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By Terrence L. Graves,  
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Ross Suter

**M**ock juries and focus groups provide critical insights, helping attorneys navigate the nuances of juror perceptions.

# Mock Trials and Jury Focus Groups—What Are They and How Do You Use Them to Your Best Advantage?

Today's litigation involves high stakes decisions about everything from the appropriate theme for your case to what type of juror do you want to serve on your juror at trial. These decisions can make or break your case and should be approached with the utmost care.

The typical juror will have no knowledge about the facts of your case. In fact, that is a requirement for serving on a jury. That juror will also bring with her whatever biases she may have due to her life experiences. Those biases can affect how they see the world and your case, including the evidence introduced and the way that the evidence is introduced. Those biases will also affect how the juror interacts with others and those group dynamics can have a large impact on any verdict that a jury provides.

Most courts provide parties with basic identifying information about potential jurors, which can be used to try to size up the jurors in order to make a decision about whether that person is the type of person you want on your jury. However, this information doesn't necessarily tell you how this type of juror thinks or reacts in a group setting such as a jury.

So, you may ask yourself, "How do I figure that out?" One way is to use a focus group and/or a mock trial to give you and your client insight into the best way to resolve those issues and to provide some direction.

## What Are Focus Groups and Mock Juries?

A focus group consists of a small, demographically diverse group of individuals who discuss and consider a lawsuit or a specific set of facts with the guidance of a facilitator. These groups provide a platform for open discussions about case-related issues, allowing attorneys to gauge initial reactions and potential biases.

A mock jury is a panel of individuals who participate in a simulated trial experience. These individuals, listen to arguments presented by both the plaintiff and defense. The goal is to replicate the dynamics of an actual trial, allowing attorneys to practice their case presentations and identify strengths and weaknesses of themes, evidence, evidence presentation, and arguments.



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Company's complex case adjusters and providing strategic resolution and litigation advice on Canal's largest and most complex claims. In November 2022, Mr. Greene was again promoted to serve as the Company's Vice President and Chief Claims Officer, providing strategic leadership to Canal's Claims Department. **Ross Suter** is the Senior Vice President of Litigation Solutions at Magna Legal Services. Mr. Suter is a resident of the firm's Philadelphia and New York offices. After practicing as a litigator in Philadelphia, Pennsylvania for several years, he turned his attention to litigation consulting services where he has been involved in the development of graphics and trial presentation strategies in hundreds of cases. His work includes partnering with members of the trial team to develop themes and case strategies that persuade juries, judges and arbitration panels.



Both focus groups and mock juries are typically recruited from the community where the case is pending. Many litigants utilize jury consultants or trial services providers to do this. There are also law firms that do this on their own. They can take place in person or entirely online depending on how you choose to structure the exercise based upon preferences for direct contact and interaction with members of the focus group or mock jury and the amount of money budgeted for these exercises.

economic, and cultural drivers that might influence individual jurors and those jurors collectively as a group for your particular venue. It is preferable to “seat” more than one panel, which will allow you to collect data, impressions, and feedback from different groups that although they hear the same evidence, their responses to that evidence will be slightly different by virtue of the fact that the group will typically shape the evidence in a different way through the medium of their discussions and deliberations.

dence and/or testimony obtained during depositions. Ideally, the focus group members will apply their own understanding of the law to the situation presented and provide feedback in a somewhat structured fashion. The entire process is frequently recorded via audio/visual means and in many cases the attorneys are able to observe the process in real time.

If your goal is to hone your trial presentation while getting feedback on how a jury reacts to the presentation, including the themes, arguments, and evidence, then a mock trial is what you will want to utilize. A mock trial is just what it sounds like—It is a process in which recruited jurors will form one or more jury panels to consider evidence presented in much the same way you would if you were really in court, albeit in a more abbreviated and less formal fashion in most instances. Even though the process and introduction of evidence might be abbreviated, the point is to simulate trial conditions as closely as practical in order to get valid responses from the jury panels.

Mock trials will generally include opening statements, introduction of evidence including highly detailed exhibits, and closing arguments that use real jury instructions. The parties will present their cases in chief and rebuttal

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#### Which Is Best for You?

The answer to this question depends on what you and your client are trying to achieve. If your purpose is to explore the facts of the case and potential overarching themes, then a focus group is where you want to start. Focus groups are generally used to re **Purpose:** Focus groups are primarily **exploratory** in nature. They are used when very little is initially known about the case.

Typically, a facilitator will ask the members of the focus group a series of questions or pose scenarios based upon the facts of a case. The materials may include fact patterns, arguments, interactions between legal standards and facts, expected evi-

Ideally, you want to replicate the venire as closely as possible in order to determine the overall attitudes, biases, socio-

evidence. Although many don't go this far, some mock trials will have someone serve as a judge to rule on evidentiary issues and to instruct the jury on what law applies. Many mock trials will incorporate the use of verdict forms and jury interrogatories if they are typically used in the subject venue.

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try to predict as closely as possible how a jury will respond to the case as presented. Because of this, you will generally want to try to come up with what you believe the best theme, and presentation of evidence specific to your case. The same is true for your opening and closing arguments. If your budget will support it, you can potentially make alternative presentations of arguments and themes to different panels. This will allow you the luxury of getting feedback on what works best. It is also possible to ask your mock jurors for feedback after the verdict has been rendered on what they liked and disliked about your presentation and how your client was perceived. This predictive validity will hopefully allow you to have some ability to better determine the outcome of the trial under different parameters.

Perhaps the best attribute of a mock trial is the ability to watch the jury panels engage in deliberations following the introduction of evidence. Similar to focus groups, mock trial jury deliberations are typically recorded via audio/visual means. The attorneys are able in most instances to watch the deliberations in real time. Observing these deliberations provides invaluable information about jury and group dynamics.

Depending upon how much money and time you have, a party would potentially be able to utilize a focus group near the beginning of the litigation process that would be used to determine the focus of discovery, damages themes, liability themes, and the overall concept of the case and supplemented by a mock trial closer to the actual trial which would allow you to test out the themes and concepts prior to having to put on your case for real.

### **What Are the Pros and Cons of Each Format?**

There are going to be good things and bad things about just about anything. Let's explore them for both focus groups and mock trials.

The pros of focus groups include:

- The ability to determine areas where potential jurors can either easily understand the concepts being presented or where there may be more opportunities for misconceptions or misunderstanding to take place.
- The ability to identify strengths and weaknesses in your case early in the process and therefore to evaluate the overall case.
- Using this evaluation, you have the ability to correct problem areas and further build up strengths.
- Opportunities to present demonstrative evidence at an early stage and determine their effectiveness.
- Determine how witnesses will be perceived by potential jurors.
- The ability to determine overarching themes for presentation of your case.
- You can gain insight into different personality types, biases, experiences, socioeconomic information that can be used later to help choose the most likely jurors that will receive the message you are trying to convey at trial. Collecting this information will help attorneys to customize their arguments and how the evidence is presented in order to get the best reaction from the jurors.
- Presenting your case to a focus group will allow you to determine which themes allow you to reach the jurors. This will allow you to focus on your stronger themes and arguments during trial.

- The ability to record the focus group and listen to the discussions in real time allows attorneys to learn what works and what doesn't at a much higher level.

The cons of focus groups include:

- Focus groups don't really predict trial outcomes. They can provide limited insight into themes and small insight into juror reactions and perceptions, but don't give you a real-world view of how a true jury would react.
- Group discussions are more likely to be influenced by one or two dominant personalities in the group which may affect the quality of the feedback.
- The timing of a focus group may not be ideal, particularly if you are doing one early in the litigation process. You may not have all of the necessary pieces to present to a focus group and this could affect the quality of the feedback you receive.
- Focus groups typically don't receive jury instructions, so they aren't advised of what the law provides. Because of this they will typically use their own perceptions of what the law requires, which may skew the results.
- Although the focus group will discuss the case as presented to them, they will not truly deliberate as a jury would.
- Depending on how the focus groups are recruited and the groups are structured, the cost can be prohibitive for use on all but the cases with an exposure high enough to merit the expense, however, this can often be mitigated by a trial services firm if you provide them with sufficient direction on what you really need.
- Non-verbal responses by members may be difficult to interpret.
- Moderators/facilitators can cause response to questions to vary depending upon how they ask the questions.

The pros of mock trials include:

- Mock juries provide attorneys with valuable feedback on their case. By observing how jurors react to evidence, witness testimony, and legal arguments, attorneys can fine-tune their strategies and their presentations.
- Understanding how jurors emotionally connect with a case is crucial. A compelling presentation backed by evidence is essential, but engaging the jury's emo-



tions is equally important. Presenting your case to a mock jury allows attorneys to fine tune the case so that you offer the most engaging evidence and arguments tailored to be as convincing as possible.

- Mock jury deliberations are recorded and analyzed. This allows attorneys to identify patterns, assess juror biases, and adapt their approaches accordingly.
- The ability to record deliberations and listen to them in real time allows attorneys to learn and understand what worked and what doesn't work in terms of their presentations and also how group dynamics play a role in ultimately arriving at a verdict.
- The mock jury actually deliberates and therefore provides attorneys with insight into the process utilized by juries to reach a decision.
- Mock trials allow attorneys to get practice standing on their feet and presenting evidence to jurors.
- Because of the complexity of mock trials, typically you can involve a number of attorneys in the process, thus allowing them the opportunity to hone their trial skills.
- Mock trials are more predictive of actual trial outcomes.
- A mock trial can utilize more than one jury panel which can allow you to watch the differing deliberations, which will offer invaluable insight into group dynamics and how that could potentially affect the trial outcome.

The cons of mock trials include:

- Organizing mock trials can be expensive and time-consuming. They typically take several weeks to put together, so it is best to plan to do this early and not wait until the last minute. You may be able to mitigate some of the cost involved by working with the client and a consultant to set parameters in place that will make it less expensive in the long run, if your case doesn't merit the highest possible spend.
- Depending upon how and where you have to recruit, mock juries can be smaller than actual juries, which may affect the representativeness of the feedback you receive.
- Despite efforts to simulate a real trial, the controlled environment of a mock jury

may not fully replicate the emotional intensity of a courtroom and may affect the feedback you receive.

- Although you strive to recruit jurors that are fully representative of the community in which your case is located, this might not happen for a number of reasons. Failure to do this may provide you with a result that is not representative of what you would truly get with a real jury.
- If you don't hold the mock trial virtually or on-line, you will need to obtain a place big enough to hold a trial in. This means a hotel or other facility with multiple conference rooms that can be rented.
- It is always difficult to interpret non-verbal responses by mock jurors without the need for additional follow up, which may not be possible depending on your chosen format.

### How Are Focus Groups and Mock Trials Used?

Trial lawyers will often use focus groups and mock trials as part of trial preparation. Either format will allow attorneys to obtain invaluable information on how potential jurors will view their case, identify strengths and weaknesses in their arguments, and test different trial strategies.

Mock trials allow attorneys to assess juror reactions, uncover biases, and refine trial presentations through presenting case facts, evidence, and arguments. By presenting case facts, evidence, and arguments to a group of mock jurors, trial lawyers can assess juror reactions, uncover biases, and refine their trial presentation.

Focus groups provide a valuable opportunity for trial attorneys to fine-tune their trial strategy and improve their chances of success in court by asking tailored questions that are designed to explore specific facts, themes, and evidentiary issues in a case. A specially trained moderator or facilitator is often utilized to pose the questions to the focus group members. Focus groups allow attorneys to have a better understanding of what ingrained biases and ideas potential jurors may have early in the process.

### How Do You Put on a Mock Trial?

Putting on a mock trial can be a daunting endeavor, however, most, if not all of

them follow the same basic steps. You will want to select a representative and unbiased panel or panels from the same venue where your case is pending. You will need to create a presentation tailored to convey the facts and law applicable to your case. Make sure that your presentation is narrowed down to be sufficiently understood and presented within the applicable time frame. The presentation format needs to be adequately considered. Each of these areas is covered in more detail below.

### Choosing an Unbiased Panel

The key to the effectiveness of any mock jury is obtaining a panel of individuals from the same venue where the case is pending. This can be done by advertising for people interested in sitting on a jury for a nominal fee. This process will include a questionnaire that tests the knowledge of prospective jurors to make sure they don't have any knowledge of the facts and circumstances of the case. You will want to have a target number of jurors in mind. Once you have the correct number of jurors selected, you advise them when and where to show up.

### Creating the Presentation

There are any number of ways to craft a presentation for a mock trial. Some lawyers prefer a format that uses "clopenings" in which the opening statements and closing arguments are combined together followed by abbreviated presentations of evidence that can consist of video deposition clips, reading deposition excerpts, or presentation of evidence summaries. This testimonial evidence is also typically supplemented by documentation evidence such as photographs of the scene, vehicles, injuries, contracts, discovery responses, and other evidence.

Others prefer a more traditional approach to presenting a mock trial. That approach entails both sides making abbreviated opening statements, presenting their case in chief, and wrapping up with closing arguments. The evidence introduced during the cases in chief is typically abbreviated and condensed down to the bare minimum to convey the most cogent information. This approach will also include introduction of documentation evidence as described above.

No matter which format you utilize, most, if not all of the testimony you introduce should be via video or very brief deposition excerpts. If you choose to bring live witnesses, you bring a certain level of uncertainty to the proceedings that may affect the validity and your ability to stay on schedule. The format that is chosen may affect your results, so you should be careful to consider the pros and cons of each way in order to get the desired validity for your case.

Team up with colleagues from your firm to play the different roles in the case. If you are the lead defense counsel and will try the case, you should take the role of defense counsel in the mock trial. Have an associate or another partner play the role of the plaintiff's counsel. Although everyone should give the best possible effort and presentation, the ultimate goal is to get valid feedback from the mock jury, not to win the case.

#### **Streamline the Facts**

It is very easy to get caught up in preparing for a mock trial and including too much detail. There should be a focus on presenting just what's necessary to convey the operable facts without overload-

ing the case. Remember that you only have a few hours at best to present both sides of the case, therefore, it is important to be extremely picky about what you include in the presentation.

You want your jurors to focus on those issues that are of utmost importance to the case. Lawyers tend to want to overprepare and over-include. Doing that will not put you in the best situation for having a successful and useful mock trial.

#### **Pick the Best Format for Your Purposes**

If you can afford to do so, presenting the case to multiple jury panels is an optimal way to get the best bang for your buck. Having multiple panels will give you insight into how different group dynamics affect the potential outcome of the trial.

Each panel should have someone assigned to be the "bailiff" who will answer questions, bring in evidence, and ensure that the deliberations are proceeding in an orderly fashion. The panels should have separate rooms for deliberations. Each panel should also be set up with a live CCTV feed and/or videotaped so the deliberations can be watched in real time or later by counsel. This will give you an opportunity to see what facts, arguments,

and issues were of the utmost importance to the juries. Although it might be tempting to sit in the rooms with the panels while they deliberate, this should be avoided in order to make sure that there is no undue influence on the jurors while they deliberate. The jurors may be unwilling to deliberate or express their opinions on issues fully if attorneys are present.

#### **Conclusion**

In our era of polarized opinions and complex legal battles, many firms and clients are investing more in trial preparation. Mock juries and focus groups provide critical insights, helping attorneys navigate the nuances of juror perceptions. While these tools are fantastic for theme/storyline development and witness feedback they are generally not verdict or damages centric exercises. They will provide a sense of where a jury may go in terms of low, high, or medium verdict ranges; the sample size is generally too small (i.e. 24-48 jurors) to be that sensitive. By combining emotional appeal with solid evidence, legal teams can build compelling narratives that resonate with juries and allow for the best possible results.



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