

## 'Universal Principles' For Being Persuasive In Court

By **Aebra Coe**

*Law360, San Francisco (August 8, 2019, 6:32 PM EDT)* -- Three longtime trial lawyers offered up their thoughts on how attorneys can be persuasive in the courtroom and win cases, whether they're advocating on behalf of the plaintiff or defense, at the American Bar Association's Annual Meeting on Thursday.

Morrison & Foerster LLP senior of counsel James Brosnahan spoke on the panel alongside Doris Cheng, president of the San Francisco Bar Association, and another high-profile trial lawyer, Cynthia McGuinn of Rouda Feder Tietjen & McGuinn. The group laid out a set of "universal principles" for courtroom success during an educational session at the meeting.

Some common refrains included getting to know the audience, whether that's a judge or jury; being genuine and passionate about the case; and using emotion effectively.

"You must know your audience. Once you know your audience, you must adapt your argument to your audience," Brosnahan said.

Cheng suggested that attorneys dig up as much information as possible about the place where the trial is being held. That includes everything from demographic data to how people commute to work every day.

"Find out about the demographic. What are their values, what is important to them?" she said. "How do I advocate to reach them?"

Cheng reflected on a medical malpractice trial she worked on in Humboldt County, California. She said



Cynthia McGuinn speaks Thursday at the American Bar Association Annual Meeting in San Francisco about strategies for being persuasive in the courtroom. Her fellow panelists are James Brosnahan and Doris Cheng. (Aebra Coe | Law360)

the moment she knew she lost the case was when she was leaving court one day, talking to a security guard. She learned that the community had a shortage of doctors because of difficulties in drawing professionals to the area, and as a result, residents were likely to highly value keeping doctors in the county.

"I realized I should have started my case completely differently than I had," she said.

Cheng added that her trial strategy can shift based on whether she is trying to appeal to jurors who are Generation X, millennials or baby boomers.

"Twenty years ago we had more baby boomers on juries. It was a much more empathetic group, I felt. Now it's a much more apathetic group, so my themes have to change," she said.

And, while trials do involve a good deal of strategizing and performance, the panelists agreed that it is vitally important for attorneys to be completely genuine as they advocate for clients in order to be as effective as possible.

"If you don't believe in your case and can't articulate why others should believe in it, and do that with passion, you're not going to win. Or if you win, you'll get a modest verdict," McGuinn said.

"Make the jury believe that you believe in it, and that it's important. You do that by being real," she added.

One way to convey sincerity is by being completely in the moment, leaving other worries and thoughts behind when relaying the most important and emotionally charged details of the case, she explained.

"If you're not present, if you're not in the moment, you're not as effective as you can be," McGuinn said.

Well-placed emotion can win over a jury, but it must be used carefully, the panelists said.

"You don't have to raise your voice or shout, but go back to real emotion," McGuinn said.

Cheng suggested that attorneys should show emotions like anger or indignation, but they should be no more indignant than the least indignant juror.

"In terms of what we do with emotion and how we use it, we're drawing on emotion from different ranges," she said. "Calibrate it a little at a time. Know your audience."

Courtroom work is theater, Brosnahan said. There are elements of emotion, timing and delivery that all come together to make up the minds of the judge or jury.

"It's not like theater," Brosnahan said. "It is theater, except you can't make up the language."

--Editing by Haylee Pearl.