



# The High Value and Low Cost of Mock Trial Focus Groups

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Recently, we served as co-counsel in a felonious assault matter out of Cuyahoga County. Given the case's unique facts, we decided to organize a mock trial focus group in our office's conference room. The endeavor proved cost-effective, straightforward to prepare, and of significant value. We aim to share our experience and why this exercise should be utilized more in our profession.

## Why Conduct a Mock Trial Focus Group?

Traditionally associated with civil litigation, criminal defense attorneys increasingly use mock trial focus groups. They offer multiple benefits, including raw insight into juror behavior, identification of expected (and unexpected) weaknesses, witness preparation, refinement of arguments, and valuable feedback from a variety of "jurors."

One of the most compelling aspects of a mock trial focus group is affordability concerning finances, time, and energy. Facilitating a mock trial focus group can be inexpensive and does not require a jury consultant. In our case, other than our time, the expenses included a pre-paid VISA gift card to each participant and the cost of coffee and donuts.

As for the preparation, doing so was manageable and meaningful. In a matter of hours, we had developed the plan and script for all aspects of the "trial," drafted necessary paperwork for the participants, and ironed out other logistics for what ultimately was a 4.5-hour event. These relatively low "costs" ultimately helped to reduce an originally indicted felonious assault with severe injury to the victim to a low-level, non-violent felony resolution and a sentence of probation.

## The Participants

Recruiting the right people for any mock trial focus group is essential for gaining valuable feedback and insight into your case. The jurors must believe and understand that their involvement will have a real impact. The makeup of our six (6) participants were friends of friends, colleagues, and distant family members. Fortunately, our "jury" was diverse in age, race, ethnicity, gender, occupation, and educational background. Had we desired a larger pool of participants, we would have utilized personal and professional networks, social media ads, and recruitment/temp agencies. Interestingly, we know of an attorney in another state who regularly issues a public records request for the list of jurors who recently completed jury service in that county. Then he sends them mail solicitation.

ing their service for his mock trial focus group.

Regarding presenting the case, Joe served as the prosecutor, and Brad was the defense attorney. This assignment of roles was important for consistency in reading the prepared opening statements and closing arguments. When presenting the case to a mock trial focus group, the goal must be to present the State's case in the strongest possible light with equal persuasive power. It is essential to present the most effective opposition arguments you can think of, including those you fear most. Using a second attorney is optimal for avoiding confusion within the panel and helping to replicate the conditions of the trial as much as possible.

### The Plan

To ensure a smooth and effective experience, we developed a "script" for the mock trial focus group. In the interest of time, we presented a modified trial of sorts to focus on what we believed were the most critical components of our case. The function of the script listed below was to provide order for when to elicit written responses after each phase, watch deliberations, and debrief the panel afterward:

1. Give Brief Intro & Welcoming Remarks
2. Distribute and Receive Confidentiality Agreement
3. Deliver Openings Statements; Distribute and Receive Corresponding Jury Form
4. Read the Investigating Officer's Testimony, Show Video of the Incident; Distribute and Receive the Corresponding Jury Form
5. Read Bystander's Testimony; Distribute and Receive Corresponding Jury Form

6. Play Previously Recorded Direct and Cross of Defendant/Client; Distribute and Receive Corresponding Jury Form
7. Read Closings; Distribute and Receive Corresponding Jury Form
8. Read Jury Instructions
9. Deliberations; Distribute and Receive the Corresponding Jury Form
10. Debrief with Jury

Between nearly every step listed above, we asked the panel to complete written surveys of their thoughts on the case individually. The jurors were also given notepads that were collected afterward. (Extra tip: Provide pens to the panel for taking notes that make an audible clicking sound. Regardless of what note they take, if a piece of information comes out and you hear the room erupt in clicks, you know that they found it to be significant.) You can also divide the panel for deliberations and during the case presentation if you want to account for different theories, whether certain evidence will be admitted, multiple jury instructions, or other variables.

Except for our client, and in the interest of time, we did not perform direct and cross-examinations of any witness with this particular mock trial focus group. Instead, we typed up "testimonial witness statements," which we read directly to the participants. Also, our client's testimony was not live but previously recorded because he lived out of state and could not attend. With that in mind, there is likely benefit to your client not attending the mock trial so that your attention can be given entirely to the task at hand and to avoid jurors feeling potentially uncomfortable or influenced.

### The Paperwork

Before commencing our mock trial focus group, creating a confidentiality agreement and comprehensive feedback forms was imperative. We tailored these forms to capture the participants' perceptions, reactions, and opinions concerning various aspects of the case, evidence, and arguments. We had our panel individually complete unique forms after each stage of the mock trial presentation without discussion amongst the group until it was time for deliberations. We are happy to provide these documents in full, and our contact information is below.

### Delving into Deliberations

By way of the Honorable Kenneth A. Bossin, full jury instructions were eventually read to the jury. The most valuable aspect of our mock trial focus group was the observation of the deliberations which followed. For nearly an hour, we watched (from a separate room) how our jurors interpreted the evidence, applied legal principles, debated the jury instructions, and interacted with one another. They were fully engaged and stayed almost 45 minutes longer than we initially estimated their commitment would be. There were passionate arguments, "not guilty's" that were flipped, and ultimately a 4-2 hung jury in favor of the prosecution.

Recording these discussions was critical. We used a Meeting Owl camera with recording software and watched live via Zoom. However, a simple laptop camera or webcam with basic recording functions works fine. To help facilitate natural conversation, efforts should be made to avoid the jurors feeling as if they have a camera directly in their faces. Included in the confidentiality agreement was a clause giving the participant an option to agree to be recorded.

**Responses to [REDACTED] "Testimony"**

Name: \_\_\_\_\_

You just heard the "testimony" of the [REDACTED] in this case. How did you react to what you heard?

\_\_\_\_\_

\_\_\_\_\_

How did this testimony affect your thinking of the case?

\_\_\_\_\_

\_\_\_\_\_

Please list three words or phrases that describe the kind of person he seems to be:

\_\_\_\_\_

\_\_\_\_\_

If you could ask any questions, what would they be?

\_\_\_\_\_

\_\_\_\_\_

Do you find [REDACTED] testimony truthful? Please explain:

\_\_\_\_\_

\_\_\_\_\_

What made his testimony helpful to the State?

\_\_\_\_\_

\_\_\_\_\_

What made his testimony helpful to the Defense?

\_\_\_\_\_

\_\_\_\_\_

**If the trial were to end now, is Mr. [REDACTED] Guilty of Felonious Assault?**

Absolutely Yes

Probably Yes

Probably Not

Absolutely Not

Is there anything else you would like to comment about what you just heard and saw?

\_\_\_\_\_

\_\_\_\_\_



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**Confidentiality Agreement**

Dear Participant,

Today you will help decide the potential outcome of a real case. Because it is real, it is important to listen carefully and to arrive at a fair verdict.

To protect all parties involved, please sign the confidentiality agreement below. This agreement also requires us to hold in confidence all information you provide us about yourself.

Thank you for participating.

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*In re: State of Ohio v. [REDACTED]*

In return for financial compensation, I agree to participate in deciding the above-referenced matter.

I agree to be videotaped.

I agree to hold everything about this case in strictest confidence. I will not talk about this case to anyone after I leave here. In return, I understand that all information I provide about me will be held in strictest confidence.

I understand that this case is real. Therefore, I will do my best to arrive at an honest and fair decision.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Please print your name: \_\_\_\_\_

**Responses to Opening Statements**

Name: \_\_\_\_\_

Based on what you have heard so far today, how would you rate the **State's** case?

Probably Strong

Probably Weak

Please explain: \_\_\_\_\_

\_\_\_\_\_

Based on what you have heard so far today, how would you rate the **Defense's** case?

Probably Strong

Probably Weak

Please explain: \_\_\_\_\_

\_\_\_\_\_

In most cases like this, which side do you think is usually right, and why? Please explain:

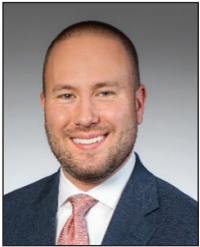
\_\_\_\_\_

\_\_\_\_\_

Based on what you have heard so far, what are the two most important pieces of information you would need in order to make a final decision in this case?

\_\_\_\_\_

\_\_\_\_\_



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Rewatching deliberations was also particularly helpful for actual trial preparation several weeks later. This information was instrumental in anticipating potential challenges and tailoring our case accordingly. Overall, we learned what aspects needed to be addressed as soon as possible in voir dire and opening. We also observed which witnesses were liked and disliked by the jurors and found to be credible or not credible. It was helpful to watch what life experiences the jurors pulled from when weighing the evidence. Perhaps most importantly, we received feedback on the information the participants wished they knew.

**Conclusion**

In a legal landscape where every advantage counts, mock trial focus groups are a transformative and cost-effective tool. Their ease of preparation, ability to provide critical feedback, and potential to identify case strengths and weaknesses make them an asset in the arsenal of any criminal defense attorney. For those looking to elevate their practice, including mock trial focus groups is an endeavor worth embracing.