

Is It a Focus Group or a Trial Simulation?

Within the legal community, the term “focus group” is often used to describe all type of pretrial research involving surrogate jurors. If we are going to begin a series of articles about the findings of focus groups and pretrial research in the form of trial simulations, we need to describe what each is and what they can and cannot do.

Focus Group

A true focus group is a setting that is controlled by a facilitator. In a true focus group, a group of surrogates are brought together and provided with information about a case. The facilitator will then lead discussions about the strengths and weaknesses of the case and the things the jurors do and do not like about it. A focus group can provide an attorney with direction that typical jurors would like to see followed. A focus group, by its very nature, can arrive at any point at the will of the facilitator. If the facilitator is not highly skilled, he or she will become a group leader and will simply take the focus group where she or he wishes to go. This dynamic tends to make a true focus group somewhat suspect. Focus groups, by their very nature, cannot give quantitative results. A case value arrived at through a focus group with a facilitator cannot be relied upon. This type of research is better applied to assisting soap manufacturers with identifying the best color for their new detergent than it is to identifying case strengths and weaknesses to an attorney. There are a few exceptions, one of which is the conceptual focus group.

Conceptual focus groups are usually exploratory sessions used very early in a case to establish basic strategy. Typically, a conceptual focus group is provided with the basic information of the case, especially points that are worrisome to the principals. A group facilitator explains the facts to the jurors as they would be presented by each side at trial. The facilitator then leads an exploratory discussion into the feelings and reactions of the group members. Exploratory or conceptual focus groups are very cost effective when attorneys for the plaintiff are considering taking on an expensive case such as a medical malpractice suit. Recently, I conducted a conceptual focus group for an attorney who was bringing a medical malpractice case against emergency room physicians and a hospital for failure to report obvious child abuse. On the third visit within a month to the same emergency room, an infant was finally diagnosed with a brain stem injury caused by shaken baby syndrome. There is a comparative fault issue, and it was necessary to determine whether the jurors would find the parents who assaulted the child responsible or if they would also hold the physicians and hospital staff responsible for their failure to report. The outcome in this case was an indication that when a child is brain-injured, because of repeated abuses, there is plenty of guilt to go around for the parents, the hospital and the physicians.

Trial Simulations

The most widely used form of pretrial research is the mock trial or trial simulation group. Often, these are improperly referred to as focus groups. Trial simulation research

requires a consultant to plan a research design specific to each case to answer questions that are the target of the research. In addition to the targeted research, each trial simulation will give ancillary information as a by-product of the exercise. A trial simulation designed specifically to estimate case values will also provide information on the best juror cohorts, jury response to attorney presentations, and the impressions of important witnesses and demonstrative evidence. Trial simulations are usually one very long work day or, as I like it, two moderate work days. On the first day, the surrogate jurors, usually three or four panels, are gathered together and the plaintiff's side of the case and the defense side of the case is explained to them. There are many methods for doing this, and they will be explained in our next article. After the jurors have gained a thorough understanding of each side of the presentation, have learned what all the witnesses will have to say, and have examined physical evidence, they fill out individual verdict forms. They are sent home to digest the information and return the next day at four different times as four different juries. Each jury is then given two hours to arrive at a verdict. The jurors are allowed to elect their own foreperson and function exactly as a trial jury would function. The exercise is videotaped and is watched on a live feed in a separate room. After the jurors have reached their verdict, there is a thirty-minute debriefing period to answer any questions about how they arrived at their decision. When all is said and done, you then have three or four separate jury verdicts, including the amount of their award. You also have all the individual verdicts and their awards. You may now conduct a statistical analysis that will give you a range of case value. Unlike a pure focus group, a trial simulation can produce quantifiable information.

To summarize, there are pure focus groups and there are trial simulation focus groups. They are really distant cousins and produce totally different results. As I provide information on the results of findings of my research groups, I will always be talking about trial simulation research and not pure focus groups. In the event that I present information on a pure focus group, it will be identified as such.