



**ALFA International**  
THE GLOBAL LEGAL NETWORK

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### POWER OF FOCUS GROUPS

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### USING FOCUS GROUPS TO EVALUATE AND STRENGTHEN ACCIDENT CASES

Focus groups and mock trials are valuable tools for litigants in the legal process, providing insights and feedback that can enhance trial strategies.

The plaintiff's bar has used this form of jury research on virtually every case for years, while the defense bar is slowly increasing its use of focus groups and mock trials, particularly for high exposure cases.

#### Focus Groups 101

- Pre-suit and pre-trial research and discovery.
- Group of laypeople selected to represent jury population of trial venue.
  - Participants must live in the county or district where the case is being tried – this is critical to get a pulse on potential jurors living in the local community.
- Discover local jurors' opinions, attitudes, and beliefs about your case.

#### Benefits of Focus Groups

- **Public Opinion Insight:** Focus groups allow attorneys to gauge how a diverse group of people perceives key issues, evidence, and arguments in a case. This can provide insight into potential juror attitudes and biases.
- **Early Jury Research:** Learn what jurors think is important and why. What is driving their decision making? What evidence do they want to see? Who do they want to hear testify? How do they see the plaintiff and defendant?
- **Feedback on Strategy:** Attorneys can present case theories and narratives to focus groups and receive feedback on what resonates and what doesn't, helping them refine their approach.
- **Identifying Weaknesses:** Engaging with focus group participants can help identify weaknesses in a case that attorneys may not have considered, allowing them to address these issues prior to trial.
- **Developing Themes:** Focus groups can assist in understanding which themes and messages might be most persuasive to jurors, aiding in the development of trial narratives.

#### Types of Focus Groups

- **Concept Focus Groups**
  - Often considered the goal standard for jury research.
  - During a concept group, facts are presented to participants to learn how they intuitively understand the case story.

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- This can be done in different ways: (1) presented as building blocks one material fact at a time, (2) presented all at once, or (3) presented as a hybrid of the two.
- Participants are encouraged to brainstorm and discuss the evidence presented.
- Concept focus groups allow attorneys to discover what participants think is important and why.
- The ideal time to conduct concept focus groups is early in the case.
  - Before and/or during the discovery phase to make sure all documents important to the jurors are requested and to understand what information is critical to obtain during depositions.
- Test specific videos, photos, and arguments.
- Help identify key themes for trial.
- Once you know what is important to jurors, you can dig for the facts you need to develop your case core and trial story with the jurors' beliefs in mind.
- **Structured Focus Groups**
  - This type of focus group is used once key themes, arguments, and evidence have been identified.
  - During structured focus groups, different people represent the plaintiff and the defense, and each presents a "closing", which is a short opening statement/closing argument that lays out the case, highlights key evidence, draws conclusions, and argues for a verdict.
  - Participants are then provided with a brief set of instructions and encouraged to deliberate and reach a verdict.
    - It is particularly useful when participants are provided with the actual jury instructions, interrogatories, and verdict forms that will be used at trial.
  - Learn how participants navigate the types of questions they will need to answer in the jury room regarding liability, proximate cause, and damages.
  - Learn whether your trial story or a specific aspect of the case will resonate with the jury.
  - Test and modify your trial story until you have it right.
    - If you win, you are on the right track.
    - If you lose, learn from watching deliberations and reading notes and responses.
  - Best way to test how a jury will respond to various arguments, testimony, exhibits, and

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themes.

- **Mock Trials**
  - Mock trials simulate the process of an actual trial with opening statements, closing arguments, and case-in-chief presentation – different people represent the plaintiff and the defense.
  - Attorneys present their case in the order and manner planned for trial to test key case themes and their effectiveness.
  - Individual jurors provide their verdicts on liability and damages privately and then discuss their views with the group.
  - Discover how jurors respond to your trial strategy and arguments, whether they understand the evidence in the case, and how they evaluate key witnesses.
  - Group size typically 6 – 12; may divide large groups for deliberation.
  - Utilization of trial-like conditions is a key factor in maximizing the predictive validity of research.
- **Confidentiality (Required for All Types)**
  - Conflict checks must be performed to make sure focus group participants do not know any of the parties and attorneys involved. This is particularly critical when venues are in a small town.
  - All participants must sign confidentiality forms.

## In-Person vs. Virtual Focus Groups

- **Pros and Cons of In-Person Focus Groups**
  - Pro: More natural setting for participants to discuss views.
  - Pro: Able to incorporate written questionnaires and secure individual responses.
    - Some of the most valuable feedback can be found in jurors' notes and written responses to questionnaires. These allow attorneys to see how opinions change as facts unfold and gain insight on those less likely to speak up or control the discussion.
  - Pro: Easier to read participants' faces and body language.
  - Con: Less flexible.
  - Con: More costly.

- **Pros and Cons of Virtual Focus Groups**
  - Pro: More flexibility.
  - Pro: Fraction of the cost.
    - Great deal of value for the money.
  - Pro: Ability to conduct multiple focus groups to confirm findings.
    - More focus groups = more accurate data.
  - Con: More difficult to read participants.
  - Con: Technology and internet challenges.
  - Con: Difficult to secure written materials.

### The Plaintiff's Bar – Focus Groups and Case Assessment

The plaintiff's bar believes that focus groups are critical to the success of every single case. They use this form of jury research to identify land minds that could sabotage their case and prepare rebuttals.<sup>1</sup>

- **Using Focus Groups to Discover Juror Biases**
  - Five Anti-Plaintiff Biases: 1) Suspicion; 2) Victimization; 3) Personal Responsibility; 4) Stuff Happens; and 5) Blame the Plaintiff.
  - Using early jury research to explore which facts will best redirect the jurors' attention to the defendants' conduct.
  - Looking for ways to arm pro-plaintiff jurors.
- **Use of Concept Focus Groups**
  - Early and often.
  - Help determine whether to accept or decline a case.
  - Learn what information is important to jurors to guide discovery.
  - Virtually and in-person.
  - Conduct with trial consultants and/or on their own.
  - Assist with case assessment and settlement negotiations.

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- Use of Structured Focus Groups
  - Months and weeks before trial.
  - Test impressions of witnesses.
  - Test and evaluate presentation styles.
  - Test specific exhibits, photos, and demonstratives.
    - Focus groups critique exhibits with a fresh eye.
    - Always help to tweak and elevate exhibits so they are the best they can be and send the right message to the jury.
  - Develop voir dire questions and themes.
  - Practice voir dire skills.
  - Develop juror profile.

### Key Takeaway – Focus Groups Advantages

- **Rich Qualitative Data:** Focus groups provide deep insight into participants' thoughts, feelings, and motivations, offering qualitative data that surveys might not capture.
- **Diverse Perspectives:** By gathering individuals from different backgrounds, focus groups can reveal a variety of viewpoints, helping to understand a wider audience.
- **Interactive Discussion:** The group dynamic allows participants to interact, which can lead to more natural and spontaneous responses, often uncovering insights that might not emerge in individual interviews.
- **Immediate Feedback:** Focus groups provide real-time feedback on ideas, messages, or products, enabling quick adjustments and refinements before further action.
- **Exploratory Research:** They are particularly useful in the early stages of research when exploring new concepts or ideas, helping to generate hypotheses for further investigation.

### Key Takeaway – Focus Group Challenges

- **Group Dynamics:** The presence of dominant personalities can skew results, as some individuals may dominate the conversation while others may remain silent, leading to unbalanced perspectives.
- **Moderator Bias:** The effectiveness of a focus group often relies on the moderator's skills. A biased or inexperienced moderator can influence the discussion and outcomes unintentionally.
- **Limited Sample Size:** Typically, focus groups consist of a small number of participants, which may not be representative of the larger population, limiting the generalizability of the findings.

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- **Interpretation Challenges:** Analyzing qualitative data can be subjective, as meanings and conclusions drawn from discussions may vary depending on interpretation.
- **Cost and Time:** Organizing focus groups can be resource-intensive, requiring time for planning, recruiting participants, and analyzing results, which may not be feasible for all organizations.
- **Potential Jury Pool Contamination:** Focus group participants tend to come from the geographical location nearest the venue where the case might be tried. This creates a real risk of excluding potential jurors from serving on the case.

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<sup>1</sup> *How To Do Your Own Focus Groups*, David Ball, Ph.D. (January 13, 2007); *Focus Groups: Hitting the Bull's-eye*, Phillip H. Miller and Paul J. Sceptur (January 17, 2019).