



Trial Survey Group

## Pros & Cons of Surveys versus Focus Groups for Developing Trial Strategies

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This paper discusses the various ways that attorneys can use both focus groups and trial surveys to prepare trial strategies. The paper also helps the reader understand when one research methodology is more appropriate than the other, and provides advice on avoiding the traps that could lead to erroneous conclusions.

## Focus Groups: Strengths & Weaknesses

Focus groups are one of the oldest forms of market research. Companies typically use focus groups to identify new product opportunities or investigate ways to improve existing products. For example, whenever you see a manufacturer come out with a product touting that it is “new and improved,” you can bet that a focus group was involved.

The process is simple. Bring together a group of 8 to 12 people to discuss a product. By utilizing the “group effect” participants build upon each other’s opinions to generate and/or refine new ideas. Although focus groups are still used by market researchers today, their popularity has shrunk significantly in favor of other research methodologies that cost less and are considerably more effective.

Despite the shift away from focus groups in market research, focus groups continue to be the most common type of research employed by attorneys and trial consultants. Focus groups remain popular in the legal setting for two reasons. First, focus groups have the natural appeal of mimicking the group dynamic inside the jury room. Second, although expensive, focus groups are relatively straightforward to administer compared to many of the newer research methodologies that require more specialized training.

Unfortunately, focus groups suffer from the same limitations in trial research that have reduced their popularity among traditional market researchers.

### Expense

Because each participant is required to physically attend, focus groups are very expensive to administer; typically costing attorneys between \$5,000 to \$8,000 per group. If a group has eight members, an attorney may spend up to \$1,000 per group member for feedback.

### Lack of Predictability

Because focus groups typically have fewer than a dozen participants they are notoriously poor predictors of behavior. This is why experienced researchers strictly limit the use focus groups to flush out ideas and concepts. Focus groups should *never* be used to try to predict overall sentiment toward a case, or develop juror profiles. The predictive value of focus groups can be improved by running multiple groups, but this becomes cost prohibitive for all but the largest cases.

Does this mean that attorneys should avoid using focus groups all together? Absolutely not. Focus groups can provide attorneys with valuable feedback as they prepare their cases for trial as long as they are used correctly. By using the “group effect” and the ability to engage in back and forth dialog with group members attorneys can identify possible new arguments and case theories similar to the way that market researchers use focus groups to identify and refine new product concepts.

The key is not to be seduced into thinking that just because your group appears to lean one way or the other that this reflects how an actual jury will evaluate your case. Just as important is to resist the temptation of concluding that you should strike younger jurors just because the two youngest members of your focus group were against your client.

## Trial Surveys: Filling the Gap Left by Focus Groups

Surveys are very different than focus groups. Whereas focus groups ask a small number of people to discuss a topic in a relatively unstructured format, surveys are fielded to a much larger audience using a structured questionnaire that includes “check boxes” for answers. The larger sample size and structured nature of the questionnaire means that survey results are quantifiable (i.e.; 42% of jurors hold a specific opinion) and when performed correctly can be highly predictive of future behavior.

Although researchers have always applauded the statistical validity of a well-executed survey, many types of surveys were difficult to execute because it was hard to find large numbers of people willing to take a survey. Researchers got around this problem by randomly dialing telephone numbers and asking the person who answered if they were willing to “take a survey.” This increased the cost, and carried the additional problem

that you could only ask a limited number of questions over the phone before the person on the other end became bored and hung up.

The Internet ushered in a new age for survey research because it solved both problems. First, companies sprang up whose only function is assembling large panels of people who will agree to take your survey for a fee. Second, we are able to read many times faster than we speak, which means that a survey administered over the Internet can cover much more ground than one administered by telephone. This allows researchers to obtain feedback from hundreds of people through a survey for less than it costs to administer a single focus group.

As a result the number of market research surveys administered each year has grown by leaps and bounds compared to the diminishing use of focus groups. This does not, however, mean that surveys are automatically the better tool for attorneys.

## When to Use a Trial Survey versus a Focus Group

As with focus groups, determining if a trial survey is right for you depends on your goals and objectives. As a general rule, you should consider a trial survey when your goal is to:

- Predict the likely outcome of your case (liability, damages, or guilt),
- Identify the profile of jurors who will be for (or against) your case, or
- Determine the relative impact of individual facts or pieces of evidence

By comparison, a focus group may be appropriate when your goal is to:

- Identify new case theories or flush out details about evidence or arguments, or
- Engage in a back and forth dialog with panelists

## Avoiding the Pitfalls of Trial Surveys

Although a survey is likely to be the more appropriate tool in most situations, attorneys need to be very careful before they proceed. First, even a simple survey can be complex to administer so it is important to avoid the pitfalls that can invalidate the integrity of the results. This compares to focus groups that are very straightforward to administer; one of the reasons that attorneys and trial consultants continue to rely on them as their primary research tool.

The following lists a few of the most common mistakes that are made when designing a trial survey:

- Make sure that the survey panel is provided with a case description that fully and passionately argues both sides case as it will be presented at trial (the adversarial process applies to trial surveys the same way it does in court).
- Just as rules prevent attorneys from leading the witness, avoid drafting questions that lead the respondent to answer a particular way (this is surprisingly common mistake among attorneys who are trained to advocate for one side or the other).
- Make sure that survey questions cover only one topic (for example do not ask if a doctor appeared to be both honest and knowledgeable in a single question because these are independent concepts).
- Be careful that there are no ambiguities in your questions (this happens more often than you would think so consider showing your questionnaire to a half dozen people to make sure that every question is clearly understood).
- Develop a sample plan that is demographically representative of your actual jury pool (our research shows that balancing for affluence, ethnicity and gender is more important than choosing survey respondents who live within the specific venue of your case).

## About the Author



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Chris Denove is both a trial attorney and an experienced market researcher. Chris is the president of Trial Survey Group (TSG), which provides survey research services for attorneys. Prior to founding TSG Chris spent more than a dozen years at J.D. Power and Associates where as Vice President he helped companies develop systems to measure and act upon customer opinion and sentiment. Chris authored the best selling book *SATISFACTION: How Every Great Company Listens to the Voice of the Customer* and has been frequently quoted in the Wall Street Journal and USA Today, as well as appearing as an analyst on networks including CNN, CNBC, and Fox Business Channel. Chris earned his Juris Doctor from University of California at Davis and his bachelors degree in Marketing from California State University at Northridge.

## Conclusion

Focus groups and trial surveys both provide valuable strategic and tactical guidance for attorneys. It is critical, however, that attorneys choose the correct methodology based on their specific informational needs. Although trial surveys are likely to be the more appropriate methodology for most litigation needs, surveys are more complex to administer such that attorneys need to be proceed with caution.



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