

Spotlight On Focus Groups

Focus Groups: Why Do Them?

The focus group is a powerful research tool often used in trial preparation. Focus groups are typically conducted 3-4 months before trial. They enable the trial team to identify the strengths and weaknesses of their case, and help in clarifying and prioritizing the themes of the case early in the trial preparation process.

The Format

A focus group is a guided small-group discussion. A moderator gives a modular, bipartisan presentation of the case and the participants respond to what they have heard. At a typical focus group, 10-15 participants – who are a representative sample of the venire – are brought into a conference room and are seated around a table. A moderator then leads the group through a guided discussion that includes:

- An introduction to the case;
- Case-related free association questions;
- A presentation of case themes and facts;
- Questions interspersed throughout the presentation; and
- Final verdict questions

The trial team observes the proceedings through a one-way mirror, and all of the proceedings can be videotaped and/or transcribed.

Similar to our telephone surveys, our focus groups are noteworthy for their bi-partisan presentation of the case: we present both sides of the case on a theme-by-theme basis in modular form. After each module is presented, we ask the participants to react to what they have just heard. For example, we ask questions such as:

What do you think of the idea that Mr. Jones was told by the CFO to do this, and did not know that it was in violation of accounting rules?

How much does it matter to you that Mr. Jones' fellow employees will testify against him? Do you think their testimony is reliable or do you think they're trying to save their own skins?

What if I told you that Mr. Jones had been investigated for financial wrongdoing at his last job, but never actually charged with anything? Would that matter to you?

Then, after the entire case is presented, we ask the participants to react to the case as a whole and to vote on the verdict questions.

A Source Of In-Depth Data

Because focus groups last three to four hours, we are able to give a detailed presentation of the case themes and facts and, in turn, obtain in-depth information about the thought processes and perceptions of likely fact finders. In fact, focus groups often bring out aspects of the case that would not have been predicted or anticipated by the trial team.

They also can provide new language for talking about your case. Participants often come up with expressions and analogies that “ring true” to others, and that can be very effective when used at trial. Similarly, participants’ reactions to explanations, demonstratives and exhibits provide an excellent test of proposed strategies for teaching your case to a jury.

Focus group data consist of participants’ written responses to questionnaires – which include questions about demographics, case-related pre-existing attitudes, reactions to the case, and verdict(s) - and oral answers to questions posed by the moderator. Their responses provide us with an in-depth understanding of how a jury is likely to process the facts and issues of a case. By analyzing participants’ reactions after each argument, we are able to assess the impact of each theme presented, as well as the relative strengths and weaknesses of the case.

Focus groups are generally the second step in a series of pre-trial research tools designed to help a trial team better prepare for trial. We will explore the third step – a mock trial – in the future.