

>>: Hello, all. My name is Jessica Gray. I'm an attorney at Sweeney Merrigan Law in Boston. I've been practicing for about six years now. I went to Suffolk Law School here in Boston, and I also graduated from Wheaton College in Norton in Massachusetts, actually. And I've been practicing plaintiff's personal injury law for as long as I've been an attorney in the tort world, focusing mostly on catastrophic injury, wrongful death cases, but also, of course, lesser severe injury cases as well. So that's been the crux of my practice for the extent of my career so far. So that goes in line with what we'll be talking about today. I will be presenting on preparing and trying a civil case. Now, of course, personal injury law is just one area of civil litigation, generally speaking. But that will be the crux of my examples that I will use as we go through the PowerPoint that I'm that I will show you. Now, that being said, let's get started. And I think I should preface this by saying that the extent of this presentation will be the CliffsNotes version of, of course, preparing and also trying a case. Each aspect of what I'll be talking about can be its own presentation by itself. There's so much to learn and so much to know. So this will simply be the highlights of preparing and trying a civil case and trying to get as much in one presentation as I can. So let's get started. So preparing for trial starts as soon as you sign a client. It starts the day that you sign a client, the day that you meet that client. A lot of times you will see attorneys get to trial and really not know the story of their client, you know, where they grew up, what their family situation was, how they grew up. A lot of that can be found out, of course, when you're prepping your client for trial and for their testimony at trial. But it's best to do that in the initial stages when you're in the intake phase - right? - of interviewing a client and getting their human story. And getting that human story in from the beginning helps in a lot of ways. It helps you understand your client, where they came from, where they are now, and understanding as the litigation unfolds, perhaps, you know, what certain triggers are for them so that you're handling their file and their case with the care that they need, given what they've gone through in life. But most importantly, understanding their story is significant to establishing the story that you're going to tell a jury about your client at trial. Another part, to do a thorough interview with your client in the beginning in terms of how it prepares for trial, is that you get to go through or you should go through what would later be concerns if it was ever presented to a jury even before it was presented to a jury, right? So any prior litigation that your client has been involved in. For example, if you have a case, a motor vehicle collision case, and you're representing a client who's been in 10 other motor vehicle collisions before, you'd want to know that, because that will absolutely come out in the discovery process, which we will talk about. And the defense, of course, will harp on that and make a big deal about that. Similarly, you'd want to ask the difficult question of whether or not your client had any prior criminal history, any criminal convictions. Again, better to find out at the outset so that you can know the full picture and be able to address it rather than having it come out in a deposition. For example, there's plenty of stories we know of people that we've worked with, people, colleagues in our firm or in firms that we know that there's something that comes out in a deposition that they didn't even know about their own client. Prior litigation involvement and criminal convictions are two big ones, but those are not the only ones. But they're certainly ones that it's important to address at the intake phase of a case, if you can. And this all ties into preparing for trial in that - from that first day, from that first meeting with your client, you're creating that roadmap for the direct examination at trial, the direct examination of your client, because at that point, that is when the jury is going to hear the background of your client. A lot of times the defense will overlook the importance or the significance that your client's background, where they grew up, what they did for work, you know, how they made it to where they are in life right now, what obstacles they had to overcome. Defense will often overlook the

importance of that and not even ask those questions to your client in their deposition. So the first time that stuff is coming out, a lot is at trial. So it's best for you as a representative of your client to know all that from the outset. OK. Now building your case. Just as it's important to interview your client thoroughly right from the beginning, it's also important to investigate the liability of your case as soon as possible. Sometimes that's out of your control. You know, for example, if a case happened two years before you got it, if it came in from another attorney who handled it, you know, for a couple of years and then didn't want to file suit. There are, of course, scenarios where it is out of your control. That being said, when it is under your control and even when it isn't, you know, still do as much investigation as you can as a liability. For example, witness statements. Whether it was a car collision, whether it was a gas explosion, and there may have been neighbors in the area that saw things, whether it's a trip and fall, a construction fall, any sort of thing, whether it's an employment case, right, a negligent hire case, something like that. If there are witnesses that you could get statements from, it's best to do that as soon as possible and working with an investigator to do that. Video of the incident - again, car collision, even a trip and fall, if it's on a commercial premises, even a private premises these days, there is a lot of private cameras that people have on their homes that they can capture video of a fall, of a collision, anything like that. That is priority to get as soon as possible. Often those videos are on a 30-day turn over before they are wiped. So even if it's not necessarily feasible to get that video, so long as you've documented that you've requested that video - requested that it be preserved from whoever, whoever it may be, whether it's a commercial property where this happened, and you send a letter to that specific property asking that they do not destroy the video, that they put a litigation hold on it and make sure that language is clear, otherwise, you may bring a claim for spoliation. Then you have established a record and kind of protected yourself and put them in a much more dangerous situation or vulnerable situation if for whatever reason they do not hand over that video or they claim it no longer exists. So long as that letter gets out, most of the time within the 30-day window immediately after the incident, you cover yourself. Photographs of the scene and your client's injuries are very important to get as soon as possible, whether it could be the day of even the day after. A lot of times injury photos - if your client was taken to the hospital, injury photos at the hospital are really important. Of course, sometimes people don't think to take photos. It's OK if you don't have them. But even so, if you don't have them immediately, please go back - go back to the scene. If you do another investigation, when you finally do get in touch with your client after the incident, whether or not they come to you a year or two years later - at that point, if they develop scarring, make sure that they're taking periodic photos of their scarring so that you can keep track of how it's developing. Similarly, phone records - get requests out for phone records, 9-1-1 calls - as soon as you can after getting a case. In the importance of building your case against - in preparing for a trial starts at the very beginning. Setting the value of the case with the insurance company from the outset - this is extremely important in terms of setting the reserves, which is essentially the insurance company's best estimate of what it will pay in the future for claims, right? And at the beginning of a claim that's filed with an insurance company, they set their amount of money at which they're willing to pay out for this claim when it comes to settlement posture. The more that you can press on the insurance company - the significance of the injuries - the better. If you can establish, right away, just how severe this was to the insurance company and make sure that it's noted right off the bat, whether it's the attorney calling directly to the adjuster as opposed to the paralegal to make sure that whoever's on the other line is paying attention, then so be it. It's got to be done as early as possible because that is when the insurance company is setting their reserves, which is important

because when it comes later in the case - and for example, if the value of the case develops into much higher than initially thought - meaning the injuries didn't resolve in the way that was expected or all of a sudden there's more permanency, the scarring is worse than was initially expected, or there's more long term disability, if it's a TBI - for whatever reason - if the damages escalate and the insurance company hasn't set their reserves to meet what that reasonable value a settlement would be based on that escalation damages, it is much harder for the insurance company to go back and get a higher number to increase their reserves. So it's really important to do that at the very beginning of the case if you can.

Witnesses - now, again, in terms of preparing for trial and trying a case, witnesses - I just mentioned witness statements - really important to identify fact witnesses as soon as you can, especially when it comes to fact witnesses as to the liability. For example, someone who witnessed a car collision, someone who witnessed a fall. If it's a medical malpractice, maybe another nurse who was there or someone else in the facility who witnessed something happen. This is really important to get witness statements right off the bat, but also to identify those people who you may want to take your - their depositions. And we'll talk about depositions briefly and their importance, but the sooner the better. And your best resource for finding out who the witnesses could be, are generally your own client. Not always, you know, sometimes they'll be names in a police report of a witness. Half of the time, they have identifying information, a phone number or address, a way to track them down. Sometimes they don't. But do your due diligence in trying to track down those people as soon as possible. Of course, the human memory fades, right? After more and more time - after the months pass, the years pass, memory fades. So the sooner you can get to those witnesses, the better. And this, of course, goes to liability experts and damage experts to fact witnesses, lay witnesses are - they're more important to get set up right away. Liability experts, certainly, if liability is iffy in a case, for example, if it's a trip and fall case and there are building code violations, just as there were in a couple trials that I just tried, best to retain an expert as soon as possible, especially if you inherit a case that's already in suit, for example, and there's not already an expert in that case. Most of the time, you will need an expert. There have been cases where I've thought myself we don't need an expert for this, this is common sense. But when it, you know, comes closer to trial, you realize, based on how the evidence folds in these creative arguments that the defense likes to make, that a lot of times we think may be a little wonky, it's better to have an expert lined up well in advance, if you can, especially as to contested liability cases, but even when it's not necessarily contested. Damages experts, similarly. Damages experts are essentially medical professionals, an economist to opine as to your client's loss earning capacity, for example, if they couldn't go back - if they can't go back to work anymore because of their injuries. For the medical experts, for example, if you have a client who suffered a traumatic brain injury, it's best if you can ask a treater - this is someone that you're not hiring, someone who's already been treating your client, a medical treater of your client - if they would be willing to testify in the case. Now, it's one thing to ask if they would be willing to write a report or a narrative about your client's prognosis, the permanency of their injuries, whatever else may be there. But you want to be clear, also, if they would be willing to testify at trial. You don't want to get into a situation where, you know, you got the trial notice and you go back to who you thought was going to be your testifying expert and they say, oh, no, no, no, I just agreed to do the narrative report. I'm not testifying at trial. So you want to be as clear as you can from the beginning. A lot of times, doctors, treater - treating doctors don't want to be involved in litigation. That's not uncommon at all. Sometimes they don't mind testifying, but a lot of times - even if you can get a treating physician to testify, it's also good to supplement that part of your case, about the

damages, with an actually testifying expert, especially if there's a specific specialty that you really need a expert opinion on, for example, neurology, if it's a TBI case, anything like that. And again, it doesn't have to necessarily be medical, too. But for an expert, as well, something that you want to be able to keep track of - and I've learned this in my past trials, too - is that you want to keep track of every thing that you are sending your experts to review, whether it's a liability expert or a damages expert, all the materials that you send them to review in coming up with their opinions, whether that is, for a liability expert, accident report, or, like, a police report, or if it's deposition testimony of your client or the defendants in the case, whether it's photographs they reviewed, any of the written discovery in the case, any documents that were produced. For a medical expert, you know, all of the medical records of your client that you had, the prior records and all the records after the incident and maybe all the records after they stopped treating for the specific injury that they say resulted from the specific incident at issue in that case, you want to make sure you're keeping track of everything that is sent. And if you get additional medical records, as is the normal course, you know, you may send out a medical request that your client's still treating, you have to send out another medical request. Make sure that you're supplementing everything that you've provided to your experts. Make sure that you get new medical records in, you send them off to your expert so they have them to review if it has any effect on their opinion or not. Another note, as soon as you get a trial date, reach out to the witnesses you intend to call at trial. This doesn't just include the experts, it also includes any lay witnesses that you'd expect to call at trial and make sure it gets on their calendar that they know. Best to document that in a letter or anything written. It could be an email to you, but so long as it's documented that you've informed them, that gives you a little bit of cover so they can't really claim, hey, you never told me about this. Just make sure you keep everyone in the know. Now, discovery. I've mentioned discovery a little bit. There's two main parts of the discovery process, the written discovery and depositions. Now, I've framed it here in how it would apply to trial, more so, and why discovery is so important. Now, written discovery includes interrogatories and requests for production of documents, both as to the plaintiff, of course, and to the defendants in the case. Generally speaking, my own practice is to hold or preserve a few interrogatories, if possible. In Massachusetts, you're only allowed to ask 30 interrogatories, 30 questions to the defendant. If you can, it's best to hold back as many as you can. I mean, if you can hold back five, great. If you can only hold back two and preserve two questions for later, that's great. The point being that, you know, usually the written discovery is done before the depositions. Historically, that's how it should be done. But that's earlier on in the course of discovery. So after depositions, for example, there's - could be additional information that comes out and you want to formally ask additional specific interrogatories and supplement your original set of interrogatories. Now, if you already asked 30 the first go around, you don't have any more that you can ask, right? So it makes sense, if you can, to hold a couple. Now, the significance as to trial with depositions and answers to interrogatories is that it was sworn testimony under oath of your client. Of course, it's also - can be of the defendant's and anyone else who's testified, too. But the answers to interrogatories, the written answers, will be your client's sworn answers, as well as the defendant's in the case. These are used at trial as a tool for impeachment. Now, depositions, when you're taking them, it's very important, as you're going through, to remember and always keep in the back of your mind that these objections that we're - you know, that we throw out sometimes aren't just objecting, you know, for the sake of objecting. They're objections to be ruled on later by the judge at trial. So it's important to pay attention and focus on the fact that if you're objecting to a series of questions - right? - on the same topic, and the defense attorney is going, you

know, trying to get around to the same point, asking the same question in different ways, but it's an inappropriate question for whatever reason, continue to object to that question, no matter how many times you ask and however many different ways, 'cause you want to make sure that you're establishing, and continuing to establish, that objection and reserving it - and preserving it. Now, at trial, they're used in the classic sense. For example, the witness is on the stand and they're testifying that, you know, oh, I went through the intersection and the light was green. And you can say, all right, Mr. So-And-So, well, do you remember testifying at your deposition on X date? Right? And you understand that that testimony was done under the pains and penalties of perjury, just like your testimony here today? And you can show them, show the witness, his deposition transcript, the specific page, line. Make sure you tell the defense attorney before you show the witness exactly what testimony you're going to be reading from or having the witness read from. And tell him, well, you - do you remember testifying here that the light was yellow? It wasn't green. And that is classic impeachment. Same thing can be done with the answers to interrogatories. But those are the two tools, the main tools, I shouldn't say the only tools, the main tools to use at trial for impeachment. Now, 90 days before trial - this is a little ambitious of a timeline, I think, for a lot of attorneys. But, you know, we don't get to this stuff until a little bit closer to trial. But if you can, if you have the time and you're able to start to go down a list of all the things you need to do and prep for a trial, it's important to do that as soon as you can. But most importantly, it's important to do that throughout the discovery process - right? - which is the lengthiest stage of any case, the discovery. Reviewing the medical records, bills, films, these are the images, if there are radiology images - MRIs, X-rays, CAT scans, etc. Make sure that you have all of those and that everything is certified under Mass. General Laws, Chapter 233, 79G. You'll often hear it referred to as 79G - are the medical records certified under 79G? That - they're required to be what's certified - this is when the hospital or medical facility essentially has a page in front of the set of records or bills saying that they are certified under the specific statute. And when they are, then they are allowed to be admitted into evidence at trial. If they are - if you have some records, for instance, that are not, it - normally, the course is to ask defense counsel if they will agree to those particular records that are not certified. Sometimes they'll give you a hard time and they'll say, no, we won't agree. And then you're in a little bit of a pickle there. So the sooner that you can make sure that these are certified, the better. The best way to do that is from the outset when you're requesting the medical records and bills, make sure that you're requesting that they are certified. When you get them in right away and you notice, for whatever reason, there's no certification included, under 79G specifically, reach out as soon as possible. Don't wait until, you know, the eve of trial and call up the facility. They're going to ask you to put in another medical request. They're going to say it's too late. You're going to have to re-request all the records. It's best to do this as soon as possible. Similarly, it's important to disclose everything that needs to be disclosed. And when I say disclose, I mean to the other side, to the defense. That would be anything that you intend to use at trial. We'll talk about exhibits in a minute. But that could include all photos that you intend to use, all medical records and bills, like the 79Gs. You can also separate out specific records if you want, specific key medical records, that you wanted admitted as its own exhibit, which I will also talk about in a little bit. For example, for whatever reason, if the ambulance report is very important to your case, even though you will be submitting, you know, the big stack of medical records and bills as one exhibit, generally, not necessarily always, you can do it by provider, too. If you're submitting them all under 79-G, that can be one exhibit. But if you want the ambulance report, separate it so that the jury has a key document that's marked as its own exhibit. It's important to pull that out.

And again, make sure that is all disclosed. Also, witnesses - you will have to do this anyway at the final pretrial conference, which is generally when you will be assigned a trial date by the judge, depending on, of course, the court. Since the pandemic, every court has a different backlog issue. So it depends on how far out you're getting trial dates. But either way, under the rules of civil procedure in Massachusetts and under the standing order of the superior court, you have to provide your expert witnesses and all witnesses that you expect to call at trial at the final trial conference in the form of - I'm sorry - at the final pretrial conference, in the form of the final pretrial memorandum, which is jointly done with the defense in the case. And they have to list anyone they intend to call, lay witnesses as well as their experts. It's much harder to come back to the court after that date, after the final pretrial and say, OK, we'd like to call this witness now, or we'd like to disclose this expert witness. You're going to get a lot of pushback. There are caveats to that, you know, regarding rebuttal witnesses and whatnot. But we don't need to get into the weeds, generally speaking. That's why it's important from the outset of the case, get all your witnesses lined up. Start to put a list together. And better to be all encompassing and include every single possible person that could be called at trial to testify. And it could be a list of, like, 30 people, could be a list of 50 people, could be a list of 100. And you know realistically you're probably only going to call five. But you never know. There's always those cases where you realize when you get close to a trial, oh, dear. You know, we're actually really going to need this witness' testimony because it's going to be really important to this specific aspect of the case. So even though you may not have anticipated wanting to call them initially, they suddenly become extremely important to your case. So better to list them off right from the beginning in that final pre-trial memorandum. Also before trial, a few months before trial, make sure you're running background checks on the plaintiff, certainly the defendant and any experts, too, including your own expert. You know, you don't want to find out that your expert's been involved in, you know, litigation or been involved in money laundering. I'm just making stuff up. But anything like that, you never know. It's those juicy sort of sideshows that a jury can really grasp onto and forget about, you know, the liability in the case or how severe the damages are. It's those little things that you never know how a jury is going to internalize in terms of the importance to the overall case. So better to, you know, clean out all the skeletons of the closet or at least be aware of any skeletons in the closet sooner rather than later. Updated CVs for defense experts, even your own, if it's been a while since your expert was hired and they've done a lot more, you know, publishing or teaching, whatever it may be, in their field, it's good to ask them for an updated CV. Just make sure that you are again disclosing that to the other side, to the defense, as soon as you can. Impeachment material, we talked about depositions being used for impeachment. This also is important for experts that you will be cross-examining. Prior testimony in terms of deposition testimony or even trial transcripts by the defense expert can be significant to your cross-examination. Sometimes of course, you'll get experts on the other side who haven't testified that much. So there's not much dirt, I should say, out there on them. That's fine, too. You know, you work with what you got. But some experts are, you know, historically hired guns that have been in the field for a very, very long time. And I say in the field specifically as testifying experts at trial and have testified hundreds of times at trial. And there is a lot to work with there for cross-examination. If you can pinpoint and simplify the main nuggets, that would be helpful in your case, right? There can be a lot of information out there on an expert that you're going to be cross-examining, but it's best not to get overwhelmed with all of that information if there is a ton out there. Try to streamline it and just focus on the nuggets that will resonate the most, you think, with the jury based on the facts of your own case. Likely exhibits, now, I talked about this a little bit, too.

Again, producing what you intend to use at trial is very important. The sooner you can do it, the better. In that way, the defense is on notice of what you intend to use, and they certainly have a right to object to any proposed exhibits that you have. But so long as you've disclosed them, you at least have that cover. If you suddenly, you know, at trial say, I want to use this exhibit, this particular document that I never showed the other side before, it's likely not going to be allowed to be admitted into evidence. It could be allowed to be marked as an exhibit. Now, the difference between that, is that when a document is marked as a - is admitted as an exhibit, that means it goes back with the jury in the deliberation room so they can review it. However, if it's just marked as an exhibit, meaning is not admissible, the jury can't take it back to deliberate. Then, it is simply used with the questioning attorney and the witness on the witness stand, all right? The jury never gets to actually see it, but they, obviously, hear testimony about it. That being said, that's not the always likely alternative, if it's something that's been - that hasn't been disclosed before, sometimes the judge will say, no, you can't use it at all, all right? So better to err on the side of caution and make sure you're disclosing everything that you can, so long, of course, again, caveats that it's not anything privileged. Now, some trial procedure issues, just some logistics to - identify needed courtroom technology resources. Now, since the pandemic, I think a lot of us are a little, of course - certainly a little bit more familiar, maybe a lot familiar with using, you know, Zoom and audio-visual depositions, whatever it may be, anything like that. At trial, which was the case before, but if a deposition was recorded and was reported under Massachusetts law - Massachusetts rule allowing for that testimony to be used at trial in lieu of live testimony, whether it's a witness that lives out of state or, say, you retook the deposition of a witness who you knew was going to be deceased soon, if they had a long term illness and they, you know, were given a prognosis of six months and you knew you weren't going to get a trial for three years, and you took your - and you recorded the deposition, that can be used at trial. Similarly, experts can have their depositions taken remotely - taken by audio-visual means to be used at trial in lieu of live testimony, again, under the Massachusetts rules. So because of that, it's not on the court to be able to set up, you know, the logistics of it - have the projector, you know, have someone there to do the recording, all of that stuff. That is on you, so make sure you're planning ahead for that. Make sure you have all of your tech needs and that you're familiar with the layout of the courtroom before you get there on the first day of trial, of course, you know, assuming that you've been in-person at that courtroom for the final trial conference or the pretrial conference, use one of those days as an opportunity to check out the layout of the courtroom so you know where the plugs are, you know where the jury is going to be, how far the projector will be. Those things are really important and easy to overlook. So you don't want to be in a situation where you're stressing out about not having the right technology there. Another trial procedure issue is stipulations, which is - it's simply an agreement between the parties regarding something. For example, could be authenticity of evidence, often a document. Most recently in trial, we had a stipulation regarding any mention of insurance, which, generally, it's not allowed. You know, insurance - the idea of insurance, the fact that the client has insurance, whether it's health insurance, auto insurance, whether the defendant has a big commercial insurance policy, anything like that - anything regarding insurance can't come into trial anyway. It's not admissible, can't be spoken about by the witnesses, etc. You know, but sometimes in the medical records or in any sort of records, whether it's tax returns - there may be something in there that you don't want the jury to see. For example, talking on insurance, there could be a mention of the client having Medicare or MassHealth or Blue Cross Blue Shield. That's - if you have a stipulation, even though, generally speaking, that should be

redacted anyway, it's always good - it doesn't hurt to formalize that sort of thing in a stipulation. OK, trial prep to-dos - there are, of course, an endless list of to-dos, but these are always the main ones. Priority, at least for me and how I've learned, is always to find out who is the judge that's going to be trying the case, right? Who is going to be the judge in this session? And also, more importantly, who is the clerk? The clerk is almost more important sometimes than who the judge is, right? So the clerk is a great resource for calling ahead of time, way ahead of your trial and finding out, oh, you know, who is going to be expected to try the case? Sometimes they know, sometimes they don't. It doesn't hurt to initiate that. It also doesn't hurt to call and ask how far out you are on the trial list. For example, are you third out? Meaning there is three trials scheduled for an August 1st trial date. Expecting that, hopefully, you know, the court expects a lot of these cases to settle, whatever the percentages are these days, 95 to 97% of cases are settling anyway. That that's why they double book or even triple book some trials. It's good to call in advance and ask how far out your particular case is on the trial list for that date. If it's quote-unquote, "first out," that means you are the first trial scheduled for that date - there are no trials ahead of you - that you are set to try the case if it does not settle. Trial length and schedule is key. And this is fluid, right? It's fluid to an extent. When you put together your final pretrial memorandum that we talked about, one of the sections that's required there is estimating how long the trial is to be, is going to be. I mean, you can say 5 to 7 days, 10 to 14 days, over two, you know, two, three weeks, whatever it may be. And of course, you're working with defense on that. But a lot of that's dependent on how many witnesses you expect to call too. So it's important to identify that from the beginning, especially when you're trying to work out, you know, witness order, when you're going to be calling them, you know, expert schedule. It's a lot of juggling around and will be juggling, not only before the trial, but during the trial. Also important to find out, if you can, who, on the defense side, is going to be trying the case. A lot of times you have, you know, a couple attorneys on the case. Are they both going to be trying it? Is only, you know, the partner in the case going to be trying it or an associate? Try to find out who is going to be trying the case, if you can, if it's not obvious enough already. And another thing, good thing, to do is start to put together timelines, both of the liability part, chronological events of, say it was a medical malpractice, for example. You know, good to put in the key dates, the key appointments, the key treatment of your client to create a timeline to make it, not only easy for you to digest - if it's a little messy, there's a lot of dates involved, but also by helping you to kind of streamline that, it's also going to benefit the jury, right? The simpler you can make the case, the simpler it can be to understand for the jury, the better. Same thing with a medical chronology. You know, a lot of times you have clients who they've done a ton of treatment over years - right? - even if it's just one year and they did a ton of intensive treatment - most of the time, you know, three or four or five or whatever it may be. If you can put together a chronology, a timeline, well in advance of trial, it's really going to help with trial prep, especially when it's a case where there is an extensive medical history. The facts summary, brief and thorough. A lot of times, for this, I'll rely on what was already done at the - when we put together our final pretrial memorandum for the final pretrial conference. Because in that memorandum, you have the statement of - the plaintiff's statement of the case and the defendant's statement of the case. And that's really helpful to go back to and kind of remind yourself, OK, this is our position. These are, you know, the key facts. This is the key testimony that, you know, I really want to hone in on that I think's crucial to my case, these are the damages. This is what the defense is going to say at trial. This is their position. Of course, all of this is fluid (laughter). You know, trial just - it's - you got to be ready to change, whether it's, you know, your line of questioning, which we'll talk about, or whatever it may be,

at the drop of a hat, depending on what comes up. Trials are full of surprises, so you have to be able and willing to roll with the punches. That being said, if you can at least have a sense (laughter), a good sense, of where you think the defense is going to try to hit you in terms of your legal arguments, the better. So always go back to that - the final pretrial memorandum, if you can. Summary of settlement negotiations, this is really key to know in advance of trial, too, especially if it's been a while, if you mediated the case, whether it was pre suit, or it's just been years, you know. Or, of course, in the recent weeks leading up to trial, maybe there's been additional negotiations there. Make sure you keep track of those numbers. And this is also important in terms of whether or not there is a lien, a health insurance lien, whether it's from Medicare or MassHealth or whether your client had a private health insurer, like Harvard Pilgrim or Blue Cross Blue Shield. Keep track and get updated liens, especially as you're getting closer and closer to trial. And depending on the case, depending on the lien - and in most situations, it's good to put the lien holder on notice of the upcoming trial, where settlement negotiations are, to let them know that they may be getting a call, the lien holder may be getting a call to see what they can do to shave some off that lien in order to net the client more at the end of the day, depending on, ultimately, what a verdict would be or what the settlement negotiations are. Another prep to do before - demonstrative aids, which are referred to as chinks, and they are simply kind of blow-up posters of - whether it's a photo, or it could be even the timeline that I talked about, one of the timelines that you think's important to the case and have blown up into a - you know, from Staples or FedEx, any sort of store like that, on a big board to present to the jury. And these are often used in opening statements and closing statements. Most of the times they are not marked as exhibits. If it's the same photograph that's just blown up bigger, that's already going to be admitted into evidence, then sometimes the chalk, itself, can be marked as that exhibit, the bigger version, but not necessarily always. So they're just helpful. Think about what would be helpful for a jury, in terms of a visual aid. You don't want to overdo it. You don't want to have, you know, five to 10, you know, massive chinks that, while you're giving your opening statement or your closing statement, the jury isn't even listening to you 'cause they're distracted by all these visuals that you keep, you know, showing them and putting down, picking up another one, etc. So focus on the ones that would be most beneficial to you. They don't always - most beneficial to your case. They don't necessarily always need to be used during opening and closing, they can be used with an expert witness, like a medical doctor. If you want to have them, you know, come down from the witness stand and explain on a bigger image to a jury, you know, a photo of an X-ray that's blown up and what this phone is and what our client broke, etc. It can be helpful to have a blown-up image, which is referred to as a chalk. Now, more trial prep to-do's, now, these are key for filings with the court in advance of the final trial conference, which is usually a week or so before you are set to start trial. And the court will require you to submit an exhibit list, which is essentially, what I mentioned, all the proposed exhibits that you expect to use at trial. Now, the plaintiffs will usually have their proposed exhibit list and the defense will have theirs. And it is their responsibility to work together, before any filing with the court, and work on, OK, you know, if the defense is objecting to this exhibit, do I really want it or is this something that, you know, we're happy to get rid of based on their objection? Either way, the ultimate goal is to come up with a joint exhibit list. You can, of course, preserve your objections to any of the exhibits on the defense's list that you don't think should be admitted into evidence. And then when you get to the final trial conference, the judge can, of course, rule on those. My position, when it comes to exhibit lists, is to be as extensive as possible. Similarly, when it comes to the initial witness list that you put together when you're doing your final pretrial memorandum months and

months before trial, right? So for the exhibit list, I tend to just include everything under the sun, not knowing what I'm going to use. And then it's much easier once you compile that extensive list to go back and say, OK, reasonably speaking, what am I actually going to be using at trial? - what am I not? - and just making sure that all those are highlighted are included accordingly. Motions in limine, now motions in limine are historically more of a defense thing, right? The purpose of a motion in limine is to keep something out of evidence. Plaintiffs generally want things into evidence. Of course, there are exceptions to that. For example, if you have a client who had a history of being abusive to his wife, who has a loss of consortium claim in the case at issue that you're going to trial for. And the defendant really wants to harp on that and bring that up into evidence and, you know, question your clients about it on the witness stand. And you think, of course, as one would, that that's going to be really inflammatory to your case, and prejudicial. And because, hypothetically, it happened, you know, 30 years ago, it was a one-time incident, that is kind of a scenario where you would file a motion in limine to keep that out - right? - to keep that out of evidence. The jury does not get to hear about it. You don't need to feel the need - you don't need to feel (laughter) the need to file motions in limine just because. There has to be an intent. You have to think about it strategically before just going off and filing, you know, generic motions in limine, which, again, is more of a defense thing. And you will have to oppose their motions in limine, too, which will give you insight, a lot of times, into the strategy for their case. So it can cut both ways, as most - as everything does in our line of work. But sometimes it's better to hold off on filing any motions in limine because you don't want to give the other side insight into A, what you may be concerned about or two, or B, you know, what areas of attack you may have, say, on a defense expert or whatever it may be. So a - it is a strategy decision, but it is something to keep in mind that just because you can file a motions in limine, doesn't necessarily mean that you should. It's very fact specific, case specific. So just think about it carefully. Talk to, you know, your trial team about it before just filing things just because that's par for the course. Jury instructions are also to be filed before the final trial conference, generally speaking, depending on the court. And these are really, really important in terms of laying out, from the outset, the things that you want to bring out in trial, especially as regards to liability. For example, you know, if you have a building code issue in your case, if you put in a jury instruction specific to building code violations, not the generic instructions out there, but one very specific to the building code - building codes that you think that your expert says were violated in that case and put together a creative instruction based on that, you should put that in your jury instructions. Whether or not it's going to be read to the jury is another thing. But normally in trial, towards the end of the trial, you'll be able to file supplemental jury instructions, which could be, you know, one or two - don't file a whole (laughter) other set of 25-30 instructions, you know, on the eve of closing arguments. The judge isn't going to like that. No one is going to like that. So supplemental jury instructions are mainly for specific instructions that maybe you would not have come up with before all the evidence has been presented in the case. There were things that came out that, OK, now you think these two specific instructions are key and you can submit those to the jury. The important part is, when you file those initial jury instructions, your first comprehensive set, just make sure that you're reserving the right, explicitly write it in the jury instructions, I reserve the right to file, or to submit, supplemental jury instructions. And so long as you reserve that right, that allows you that opportunity, you know, closer to the end of trial to submit additional jury instructions. The judge will - the defense will do the same thing, of course, and then sometimes the judge will split the baby and decide, OK, you know, I'll take this instruction from the defense, I will take this instruction from the plaintiff. I won't use this one from the defense. I won't use

this one for the plaintiff - however they want to do it. It very much depends. Sometimes judges will just go with the model jury instructions here in Massachusetts as well. So long as you're submitting those and then preserving your objection to them not being included, you kind of cover yourself. So make sure that you're doing all of that. For jury questions, voir dire - those are also, generally speaking, to be submitted before the final trial conference. These are key for laying out questions that could suss out bias, generally speaking, bias against, you know, whether it's personal injury claims, you know, tort reform, plaintiff's attorneys, trial attorneys, generally, but also biases specific to your case. For example, if it involves a medical malpractice case and you want to find out, OK, you know, are these people biased against doctors? Do they have issues with doctors or do they love doctors? That's also a bias. If your defendant in the case is a doctor and you have a potential juror come up that says, you know, I love doctors, I would never want to sue a doctor - that in a very basic form - that is sussing out the bias specific to your case. So you lay these all out in jury questions before and submit those to the judge who generally will have his own set of general questions that he will ask the jury too. And also your specific questions as well. The verdict form can be submitted too before the final trial conference, but also so long as it's done generally before a few days before closing arguments, or at least towards the end of trial, the judge will look at your proposed verdict form. A lot of times, too, they'll just go with the typical verdict form that the judge has been used to doing in his cases. But either way, it doesn't hurt to submit your own verdict form. Now, prepping witnesses for trial testimony - this includes not only your client, but also your experts. Prep is so important, and I think it's so easy to overlook all the ways that it can go. My philosophy is I'd rather over prep - especially my client - than under prep and just hope that, you know, hope that nothing wonky happens at trial. Prepping, for my perspective, not only includes, you know, going through prior testimony, documents likely to be used with each witness, but I also do actual acting out as if I'm the defense attorney, but also on direct exam. If I'm going to be doing the direct exam of my client, I got to ease my client into it so they get used to the question-answer process and actually go through it as it is in trial. You know, not just saying, OK, this is what I'm going to ask you, this is what I'm going to do. I'll be like, OK, please introduce yourself to the jury, tell us where you grew up - these are the simple background things, but just get them used to answering questions like that. And then of course, when you get to the harder stuff, the liability of whatever your case may be about, you know, you can slow down and focus on areas specific to prior testimony or documents that may be used with your client in that - when you're going through the prep. Similarly, with cross-examination on your witnesses - both as the client and experts or experts, you want to focus on the competing experts, the defense experts report - whatever it may be. You know, if it's another doctor or if it's a, you know, an accident reconstructionist who had a different opinion as to your own expert's opinion, you want to be able to anticipate what you think the defense attorney is going to cross-examine, not only your client on, but your expert on, too, and make sure that they're prepared for all of that. I always tell my clients on cross-examination, when it comes to documents, especially, like, medical records, it's best not to fight too hard when it comes to what may be in the medical record, right? Like what a lot of times we see, especially in ambulance reports or the E.R. report after a collision, that it's not - the way the incident happened is not documented as accurately as it should have been according to the client's memory of what happened. And the defense attorney will hop on that and make it seem like the client was lying about where the accident happened or where she fell or whether or not the light was a certain color at an intersection, you know, things like that. So the more you can get your client to, you know, take a breath and not fight with whoever is cross-examining them, even experts too, the better. If they show

you a document in hopes that it makes it seem like your witness is lying, prepare them for how to respond to that. Jurors generally do not like angry witnesses, and a defense attorney will feed off of that. So the more composed that you can help them be, the better. And I think the way to do that is to put them at ease through as much prep as you can so that they feel comfortable for every scenario that could happen during cross-examination. Another thing for prepping witnesses for trial testimony - and this goes more so prepping yourself for, of course, direct examination, but also for cross-examination, too, is preparing outlines, not scripts. You got to be able to go with the flow, stay flexible. If you have a witness that's already testified, that covered an area of evidence already and, you know, you realize, OK, it's too repetitive, this isn't necessary to get the same evidence out of this witness, then just cut it out, be able to just roll with the punches, don't stick with the script because you have to be able to adapt for a variety of reasons. I also mention adapting questions based on motion in limine rulings. For example, you may not find out until the morning of your first day of trial that the judge has ruled on this motion in limine that you can't ask this specific expert about, you know, biomechanics because they didn't disclose that they were going to testify in their expert disclosure about how - about the biomechanics of this incident. So if you had an outline together on a whole section about the biomechanics of the accident, you can't ask those questions. You got to be able to just roll with it and adapt and keep going. So at trial itself, and this should be evolving, the idea of a theme should be evolving from the beginning of the case, from as soon as you get it, going back to day one when you meet your client. But your theme will evolve - right? - at the months, the years that you're working on this case, but at trial is key. It should - you should establish your theme in a way that it resonates with the jury. And it's important to continue with that theme and keep it consistent throughout the trial, starting with opening arguments and ending with closing arguments. If you can weave it in through the testimony throughout the case, the better, right? So the theme could be, you know, accountability or it could be doing your job. There's various things. You can be really creative about it, but it has to be something that's catchy and specific to your case, specific to something the jury will resonate with. Your witnesses will contribute to shaping the narrative, or they should, depending on how you're questioning them during the testimony. You want to elicit testimony that's going to help shape that theme. And you can do that, or try to do that in advance when you're prepping, right? You know, from this witness, I want to get this nugget of testimony. This is the key testimony that I want from this witness to help put our theme together. Another important thing is, from the outset - you should never forget this from day one, but do not forget the elements that you must prove. The plaintiff has the burden of proof. You don't want to overlook any of the elements and get lost in the, you know, the busyness of trial and all whatever - you know, all the sideshows that are going on in trial. At the end of the day, you have to remember what you have to prove and make sure that you're eliciting that testimony or putting in evidence for the jury that establishes all of the elements of the claim. For example, negligence - duty, breach, causation, damages. You need to establish all of those things because when the judge reads the jury instructions, one of the first instructions, for example, in a negligence case that he is going to read, are these elements and that a negligence claim requires duty, breach, causation, damages. And he'll go through exactly what is required for each of those. So never forget - it's simple, but it's easy to overlook. Never forget the endgame, what you are trying to prove. Now, exhibits, which we talked about before. Now, this is during trial. It's best if you can, in advance, to create an organized exhibit plans, right? So when you're going through your - or putting together your outlines for your witnesses, determine which exhibits to introduce through each witness if you can. Of course, with everything with trial, you have to be flexible.

If it's not feasible to get in a particular document or photograph through one witness that you intended to do it, it's OK. Find a way to get it through another if you can. But try to organize, in the plan, as - if you can, as firmly as you can, when it comes to which witness to get exhibits in. And when I say get exhibits in, that means getting them admitted into evidence, right? And when I talked about being admitted into evidence, it's the stuff that the jury gets to bring back to - when they're deliberating and to look at. And you do this, of course, by authenticating the document before asking it to be admitted as an exhibit. And a lot of you may have heard of, you know, the key phrase before, is this a fair and accurate representation of the intersection where the collision happened, etc., etc. Depending on the document, depending on the photograph, their photograph of injuries, did you take these photographs? These are a fair and accurate representation of what your leg looked like during the six months that you were treating for your broken foot after this collision, right? Yes. OK. So make sure you're authenticating whatever you're trying to put into evidence before with your witness. And I skipped over copies of exhibits. This is just a tip in terms of being professional. A lot of times, you know, even at depositions, you should take this tip, too. Make sure that you have copies of the exhibits, copy for you to use with the witness, live. Copy for defense counsel, it's professional to give a copy of the exhibit you're using with the witness to the defense counsel. And a copy for the court. When using an exhibit with a witness that has already been admitted - right? - it's already been marked as Exhibit 3 during the trial. If you want to use that same exhibit with another witness later in the trial, don't use your own copy, which you may have. You may have your own copy at counsel's table. When you go to question the witness about that particular exhibit, make sure you're using the one that was marked by the clerk, marked formally by the clerk, and has already been admitted to evidence, so you're using the real document. And finally, always, always, always look at the exhibits before they are formally marked and admitted into evidence. As I mentioned, you know, if you're going to be showing a new exhibit to a witness that has not been marked yet, show it to defense counsel first before you approach the witness stand and ask if it's - if he has any objection, if it's OK. The judge will usually ask, you know, counsel, do you have any objection? And then if you do expect there to be an objection, try to anticipate that before. And there may be - if the jury's there, there may be a sidebar conference where you'll have to argue over that, over the defense's objection as to why that exhibit should come into evidence. So definitely don't overlook that possibility, especially if you anticipate it being objected to. Now, I say always look at the exhibits before they are formally marked and made into evidence so that you're aware of what the jury is going back going back with, right? If you have defense counsel say, all right, I'm going to put this pile of medical records into evidence, flip through them. Make sure there's nothing in there that shouldn't be in there. Make sure you're laying your eyes on everything that is being admitted. And again, going with the theme of rolling with the punches and going with the flow when it comes to trial, make sure to listen to your witnesses during direct exam. I mentioned earlier it's perfectly fine and it's great, you should have outlines for your witnesses, but they shouldn't be scripts, right? You don't want to be reading, verbatim, all these questions for a lot of reasons. One, you'll get - you can easily get distracted by the script and miss out on an opportunity to follow up on something that the witness said. But also, it can become a little bit redundant, almost boring to the jury because it's less of a conversation. It seems more like a script to them, too, it'll sound that way. So make sure to always listen to your witnesses during direct exam, just as you would at a deposition, right? The same theory applies. You want to be able to follow the answers into a different area if the witness opens the door for that. So make sure you're paying attention. The other thing is just using plain language. I think there's - jurors generally, laypeople

generally, have a stereotype of lawyers that we speak in this fancy legalese talk a lot of times. But you have to think that we're regular people; the jurors are regular people. We don't need to talk in fancy, legalese terms when we're questioning witnesses, whether it's our own or the defense's witnesses, or even during opening statements, closing statements, speak in plain language. Be ready to go with redirect examination. On redirect, you want to be as crisp and pointed as you can. Redirect follows cross-examination of your witness. So, for example, I call the plaintiff to the stand, my client. I do their direct examination, then the defense attorney gets to go up and do their cross-examination. Whether or not you have any questions for redirect exam often depends, of course, on the cross-examination and what the defense goes in on, with your client or whoever the witness may be. It's best to, if you're going to do a redirect, to isolate it to, you know, specific, crisp points. You don't want to go on and on and on. The quicker and more pointed you can be, boom, boom, boom, boom, done, the better. All right? And then that way, you have the last word, normally, unless there is a recross. But remember, when there is a recross, the defense attorney can only ask questions based on your redirect exam, just as your redirect examination can only be based on questions that was asked on cross-examination. This is helpful in terms of using your trial team - I mean, using your trial team's helpful as much as you can - pre-trial, during trial, after trial, whatever it may be, if you have co-counsel, paralegal, etc., use them. Now, while the cross-examination is going on, if you have your co-counsel there, your paralegal taking notes, too, on what is coming out of cross-examination that you could follow up on and redirect, that's great. The more people that you have helping you do that, the better, 'cause you got to be thinking on the fly and it's quick. And this goes with managing the clock. This is the overall theme of trial, I think, generally speaking, especially from a plaintiff's perspective. Managing the clock is a very, very important thing to do. For example, if you have a five-day - expected five-day trial, you start on Monday, the last thing, as a plaintiff's attorney, you want to do is have closing arguments, from both sides, and jury charge - the judge reading the instructions to the jury, the jury deliberating on a Friday afternoon, right? Because they could easily check off the first box on the verdict slip, which says we do not find the defendant negligent. You don't even get to question two. It's so easy for them to just check that off and go home on a Friday afternoon. That is why managing the clock is so important, and - 'cause you're thinking about the jury's mindset, you know, what their attention span is, what they want to be doing, and how that can help or hurt you. So, for example, ways to do that - is there a witness you planned on calling that is not essential to your case? If time is an issue, if the clock is an issue for whatever reason, and you realize, OK, we don't need this witness, or actually, there is a witness that we could call that maybe we don't need, but for the sake of the clock and managing when the jury gets the case and gets to deliberate, call that witness, or don't call that witness. You have to be able to roll with the punches, that's just the theme. Is there a more efficient way to present your evidence? Can one witness offer evidence on more than one issue? For example, if you have a witness up there that you had your nuggets that you intended to get out of that witness, but because, you know, time is an issue in the case. Another example of timing issues - so you have your client on the stand - the plaintiff on the stand - and you realize, you know, it's getting towards the end of the day - of the end of the trial day, and you don't want the defense to start their cross-examination on that day and be able to come back the next morning after having an evening to go back and review and prep more for the cross-exam. You can - managing the clock means extending that direct examination, you know, milking certain areas of testimony a little bit more. Some judges will, you know, ask you, all right, let's move along, counsel. Let's keep it moving, or, you know, they'll understand what you're doing, right? So find creative ways to be

able to do that. It's those little things that really matter at the end of the day. And lastly, in terms of managing the clock too - make sure all of your exhibits are admitted before you rest, meaning before plaintiff rests their case and defense puts on their case, make sure you're going through your list of exhibits. All right, did we admit X, Y, Z? Look at the ones that the clerk already marked - double check. Make sure everything is in there, because that is your last chance to get it all in there. There are ways to manage the clock through exhibit use too. For example, I talked about the 79G as the certified medical records, which you can submit into evidence as all one big packet - one big box of medical records. If time is an issue and you need to, you know, push out time for whatever reason, you can omit them separately, for example, by provider. You know, these are medical records - 79G medical records from Brigham and Women's, these are the 79G records from Cataldo ambulance, and submit them separately in order to help with time management. Now, lastly, to round all of this up - the biggest advice I think that I can give you generally about trials comes down to something as simple as credibility - credibility of the attorneys, credibility of the witnesses and making sure when it comes to the attorney that what you tell the jury in opening statements is consistent throughout the case, right? So if you get up there in opening statements and tell the jury, you know, you're going to see this evidence and, you know, you're going to hear so-and-so testify about this, and the evidence and the testimony doesn't unfold that way. When it comes to closing statements, the jury is going to be sitting there thinking, they lied to me. They lied, right? Same thing with witnesses - the judge instructs the jury, especially when it comes to not only lay witnesses, fact witnesses, but also expert witnesses, that they can weigh the credibility. The jury should weigh the credibility of all of the witnesses that testified in the case. You know, you hear stories of clients that they get in a motor vehicle accident, for example, or any sort of accident, and they say that every single ailment, pain that they have now is because of that accident, which may or may not be true. In some cases, of course, it may or - it may be true, but sometimes it's a person who had some preexisting issues, right? So it's going back to credibility - if it's true in that specific case, it's much better for the client to admit that sure, you know, I had some of these issues before the incident, but I never had these particular symptoms or pains that I'm experiencing now. Another example is, you know, sure, in the first six months after the incident, I was completely disabled. I couldn't leave my house. I was in a wheelchair. I couldn't get around because of this - because of the collision that happened. But, you know, it's been three years now and fortunately, I am better - overall, of course, I'm better compared to how I was, but I'm still not the same. You know, those are examples of credibility, right? So it goes not only for the attorneys, but also for the witnesses. And jurors are smart. Jurors pick up on these things. So you just - you want to be truthful at the end of the day. And that goes to being yourself too - yourself as an attorney, as a trial attorney, you want to be presenting yourself to the jury in a way that is authentic to you. It's OK to, you know, watch other trial attorneys, as you should, and, you know, pick up little helpful nuggets from things that they do. You know, I really liked what that trial attorney does or I really don't like what that attorney did on cross-exam. I don't want to adapt that myself. But the bottom line is, don't try to entirely mimic someone else. You have to have your own style that's true to you. And that in and of itself will make you more credible to the jury. And that is all I have. So if you have any questions about any of this - like I said at the beginning, this is kind of the spark notes version of everything related to preparing a case and trying a civil case. There's so, so much to know and learn, and you will always be learning more as I am every single day. So if you have any questions at all, I'm more than happy to try to help answer any questions, talk to anyone. You can email me at Jessica@sweeneymerrigan.com - it's my law firm's address. But, you know, lastly, thank you so much for

listening. I hope this was helpful. Of course, if there's any follow ups, there is a plethora of information out there to learn. I'm happy to talk to any one of you but thank you for your time here today.