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# Don't lose focus

## Online focus groups can highlight case strengths and weaknesses, and at less cost than traditional focus groups



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The lawyer watched the screen with interest and disgust. On the screen: eight people, each one videoconferencing in from their respective homes. They comprised an online focus group. As the moderator unveiled case details, two defense-oriented jurors dribbled out their poisonous thoughts. Hence the lawyer's disgust. At the same time, the lawyer's interest. Far better to hear what resonated with defense jurors now than after taking a trial verdict...

### The full boat

There are many ways to conduct focus groups. The traditional method involves recruiting 15-20 potential jurors from the jurisdiction, making sure they reflect the jurisdiction's demographics, and having them show up at a focus group facility. A plaintiff's presentation is made and jurors then answer questionnaires reflecting preliminary thoughts. The defense presentation then follows, and another questionnaire.

Because the lawyers need to prepare what amounts to both a plaintiff and defense opening statement, the exercise forces the trial team to prepare for trial in a way that cannot be fudged, as well as brainstorm the likely defense positions. The group is then divided in two and sent to different rooms with one-way mirrors or video observation. They then deliberate. The lawyers and jury consultants initially observe. After some time, the jury consultants go into the rooms to facilitate discussions. Splitting them in two helps reduce the chance that the group seizes up on what is an outlier issue or gets taken off course by a forceful personality. This traditional method is very effective and, for the right case, a fantastic tool. It is also not cheap.

### As seen on TV

Another method, described in the introduction, is an online focus group. The recruitment is similar. The participants videoconference in, which can have occasional annoyances – pets, kids, or video lag. Pro tip – while an online focus group can typically be observed from anywhere, using a hardwired computer via an ethernet connection instead of WiFi typically eliminates the video lag.

The jury consultant acts as moderator, peeling the onion layers of case issues. This method is wonderful for developing themes early in a case and figuring out what discovery might be needed to answer doubting jurors' questions. Because it costs less, one can conduct an early focus group and then a later one (or two) when discovery or expert depositions end. The online method is far less expensive than in-person groups, but still requires some capital outlay.

### Home brewed

Finally, there are less formal methods. These range from

recruiting potential jurors online (Craigslist, Indeed, or others), to having non-lawyer friends or family sit and watch a case presentation, to talking to a few friends about the facts of a case. These are frequently used in cases where the case value may make it hard to spend a lot of money on a focus group. Even there, an informal presentation's effectiveness improves greatly if one buys a few hours of a jury consultant's time to go over the strengths and weaknesses in the case. This can help isolate issues and identify good jury profiles. That same consultant is then already booted up to assist on a jury questionnaire should the case go to trial.

A few tips for the do-it-yourself version. First, conduct some screening to make sure you're not inadvertently talking to the enemy. This can be as thorough as running a list of plaintiffs, defendants, and witness names by the potential attendees or as limited as making sure your friends don't work for the defendant. Second, for online recruitments, prepare a simple release and non-disclosure agreement. Go over these at the beginning. The release allows one to record the session. The non-disclosure helps make sure they understand what they do in the session is confidential.

Finally, for all focus groups, lean defense. Yes, we all want to hear wonderful things about our cases. But a focus group is not that place. We want to hear the defense juror; we want to hear what people think about the bad facts. "Winning" the focus group does not win the trial...

### Focus versus survey – themes, credibility, and damages

Focus groups are great for identifying themes, evidentiary issues, and playing video clips of witnesses to evaluate how credible they present. Focus groups are not reliable tools to predict case value. For value, jury consultants typically use online surveys of 150-400 people. These involve a series of questions the survey panelists go through to help narrow the likely verdict range. This can be a great tool before mediation to help one target the settlement figure.

### Outro

Back to our lawyer and the online focus group. After the focus group ended, the jury consultant espoused dislike for the defense-oriented jurors' harsh comments. And at the same time, took note of everything they said. Their comments helped identify weaknesses. The weaknesses were identified with plenty of time to address them – always a good thing.

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