



Using focus groups for today's jurors

Low-cost focus groups done early in a case can lead you to a story that resonates with jurors

J. JUDE BASILE

There is only one mistake that an attorney can make in conducting focus groups and that is *not* doing them. Anytime we can observe others' perception of our case, it is a valuable

experience. It provides us an opportunity to tell our clients story creatively and spontaneously and listen to the response without worry of a permanent and possibly adverse decision. Focus groups are a tremendous way to watch, understand and facilitate how groups, especially 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 that can be informative and cost effective. They can be useful even in simple cases and can be done on a shoestring budget.

Where do we find the participants?

Jury consulting firms try to obtain focus group members that match the local jury pool. While it may be the easiest way to go in terms of putting the focus group together, it can be very expensive. There are many other ways to find a group. Unfortunately, that means you or your staff have to do



OCTOBER 2007

some of the work. Ideally, you want a group of people who do not know you, as real jurors likely will not know you. You also want the group to represent the jury panel in the community where the case is to be tried.

If this ideal group isn't possible, you may simply call a group of people you know and invite them to participate. If you don't know enough people who are willing to attend, you may ask friends to invite some of their friends. A focus group of people who know you is certainly preferable to doing nothing, but it does not offer the most objective feedback. The members of the focus group may not give objective information because they want to please you. So they avoid saying anything negative about you, your clients or the case.

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. Of course, this will require an expense of money including a commission to the agency beyond the pizzas and sodas provided to your friends.

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

Another 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. You should attend these sessions weeks before your trial so you can become familiar with the jurors and the process they go through before being called to the courtroom.

In some jurisdictions, you may be able to distribute flyers to prospective jurors. (Obviously, you do not want jurors who may be assigned to cases because of the admonition forbidding contact with jurors sitting on cases.)

Your flyer might say:

Evaluate a court case and earn \$50.

If you have been excused from jury duty and are interested, please call ...

Provide a contact number where they can be screened for demographic information as well as general attitudes and beliefs about the court system.

No matter which method you choose, an effort should be made to match the group to the local jury pool as closely as possible. If you want to test your case in a worst case scenario, finding any possible flaws, you may seek out conservative individuals with a professed bias against the current tort system and, in particular, plaintiff's attorneys.

A member of your staff should 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 a.m. to noon and 1:30 to 5 p.m. Evening groups can be run from 5:30 to 9 p.m. At least a half hour is required to get organized, sign in people, and give a general introduction.

Making best use of your group

Traditionally, attorneys have used the mock trial format to conduct the group. Attorneys summarize each side of the case and then have the group deliberate and evaluate. While this approach may be fine as one gets closer to trial, there is a much better use of focus groups earlier in the case. The mock trial approach is too focused on the lawyer's presentation, which may change as he or she prepares for trial, and fails to let the group lead the dis-

covery of the meaningful facts, issues and feelings in the case.

The earlier an attorney conducts a focus group, the better. Once you have a good understanding of the case facts, the time is ripe for focus group work.

An interesting approach to focus groups can be found 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's book is interesting reading as well as 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 about our case. These may differ from our initial impressions. We should also seek to discover what the group's 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. We want you to express your feelings, attitudes and beliefs about the case. 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 about this case, we not only want to hear how you feel and think about it, but also want to hear what experiences in your own lives 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 their



OCTOBER 2007

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, resist control and prevent arguing.

Introducing the facts

Your 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. For example, 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.

Next, 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 role-play as Mrs. Jones. You may fill in the facts of her age, marital status, number of children, etc. Have the other group members question her. Note what they want to know. Have some of the other group members take a turn being Mrs. Jones. This role-playing may even reveal certain attitudes held by the member who portrays Mrs. Jones.

Next, talk about the event: Mrs. Jones is lost driving the meat truck. She pulls over here. Put the event into action in the here-and-now, and 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 in to 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 several group members play the roles of the police officer as well as 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 roles of the officer and other individuals. We would freeze the action at different points and ask the members of the focus group to express their thoughts and feelings at each of these points.

This approach provided insight and brainstorming that is very helpful in framing discovery and understanding what points of the story cause certain reactions from group members. We also had the group become a citizens 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. The information we gleaned was invaluable in preparing the case for trial.

Focus on the defendant's conduct

It is important to focus on the defendant's conduct. In fact, 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 them.

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?

Conservative people love rules. They like to see the world in black and white. They find it more comfortable when someone tells them this is the way, this is the rule. You should ask them what rule or law they feel has been broken. Why is it important?

Rick Friedman wrote 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 offers a very good approach to finding rules and building the case around how they were broken.

If you are presenting focus group re-enactments, at the conclusion of the presentation ask the group to list what, if anything, was done wrong. We must always retrench to the wrong. Our work is about responsibility, safety and prevention of harm.

I like to have group members write a single page on what they feel the most important part of the story is. At the very least, ask them to write a title for your case.

Once the initial focus groups are completed (at least two), sit down with everyone who participated or observed the facilitator, your staff and co-counsel. Discuss openly what you have learned and what they think needs to be done. Where does discovery need to be directed? Who should be deposed first?

Ready to tell your story

By this time in the process, you may have accumulated discovery that



OCTOBER 2007

fills in the blanks of defendant's version of the events. You may also want to present videotaped deposition testimony so you can monitor the impression given by the deponents and actual participants involved in the incident.

Once you have done several of these brainstorming or discovery focus groups, you'll find that the defendant's story will crystallize into a central focus.



Basile

Now you are ready to tell *your* client's story and can continue to test that story with additional focus groups.

J. Jude Basile is the founder of the Basile Law Firm in San Luis Obispo. He is on the teaching staff at the Trial Lawyers College

founded by Gerry Spence and was named Trial Lawyer of the Year in 2004 by the Consumer Attorneys Association of San Diego. He holds an MBA from Indiana University of Pennsylvania and graduated with honors from Thomas Jefferson School of Law. See www.americantriallaw.com.

