



By Peter M. Williamson

# Conducting focus groups on a shoestring

In preparing for trial, the value of focus groups is immeasurable. Focus groups can confirm the strengths as well as the weaknesses of your case. They can help identify themes that can be incorporated into your trial presentation. And, they can often provide an indication of the value of your client's case. But, how many of us actually conduct focus groups as a normal part of our trial preparation? We all know focus groups are routinely conducted in multi-million dollar cases. Why are they seldom used in smaller cases? Part of the reason for this is that many attorneys believe the costs associated with conducting focus groups are prohibitive and simply not justified by the value of smaller cases. The purpose of this article is to explain the mechanics of conducting a focus group for as little as \$1,000.

## Preparing for a focus group

Once the decision to conduct a focus group is made, you must decide when and where to hold it and who will participate. I prefer to conduct focus groups approximately 60-90 days before trial because most, if not all, discovery has been completed. At this point in the litigation, you should be aware of the evidence that will be offered at trial to support your client's claim. As the trial date nears, you may already have begun preparing trial exhibits. I recommend using trial exhibits, if they are available, during your focus group presentation. Conducting focus groups 60-90 days before trial will also allow you sufficient time to analyze and interpret the information obtained from the focus group jurors and incorporate it into your trial preparation. Planning well ahead will also afford you the opportunity to conduct a second focus group if you feel it is necessary and have the resources to do so.

The focus group should be held in a place that comfortably seats 12-14 people. It should also be large enough for you to display trial exhibits or other types

of evidence that you plan on using during the actual trial. If you do not have a large enough room, ask a friend or colleague if you can use his or her conference room for an evening. One other option may be renting a conference room for an evening in a law suite.

Once you have decided where and when to hold the focus group, you must then choose the participants. If you are lead counsel in the case, you should present the plaintiff's case. If you are fortunate enough to have co-counsel (who presumably has an intimate knowledge of the case), he or she should serve as defense counsel. If you have no co-counsel, ask a friend or colleague to present the defense position. Usually, it is not difficult to find someone to argue the defense position. Most trial lawyers welcome the opportunity to practice their trial skills.

An important caveat must be mentioned in regard to choosing someone to serve as "defense counsel." When you ask someone who is unfamiliar with your case to present the defense position, it is vitally important for his or her presentation to be legitimate and spirited. The value of the focus group will be greatly diminished if your presentation is strong and the defense is disorganized, weak and ineffective. Therefore, it is incumbent upon you to fully prepare your adversary for his or her presentation. For example, you should provide a full factual statement of the case, along with any critical discovery responses, to the person who will serve as defense counsel. It is also helpful to prepare an outline of the issues that you feel are key to the defense position in the case. After this information is provided, meet with your adversary and discuss the defense presentation fully. If possible, provide the key exhibits or evidence that you anticipate the defense will use during the actual trial. The legitimacy of the opinions expressed by the focus group jurors is, in large part, predicated on a fair and balanced presentation of the case.

It is also important to select someone to serve as the moderator of the focus group. I generally choose another attorney for this role, but anyone familiar with the case will do. The moderator's role includes performing several tasks. The moderator begins the focus group by explaining to the jurors how the evening will proceed and what is expected of them. Next, the moderator reads a simple statement of the case to the jurors before the plaintiff's presentation (in the same way a judge would read a brief jury statement at the commencement of any trial). Once the case presentations begin, it is the responsibility of the moderator to ensure that the participants stick to the time schedule established prior to the start of the focus group. A strict time schedule must be adhered to in order to complete the presentations in the limited time available (see below for a sample schedule). Prior to beginning deliberations, the moderator should read a small number of jury instructions (if possible, no more than 10) to the jurors in order to place the facts of the case in their proper legal context. Lastly, the moderator must facilitate jury deliberations by provoking discussion between the jurors and allowing everyone to participate in the discussion (similar to a jury foreperson). The moderator, however, should *never* participate in the actual deliberations.

## Finding focus group jurors

Once you have selected a date, location and the participants for the focus group, you must next find focus group "jurors." The easiest way to find people to serve as jurors for your focus group is to contact a local employment agency that specializes in temporary employment. Specify to the employment agency what type of prospective juror you are looking for. I personally prefer a mix of people because I am interested in obtaining as many diverse opinions as I can get. I usually request that the employment agency

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provide me with a group of people that includes a mix of males and females, different age groups, and various ethnic groups. On the other hand, if you are about to go to trial in a particularly conservative venue such as Torrance, you might want to request mostly middle-aged, better educated, Caucasian jurors. Most, if not all, employment agencies can accommodate your specific requests. Ask the employment agency to provide you with at least 12 people. In any event, I recommend that you conduct your focus group with no fewer than 10 people. The cost of hiring people from a temporary employment agency is approximately \$15 per hour per person. While more professional focus groups conducted by jury consultants often last a full day or more, the focus groups described in this article last four hours, so the cost per person of hiring focus group jurors is approximately \$60 per person for the evening.

In my experience, focus group jurors tend to approach their task much like real jurors do. They find the experience interesting and stimulating and, invariably, take their jobs very seriously.

### Provide dinner

I prefer to conduct focus groups in the evening when there are no distractions such as telephones ringing in the background. Since my focus groups usually occur during the typical dinner hour, I provide dinner as a courtesy to the participants. I have found the easiest way to provide dinner for 12-15 people with the least amount of fuss and distraction is to simply purchase deli platters, which I have delivered to the location of the focus group about an hour before it begins. The cost of dinner, including soft drinks, water, plates and utensils, is approximately \$250.

### Drafting focus group questionnaires

The goal of every focus group is to obtain as much feedback about your case as possible. It is important to know not only what people think about who should win or lose the case, but also the thought process they utilized in arriving at their decision. For example, what issues were most or least persuasive? Which evidence

is most critical to a successful outcome? What questions do the focus group jurors feel need to be answered in order for you to prevail? Which trial themes resonate and which do not?

To obtain the desired feedback, it is necessary to prepare at least two, and sometimes three, questionnaires. The first questionnaire is given to the jurors after the plaintiff's presentation. The second is given after the defendant's presentation. If there is sufficient time for a rebuttal by the plaintiff, a third questionnaire might be provided after the rebuttal. The questionnaires should be prepared well in advance of the focus group and should include input from everyone who will participate. Before preparing the questionnaires, think about the key issues in the case from the perspective of both the plaintiff and the defendant. Carefully consider the legal claims and defenses that will be raised and the evidentiary elements that must be established in order to prove each claim.

Because of time constraints, I recommend limiting each questionnaire to no more than 12 questions. After the plaintiff's presentation, the first questionnaire is given to the focus group jurors. The questionnaire should begin by asking the jurors to list the strongest and weakest points of the plaintiff's case. This questionnaire should be tailored to the plaintiff's issues. For example, questions might be posed regarding the defendant's conduct, liability theories, causation or the value of a certain injury. After asking about specific issues involved in the case, I usually conclude the first questionnaire with the following two questions: "1) Based on what you have heard so far, would you return a verdict for the plaintiff or the defendant (please explain your answer)? 2) Based on what you have heard so far, what questions would you like the plaintiff's attorney to answer?"

After the defense completes its presentation, the process is repeated with a second questionnaire provided to the focus group jurors. Once again, begin the second questionnaire by asking the jurors to list the strongest and weakest points of the defendant's case. This questionnaire

should be tailored to the defendant's issues. Conclude this questionnaire by asking the jurors to render a verdict on liability and damages, broken down by economic and non-economic damages.

Where a focus group is conducted for the purpose of assessing damages only, the questionnaires should be limited to issues involving damages, *i.e.*, the severity of the plaintiff's injury, the reasonableness of medical care, the plaintiff's ability to work in the future, and so on. Ultimately, focus group questionnaires must be tailored to the unique facts of each particular case. (Sample questionnaires are available at [www.williamson-krauss.com](http://www.williamson-krauss.com))

### Sample focus group schedule

It is *imperative* that you set a time schedule for the focus group and stick to it. Here is an example of a schedule for a weeknight focus group:

- 6:00-6:15 p.m. — Moderator's opening comments
- 6:15-6:45 p.m. — Plaintiff's presentation
- 6:45-7:15 p.m. — Completion of first questionnaire
- 7:15-7:35 p.m. — Dinner
- 7:35-8:05 p.m. — Defendant's presentation
- 8:05-8:35 p.m. — Completion of second questionnaire
- 8:35-8:45 p.m. — Reading of jury instructions
- 8:45-10:00 p.m. — Jury deliberations

### Case presentation

Clearly, conducting focus groups in the manner described in this article places severe time limitations on your presentation. In this very abbreviated format, it is impossible to fully present and argue every possible point of your case. Rather, your objective should be to present those issues that have been identified as critical to the resolution of your case. Both the plaintiff and the defendant's presentation should combine elements of an opening statement and closing argument. While the essential facts of the case need to be presented, both sides must also argue the key points that they believe will persuade jurors to render a verdict in their favor. If available, actual trial

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exhibits, such as photographs and illustrations, should be used during the presentations.

### **Focus group deliberations**

I do not recommend sitting in on focus group deliberations because of the risk of distorting the results. However, if you conduct the focus group at a location that allows you to watch the deliberations on a video monitor or by some other means, take advantage of this opportunity. If you have no way to observe the deliberations while they are in progress, record them on either video or audiotape. If you record the deliberations on audiotape, have the audiotape transcribed. A great deal of useful information can be obtained by watching and listening to the way jurors analyze the evidence presented to them, as well as the means they use to arrive at their ultimate decision. The moderator can also serve as your eyes and ears during the deliberations and provide you with very useful

feedback. After deliberations are completed, answer any questions the jurors may have about the case. This exchange helps to obtain additional feedback from the jurors.

Ultimately, every bit of information obtained from the focus group jurors should be carefully reviewed and analyzed. Particular attention should be given to the responses contained in the jury questionnaires. Usually, these responses represent the most accurate and truthful assessment of your case.

### **Conclusion**

Too often, attorneys fail to conduct focus groups prior to trial because of the misconception that they are cost prohibitive. The goal of this article is to encourage more attorneys to take advantage of this invaluable resource upon the realization that a focus group can be conducted for as little as \$1,000 — a paltry sum relative to the benefits obtained. It is important to emphasize that this type of focus

group should never serve as a substitute for focus groups conducted by experienced jury consultants who are specifically trained in jury dynamics and the drafting and interpretation of jury questionnaires. On a limited budget, however, focus groups conducted in this manner can provide you with extremely useful feedback regarding the strengths and weaknesses of your case, identify trial themes that might lead to a successful outcome at trial, and assess the value of your client's injuries. In either case, focus groups are an important tool in the trial lawyer's arsenal and should be conducted, if possible, before every trial.

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