

*2017 Breakfast Kickoff*

**ASK NOT WHAT THE LAW  
CAN DO FOR YOU...**

**Cynthia McGuinn**

Rouda, Feder, Tietjen & McGuinn  
President-Elect, American Board of  
Trial Advocates

# Speaker Biography

## Cynthia McGuinn - [Attorney Profile](#)

Cynthia's skills in the courtroom are the envy of many attorneys and she has the trial record to prove it—a number of her jury trials have resulted in eight figure verdicts and in 2015 she earned the record for the largest personal injury verdict in the history of Sonoma County.

Her ability to read and connect with jurors is second to none and she has the knack of making even the most difficult cases clear to each juror on the panel. Cynthia is often called upon to consult with attorneys who have cases that are going to trial, and to try cases for other attorneys who have worked up a complex case that cannot be resolved.

Cynthia's client base is diverse; she represents consumers from infants to the elderly. Past clients include industrial workers such as iron workers, operating engineers, boilermakers, fork and crane lift operators, auto and airline mechanics, electricians, plumbers, carpenters, masons, roofers, painters, press operators, tile setters, truck drivers and general laborers. She has also represented other professionals such as computer analysts, IT professionals, nurses, doctors, teachers, judges, and models. A substantial part of her representation involves prosecuting actions for surviving family members in [wrongful death cases](#) and in prosecuting actions on behalf of persons sustaining injuries resulting in [paraplegia or quadriplegia](#) and [brain injuries](#).

McGuinn was honored as the 2003 *Trial Lawyer* of the Year by the [San Francisco Trial Lawyers Association](#) and has been recognized as a "Top Woman Litigator" in California every year since 2005. She was the first woman president of the San Francisco Chapter and is presently the president elect of the national organization known as the [American Board of Trial Advocates](#), and is a Fellow of several other invitation-only organizations, including the [International Society of Barristers](#), the American College of Trial Lawyers and the International Academy of Trial Lawyers. The International Academy is limited to 600 members worldwide. Cynthia is also a member of the [Consumer Attorneys of California](#), American Association for Justice, San Francisco Trial Lawyers Association and Bar Association of San Francisco.

While maintaining an active litigation practice, McGuinn writes, lectures and has taught at law schools (UC Berkeley and Harvard) on the subject of trial advocacy. When time permits she likes to bike, dive, and ski and ride her horses. Cynthia has an A.V. Preeminent® rating for ethics and legal talent rated by Martindale-Hubbell.

# ON BEING A PLAINTIFF'S TRIAL LAWYER



This is not a “how to” article. It’s an exploration of areas that have come up for me from time to time during my 3+ decades as a plaintiff’s trial lawyer. Maybe they will resonate for you:

- Why do I do what I do?
- Is the right to trial by jury relevant today & how can I help keep it so?
- How do I end up with a satisfied client?
- What should I consider when deciding whether to try a case or settle?
- What are the traits of great trial lawyers I admire and how can I emulate them?
- What are my personal “ten commandments?”

## WHY WE DO WHAT WE DO

What other profession can you name where one goes to work every day to defend the rights of the powerless against adversaries of superior political and economic strength; risks working for years on something for which they may never receive compensation and spends their own money to advance a claim, money which they know they may never be reimbursed?

Can you think of any professional other than a plaintiff’s contingency fee lawyer who is willing to provide that service and take that risk? When the question is posed that way, it’s pretty hard to imagine why any sensible person would do it. But here we all are and, of course, we are not crazy ... well, not too crazy.

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So why do we do it? Is it the money? Or the adrenaline rush one gets by being in the arena and taking the risk? Is it the satisfaction of putting together the facts, applying the law and producing, directing and orchestrating a trial so as to persuade twelve strangers to see things the way we see them? Could it be the accolades and the recognition of our peers? I suggest that while each of these things may be a contributing factor, they are not in themselves, the core reason of why we do what we do. And this is why I think that is true: There is something that happens to you, that shifts in you, when you do litigation work and particularly when you do jury trial work representing plaintiffs.

No matter how you came to the practice ----whether you came to it from very altruistic motivations (those people I call the visionaries who choose the law with a clear goal in mind to change and shape society) or, let's face it, if you are like many who came to the practice some other way – perhaps to make a good living or because you followed generations of lawyers in your family, or out of necessity, or for many of a number of other reasons – one thing is true. Once you began to practice law and got a case and started to work it up and became involved with your client, at some point, you got to know them. And that was a watershed event. When you got to know them, to “see” them and their families, or significant others you realized you were the only hope for these people who had suffered real losses in their lives and did not have the wherewithal to help themselves against very difficult odds.

And for that reason, although some of your cases were big and some not so big, you always worked long hours and you pressed on beyond exhaustion and the fear of losing to be there for your client. And yes, hopefully you earned yourself a good fee, but along the way in that journey you discovered something else, something very profound. You experienced what it feels like to truly make a difference in someone else's life.

Through hard work, creativity and effort, through dedication, perseverance and commitment, through courage in risking failure, you were a catalyst for change for the better. And that is true whether you won or lost, because even in the losing your client knew you believed in them and were willing to take the risk to protect their interests.

And that feeling, that recognition that you are a catalyst of change for a single person or family or a group of people, is what I believe is the core reason for why we do what we do.

I try to remember that because it is so easy to become preoccupied with the mundane practicalities of the business of law: the running of the office, the dealing with the line of credit, the developing of the website, the socializing to generate business. Those things that just suck the joy out of the practice. It is so is easy to forget that what we do is noble.

So, when you are up to your armpits in the running of the business of your practice and you are not feeling “the love,” – it helps to remember why we do it.

## WHY THE RIGHT TO TRIAL BY JURY IN CIVIL CASES MATTERS

We all know it matters because it reminds wrongdoers that there is price to be paid for their wrongdoing. I’m speaking of the negligent and reckless individuals that cause injury or the car manufacturers, the pharmaceutical & chemical companies, the banks, the national and multinational corporations and yes, even the government -- that through their action or inaction cause irreversible harm. As to the entities of which I speak, we know how they think and reason and what generates a change in their behavior.

An early case in point we all know is *Grimshaw v. Ford Motor Company*. Ford Pintos were exploding and people were dying or being seriously burned. Ford had access to a new design which would decrease the possibility of the Pinto from exploding, but chose not to implement it. Instead, the company defended itself on the grounds that it used the accepted risk/benefit analysis to determine that the monetary costs of making the change were greater than the societal benefit. Based on the numbers Ford used, the cost would have been \$137 million to correct the defect versus the \$49.5 million price tag put on the deaths, injuries, and car damages. Ford had the audacity to tell the jury that the cost of making the changes were greater than the societal benefit of keeping people from burning to death in exploding cars. A jury of 12 citizens resoundingly rejected that position and awarded \$125 million in punitive damages, in addition to compensatory damages. So, forcing corporate America to consider safety as much as profit is one important reason for insuring the viability of the jury system.

But there is another reason that is critically important today, perhaps more than ever in our lifetime. Democracy is a participatory form of government, and the more people who actually participate in it –by serving on juries, by voting, by working in elections and by talking about it, the better the system works. Jury service allows people to participate in their government and to learn how the court system works. As a result, they become more curious about the system and how it is working. Being on a jury empowers people. It allows them to recognize that they actually do have the power under our constitution to effectuate change. That is so critical now.

The choice to limit the teaching of civics in the public school curriculum which began in 1960<sup>1</sup> has garnered the following sobering statistics a half century later:

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<sup>1</sup> Until the 1960’s it was common for American high school students to have three, separate courses in civics and government. These offerings were slashed over the ensuing decades. See: <http://neatoday.org/2014/09/02/the-testing-obsession-and-the-disappearing-curriculum-2/>

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- Just 26% of adults in the U.S. know what the 3 branches of government are.
- 37% of adults in U.S. can't name any of the rights guaranteed by the 1<sup>st</sup> Amendment; and,<sup>2</sup>
- 40% of adults in the U.S. are unaware that the constitution mandates the right to a trial by jury in a civil action.

I keep these things in mind because I know that the next time I try a case some of the people who don't know the foregoing basic democratic rights and principles might just be sitting on my jury.

## **WHEN TO TRY VS. WHEN SETTLE & HOW TO HAVE A SATISFIED CLIENT**

Anyone reading this already knows we work to maximize our clients' recoveries. We try cases when we cannot get fair value and the percentages present the chance for success. We know we must have at least two out of the three characteristics for a successful case: liability, damages and collectability. And we know that one of the two characteristics we generally must have is "collectability," although sometimes we might try a case anyway if there is a higher purpose in righting a wrong or bringing something to the attention of the public.

There were times when I failed to recognize that there is actually another characteristic to consider in deciding whether to try or to settle a case. Early on in my career, I used to think that my job as a trial lawyer was to prosecute a case simply to maximize my clients' damages. It was only after some years of practicing that I learned my job was so much more than that.

One day I was having lunch with an attorney I very much respected, complaining about a case in which I had obtained an excellent result for the client, but the client didn't seem happy with the recovery or appreciative of my service. *Well, what was it that your client wanted when she first came to see you?* my colleague asked. I didn't know because I had never asked. Since that day, I have always asked. And often I've been surprised to learn that for the client "winning" was not just about the money; sometimes the "win" included an apology, a memorial bench, or some other non-monetary item that allowed the client to begin the process of healing and closure. In sum, I had to learn to remember whose case it was; it was not my case – it was the client's. Getting an answer to *What would you like to have happen* or *What would you like to achieve in bringing this action?* can help determine whether to take the case and how to prosecute and resolve it. By the way, I also discovered that it's good to ask that question during the course of the case because, sometimes, the answer changes.

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<sup>2</sup> Annenberg Public Policy Center "Americans Are Poorly Informed About Basic Constitutional Provisions 9/12/17.

## TRAITS I ADMIRE IN GREAT TRIAL LAWYERS

The traits I've observed in great trial lawyers – and when I say, “great trial lawyers” I do not necessarily mean those few who handle the most complex cases or the ones with the multimillion dollar verdicts --- I am speaking of the ones that toil every day against superior odds. In those lawyers, the traits that I have observed were surprisingly simple:

- They are curious, flexible & resilient;
- They understand it is their client's case
- They recognize they do not control the outcome; they can only hope to shape it;
- They have developed a genuine relationship with their client that contemplates a clear understanding of who their client is, what they want, and, just as importantly, what they need;
- They are fierce advocates and hard workers, but they are also civil and ethical;
- They treat everyone with respect;
- They have a strongly held belief in the innate value of the jury system that they make known to the community in which they live and to the juries before whom they try their cases; and
- They are active, both personally and by financial support, in educational programs presented by the bar and legal organizations to the lay community that educate on the 7<sup>th</sup> Amendment right to trial by jury in civil suits.

## MY TEN COMMANDMENTS

1. One can be adversarial, objective, friendly & civil all at the same time.
2. The other side is not the enemy, they are simply the opponent.
3. Always, always -- tell the truth.
4. Do not expect or depend on others to reciprocate in kind.
5. There is no such thing as a justice computer; one can do it all right and still lose.
6. Sometimes one's destiny will be controlled by a jerk.
7. It's about the client; it's always about the client.
8. There are circumstances in which a client is better served by turning a case down.
9. Have friends and activities outside of law.
10. Remember that jury trial work is a lifelong exercise in humility.