

Using Focus Groups For Today's Jurors

By J. Jude Basile

There is only one mistake that you can make in conducting focus groups and that is in *not* doing them. Anytime we have an opportunity to listen to a group of people discuss our case it is valuable. It provides us an opportunity to tell our story, listen to others, and use our own spontaneity and creativity. Focus groups are a tremendous way to watch, understand and facilitate how groups (i.e. juries) come together and decide.

Focus groups are very important in today's preparation of cases. This article will present an approach to conducting focus groups in today's atmosphere of conservative tort reform propaganda.

Where to Find the Participants

There are many ways to find a group. You may simply call a bunch of people you know together some evening. You may ask your friends to invite some of their friends to get together. These are better than not doing a group, but are not the best. Ideally you want a group of people that do not know you and represent the jury panel in the community where the case is to be tried.

Jury consulting firms will try to obtain focus group members that match the local jury pool. This can be very expensive.

An alternative is to go to the courthouse and attend a juror orientation. These are held in most jurisdictions. There is a large assembly room where those called to jury duty gather and go through a general orientation. We should always attend these sessions weeks before our trial in order to become familiar with the jurors and the process they go through before being called to the courtroom. Flyers may be distributed to prospective jurors that say something like: "*Evaluate a court case — earn \$50 ... If you have been excused from jury*

duty and are interested please call." Have them call a number at your office or a cell phone where they can be screened for demographic information and general attitudes and beliefs about the court system.

Another way to obtain group members is to use a temporary employment agency. You simply tell the agency the age range, gender, and other pertinent demographics. The agency will find the members and arrange for them to come to the designated place for the group work.

You may also run an advertisement in the weekend edition of the local paper. The ad may simply ask for focus group participants, or I have even run the following: "Conservative, Republican business people wanted to evaluate a court case."

In any event, an effort should be made to match the group to the local jury pool as closely as possible or, to test your case in a worst case scenario, seek out conservative tort reformers specifically.

Facilitating the Group

You should have a member of your staff greet the group members with refreshments, sign in sheets, confidentiality forms, name tags, note taking materials and a general questionnaire.

I generally run groups from 8:30 to noon and 1:30 to 5:00 p.m., evening groups can be run from 5:30 to 9:00 p.m. This allows the first half hour to get organized, sign in and general introductions, and the remaining three hours for the work.

The traditional way of running a focus group has been to do it in a mock trial format. Lawyers would present in summary form each side of the case and then have the group deliberate and evaluate. This approach is fine towards the end as one gets closer to trial, but there is much better use of focus groups earlier in the



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case. The mock trial approach is too "lawyer presentation" focused and fails to let the group lead the discovery of the meaningful facts, issues, and feelings in the case.

How to Begin

The earlier focus groups are done the better. Once you have a good understanding of the facts of the incident that has led the person to come to you for representation, it is time for focus group work.

An interesting approach to focus groups is in the beginning of the book "The Culture Code" by Clotaire Rapaille. Rapaille is a cultural anthropologist who has done considerable research using focus groups for various corporations. He has recently become popular with some of the big shot trial lawyers around the country (i.e. the Inner Circle). Rapaille is interesting reading and thought provoking. He refers to focus groups as discovery sessions. I think this term more appropriately describes what we should be doing in the early focus group work on our cases. We should seek to discover what the group finds are the core issues, feelings and beliefs in our case. We should seek to discover what the groups' core values and beliefs are about, what is important and what they want to know.

Begin by having the facilitator tell the group this is a real case, both sides of the case are being represented here today to have you express your feelings, attitudes and beliefs. There are no wrong or right answers; rather we want you to look at your own life experiences as they relate to what you hear today. When you hear parts of the story of this case, we not only want to hear how you feel and think about it, but also what experiences in your own life you feel have shaped how you feel about this case story.

Next, have one of the lawyers or the facilitator lead a 20-minute discussion on who the group members are so they learn a bit about each other, and their feelings, attitudes and beliefs about this type of case. For example, ask each group member to say a few words about how they feel about injury cases, wrongful death cases, money for harm, etc. This is always great practice for jury selection and a tremendous way to sharpen our listening skills, and learning how to resist control and arguing.

Introducing the Facts

The general approach will be to introduce a single fact or a very short set of facts and get the group members' reactions. Start with the defendant, who they are and what they are. "Mrs. Jones is an employee of XYZ Meat Packing Corporation. She was delivering meat on her first day on the job when she got lost."

Ask the group what they feel about Mrs. Jones, what they want to know about her. What do they think of XYZ Corp? What do they want to know? Why?

You may try to get a group member to be Mrs. Jones. Have the member become her. You may fill in the facts of her age, marital status, number of children. Have the other group members question her. Note what they want to know. Have some of the other group members take a turn being her.

Next go to the event. Mrs. Jones is lost driving the meat truck. She pulls over here. Put the event into action in the here and now, make it present tense. You may show them a photo of the scene. Again ask who from the group feels they could be Mrs. Jones. Have them take her role and experience her actions. Turn to the group and again have them express feelings and

beliefs from the role of Mrs. Jones. Ask who else they would wish to meet. Perhaps they will want to talk to her supervisor or her trainer or the person who hired her.

Continuing the Exploration

Ask the group for scenes they want to see in the past or other characters in this story they want to meet. Find out what questions they have. Ask the group to tune into what life experiences they are being reminded of as they hear and see the various parts of the story.

In a recent case against a police department for negligence, we had various group members play the roles of the police officer and various characters in the event. We directed the action as we knew it from independent witnesses and the police report. We had the focus group participants play the role of the officer and the various others. We would freeze the action at various points and ask the group to express their thoughts and feelings at various points in the reenactment of the event.

This work will provide insight and brainstorming that is very helpful in framing discovery and understanding what points of the story causes reactions from group members.

In the police case mentioned above, we also had the group become a citizen's review board and question the police officer concerning his actions. We listened to their concerns. We had group members play the role of the officer and respond.

It is so important to focus on the conduct of the defendant. Leave your client out of this early work as much as possible. Refer to your client generically as "the other driver," "the citizen" or "the user of the highway." You want the group and the jury to feel that your client could have been any one of us.

In a dangerous highway case, you might begin the initial discovery focus group by simply showing a photo of the road. Find out: what they think about it? Why do they feel that way? What life experiences do they feel may have made them feel that way? What should be done? Why and how? What do they want to know?

Find the Rules and Themes

Conservative people love rules. They like

to see the world in black and white, no grey areas. They find it easier that someone tells them this is the way, this is the rule. When doing these groups ask what rule or law they feel is broken. Why is it important?

Rick Friedman has a great book, "The Rules of the Road." This book lays out how to find rules and get the other side to agree to them. It is a very good approach to finding rules and building the case around how they were broken.

In doing the focus group reenactments, use the group members, but always ask towards the end for the group to list what if anything anybody did wrong. We must always retrench to the wrong. Our work is about responsibility, safety and prevention of harm.

I like to have the group members write out on a single page what they feel the most important part of the story is. I, at least, like them to write a title.

Using the Information

Once the initial focus groups are completed (at least two), sit down with the facilitator, your staff, and co-counsel who observed and participated in the group. Discuss openly what you have learned and need to do. Where does discovery need to be directed? Who should be deposed first and in what order? Video key deposition to have clips played at the next focus group.

Once you have done several of these "brainstorming" or discovery focus groups you find that the story will crystallize into a central focus. You will then begin to tell your story and move onto testing your story and case with additional focus groups. ■