



# Do-it-yourself focus groups that won't break the bank

*The small size of a case – or your bankroll – should not dissuade you from using a focus group*

By SHARON R. VINICK

Open any legal magazine with an emphasis on litigation and you are likely to find an article extolling the virtues of focus groups. Many of these articles are written by attorneys who handle multi-million dollar cases, and can afford to spend tens of thousands of dollars to hire a jury consultant to conduct the focus group. While there are certainly cases that justify such an expense, the small size of a case – or your bankroll – should not dissuade you from using a focus group. This article primarily addresses how to set up a do-it-yourself focus group, with a brief discussion of the methods for conducting the focus group itself.

## When you should conduct a focus group

Focus groups originated about 80 years ago as a tool used by advertising agencies to test consumer attitudes regarding the marketing of new products. In fact, focus groups have played a prominent role in a number of episodes in the hit drama “Mad Men.”

In the legal setting, focus groups allow attorneys to explore the attitudes of individuals who are demographically representative of the jury pool where a case will be tried. As any jury consultant will tell you, a focus group (or even a mock jury) cannot predict the outcome of your case. A focus group can however, provide extremely useful information regarding case themes, evidentiary issues, and juror reactions to witnesses and potential “problems” in a case. Viewed from this perspective, a focus group is a useful tool in virtually any case.

Attorneys usually conduct focus groups on the eve of trial, in the hopes of refining their themes before they present their case to a jury. However, conducting a focus group during discovery can be equally useful, as the discussions often pinpoint new areas of inquiry.

## The logistics of organizing

The logistics of the focus group are pretty straightforward – you have to pick a date and time, a location, and the focus group participants.

### • The date

Typically, a focus group is conducted on a weekday evening, after work, and lasts about three hours. You should try to schedule your focus group for a Tuesday, Wednesday or Thursday evening, taking care to avoid all religious holidays, and major sporting events.

### • The location

First, you need space sufficient to host all of the participants, which includes both the individuals who are part of the focus group, and the members of your team. Ideally, you want a space that has three separate areas: a large conference room that will hold the participants, two lawyers, and your video equipment; a second room in which you can set out food and drinks, and another conference room or office in which members of your team can sit and observe the proceedings remotely.

It is important to emphasize that the offices do not have to be ornate or elegant, but simply large enough to hold everyone and be equipped with chairs that people can sit in for a few hours. Don't forget that the location should be accessible after normal business hours,

and that you should have adequate air conditioning.

Second, you need to conduct the focus group in the county in which the case is venued, so that your focus group participants will be drawn from the potential jury pool. Your office might do nicely, but if your case is not being tried locally, you will have to find space that you can use for a single evening. In the event that you don't know anyone with an office in the jurisdiction, you can often rent office space from a court reporter, or an executive suite.

Third, you need to find space that is accessible to the participants, regardless of whether they are traveling by car or public transportation. The space needs to be completely wheelchair accessible, as do the bathrooms. Since the focus group will be held in the evening, there must be safe parking.

If you choose to use your own offices, you should cover up the name of your law firm on the door (or building) before the participants arrive. You don't want participants using their mobile devices to find out that you represent plaintiffs. Putting up a sign that says “Focus Group, this way” with an arrow, is an ideal choice for covering the firm's name.

### • Finding the participants

Typically, jury consultants use temporary agencies or market research firms to find focus group members. This has two advantages. First, it guarantees that you will have a diverse group of participants, who are very representative of the jury pool. Second, it is easy for the consultants, because they simply have to identify the type and number of participants that they want, and the recruiter does the rest



of the work. But, the marketing group will charge about \$100 for each participant that they locate.

While you could probably hire an outside agency, our office has used Craigslist.com to find jurors. You could also use Monster.com, or your local newspaper. Admittedly, this will result in a group of participants that is not completely representative of the jury pool, as you are only reaching those people who have a computer available to them, who are already looking for work (or additional work), and who are literate in English.

If you use an Internet job site, you can advertise based upon location, and type of job. Since most Internet job sites charge for each “job category” in which you advertise, the representative quality of your sample is limited by the number of job categories that you choose. (Typically, the cost per job category is \$75.) However, most sites allow you to include a designation for “part-time” jobs, which expands your pool a bit. We typically choose a couple of categories, at least one of which is similar to the field in which our client worked. For example, if the plaintiff worked as a computer programmer, you might advertise in that job category.

### The ad copy

In “posting” the job, we typically use the following description:

#### Focus Group For Contra Costa County Residents

Law firm seeks participants for a focus group that will be conducted on June 11, 2012, from 5:30 p.m. to 9:00 p.m., in downtown Oakland. All applicants must live in Contra Costa County and must be registered voters. Individuals who are selected for the focus group will be paid \$100 and will be given dinner. As we seek a diverse group of participants, individuals will be selected on the basis of their responses to a written survey. The survey, which contains multiple choice questions, can be found at: <https://www.surveymonkey.com/>. (If the link does not take you directly to the

survey, please copy this address into your browser, and then answer the questions.) Individuals who are selected for participation will be contacted by June 5, 2012. No phone calls or e-mails, please.

When we conducted our first focus group, we had applicants call or e-mail us, and we did all of our screening by phone. This proved to be enormously time-consuming. Thus, after our first experience, we have employed [surveymonkey.com](http://www.surveymonkey.com) to gather information. The cost is \$25 per month for a single customized survey. You can add as many questions as you want, and can design the survey in such a way that respondents can either click “buttons,” select an item from a drop-down menu, or provide written responses. You can review the survey responses individually, or have the information downloaded into a spreadsheet. Having the information downloaded into a spreadsheet makes it a breeze to sort through the applicants and find a diverse group.

It is important to note that using an electronic data collection tool will impact the pool because individuals who are not comfortable providing personal information on the computer will not participate. However, since the real goal of a focus group is not to find out whether a jury will find in your favor, but to get useful feedback on your case, having a focus group that is composed of people who are more sophisticated or educated than your average juror is beneficial because it allows you to explore the attitudes of leaders and management types, both of whom will probably have a huge impact upon jury deliberations.

Whether you choose to call the applicants to get responses to a series of questions, or have them provide the information electronically, you want to gather the information found in box on the next page.

Depending upon the nature of your case, there may be additional information that you want to gather. For example, in cases alleging discrimination on the basis of a disability, you would probably want to include questions about whether the

applicant has a disability, or knows anyone with a disability. In general, think about including those demographic questions that you would use on a jury questionnaire.

### Whittling down the applicants

Once you have a group of applicants, you want to immediately eliminate anyone who works for the media, as they might be inclined to write about your confidential process. Also eliminate applicants who are not registered voters, as they are not part of the jury pool. (If you are conducting the focus group on the eve of trial, eliminate anyone who has recently received a jury summons.) Be cautious about selecting people who have participated in more than one focus group in the past, as they can dominate discussions in a way that is unproductive. And, as would be true in selecting a jury, eliminate anyone who has been involved in a case similar to yours, as that type of person likely would be struck for cause and their views are irrelevant to the manner in which your case will be resolved by a jury. Finally, in contrast to the jury selection process, where you try to eliminate individuals who may be adverse to your case, in choosing a focus group you want to keep those individuals on your panel, so that you can explore their attitudes and try to develop themes and evidence that they will find to be persuasive.

After you’ve honed down your list of potential participants, look up the demographic data for the county in which the trial will be held. Typically, this information is on the county Web site. Then, try to match your participants to the demographics of the county, in terms of gender, race and age. Next, you want to select participants so that you have a diverse group, with a broad range of educational backgrounds and work experience. Create a list of a dozen applicants, and call each of them to get a sense of whether they will be good, active participants. If they sound good, provide them with detailed information regarding the focus group – the date, time, and place.



Make sure that you send confirming e-mails to those that you selected, as well as e-mails to those who applied but you are not choosing to use.

Since you do not want to reveal the side for which you are working, when you do the screening, you should not use your work e-mail address, or work phone number. You can set up an e-mail account specifically for this purpose, and can call from a cell phone, or a line with a blocked number.

Based upon our experience, as well as discussions with colleagues and jury consultants, a focus group should include approximately eight people. Unfortunately, there are always some drop-outs, especially among younger participants. So, recruit at least 10 or 11 people. If you end up with more than eight participants, consider it a bonus.

### The use of video

There are three ways in which electronics are useful in conducting focus groups: presenting videos of your client, recording the focus group discussions for later analysis, and broadcasting the focus group to members of your trial team who are not direct participants in the focus group.

In most instances, you will want to show a short video of your client to the focus group – something that is no longer than eight minutes. You can either use an excerpt from your client's deposition if it was videotaped, or you can tape an interview of your client. If you decide to interview your client, have someone who is not participating in the focus group conduct the interview. (Again, this is part of the overall effort to cloak from the participants the side that you represent.)

In addition to preparing the video, you will need the equipment for showing it – computer, projector, speakers and screen.

You will probably want to record the focus group, too, so that you can look at it afterwards. To do the recording, you need a video recorder, a good microphone and a tripod. The purchase cost is about \$600. (And you can also use them to tape your own depositions!)

### Questions to ask potential participants

- Name
- Phone number
- E-mail address
- County in which they live
- Race/Ethnicity
- Gender
- Age
- Marital status
- Whether they are a registered voter
- Party Affiliation
- Level of education, including area of study
- Employment status
- Area of employment
- Whether they are a supervisor (particularly for employment cases)
- Whether they know any lawyers/judges
- Whether they work for the media
- Whether they have served on a jury before
- Whether they have ever participated in a focus group
- Whether they have ever been involved in a lawsuit, and what kind
- Whether they have been called for upcoming jury duty

Finally, you may have colleagues who want to watch the focus group while it is in progress. Since you don't want to overwhelm the participants with too many people in the room, you have two options for using video to expand the number of viewers.

One option is to run a cable from the recording device that you are using, to a projector and TV/computer in another room. But, unless you have the equipment and expertise to do this, you'll probably have to hire some type of videographer, and this can be expensive.

A second option is to use "Skype" to project the proceedings into another room. This is much easier than it sounds. To begin, in the room in which the focus group will be sitting, set up a computer that has a camera and microphone. (Most laptop computers have a built-in microphone, and many have a built-in camera. If your laptop doesn't have a camera, you can buy one for under \$20.) Make sure that you can see and hear most of the participants. Next, in the room where your team members will be sitting, set up a second computer. (In actuality, the second room doesn't need to be in the same building, let alone the same office, but if you are not in the same office the "team" can't help with setting up dinner, trouble-shooting technical problems, etc.) Then, connect the two computers via Skype. (If Skype has

not already been loaded onto both computers, you will have to do so, which will take a few minutes.) It is important that the Internet connection work reliably, and it is best to have speakers on the receiving end, as the sound can sometimes be hard to hear. You also need to ask everyone to turn off (not just silence) their smartphones as it causes interference with the equipment, making it difficult for the Skyped conversation to be heard in the other room.

### The paperwork

The fact that a focus group has been conducted, as well as everything discussed during the focus group, is confidential. You need to communicate this fact to the participants at the time that they are each selected for the focus group, as well as in the confirming e-mail. Additionally, on the day of the focus group, each participant should sign a simple confidentiality agreement. Our agreement reads as follows:

I, \_\_\_\_\_, agree to keep confidential any and all information learned during the focus group I participated in on June 11, 2012, relating to the case of *Jane Smith v. Evil Corporation, Inc.* I further agree to return to Levy Vinick Burrell Hyams LLP any and all documents I reviewed during the course of the focus group. I further agree that I may be videotaped, with the



understanding that any resulting video will be used for training purposes only.

Of course, the other important piece of “paperwork” is the check that is given to each participant at the end of the evening. Assuming that you pay the participants in the neighborhood of \$100 per person, there is no need for the participants to fill out any tax forms.

#### • *The food*

Given that the participants are coming in the evening, they will expect to be fed. Most focus group participants will be more than happy with a selection of salads and sandwiches, and soft drinks. As long as the food is plentiful, and there is something for vegetarians, everyone will be satisfied.

### Final preparations for the focus group

On the day of the focus group, someone who is *not* responsible for directly interacting with the focus group should be responsible for the final logistics. The person who is actually running the focus group shouldn't be distracted by these details.

The following is a check-list for the day of the event:

1. Print out checks for all participants.
2. Make copies of the confidentiality agreements for everyone to sign.
3. Pick up the food, and set it up (don't forget plates and forks);
4. Set up all of the video equipment and make sure that it works (this step always takes longer than anticipated and there is typically some last-minute snafu).
5. As the participants arrive, check them in and get them settled.

### “Mini trial” or “discussion group”?

There are basically two models for focus groups: the “mini trial” (also known as a mock jury) and the “discussion.”

The “mini-trial” or “mock jury” revolves around a two-part presentation of the case, in which one attorney “presents” the plaintiff's case, and another

attorney “presents the defendant's case. Each presentation, which should last no more than 30 minutes, is a “cloopening,” in which the attorney recites – in a persuasive manner – the essential facts of the case, the evidence, a jury instruction or two, and seeks a verdict. Generally, the presentation for the plaintiff includes a brief video clip of the plaintiff, and the presentation for the defendant includes a video of a key defense witness.

Following the presentation, a single moderator directs the discussion regarding the case. While this model has its benefits, its success is heavily dependent upon the strength of the individual leading the discussion. As most attorneys are not trained to be neutral moderators, this method tends to be less effective than the “discussion” format, especially without the aid of a trained jury consultant.

The second model is the “discussion” format. Unless you or someone in your firm has extensive experience with mock juries, this is probably the better choice. The “discussion” model can be highly successful if the attorneys are neutral in their presentation, ask very open-ended questions, and ensure that all participants are heard.

The “discussion” format involves a guided discussion of the case, with the attorneys serially dispensing small nuggets of information about the case, and then asking questions. In this format, the attorneys first introduce themselves, explaining that they are experienced trial attorneys and are interested in getting the participants' views on a real case that is currently pending. (However, at no time should the attorney disclose which side she is representing.)

Next, the attorneys ask each of the focus group participants to identify themselves, their profession, and to talk about views of the legal system. Then, the participants are given basic information about the type of case – i.e., “This is an employment discrimination case alleging claims for sexual harassment;” or, “This is a personal injury case in which the plaintiff lost the use of his left hand;” – and

are asked what views, if any, they hold regarding that type of case.

Thereafter, the case is presented to the focus group in short snippets of information, with open-ended questions posed to the group after each piece of information is doled out. For example, in an age discrimination case, you might tell the jurors that some of the decision-makers are the same age as the plaintiff, and ask what impact this has on their view of the case. Depending upon the complexity of your case, you often get through all key aspects of your case, including questions about likely verdicts and damages. Of course, you should also present a video of your client, and get feedback about him or her, since jurors' perception of the plaintiff is a crucial factor in whether you will prevail at trial.

Now, armed with this simple outline, you have the ability to conduct a focus group in almost any case, for about the same cost as taking a full-day deposition. And, to quote a well known commercial, the experience is likely to be “priceless.”



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