

# Junk In, Junk Out

**A Guide to Conducting Your Own  
Focus Groups *Correctly***

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## 1 | WHO ARE YOU AND WHY SHOULD I TAKE YOUR ADVICE?

My name is Jessica Brylo. I am a seasoned jury and trial consultant and work nationally. I am a licensed attorney and received a Master of Psychology from Duke University in 2007.

I own **Trial Dynamics**, a full-service trial consulting firm. I have run my national firm for almost a decade and a half. I spend my days running focus groups and mock trials, analyzing data, watching jurors deliberate, aiding with jury selection, revamping opening statements, conducting effective witness preparation, and breaking down cases to find any holes and work to rebuild them with a stronger focus and tested themes.

I have worked on low-impact collision cases, multi-billion-dollar class-action lawsuits, and everything in between. From 2004 to 2007, I was fortunate enough to be trained and mentored by David Ball, Ph.D., one of the nation's leading plaintiff's trial consultants.

I am one of only a handful of people in the world who gained access to the 1996 Arizona Jury Project videos of real jurors deliberating. The only time in US history that video cameras were allowed into actual deliberation rooms to study the jury deliberation process was during the Arizona Jury Project. The videos are stored under lock and key.

Throughout my career, I have spoken with clients who, for one reason or another, want to take on some of the tasks that are typically assigned to jury consultants, such as running their own focus groups.

I am often brought in later to do additional work on these cases, such as selecting a jury or extrapolating results from the focus groups to create trial strategy.

All too often, the focus groups I review contain several missteps, each of which affect the reliability of the results. As a result, money, time, and effort are often lost as my clients and I must start over with new focus groups.

My intention in writing this handbook is to give you the tools to avoid and/or remedy some of these mistakes, thereby providing a better product. If you do need to hire someone for follow-up work on the case, my hope is that you will not need to repeat the work you have already done.

Research is delicate. The adage “**junk in, junk out**” absolutely applies. My goal is to help you avoid unreliable research and toss out the junk.



## 2 | HOW SHOULD I USE THIS HANDBOOK?

This handbook can be used as a quick reference guide if you find you need to conduct some research on your own or as a learning resource when read in its entirety.

I have identified specific aspects that you can take on yourself as well as areas in which you may be better served hiring a professional. Some parts of the process require training or developing specific skills that are hard to teach, whereas other parts are easier to learn.

You can also use this information to interview prospective jury consultants if you hire someone else to conduct research for you. If they break any of the principles laid out in this basic guide, you can assume they aren't qualified to aid you in building your case.

To ensure this information will help as many people as possible, please feel free to make copies of pages that interest you and share this guide. Noncommercial sharing is permitted, provided author credit is conveyed as well.

## 3 | WHY CAN'T I JUST DO MY OWN RESEARCH AND SKIP THIS HANDBOOK?

You certainly can, but you may unknowingly carry out unreliable research (which is arguably worse than no research at all) or realize that you have wasted valuable time, money, and effort.

Knowing when you've done something drastically wrong is often difficult. If you introduce a piece of evidence that you shouldn't have, or you introduce it at the wrong time, jury deliberations may turn out vastly different from how they would have had you not presented the evidence or had presented it differently. You would never know that you altered the results because you had no control group for comparison.

In cases of comparative fault, for example, when and how should your client's transgressions be brought up? Presenting them up front will give them a greater weight as jurors have not yet created any mental schema for the case. Those bad facts will help form the schema. Conversely, if you delay presenting them and succeed in winning jurors over to your side before the adverse facts are presented, the bad facts may carry less weight. Determining when to present the bad facts depends on what your goals are for the focus group. If you are looking to find every possible negative outcome, you may want to lead with the bad facts. If you are

testing whether your opening structure will overcome the bad facts, then you may want to delay presenting them until later.

What YOU can do: With practice, most attorneys can learn to create statements for the focus groups. How much detail you present will depend on the case and the length of the focus group.

Depending on your skill level, hiring a professional to edit scripts that you create may be worthwhile. The wording, order, and decisions about what pieces of evidence should be included or excluded is sometimes more art than science. A few hours of edits should help to avoid missteps.

Whether the research is poor or excellent, in the end, you will be watching jurors deliberate. As you watch and listen, you may think, “This is great!” when in reality, it may be unreliable. You may hear opinions that would never surface had the research been conducted appropriately. If you are unaware that the results are unreliable, you may alter your trial strategy and potentially make the case weaker.

The way you speak to recruits, the questions you ask them, the introductory script you read, and the way you answer jurors’ questions impact the results. The chapters that follow will discuss these specifics in further detail.

## 4 | FOCUS GROUP CHECKLIST

Creating and running a focus group involves several components that I will delve into separately. Your checklist should look similar to this:



- Recruiting grid\* – used to track jurors as you recruit them. (If you hire a recruiter, you will not need this.)
- Database of jurors – (If you hire a recruiter, you will not need this.)
- Recruiting letter\* – posted online or sent out to find potential mock jurors. (If you hire a recruiter, you will not need this.)
- Screening letter\* – used to screen potential jurors according to demographics and potential disqualifiers for serving on the case.
- Juror follow-up letter\* – used to confirm jurors as the project start date gets closer.
- Technology check – depending on whether the focus group is in person or online, you may need someone to conduct technology checks with jurors before their participation. Technology issues are almost inevitable with online focus groups, but you can minimize them ahead of time.
- Facility – for hosting the focus groups



- Audio-visual equipment or specialist – the deliberations are viewed from a separate room, so you will need quality AV to hear and see the jurors.
- Paper and pens - for jurors to take notes if research is conducted in person
- Name tags – to identify jurors
- Juror check-in sheet\*
- COVID protocols depending on venue and timing – hand sanitizer, masks, etc.
- Juror sign-out sheet\*
- Confidentiality agreement
- Juror questionnaires – used to track juror attitudes as you move through the presentations.
- Cash to pay jurors
- Scripts – created to tell jurors about the case
- Evidence to present to jurors

\* I can send you these forms. We will need to have a quick five- to ten-minute phone conversation to discuss how to use them.

## 5 | THE SCIENTIFIC METHOD

When conducting research, strategy is important. Think back to what you may have learned in your middle-school or high-school science classes.

Every time a new variable is added to the research, you lose some control over the study. Finding relationships between the variables and the outcome becomes harder. For example, to test whether babies gravitate toward a certain sock color, you could line up several socks of different colors and watch babies crawl toward them. You would be testing whether babies gravitate toward one color significantly more than the others. Clear results would indicate that the color of a sock correlates with a baby's choice.

Now let's add an extra variable. You lay out socks of various colors AND various textures. Did the baby choose the red sock because it's red or because it's fuzzy? The relationships between variables became harder to interpret.

The same holds true with your jury research. Every time you change something, such as adding in extra evidence, changing the order of proof, or having someone else present, you are adding extra variables. When juror responses change, how will you know which variable caused the change?



result, but constant mental reminders and practice can minimize the potential damage.

What YOU can do: When presenting to the focus group panel, you need to be very cognizant of your tone of voice and careful how you answer questions. Creating scripts that simply need to be read to the jurors will help. Reading a predetermined script will help to minimize any inadvertent changes to what is presented. Alternatively, someone unrelated to the case can read the presentation for you—perhaps a paralegal unassociated with the case.

If you feel you would be unable to stay neutral throughout the presentation, hiring someone to present for you would be best. The greater concern is establishing what the script will say. A professional can be a great help when it comes to vetting the script and determining what should be presented and in which order.

## 6 | TYPES OF FOCUS GROUPS

Although there are many types of focus groups, the two main types that you would likely use include

1. concept focus groups, more commonly called moderated discussions,
2. deliberation groups.

### *Moderated Discussions*

A moderated discussion is a small focus group comprised of six to ten participants and a moderator. The moderator asks the participants questions to gauge their attitudes and beliefs.

Generally, the moderator is a consultant, but you can take over the moderator role, as discussed in the preceding chapter. The participants may hear bits and pieces of a case with discussion occurring throughout. Alternatively, they may be questioned about certain aspects of a case, such as opinions of doctors or hospitals in the area.

These focus groups are much less expensive to run as they generally last only one to three hours in length, are limited in scope, and only require one room to host them.

They are best used for testing specific things, such as graphics or opinions about a topic. They tend to be less helpful for testing an entire

case for several reasons; for example, simply asking jurors leading questions will change the outcome of their opinions or verdict. When you put focus on an issue by asking about it, you may cause jurors to think about it differently, whereas if you hadn't asked, they might feel the issue was unimportant.

For example, in a medical malpractice case, one fact presented may be that the doctor spent only five minutes with the patient. If you present that fact and then ask jurors, "Do you think five minutes is enough time to fully evaluate a sick patient?" you have now emphasized that five minutes is not enough time to evaluate a patient. Jurors may respond that the time spent was too short and the doctor should have spent at least three times as much with the patient. That input was potentially valuable, but also potentially misleading.

If you had presented the timeline and refrained from mentioning it, and none of the jurors brought it up as an issue, you would now know that either the timeline was unimportant to the jurors, or it was not presented in such a way that would make it important. Perhaps other aspects of the case were more triggering for them, but if you had put emphasis on the timeline, you may have made the issue important when previously, it was not. By allowing jurors to choose what to focus on, you learn what aspects are more important to jurors. You can use this knowledge to highlight those aspects at trial, or if you feel they are

missing an essential element of the case, you now know you need to find a different way to present it so jurors will consider that element important.

For this reason, a moderated discussion works best when followed up with a deliberation group at a later time. The moderated discussion allows you to choose what to focus on and to probe jurors about their feelings, but the deliberation group removes your influence and will show you what jurors find important on their own. Both are important and valuable as long as you understand their differences and limitations.

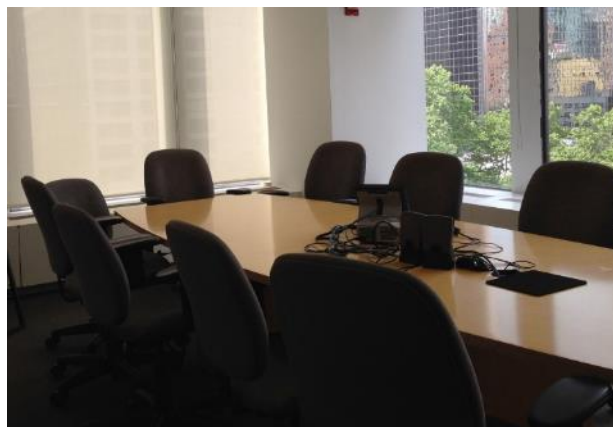
What YOU can do: I generally recommend focusing research on testing specific topics relevant to the case or testing exhibits. Moderated discussions can be helpful to the case very early on during discovery as jurors will tell you what they want to see or hear. Attorneys are often successful at employing moderated discussions limited to gauging initial reactions to case facts to steer discovery.

However, moderated discussions in which the goal is to gauge attitudes and beliefs, rather than probe for missing pieces of evidence for the purposes of discovery, often require an artful approach. Discussions often become sidetracked, and you need to know when to take a detour and when to pull jurors back on track. Determining which questions are suitable to ask, in what order to introduce the evidence, and which questions to answer as the discussion progresses is a complicated process. For these reasons, hiring a professional to lead a moderated focus group may be best.

## Deliberation Groups

Deliberation focus groups give you a more in-depth understanding of the case but cost more to run. In this type of focus group, jurors hear both sides of a case, and view limited exhibits or deposition testimony. Following presentation of evidence, jurors are broken into smaller groups—typically six to ten jurors each—to deliberate uninterrupted on several verdict form questions.

Administering questionnaires to jurors as you progress through the presentations is helpful for tracking their opinions about the evidence.



When running a deliberation focus group, you can overstep research boundaries in several areas without realizing it. The tone of your voice and how you answer questions are crucial. If you inadvertently alert jurors to which side you represent, you compromise the integrity of the results. As jurors submit questions, which ones should you answer, and how do you answer them?

Addressing these nuances with focus groups can become more art than science. If you run your own groups, it may be best not to answer *any* juror questions. However, collecting the questions will provide you with valuable information about what jurors find significant and what information needs to be clarified.



You need to decide who will present the evidence. Views on this differ even within the consulting community. Some consultants allow one attorney to play the role of the plaintiff/prosecution and another attorney to play the role of defense.

The benefit of having two separate presenters is a more dynamic presentation. The downside is that you have introduced an extra variable (attorneys' personalities) into the research, which you cannot control for.

Now, instead of testing only the facts, you will be adding an uncontrolled variable of personality. You will have no way of knowing whether jurors' decisions correlate with the facts alone, or if personality has altered the results. If the attorney for the opposition in the actual case argues against you during presentation, that would be valid as those are the personalities that will play out in court. However, introducing an additional personality to the jurors that may act very differently can have an impact on the research.

When I join a project, I usually suggest that attorneys allow me to present both sides in a very neutral manner. I work with the attorneys to create scripts, so all information presented to the jurors is predetermined. While this may seem like more work than putting together an outline and presenting it yourself, using a script does control what information is presented and in what order. None of my attorney clients have ever regretted putting in the extra work. On the contrary, I often hear how the preparation was just as valuable as using the focus group because we

consulted along the way, essentially creating a draft opening statement by the time we finish.

Several attorney clients want to run their own focus groups but hire me to oversee the process, direct them how to recruit and where to host, and revise statements. I send in my videographer to ensure we have good audiovisual coverage of the jurors, so I can review the video later to help clients strategize.

This is an excellent middle ground when you are on a budget but want to protect the integrity of the research and achieve meaningful results.

What YOU can do: If you have a vetted script and the ability to remain neutral, you can present evidence to the mock jurors. I would suggest refraining from answering questions that jurors submit unless you can commit to giving unbiased answers and weighting the answer toward the opposition.

Hiring a professional to help create the scripts that you will read to the jurors is beneficial. Doing so will ensure that the information is presented in a balanced manner and with forethought to word choices and the order of evidence. Hiring a consultant to create questionnaires for tracking juror attitudes as you progress through the presentations would also be helpful.

## 7 | ONLINE VS. IN PERSON

Two years ago (2020), nearly all research was conducted in person. However, online focus groups have taken center stage as a result of COVID-19 and are unlikely to go away. Deciding which way to conduct your research depends on several factors:

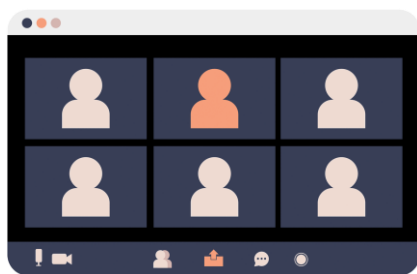
- Is your trial likely to take place virtually? If so, conducting your research online makes more sense.
- How consistent is the in-person show rate for your venue? Numbers are likely to change monthly, if not daily. I advise having an online backup plan in the event that the in-person project needs to be moved online.
- What are the mask rules and comfort level in your venue? Masks make it extremely difficult to hear jurors and for jurors to hear you. They also make it harder to read jurors' non-verbal language when deliberating. Observing body language is beneficial for research, as jurors are likely to need to wear masks at the trial and deliberate with each other with the masks on. Watching how they navigate that may be valuable.

However, depending on your AV equipment, hearing jurors with masks on may not be feasible. In that case, you would need to run the focus group online. In some venues, you may be able to space the chairs an appropriate distance apart so that people can participate without masks or with transparent face shields. In other venues, masks

may not be worn regularly and won't present a problem. You need to weigh these factors when deciding how to conduct the research.

- Pricing. I have found that the pricing for both in-person research and online research can be very similar. Any difference mainly depends on your online vendor and what hotel rates you can secure.
- Juror attention spans. Humans have shorter attention spans when viewing events on a screen. In person, even after hours of presentations, jurors can retain information and stay engaged with only a couple breaks. In contrast, when viewing presentations on a screen, people are only able to focus their attention for thirty to forty minutes, maximum. You must get creative at refining your presentation, making it more dynamic, breaking it up into manageable segments, and finding ways to ensure that jurors are paying attention instead of surfing the web.

I believe each type of research has an appropriate time and place. Many aspects of in-person research cannot be replicated online. Even so, I do conduct a good deal of online research, depending on the needs of the client, the venue, and what makes the most sense for each specific case.



## 8 | PICKING A LOCATION

### Venue

In general, your focus groups need to be run in the trial venue, which may require travel. To save on travel expenses, run online focus groups.

I often get asked if hosting the focus group in the trial venue is truly necessary. Concisely, yes, it is. Jurors in different counties have had different life experiences and frequently hold different beliefs.

For example, in Louisiana, you can pick up alcohol in a drive-through. How would that play out in a drunk-driving case? In some areas of the country, racial tensions are higher than in others. Even if your case doesn't involve race, how would that play out with a mixed-race jury? Even the various responses to COVID and how people's health or businesses were affected can alter their views on money and the value of life.

Although conducting research in the trial venue is preferable, sometimes that is not practical or advisable. For example, if your trial venue is a very small, rural town, you don't want to exhaust the local jury pool by conducting research with a significant portion of available participants. In such cases, running your research in a different venue with similar demographics and lifestyles would be preferred.

## Hosting

Chances are, if you're running focus groups on your own, you are likely on a budget.

Ideally, you would host the focus groups at a hotel with numerous rooms and easy access to lunch for the jurors, but this may not be feasible. However, hotel rates vary drastically, so making some calls is worthwhile.

If you cannot afford hotel conference rooms, several other options may include schools, churches, community centers, and even law offices.<sup>1</sup>

You need a minimum of two rooms when running a deliberation focus group: one room for the presentation, utilizing a U-shape setup for deliberations; and a second room where you can watch deliberations live without being present in the deliberation room.

I often get asked if the attorney can sit quietly in the corner of the deliberation room. I strongly urge you not to do so as it can affect the research. It is highly likely that jurors would be less candid and more guarded and look to you for answers to questions even if you refuse to answer them.

Therefore, I highly recommend not staying in the deliberation room when jurors are deliberating.

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<sup>1</sup> When using a law office, it is extremely important that jurors do not know the name of the firm. If you are looking at using a law office's conference room, call me to discuss how to make it work.

## 9 | AUDIO-VISUAL

When I first started conducting focus groups, I bought my own AV equipment, and my extremely tech-savvy partner ran both the wiring and the AV.

We learned very quickly that we would need to invest thousands of dollars to acquire the right cables so that we wouldn't get interference, expensive microphones so we could hear the jurors clearly, and a backup system in case anything stopped working. After years of struggling to get it right, I ended up selling all my equipment and now hire out the AV work.



Some attorneys have run their own focus groups then handed me recorded video in which only one third of the discussion could be heard once the air conditioning had turned on and half of that was still difficult to hear because the equipment used had not been adequate.



You cannot set up a single camera in the corner of a room and expect to hear what you need to hear. If your audio-visual recordings are unclear, every penny you spend on the rest of the project will be wasted.<sup>2</sup>

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<sup>2</sup> My AV services are priced separately from focus-group work, so if you only need AV services, discussing whether my team can provide that for you independent from any other services is welcome.

What YOU can do: If you have experience in AV work, you can likely set up your own audio-visual equipment. If not, I highly suggest hiring someone qualified who has reliable equipment. Alternatively, you can host the project at a focus-group facility that already has AV wired into the rooms. One caveat, however, is that often the AV in these facilities is grainy and hard to hear. High quality table microphones or individual microphones are necessary to capture the discussion.



## 10 | RECRUITING

Recruiting may seem like a menial part of your project, but the quality of your recruits will significantly influence the research.

A group of stay-at-home moms and twenty-year-olds who scavenge Craigslist for side jobs hardly represent the entire venire, and their opinions will not be representative.

I consistently see attorneys cut corners when recruiting, not realizing that any results they get from these focus groups will need to be retested. Remember, “junk in, junk out.” Your jurors must be representative of your jury pool.

When recruiting jurors for your project, you need to consider your budget and the quality of recruits. Recruiting quality jurors yourself is tedious but doable, and by far the least expensive option.

On the other end of the spectrum, recruiters can conduct a superior recruiting, but they rightfully charge a substantial amount per juror. Once you try recruiting on your own, you will likely have a much greater appreciation for the work and cost of a professional recruiter.

Recruiting ten to twelve jurors per group is recommended, with the expectation that six to ten jurors will show up. I always suggest running

a minimum of two groups, so double, triple, or quadruple the number of jurors accordingly.

### *Professional Recruiters*

The easiest and most effective, yet most expensive way to recruit for a project is to hire a professional recruiter. The cost is generally \$150 to \$160 per recruit, regardless of whether the juror shows up or not. The fee is higher if you pay per show rather than per recruit.

I always suggest running a minimum of two panels of jurors. If you run one panel, a strong personality in the group will typically alter the conversation and, potentially, results.

You also need a control group to determine if that personality affected the entire project or if the results were valid regardless. If you run two panels, you will likely hear around fifty percent of all arguments that could come up at trial. If you run four panels, you will hear nearly one hundred percent of arguments that could come up at trial. Three panels run somewhere in between. I also strongly suggest that you budget for re-running another round of focus groups weeks after the first round with two to four additional panels.

Running a second round allows you to test any changes to your trial strategy based on the first-round findings. Depending on the timeline, you may need to recruit for both rounds simultaneously.

All recruiters are not created equal, so you need to interview a few of them to find one that conducts a quality recruit.<sup>3</sup> If your recruiter compiles their database from Craigslist or unemployment agencies, you are better off doing your own recruiting.

If it were possible, a completely representative recruit would be selected randomly from voter and driver's license records and receive a summons. However, since you cannot access those databases, nor send out a summons for a focus group, you must do the next best thing. Ideally, you will find a recruiter who does random digit dialing to fill their database, possibly combined with other methods.

You want virgin recruits, not professional focus-group participants who join ten of these a year. If a recruiter pulls from another recruiter's list when recruiting in an area for which they haven't composed an acceptable database, you need to interview the other recruiter as well.

One final note: A staffing agency is not a valid recruiter. Avoid using Robert Half Legal or other similar staffing agencies at all costs, unless you anticipate your entire jury venire will be comprised of unemployed individuals.

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<sup>3</sup> Feel free to contact me to discuss questions you may want to ask when interviewing recruiters.

## *Do-It-Yourself Recruiting*

Recruiting for your project is time-consuming but can save a few thousand dollars. If you have a paralegal or assistant, this may be a feasible option for you. I suggest planning a month ahead to allow yourself time to obtain recruits through several different avenues.

If you recruit only through Craigslist, or only your church, or only the newspaper, you will get only one type of person.

You need a varied group of people. I previously suggested that attorneys place ads in the local newspaper, combined with Craigslist, but times have changed. Few people read newspapers anymore (many people get their news from portal sites or social media sites), and Craigslist is almost obsolete compared to the many other job search/recruiting sites available. I would suggest a combination of the following:

- Post bulletins at local churches and coffee shops
- Post an ad in various Facebook groups and on neighborhood networking sites, such as Nextdoor
- Post in some local buy/sell/trade groups on Facebook
- Mail letters to people selected at random from a phone book. Letters can reach the non-tech-savvy or older population. You need to mail these out a week or two before you expect to receive calls.

nextdoor



The wording of your ads and what you say when screening jurors over the phone matters. The ad should be very straightforward.

Seeking Mock Jurors

Date/Time

Participants will listen to presentations from both sides of a real lawsuit and deliberate to a conclusion.

\$xxx in cash. Lunch served.

If you are interested, please send a message, and for screening purposes, we will either send you a questionnaire to fill out or call you. We are required to match the demographics of the area.

Compile a juror recruiting grid based on the demographics of the area. You need to look up census data to determine what demographic markers you'll need to hit. Meeting the demographics of the area—you don't need to be exact but come close—is important because your research needs to be matched to your jury pool at trial as closely as possible.

Throughout the process of recruiting jurors, filling slots will become harder as you'll need a particular ethnicity combined with a specific age/income/background.

I suggest over-recruiting by about ten to thirty percent, depending on the show rate in your area. Be prepared to either pay and let go of extra

jurors, accept the extras if everyone shows, or run smaller groups if there are several no-shows.

Juror pay depends on the area, but generally, you need to offer \$200 to \$250 for a full eight-hour day. Remember, you want to entice jurors who have jobs and families, so it needs to be worth their while. Pay them in cash; they don't know or trust you yet, but cash is reliable.

I do not advocate mentioning that jurors need to reside in a specific county in the ad. Save that question for the screener.

Alerting people to what you are looking for often invites them to lie to participate. Additionally, if you give out the location before confirming recruited jurors, you risk the possibility of extras showing up without being invited.

I highly recommend that you initially speak to the jurors over the phone to screen them. Someone who fits the demographics may sound unsuitable in some way over the phone. When screening over the phone, make sure you use a phone number that will not display your personal or business name on their caller ID.

If jurors figure out which side you represent, the research is null and void as it will unconsciously affect their decision making. If your name or business shows up on the caller ID, jurors can reverse search the phone number (which they will do). You won't want jurors calling you or the

office with questions, so do yourself a favor and use a pay-as-you-go phone or get a separate line dedicated to research recruiting.

Once you have recruited your jurors, schedule a reminder call a few days before the event. Failing to do this can result in very high no-show rates.

Ask that jurors bring an ID with them to the event so that you can check them in and ensure that they are who they say they are and didn't send a friend as a replacement (yes, it happens).

## 11 | CREATING YOUR PRESENTATIONS

If you plan on using a deliberation focus group, you need to create scripts. Essentially, you will be creating an opening statement but speak more definitively and include information on damages. Speak in the present tense. Tell jurors what an expert will say, but don't say, for example, "Dr. Smith will be here to testify..." because that expert will *not* be in the focus group. Instead, say, "Dr. Smith testifies XYZ."

Make the opponent's script as strong as possible and tone yours down slightly. You want to plan for the worst-case scenario. Your goal is *not* to win the focus group. Attorneys often get excited when they watch deliberations, and their side appears to be winning. No! You want to lose. You want to be aware of every single argument against you. Otherwise, your case will be harmed by those arguments during the actual trial.

If you uncover problems now, you can prevent them from destroying your case when it matters most. You may find that some issues with the case are not fixable (generally few and far between). If that happens, you may need to settle the case. Most of the time, when you learn of problems with your case, you will need to reframe the arguments or present more evidence and/or experts to combat those issues. Either way, you need to discover these problems and the only way to do that is to overstate the opposition and understate your arguments.



If there is a debate about the admissibility of a piece of evidence, consider including it if it harms you and withholding it if it helps you. If you represent the plaintiff, do not present a rebuttal. If you represent the defendant, write out a rebuttal for the plaintiff only.

If you plan to administer questionnaires to jurors as you progress through the presentations, you need to keep your presentations to ninety minutes or less per side. This will allow time for check-in, breaks, lunch, and a few hours at the end for deliberations.

What YOU can do: Depending on your skill level, you may be able to create scripts to read to the jurors. Most attorneys tend to create outlines or PowerPoint presentations and present without a script. This *can* be dangerous if you are less experienced at knowing what evidence should be withheld. Additionally, this can often lead to one side's presentation being more detailed or longer than the other's which causes problems with research validity. If you present without a script and need to retest the same focus group, giving the same presentation and comparing results becomes impossible. For these reasons, I generally suggest that you read off a script.

As mentioned previously, hire a professional to create or edit the scripts is usually worthwhile. The focus of your presentation may change drastically when conferring with an expert. A small investment up front can pay off significantly down the line.

## 12 | DELIBERATIONS AND MODERATED DISCUSSIONS

The general rule is: Leave them alone.

Every time a jury gets off track or misunderstands evidence or instructions, attorneys want to jump out of their seats and run in. You will not be able to do that at an actual trial. You need to see how they resolve these issues without your involvement. Nine times out of ten, another juror will correct them and get them back on track.

If they continue to struggle for another ten to twenty minutes, or they are completely wrong about an instruction or piece of evidence, you can go in and correct the misunderstanding.

Do so very neutrally, and do *not* get wrapped up in convincing them or advocating for your side. You'd be shocked how often this happens. Take note of what caused the confusion and ensure that you take steps to mitigate that at trial.

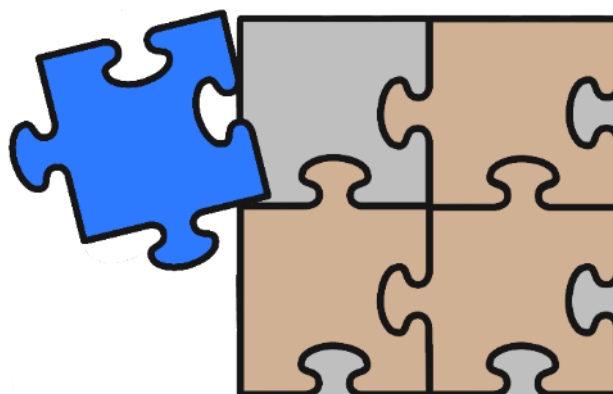
When I am running a project, I often get asked if I can moderate a discussion after deliberations are over to ask pointed questions of the panel. The answer is always yes, but with a caveat: Some questions are more valid than others.

Questions about a piece of information that jurors found to be the most critical, something that confused them, or something that would cause the other side to win in court are all valid questions.

Often, attorneys want me to ask jurors hypothetical questions, such as, “What if, instead of XYZ, you were to hear ABC?” When the research is over and can’t be tainted by asking, I will always ask the question, but the answers to these “what if” questions are unreliable.

People process information chronologically in the order in which it is received. When you read the first sentence of the presentation, that influences how jurors hear the second sentence, and so on.

So, once jurors have already created a mental framework of the case, you cannot ask them to remove a piece of that puzzle and replace it with something else. They will answer the hypothetical question because



humans are logical beings, and we always think we know how we would respond. But our answers are unreliable. If the alternate information was presented in the same order, it could produce an entirely different effect than what the juror claims it would. Therefore, if you decide to ask such questions, be very skeptical of the answers.

The best way to learn how evidence changes would impact decision making is to run a separate focus group with the alternate information and watch for any shifts in discussion.

What YOU can do: You can certainly sit and watch the jurors deliberate. Take notes, make sure they stay on topic. Give jurors at least ten minutes when they veer off-topic before you step in to correct them. Stay out of the way as much as possible. When jurors finish, you can ask any question you want without risking tainting the validity of the research. As mentioned above, however, be wary of relying on the answers you receive.

If you want a true moderated discussion following deliberations, you should consider hiring a professional. The professional can guide you as to which questions are valid and which are likely to produce misleading answers.

## 13 | NOW WHAT?

Now that you've run your focus group, you are likely loading your car with piles of questionnaires, copious notes, and video footage. Or, if you've run an online focus group, you've collected zip files filled with data. What do you do now?

This is when art meets science. Depending on how many participants were involved, you analyze the questionnaire data to find statistically significant correlations between demographics or attitudes and verdict leanings. Often, you won't have enough participants to do so effectively.

I personally think statistical analysis is one of the least valuable parts of research unless you hired a considerable number of recruits and can run several different crosstabs.

Look through the questionnaires and pay attention to the language used by the jurors. Incorporate it into your trial preparation. Look for moments when jurors changed opinions. Most importantly, look beyond what they said to understand what they really meant.

People usually have unconscious reasons for making decisions that they are often unaware of. They may provide logical explanations for their choices, but those reasons may be utterly irrelevant to what really drove their decision making. The tricky part for you is to decipher the hidden reasoning so that you can address that at trial.

As you watch deliberation videos, look for the unconscious objectives. Watch for times when jurors change their minds and ask these questions.

- What caused the change?
- Which arguments are persuasive, and which ones are not?
- What are they confused about, and what information do you need to supplement at trial?
- Did your theme succeed in winning over jurors, or did it fall flat?

Listen for other themes that could have more of an impact. You are not watching to see who wins or loses. Let me say that again: You are not watching to see who wins or loses.



Focus groups are notoriously unreliable, especially when it comes to damage amounts. They can give you some idea of whether you are in the right range (five figures, six figures, etc.), but their damage predictions are not reliable; exponentially more time to present tangible evidence and testimony related to damages is available at trial.

The verdict may or may not be reliable, but that should not be your focus. You should focus on the arguments, finding the holes and repairing them, and seeing how jurors with different backgrounds react to the case.

Focus on the nuances of their facial expressions. When one juror talks, how do the other jurors react to that argument? Often, the reaction is non-verbal. Focus on the trees, not the forest.

Take all of this insight and reframe your case. Ideally, this means retesting it with another round of focus groups. You can always make an educated guess as to what will make your case stronger, but without testing it, you have no way of knowing if the changes would make any impact at all, either for better or worse.

Therefore, I often suggested that attorneys plan to run at least two rounds of focus groups with two to four panels per round if budget allows. Hearing more opinions supplies you with more certainty in your trial approach.

What YOU can do: You can review deliberation video and focus on what jurors found convincing, holes in the argument, terminology that jurors used, and what type of story they constructed about the case.

Understandably, delving further into the details of the deliberation can be overwhelming. I suggest hiring a professional to review the focus group footage and data. They can look for underlying reasons why jurors held certain views, changed their minds, or held tight to their beliefs despite clear evidence to the contrary. They can also establish what you should do with the information to formulate your trial strategy.

## 14 | WHAT WILL IT COST TO RECEIVE YOUR HELP?

If this process seems too overwhelming, it's because you are essentially taking on the responsibilities of a trained professional. I can help make conducting research more palatable in several ways.

Costs involved vary widely depending on how much of the process you want someone else to take over. Prices depend on several factors, including number of panels, location and venue rates, online versus in-person groups, and several other elements that we would need to discuss.

Assistance solely with drafting presentation statements would cost significantly less. After you run the focus group, you would send me the deliberation videos to review.

We can discuss all options when you call me. Attorneys are often hesitant to call in for help because they assume consultants' rates are only justified for the largest cases. That could not be further from the truth. A skilled consultant can help with merely a couple of hours of consult or a revision of an opening, regardless of case size.

If conducting focus groups is not within your budget, there are several other ways I can help. Keep in mind that the goal is to leverage your investment. In some cases, running a focus group may make more sense than other options. For example, if your claim is worth tens of thousands of dollars, you are not likely to leverage a \$10,000 investment. It's



unlikely that you will learn how to turn that \$10,000 into \$100,000. If your case is worth six or seven figures, however, spending \$40,000 on research to increase the value by another \$200,000 or more is well worth the investment.

Similarly, if your case is potentially very problematic, saving yourself a \$50,000 trial loss may be worth spending \$15,000 if you learn that the case is not worth trying.

I will never suggest spending more than we anticipate receiving in return on your investment.



## 15 | IF A FOCUS GROUP DOESN'T MAKE SENSE FOR A CASE, CAN YOU HELP IN ANY OTHER WAYS?

Absolutely. A majority of my work consists of ancillary services. While focus groups are very helpful for guiding my other services, many times they are not feasible. I can draw on my knowledge base gained through watching thousands of jurors deliberate in various settings to significantly strengthen your case, often after only a few hours of work. Ways in which I can help without the use of a focus group are detailed next.

### Case Analysis

Often, talking through the case for an hour or two can produce drastic changes in the focus of the case, themes, and direction you need to take. For a case analysis, I would dissect the case, find the potential problems, and discuss ways to either reframe the case or address these issues through witnesses, or in voir dire, opening, and closing argument.

As you analyze a case during intake and progress through discovery, some pieces are often missed. Once you get to trial, the jury will tell you what those missing pieces were, but by then it is too late to address them. I can look at a case and find the holes. We will then work to rebuild with a new focus and theme.

## Opening Statement Strategy and Development

Opening statement strategy is a very critical component of trial. Humans process information in the order in which it is received. Each new fact is processed through a lens created by the previous pieces of information. Your voir dire and opening help to create that lens. Earlier pieces of information are more important than later ones because they help to create a mental framework that builds a juror's bias.

If a juror has developed the belief that your client did something wrong by the end of opening, they will judge each additional piece of information through that bias. If the information introduced is consistent with their belief about your client, the juror will accept that belief as true. If the information is inconsistent with their belief, the juror will either completely disregard it, or mentally alter it to fit their belief.

Very frequently, jurors who heard the same facts have entered the deliberation room with entirely different memories about the evidence presented. If you fail to win jurors over by the end of opening, winning them back will become increasingly more difficult. For this reason, carefully working together to craft a persuasive opening statement would be very advantageous.

## Voir Dire

Voir dire is your chance to build rapport with jurors, start to plant seeds about your case, and inoculate your case against the opponent's

claims, as well as seek out jurors who will be harmful to your case. In COVID times, accomplishing all of this has become more complicated than it used to be. Jurors are hard to hear and connect with through masks, and their facial expressions are much harder to read. Therefore, the quality of your questions matters greatly.

The same rule that applies to research applies here: junk in, junk out. If your questions are not appropriately prepared, giving consideration to themes, beliefs central to the case, and time management, you will fail to extract the information you need to make educated strikes. In addition, the *manner* in which a great majority of attorneys ask questions fails to elicit truthful responses from jurors. Few attorneys are skilled at locking down challenges for cause, thereby leaving undesirable jurors on the panel when peremptory challenges are finished.

I can help with voir dire in several ways:

- Formulate effective questions to elicit honest, useful responses from jurors. All too often, counsel has brought me in to help select the jury, yet the attorney's questioning was so poor that I knew very little about the jurors by the end of voir dire. If your questions are not pointed, carefully crafted, practiced, and strategic, money spent for assistance with picking a jury is wasted.
- Direct focus during jury selection. Your focus in jury selection should be on connecting, learning names, and effective questioning. Your focus should not be on non-verbal language or tracking answers. I will look at

the panel as a whole, evaluate jurors based on individual responses as well as body language, and help you determine which jurors to strike.

- Hold a voir dire prep session. This is an inexpensive mini focus group meant to refine your voir dire skills. Crafting questions is important, but you also must be able to deliver them in a coherent, relatable manner. During this prep session, you will practice voir dire in front of a group of mock jurors, with questions that we've crafted together ahead of time. I will continually interrupt to change the way you ask the questions and how you follow up on jurors' answers, and to work on locking down cause challenges. The session can be recorded so that you can review it several times before trial. Consider this a skill-building workshop. Once you have done it a few times, you will have gained a skill that you can apply for any trial. The cost for this is usually minimal.

### *Witness Preparation*

Most attorneys tell me, "I do my own witness preparation." That's wonderful, but the preparation you do with your clients is vastly different from what I provide. While you likely focus on making sure they give factual answers, stay on topic, and only answer "yes," "no," or "I don't recall" to questions on cross-exam, my focus is entirely different.

If a client on the witness stand comes across as nervous or unlikeable or a victim, telling them, "Don't be anxious, don't talk so fast, don't be negative," is ineffective. You cannot change someone's external mannerisms unless you change the internal emotional state that is causing

those mannerisms. If you succeed in taming their problematic qualities without addressing how they feel, you are likely to further harm the case by causing the client to appear inauthentic because they are acting in a manner that is inconsistent with how they feel.

I work from the inside, outward. I work on changing the way they think internally, thereby changing how they feel, and allowing them to be a stronger and more genuine witness.

For experts or other witnesses who testify, I work together with you to frame their testimony to be consistent with the themes of the case. Often, this leads to a discussion about *your* focus in the case and can shift the entire approach. Witness preparation is billed hourly and can be completed via Zoom if necessary.

### *Background/Social Media Searches on the Jury Venire*

In today's technology-driven age, you would be remiss to focus only on what jurors say in court and not conduct any online searches on the jurors. In most trials, you receive the jury list the morning of trial. While this leaves very little time to do background searches, we can run jurors through an artificial intelligence system and return results on fifty jurors within half an hour. These searches show criminal convictions, socioeconomic status, political leanings, and links to social media pages (where available), among other data. While you are in court, we can text you the relevant pieces of information from the data search to aid you in jury selection.

In some venues or for longer trials, you may receive the jury list days in advance. This allows time for us to conduct more in-depth social media searches on the jurors along with background searches to find any relevant information. The data is then compiled into a format that is easy to reference for jury selection.

The importance of these searches should not be overlooked. You may find out that one juror espouses anti-establishment rhetoric on their Facebook or Instagram. In a case involving a governmental entity, that fact may be extremely important. In a case of police misconduct, wouldn't you want to know if a juror was supportive of the Black Lives Matter movement? In a medical malpractice case, wouldn't it be helpful to know if a juror posted about disliking doctors or blaming a doctor for a death in the family? Conversely, you will also need to know if their posts reveal they believe doctors are heroes. You can question jurors about these issues in open court, but they may not always give honest answers. Presenting the social media information to the judge in a sidebar discussion can show that a juror may not be fully honest in their answers.

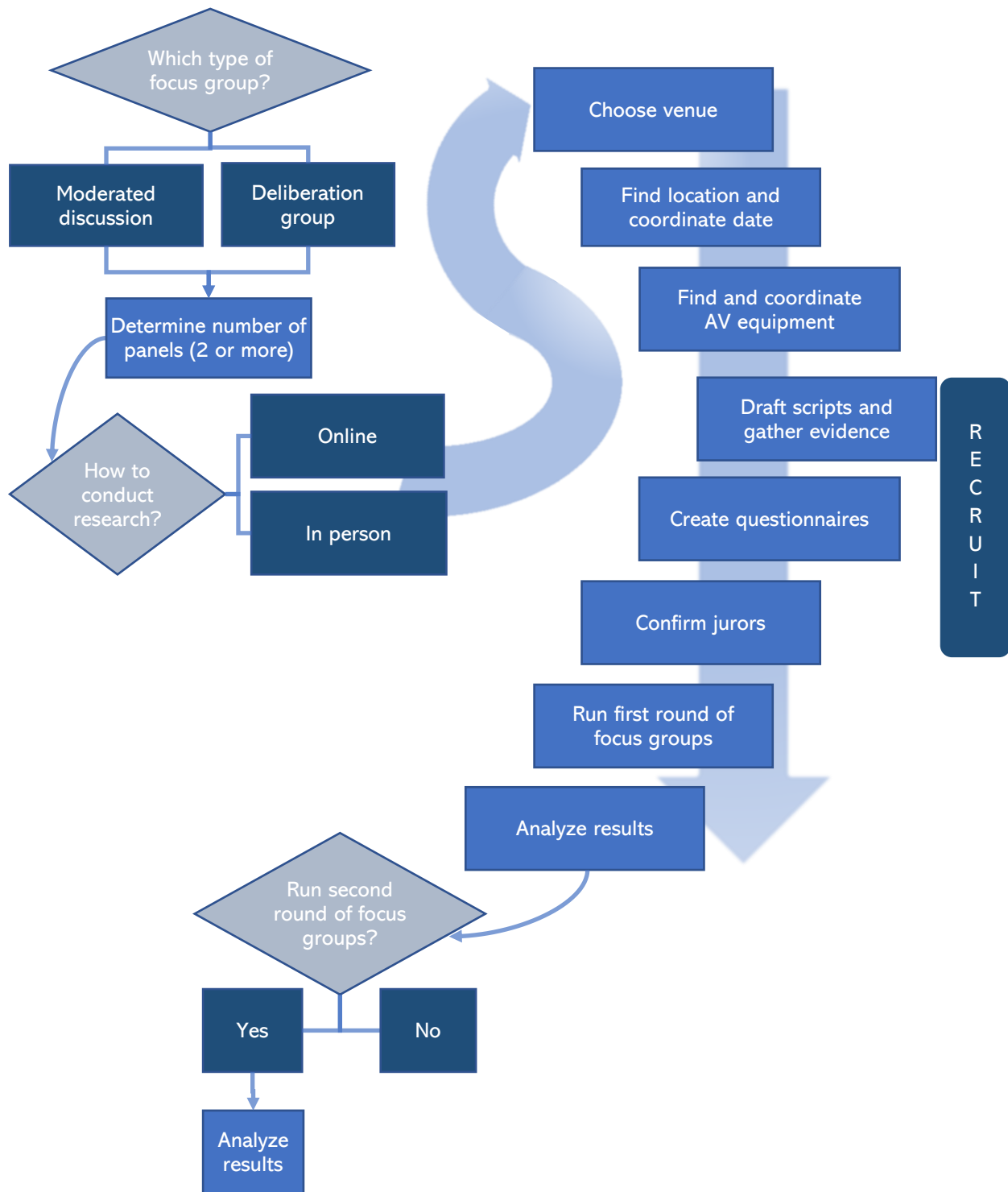
Finally, if you have lost a large case and want to know if any juror misconduct occurred, social media searches should be conducted to look for any mention of the case. This should be paired with post-verdict interviews conducted by a consultant. Several cases have been overturned with information gleaned in the interviews and searches.

## ROADMAP

Below are the steps, in order, to coordinating a focus group. My hope is that this organizes the information contained within this handbook into a useful secondary format.

1. Decide on the type of focus group (moderated vs. deliberation)
2. Determine the number of panels (minimum of two)
3. Decide online vs. in person
4. Choose your venue
5. Find a location and coordinate a date
6. Find and coordinate Audio-Visual equipment
7. Recruit (this will run simultaneously with the rest of the steps up until the day of the project)
8. Draft scripts and gather evidence
9. Create questionnaires
10. Confirm jurors
11. Run the focus groups
12. Analyze results
13. Run a second round (if possible)





## IN CONCLUSION

I hope this handbook provides you with a roadmap for conducting better research and helping your clients. If you need access to any of the forms mentioned within, please contact me to set up a five- to ten-minute phone call to explain the documents.

Remember, your research is only as good as its components.

My goal is help clients understand how to avoid the major pitfalls in research and save yourselves wasted time, money, and heartache that results from doing it incorrectly.

Best of luck,

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