

Shock and Awe

The Art of Using Focus Groups to Profile Highly Emotional Cases

BY CAREY CRANTFORD

[Carey Crantford](#) was headed for a career in academia when a fortunate graduate assistantship landed him in the role of Director of Research for a television documentary project produced by the University of South Carolina on the social transformation of the South after WWII. Through the project he became enamored with the art of interviewing and took a career turn into the field of market research. [Crantford Research](#) produces research products for a variety of clients including litigators. The firm has provided trial related services since 1994 and has offices in Columbia, South Carolina and Montgomery, Alabama.

Emotion is an important component of every trial project. No matter what the topic or nature of the conflict, emotion plays a significant role in determining how jurors will receive information and formulate verdicts. In prepping for a trial, the trial team spends a great deal of time locating the emotional buttons of a case and testing how these buttons will influence juror decision making. An equal amount of time is also spent trying to craft trial messages and stories with the appropriate amount of emotional content so we are communicating with themes that will impact and move people.

The emotional nature of the topics or issues involved in a certain class of case are so white-hot that sorting out how a juror's reactions will influence deliberations can be challenging. In 2011 there were a number of court dramas and emerging legal cases that contained rarefied emotional content. The Casey Anthony and Dr. Conrad Murray trials along with the deluge of allegations emerging from



Penn State (the Jerry Sandusky case) are examples of extreme emotional content cases that, by their very nature, raise eyebrows, excite the media and force people to collectively wonder "what is this world coming to"? A mother on trial for killing her child, a doctor accused of compromising a patient's health for profit and allegations that trusted community figures abused their positions of authority causing and allowing the sexual abuse of children. These stories push the limits of civility and everything we have been taught about right and wrong.

Over the years our trial consulting work has connected with a variety of extreme emotional content cases. These cases have brought us into uncomfortable contact with topics, issues and events that strain belief and shock the senses. Gruesome murders involving the elderly and children, accusations of child abuse leveled at neighbors, grandfathers, professionals and members of the clergy, possession of child pornography, torture, kidnapping and rape are a sample of the issues connected to cases with which we have worked. These cases are uncomfortable for the obvious reasons and as we have learned, require adopting some different methods for producing insights that can be crafted into a trial strategy.

Creating an atmosphere for rational understanding involving a situation that defies any rational explanation or understanding is a challenge in highly emotional cases. And as we found through practice, different tactics are needed when trying to use focus group activity as a barometer for testing potential trial strategies for cases dealing with extreme topics.

The core of our work is producing focus groups that test and probe potential jurors for narrative themes and imagery that incite emotion. We do the majority of our own recruiting, handle the moderation and work with the client on selecting the right qualitative research design. The first case we ever worked with involving extreme emotional topics dealt with allegations of possessing child pornography. The charge itself conjures all types of negative imagery of both the nature of the material and the character of the accused. Our client was obviously concerned about whether or not people could get beyond the topic and sort through the rational components of the story. Our focus group strategy was simple - introduce the charge, explain the nature of the evidence, probe for reactions to the dynamics of the charge, evidence and background of the accused and move the discussion to a consideration of the mitigating circumstances. The recruit was structured according to a general jury profile for the area. Possible participants were screened for any background experiences that would have been problematic during jury selection. As the first session started, it became immediately apparent that a different protocol would have to be developed with this type of case. The problems were two-fold and related to the extraordinary emotions unleashed by a case of this nature.

Rethinking the Recruiting Process

There was no discussion with the potential participants on the possession case of what the group discussion topic was as the recruit was executed. As usual, care was taken to screen for professional connections and associations that would have created some conflicts, but no specific instructions were given the participants about the topic of the case. With child pornography as a main component of the discussion, we worried that introducing the topic during the recruit could deter participation or harden the negative bias about the content that was going to be a part of the overall discussion. The topic was brought up as we finished the introductions and warm-up exercises with the first group. At that point, the facts of the case were still an abstract concept with the group. No one seemed concerned about the issues related to the case until explanations of the evidence were read. The descriptions clearly shocked and bothered many participants. People were shaking their heads and groaning as descriptions of the type of material connected to the case were explained.

As we moved deeper into the discussion of the evidence some people became visibly upset. One person left the room and another began crying when questions came up about how this type of material was allowed to exist. Clearly the specifics of the case were overwhelming to the group. They couldn't move past their emotional concern for the exploited children and their understandable revulsion at the notion that there were people out there profiting from and entertaining themselves with such material. As a result they were having noticeable difficulty formulating questions or observations about the issues involved with the case. They simply wanted to leave the room.

Coming face to face with such an unsavory topic without any preparation clearly demonstrated

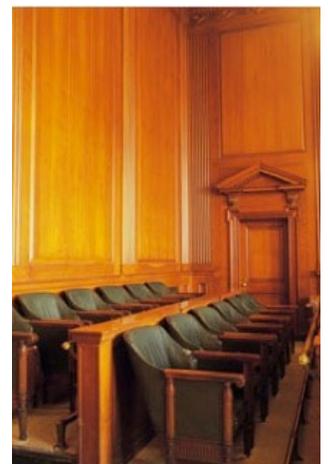
how the emotions tapped by these types of cases can and do overwhelm any rational thought process. Participants had no background for considering the key topics of the case. Their immediate reactions were entirely focused on a concern about the victims. Little attention was paid to the key issue in the case [which was a definition of possession]. The disgusting material made the accused guilty because there could never be any other explanation for having such material around. In this case, however, there were other explanations but they were soundly discounted because the emotional focus in the room was about the need to protect children from predators.

Since this case we have done a variety of focus groups on equally difficult issues. In each one there has been an internal debate within the company about how to corral the emotional content. Reactions to the emotional content are salient to the research at hand. However, if they can't be managed, they overwhelm the group and limit what needs to be learned from the project. A good first step has been for us to prepare participants better before the session with a multi-part screening process that hints at the disturbing nature of the material to be discussed. This helps prepare the participant for the nature of the information and allows us to get a sense of how they will react to the discussion.

In general participants are unsure about how to discuss these types of topics. Moderators face this problem in every case. However, in these extreme situations the participants' full range of thought is very truncated because of the difficulty of confronting very uncomfortable situations. To be effective, the focus group participants must be empowered with a sense of permission and responsibility before they arrive for the discussion. Qualifying a recruit and then coming back in two additional pre-focus group interviews to generally explain the nature of the case seems to help pave the way for more settled discussion. The participant comes more prepared to deal with the topic. Even if the recruit spends time thinking about the topics before the group session, they are never given sufficient detail to allow them to locate any real information about the case under consideration.

In the pre-screening you are also able to disqualify the people who are truly unhinged by these difficult topics. We use a questionnaire in the second screening stage to let people answer some case related questions so we can locate people who might be very troubled by the topic. Finally, I speak with the qualified recruit in a final follow up to begin the process of building a relationship and to give everyone a chance to ask questions about the focus group process. Ultimately this effort provides for a better mix of focus group participants with which to work. We understand [without doing any research] where the emotions of the case are likely to lead people. But what we need for the client is a test of how any shred of mitigation creates questions about who is responsible. Overly emotional groups do a poor job of this.

In no way do we want to minimize the influence that the emotional content of the case has on determining how a focus group will sort through information; on the contrary, we understand the emotional content is a critical component for thinking through both sides of the case. The extraordinary events in these types of cases not only shock people they also raise the stakes on the consequences of the verdict. Cases that deal with these extreme topics can lead to extreme punishments. Specifically, those punishments could include a long prison term, life in prison, or the death penalty, along with being permanently labeled as an untouchable or social miscreant. If directed correctly, the extreme consequences of the case can also help focus participants on moving carefully when considering evidence. This often proves difficult in a focus group. The participants know they have no true responsibility for a verdict. They do not have to deal with the emotional issues of signing a death warrant or being publicly scrutinized for their decision. Because of this, creating a sense of responsibility for the outcome of the discussion can be problematic. However, it is important to try and lead the group into an appreciation of the consequences of their decision. This can act as more of an emotional counter



balance to the content of the case rather than as a way to structure objectivity. If handled correctly, this emotional balancing act can help establish the position that the consequences of the verdict demand careful consideration of all of the factors involved in the case.

Moderator Interaction

The nature of the evidence in the pornography possession case made testing for respondent reactions to the content that would be seen in court very difficult. There is a legal prohibition with the pornography material but the same problem about testing graphic evidence exists with other extreme cases. Knowing how much graphic reality to introduce into the discussion of a highly emotional case is an important judgment call. Too much graphic information can create a tidal wave of emotional reactions. Not enough will deprive the effort of an important component of the case. The work around on the pornography possession case was to create descriptions of the evidence that might be shown in court. This required the moderator to read a series of descriptions of some just completely disgusting and shocking material. The effort opened up the issue of how the information in these types of cases can have a significant impact on all who work on them.

An effective moderator needs a good poker face when leading focus groups. No matter what side or topic is being presented the moderator always must project a quality of engaged neutrality when presenting information and leading discussion. Training and experience constantly reinforces the need for a moderator to carefully guard against allowing his or her bias or emotions from becoming leading indicators in a group discussion. Managing this dynamic with highly emotional content requires some careful planning. In the pornography case I misjudged how difficult it was to objectively describe the material that needed to be considered. There is no training for this. My voice cracked at different intervals. I had to stop at different sections to regain my composure. The focus group participants had never met or been in a group with me so I was probably more sensitive and aware of the stumbles than the group. However, the issue of emotional involvement by the moderator is a key problem with these types of cases.

To combat emotional interaction we have relied on the simple practice of repetition. Practicing a neutral delivery over and over again develops a pattern of behavior and a degree of over-familiarity with the material that helps when it is time to deliver the information. Having spent a brief moment with each participant on the final screening recruitment call also helps everyone manage the situation better. No one is surprised by the nature of the material and the multi-step recruiting process seems to create a modicum of trust that helps foster a more settled research atmosphere.

Cases involving white-hot topics such as child abuse, graphic violence, sexual exploitation and murder are, by their very nature, difficult projects to work on. These cases show human beings at their worst and bring us into contact with events and actions that push against everything we hold dear. The first emotional reaction is often visceral and double edged—on the one hand there is disdain for the accused and on the other a desire to protect the victim. In the adversarial environment of a court case, the swing of the emotional pendulum creates shock waves that both sides hope to deflect or steer for their own purposes. Understanding how these unleashed emotions will assist or detract from our client's purposes is the role our research effort hopes to fulfill. Thinking through recruiting dynamics and concentrating on moderator performance has helped bring about more stable research insights for us when working in these areas. The result has been the creation of a useful but labor-intensive process essential for obtaining useful feedback in high stakes and emotionally supercharged litigation.

Image Credits: [Conrad Murray](#), [Jury box](#)