



### **A mock trial or a focus group?**

When considering jury research, New South is often asked, “*Should we conduct a mock trial or focus group?*” The answer depends on what you want to learn from the research and where you may be in the litigation cycle.

Jury research should always be tailored to your research needs or goals. When choosing between a mock trial, a focus group, or some other hybrid design, start by determining what you want to learn and how you will use the information.

### **What can be learned in a focus group?**

A focus group is a non-adversarial, exploratory conversation among surrogate jurors recruited to participate and provide feedback in a guided discussion. A focus group is particularly effective when used early in the discovery and the litigation cycle, to help frame witness and case themes and case strategy, but can also be used later in preparation to test specific issues among the target jury pool.

When used in jury research, participants are typically given short statements or read an opening or closing statement, then asked for feedback, without receiving instructions on the law or background on the case. The proceedings are less formal than a mock trial and are typically conducted over a shorter time frame. Rather than deliberating, the discussions are led by a moderator/attorney, which allows the exploration of issues and probing of jurors’ thoughts.

With a focus group, you may discover the strengths and weaknesses of your case, as well as your opponent’s case. Focus groups can be useful in understanding:

- What themes are persuasive for both parties?
- How do jurors respond to key facts or pieces of evidence?
- What questions do jurors have about the case?
- Why do they think some facts are important – or not important?
- What areas of the case do jurors find confusing?
- What attitudes and experiences influence how jurors view the information you are giving them?



## What can be learned in a mock trial?

A mock trial is a “practice” trial that is set in a simulated courtroom utilizing attorneys to present the case. In a mock trial, participants frequently hear opening and closing statements, may hear from one or more “witnesses” or “experts”, and may even get to see evidence as it would be presented at trial. Jurors are then split into smaller groups and asked to deliberate and reach a final verdict, including damages or other awards, similar to a real trial. After deliberations, jurors are debriefed and asked questions about the verdict decision process, as well as influences, key themes, believability of witnesses, and what was important during deliberations. A mock trial is particularly helpful in revealing vulnerabilities in the case and what could be done to address those weaknesses before the trial.

Mock trials help you get into the minds of potential jurors, as you watch them deliberate and learn which arguments had the biggest impact on their decisions. Mock jurors often have a different view of the case and may come to a different conclusion than expected. It is better to learn this during a mock trial where adjustments can still be made before presenting to a real jury.

In consultation with the attorneys, New South will develop questionnaires designed to uncover key issues in the case and aid with jury selection. These questionnaires help to back up the qualitative side of the research heard in the groups with quantitative data. Sample questions that can be answered using a mock trial include:

- What are overall reactions to the case?
- How do case themes impact jurors?
- What are juror impressions of witnesses?
- What is the range of damages jurors might award?
- What is the profile of potential jurors that may need to be selected or “deselected” at trial?
- What are juror attitudes and experiences that influence the verdict?

At times, rather than offering the “full” mock trial, NSR may suggest a hybrid “focused mini-mock.” In this design, we typically have shorter attorney presentation with a combined closing/opening for each side before moving to deliberations.



**NEW SOUTH RESEARCH**

THE SCIENCE OF READING MINDS

## **Making the Research Decision**

Even if you are moving toward settlement, jury research can give you the leverage you need in negotiations. Having assessed the impact of arguments against a representative juror group, you can approach negotiations or case presentation with confidence and your sharpest arguments.

Ultimately, the best research design is the one that answers the questions of the trial team. Working with New South Research to design and conduct research, whether for a focus group, mock trial, or other creative design, will help you get the answers you need to win for your client.