OPERATOR: This is Conference # 1778766

Chandler Torbet Welcome to the ABA Solo, small firms, and general practices divisions hot off the press live podcast. My name is Chandler Torbet. I'm a member of GP solo. Today we will be speaking with Sawnie McEntire. He is the ABA editor and one of the authors of the new addition of GP Solos' book: From the Trenches III Pretrial Strategies for Success.

The presentation will conclude with a question and answer session, which the operator will facilitate. From the Trenches III Pretrial Strategies for Success provides important [facts] from experienced trial lawyers from across the country. This valuable resource is a general reference tool with solid insights for both beginning lawyers and seasoned trial veterans.

Sawnie McEntire, who is the director and shareholder at Parsons, McEntire, McCleary in Dallas Texas. He has over thirty-five years of experience handling complex civil matters in federal and state courts throughout Texas and across the United States. He's tried dozens of difficult cases to a jury verdict on a variety of subject matters, including commercial, products liability, pharmaceutical and real-estate claims.

He also served as national, statewide, and regional council for many clients and has received many national and local accolade for his advocacy accomplishments. And has authored several publications on advocacy skills, so I'll now turn the call over to Mr. McEntire.

Sawnie McEntire Thank you very much Chandler, good morning and good afternoon, where ever you may be. It is a pleasure to be with you today. And I must say it was a pleasure to serve as the editor and also as a contributing author in this book: From the Trenches' volume III Pretrial Strategies for Success.

Before I get into the details of the book, I would like to provide just a very supplemental, brief personal background to put things into context. I have been practicing law now close to forty years, trial law. I started
with a very large law firm out of Houston, Texas the head of national practice. I left that firm and helped grow a small firm into a larger, medium-size firm of approximately a hundred and twenty lawyers.

I find myself now on a great journey and a great adventure with a boutique litigation firm with offices in Dallas and Houston. We have approximately thirteen lawyers. The result of all this is I come to the table with a diversified background and experiences from big firm to medium firm to currently boutique-size law firm.

I have been fortunate enough to actually handle jury trials in several states not just Texas. I've tried cases in state and federal court. I've won cases, but certainly I must acknowledge I've also lost some cases and some big ones. But I've always been fortunate and blessed to have the opportunity to work on cases that were interesting both from a substantive perspective legally, factually, and procedurally interesting cases.

And hopefully I've grown from those experiences. I grew up as a young lawyer as a product liability, defense lawyer. I did a lot of automotive product liability litigation lots of engineering issues technical issues involved. I've been involved in pharmaceutical what they call drug litigation defense. I redefined myself somewhat several years ago, maybe ten years ago, and I have a much broader practice today.

I do a lot of commercial tort cases both on the plaintiff side and the defense size. So I bring to the equation again, a perspective of seeing things from both from a defense lawyer perspective and a plaintiff's lawyer's perspective. I must say I enjoyed them both.

They both have unique challenges and issues that lawyers must deal with, and I find that both sides to be equally compelling. I've also had the great fortune of working with some very distinguished trail lawyers. Some of whom you may have heard of, I've been against some, and I've also worked with some.

Some of those lawyers are actually authors of this book From the Trenches volume III. Throughout this journey, I've also learned something about myself and that is that I'm always learning new things. There’s never an end to the education or learning process. And I've also
learned that I enjoy sharing my experiences, which is one of the reasons that I'm doing this podcast today.

I enjoy writing, and talking, and giving speeches, and sharing some of the things that I've learned over my years of trail practice. I'd like to now briefly talk about the book at a very high altitude. This book, From the Trenches III is the third in a series of three volumes all published by the American Bar Association.

There are some authors that are in all four volumes- or all be all three volumes. I'm one of them. Volume one, I offered a chapter on jury selection [what are]. Volume two, I authored a chapter on preparing corporate witnesses for depositions. So there are some great lawyers involved in each of these books, and I commend them all to you, not just the volume three.

Volume one, by way a brief background, focused on each of the stages of a trial, from jury-selection, opening statement all through the direct to verdict stages to final argument. It was published in twenty fifteen. The editor of that book was John Warden from the Schiff Hardin law firm in San Francisco, larger law firm.

And it provided perspectives on each of the stages of the trial, and practiced tips and practical guidelines and suggestions from twenty-one different lawyers from across the country. The mechanics, the advice from mechanics and the advice from strategy are just great advice set forth in this volume one of the book.

And I commend, to the audience on this podcast, I commend this book to you for an easy reference guide to trying a law suit. Volume two was edited--the editor was Jim Miller, James Miller, who was the former head of litigation for the Akerman Law Firm out of Miami Florida. Akerman is a very large, regional firm at this point. It was published in twenty seventeen. There were twelve authors from around the country. And it focused on witness preparations. The scope was broad. It addressed ethical issues and preparing witnesses what you can and cannot do from an appropriate ethical perspective. Privilege issues, how to protect privileges and dealing with certain witnesses, not
inadvertently disclose privilege material or make privilege material potentially vulnerable to disclosure.

Mechanical issues, the do's and dont's of effectively preparing witnesses, preparing witnesses on witness techniques, how to be a good witness, not just memorizing documents. I find it that that is always a mistake just to prepare a witness to memorize documents or facts. That ends up to be a negative approach.

Teaching someone how to be an effective witness is a far superior approach from my experience. And so that book contains lots of practice tips a creative approaches to preparing witnesses. The--again, the spectrum is broad, and you bring to the table the perspectives of many lawyers from different firms around the country: critical witnesses, lay witnesses, corporate witnesses, what we call 30(b)(6) witnesses, expert witnesses, and even potentially hostile witnesses.

All the these different types of witnesses are addressed in the book. Now we turn to volume three the book that is the focus of my presentation: Pretrial Strategies for Success. I did serve as the editor of this book. It was published in the fall of last year twenty eighteen.

There are eighteen contributing lawyers from around the country who participated in this book. There are fifteen chapters. As I talk about the book, I would like to talk about one overriding trial principal that I think governs each chapter of the book and that is that early planning is critical.

I think everybody who is on this call probably understands that intuitively. There's a quotation that I like to refer to from Allen Liken. He's a published author and speaker on effective time management skills and techniques. His quote is this, "Planning is bringing the future into the present so that you can do something about it now."

If we listen to those words, "planning is bringing the future into the present so that you could do something about it now," that's effectively what we do when we take a case shift. We can give planning from the very initial stages to control ultimately what happens at trial. And that permeates every aspect of what we do as trial lawyers.
And that would be my overall, hopefully, resonating message from this phone call today. Another key component that I think is important to observe are what I call the cornerstones of advocacy. Now, I didn't come up with these cornerstones. This is actually goes all the way back to the days of Aristotle.

These are Aristotle's three cornerstones of advocacy. I don't speak Greek, but the words are, you know, easily understood, ethos. Every case that you defend or prosecute as plaintiff or defense lawyer has to have the quality of ethos: credibility, trustworthiness of the reputation, trustworthiness and credibility of the lawyers, the witnesses, the client representatives.

Logos, logic: this is the, nuts and bolts, the nails that hold your case together, that's the facts the data put together through the witness testimony and the documents and glued together by the lawyers advocacy. The goal here is to create an internally, consistent, understandable, credible, trial statement and a case message.

Pathos: that's emotion. The emotional tug that you want to give to the jury to have them react favorably in this really appealing--you want the case to appeal to the jury. So ethos, pathos, and logos they are like three legs to a table. Aristotle has been attributed to it said that-this is a quotation-, "character may almost be called the most effective means of persuasion."

If your client is likable, if your client--whether it's a corporation or an individual, if they are--manifest principled, socially conscience, conscious moral, principles good citizen type behavior, they're going to be liked. And if they're liked, they're going to be credible. If you lose that highroad and your witness or witnesses are not believed, you will lose the case.

One of the three legs of this three-legged table will break, and the table will fall. And in fact, I'm going to suggest that if any of the legs, ethos, pathos, or logos break, the table will fall. Logos is the road map, the story, the explanation of what happened, and equally important, what did not happen.
Simple explanations, reasoned explanations, factually supported explanations, and very important internally consistent, explanations presented in a way that keeps the jury interested and invested in your case. The chapters in volume one of From the Trenches, the chapters of volume two of From the Trenches, and now the chapters of volume three From the Trenches, all calculated to achieve these goals.

The purpose of the book was to provide an easy read, not to cover somewhat lots of legal citations, but more of an easy read, a quick reference book with common sense tips. Some are, again, intuitive, and many of the people on this phone call probably already know them instinctively.

However, some are more sophisticated and creative that perhaps I hadn't thought of some of these before I read the actual chapters. Some of the techniques that some of my college have actually used over the years. It's kind of like that light bulb that goes off in your head, and say why didn't I do that twenty years ago.

So there's a bit of--a couple of epiphany moments in this book that I personally had. Again, I think we all learn every day something new. The book was intended to be appealing to both less experienced trial lawyers, beginning trial lawyers, and even experienced trial lawyer. There is something in here for everybody.

It starts with the very basics of investigating a case, interviewing clients, doing internal investigations, how to organize a case how to developed a case. And again, the audience is intended to be a broad based audience. The book is a very helpful book because it also provides checklists, and exemplar forms, and templates for use in various stages of the case, whether it's preparing witnesses for trial, initial case intake things of that nature.

Again, it covers things from pre-suit investigations, pre-suit discovery, whether or not to conduct an early mediation, and I'll discuss that in more detail in a moment. Whether or not to pursue a pre-suit mediation, which frankly is something that I've actually done on several occasions because I find it to be very beneficial to my clients.
To avoid adverse publicity, to try to limit or avoid unnecessary expense in cases where potentially clear liability is shown. It addresses motion practice, development of discovery plans, leads ultimately to what the last chapter, which is referred to as the final curtain. Actually should be the opening card because we're all moving down the journey-- the pathway to the opening statement, the jury selection opening statement.

The book-a quick overview of the book the topics where selected in twenty sixteen. I did an initial cut of the topics and got input from some colleagues. The ADA also weighed in and help to find some of the topics. We began to select the authors shortly after the topics were developed.

Publication date was in the fall of twenty eighteen, so it is literally hot off the presses. It's been out in the market for about two months, less than two months perhaps. There are eighteen authors, and there are fifteen chapters. The author selection, there are, as I said eighteen authors. All of the authors are experienced trial lawyers.

One of the goals was to provide geographic diversity. Some of the lawyers have national practices; some have more regional or local practices. But there was a goal to provide a coast-to-coast geographic diversity. That's been true of all the volumes, From the Trenches that the ADA has published.

In this particular book, we have lawyers from very large or multi-state regional law firms. We have small firms. My firm perhaps is probably the smallest boutique litigation firm in Houston and Dallas with thirteen lawyers.

We have lawyers from Birmingham, Alabama New Orleans, three from Texas, Chicago, St Louis, Boston, Miami, Providence Rhode, Island, Seattle Washington, a couple of attorneys contributing authors from New York, and an author from Richmond, Virginia.

The topic selection was, again, intended to be broad sweeping to attract and be appealing to both beginning and experienced lawyers. For use in large firms solo practice situations or smaller firms. The topics, there's a wide variety, but they all focus on pretrial stages, and some focus on the pre-suit stages leading to the final curtain chapter.
There are fifteen different topics, again, all including practical pointers and strategic examples. In some cases, actual templates and checklists that you can copy and use or certainly utilize in your own practice. The chapters included the following: there's a chapter-and I'll discuss each chapter in more detail, but I'll give you a quick overview now.

Internal investigations: typically where a corporate client is concerned about an event or an allegation or accusation against it that may be far ranging and widespread within the corporate ranks.

The timing of mediations: venue selection and jurisdiction issues, seeking, and preparing litigation [holes] when to do it, how to do it, whether you're plaintiff or defense, eDiscovery issues: expedited or pre-suit discovery, initial cases assessments.

My chapter on discovery keeping it simple, simple, simple and clean, clean, clean, and understandable. Getting organized, motions for summary judgment practice pointers for particular for those who practice in federal court.

Shifting risk with offers of judgment. Many states around the country have statutes, procedural rules that allow parties to make offers or offers of judgment that shift the risk of attorney seizing costs in the case.

Designing and executing a critical witness deposition, making the kitchen hotter through discovery motions, particularly motions to compel. The use of jury consultants, focus groups, and mock trials that was another one of my chapters. And I'll be talking about that more detail.

And of course the final screenplay the last thirty days before trial. I authored two chapters, in addition to being the editor. I authored two chapters in the book. One on jury consultants, jury studies focus groups, and the other on discovery plans. I'd like to talk a little bit about my chapters.

I wrote them. I have a deep--originally a deep understanding of what I wrote. Trial depositions it's my philosophy that every deposition is a trial deposition. I think as practitioners when we go take a deposition, or present client for deposition, or a witness for deposition, we should all
assume that that deposition will be read or heard, somehow consumed by
the jury or the judge.

So if you're taking a deposition, I believe philosophically that it's
important to keep your questions, clean, simple, and very interesting, and
understandable. Again, that's the cornerstones of effective advocacy:
pathos, logos, and ethos. Those cornerstones are not going to be effective
unless the questions are heard, and listened to, and understood.

And so one goal is to make sure that your examinations are crisp i.e.
provide some guidelines and suggestions in that regard. Also witness
selection and timing issues are addressed in this chapter. When you want
to depose a 30(b) (6) witness on the other side, should you or should you
not wait for significant written discovery before you pursue that type of
30(b) (6) testimony.

I typically say yes, you do. I also though believe that you want to take
those types of depositions as early as possible in case when you're ready
because you could lock the opposing side and box them into a corner
early on before, perhaps, they've done their homework completely.

What witnesses should you not depose? Perhaps witnesses who are in
subpoena range, and you can call easily at trial. Perhaps they are going to
have compelling testimony that the other side does not appreciate, and
therefore doesn't get two bites of the apple, so maybe you just called
them more out of a trial.

You have make the assessment as to whether the witness is more
effective at trial or perhaps potentially more effective in deposition. And
whether or not you want to give it a trial run or a dress rehearsal in
depositions to see how witness holds up. These are all individual
assessments that need to be made. And I have comments and analysis of
those types of situations in the book.

What witnesses to depose: those witnesses who are perhaps ill and will
not be available for trial. Those witnesses who may be leaving the
country. Those witnesses who will not be in subpoena range because they
live in a neighboring state.
And even potentially hostile witnesses, critical witnesses, so you can identify what you need to do to effectively prepare for trial, obviously your party opponent, and the opposing experts. Demonstratives in depositions: I don't believe that deposition should simply be dry exercises, and questions, and answers.

I think that all depositions, most all the depositions should be videotaped, and I believe that demonstrative exhibits can be used to bring drama and life to a deposition. I like to give you a few examples that I have seen that I've been involved with. I've been involved in depositions were an actual truck actually an SUV chassis was bought into the deposition.

And we had the witness actually explain the different component parts of the chassis and how it impacted the stability of the vehicle. Magnetized cars: I've used a bigger than life aerial photograph of an accident scene in rural West Virginia.

I had the back of the poster, the aerial photograph magnetized. And then I had magnetic model cars where I could have the witness stand up on the video camera and show how what he saw, how the cars were moving as it leads up to the accident itself.

Very effective, it's almost like an old video movie and soft shots as the witness is actually describing the sequence of the movement of the vehicles to the crash. Talking heads: Obviously, there may be procedural rules in your local jurisdictions in each of your jurisdiction that would limit what I call the talking heads demonstration or demonstrative evidence.

That's when you have a document displayed on the video screen but you also have the head shrunken to--the pygmy size up in the left hand corner--the right hand corner. A lot of the lawyers like to do that because it kind of degrades the witness. As a defense lawyer frequently, I will object the process and procedures.

As plaintiff's lawyers, they love to do it if they can get away with it. I've actually tried to do it myself. So every circumstance is a little bit different. More fairness can be achieved if the screens are split fifty-fifty in the middle and you have the document of one side and the witness or...
more fairly portrayed in the video. Simple blow-ups, a chart a flip chart can be the most affected demonstrative of all time because you can have the witness stand up and write on the chart.

And I've I found that juries love to see movement because it attracts their attention and they are invested in seeing what the witness is going to write on the chart. So I'm find flip charts to be an effective demonstrative, particularly when on the witness is involved in the exercise of filling out the chart.

Models static models or mechanical models: I've had experts demonstrate their opinions with moving parts on a small model. All of these are the types of demonstrative exhibits that I've discussed. There are many many more. The universe is limited only by your creative imagination what is going to be effective to carry the message in a dramatic format in a dramatic means to the jury.

Jury studies: this chapter also focuses on jury studies and use of jury consultants. Jury studies are undertaken for different purposes or a combination of purposes. You can actually test the credibility of witnesses, the ethos of a witness. You can test the credibility and the presence of a lawyer the ethos of a lawyer.

You can test the credibility certain evidence, the logos the logic, the pathos of certain evidence. Is it appealing or is it--does it alienate the witness. Does a witness alienate the witness? Does a particular piece of evidence--a photograph is too gory. These are the types of things that you can actually test in focus groups.

Issue testing of course: to develop final trial things. There are different types of jury studies. There are focus groups. There are, what I call, the two-tiered approach where you can actually have a placebo group that listens to your standard presentation. And you can phase in different evidence in like a clinical trial to the other group to see how that impacts their analysis, their consideration of the case.

So you're phasing evidence in and out and testing things in and out from the placebo group and a non-placebo group to see the impact of certain evidence. Mock trials: you can have an extended mock trial. You can an abbreviated mock trial where you're doing one or two witnesses with
fifteen minute directs, fifteen minute crosses, two or three witnesses on both sides.

You can get it started and done in a day. Those are very helpful with actual jury deliberations. I've learned something just last week about another format. And I guess I should have explored before I put the chapter in the book, but a lot of jury consultants are now using Skype. You can actually do a jury study from the comfort of your office through Skype. And the video of your presentation can be disseminated across the country or to a select group of people, and you get immediate real time feedback. It's probably much more less expensive, and probably packaged, and created, and formatted and completed much more quickly.

So if you're running out of time, it might be ready alternative. I've been involved in jury studies were we have real-time feedback each of the fifty or forty people on the jury panel. The focus group would have little machines before them with green, red, and yellow buttons they can push that registers how they're reacting to certain evidence or presentations by the lawyer.

You'd get immediate feedback on the, again, the ethos of the lawyer and the logos and the ethos and pathos of your factual presentation. It can identify the weaknesses of your case very quickly, and also can help reinforce the strengths of your case.

Again, all types of methods, mock trials, extended mock trials, focus groups, clinical trial type focus groups. We've even used mock arbitrators where we've actually did a mock arbitration in front of retired judges, both state and federal judges, to get their feedback on particular opening statements and issues arbitration.

There are mechanical considerations that have to be undertaken with important mechanical situations that have to be evaluated for any focus group. You want to match the demographics of the group with your venue, and demographics of your venue, education, income, and all the other relevant demographic factors.

You don't want to have a focus group that is not demographically similar or mirrors the demographics of your expected jury that actually sits in the box. I've been involved in cases where I had a case in West Virginia. The
community was a rural community in West Virginia.

And we thought it would be too risky to do a jury study in that particular town because our participants could actually end up in the [guardar] panel. So we made the decision to go to the neighboring jurisdiction in Kentucky, so we actually conducted our jury study in Kentucky.

I did the same thing for a case that I had in rural Georgia. Several years ago we elected to conduct our jury study in Mobile, Alabama. Little bit larger city, but the demographics mirrored what we expected to be the demographics of our ultimate jury panel. Again, the goal is to mirror the demographics of your form, jurisdiction.

And the use of jury consultants there is essential and imperative. Confidentiality issues are addressed. You want your jury studies to be confidential. It's privileged exercise, a work product exercise, and you need to make sure that all the confidentiality issues, T's are crossed and I's are dotted. And your panel focused remembers are bound.

Timing issues: when do you do a jury study or a focus group to study? If you do it too early, you may not have sufficient information to have an effective test of the risks associated with your case, whether it's plaintiff or defense. If you do it too late and a big problem surfaces, it may be too late to like to react. So this takes some a subjective evaluation and decision making as to the optimal time.

Probably close in on the end of discovery, but before the discovery deadline has passed so you have an opportunity to react if you have to. Focus groups and mock trials are not for everyone. The budgets may not support these types of endeavors.

They're always expense issues. You can go from ten or fifteen thousand twenty thousand dollars up to hundreds of thousands of dollars. I think that the idea of having a Skype presentation from your office is one that is novel since it can truly hold down the expense, and perhaps be more appealing to someone who has the case on a budget.

Jury questionnaires: my chapter also focuses on jury questionnaires. Most jurisdictions have jury information sheets, basic information, names, addresses, prior juries involvements, civil or criminal whether there was a
conviction or a verdict reached things of that nature, more plain information.

However, I signed in more complex cases that you need to go beyond that. And it's helpful to do that before you actually begin your [unintelligible] selection. The goal is behind a more complex jury questionnaire. Obviously, you need consent of all parties because it will be a joint questionnaire.

As to identify the jurors who may be helpful to your case, supporters of your case, more responsive to your case, and also identify the jurors who may not the responsive at all to your case before jury selection actually begins. So my favorite questions and I've done jury questionnaires and several cases.

And I discussed this in the book: are to ask the member of the jury panel what his or her favorite book was. What’s the last book that they read. What are their favorite magazines? Obviously, there is a difference between someone who says TV guide or Forbs, or the Economist, there's a different message being sent here.

Are they risk takers? Do they ride motorcycles? Do they scuba dive? Are they skydivers? Risk takers may not be the kind of jurors you want on our panel--in your box. I've asked questions about who their most admired historical figures were and who were their least admired or respected as historical figures.

Some of the answers and the really interesting in fact and some very strange. But if you have a group of jurors on the actual jury panel saying their favorite people all former democratic presidents, FDR etcetera. You have an understanding of how they may see the evidence.

Likewise, if you have an individual identifying all the republican presidents, lean Donald Trump, you're going to have a different interpretation of how that juror may react to the others. Both plaintiff lawyers and defense lawyers have different profiles they are looking for typically in picking a jury.

This information is valuable to both of them because picking a jury is really striking a jury, which means you're striking those jurors in typical
fashion that you do not want to be on in the box. So those are some of the considerations that are discussed.

I've gone into detail of the two chapters that I've written. I'm going to spend just a few minutes now about ten or fifteen minutes talking about some of the other chapters. So you understand the spectrum, the wide spectrum of this book.

Internal investigations is chapter one. It's authored Scott O'Connell. He is the chair of Nixon Peabody's litigation group in Boston. He discusses the purpose of internal investigations. Who is the client? Is it the CEO, or is it the board or is it the corporation itself. There may be different agenda initiates.

So it's important to know who your client is. What is your mandate? Is it broad or narrow? Who are the intended recipients of the report? That's going to dictate, obviously, whether the information is privileged or not. Who's on your investigation team? If they are corporate personalities, are they truly independent or do they may have a bias or an orientation.

Who has the ability to edit the report? That has wide-ranging ramifications. It may not be ultimately your report, perhaps you don't want to be censored or limited in what you say or do. So you have to define the boundaries of independence in your investigation.

Obviously issues as to whistle blowers and [unintelligible] are also important. All these issues are discussed in the book. Timing of mediation: early mediation, pre-suit mediation, or wait till the last minute type mediation. This is discussed by Andy Casnet, who's the shareholder and general counsel for a large firm out of Saint Louis Sandberg, Phoenix law firm.

He discusses situations where a pre-suit mediation may be highly advised. Your trial is exposed to perhaps some adverse publicity if this lawsuit is actually filed. He makes recommendations as to what to do in those situations. Perhaps pre-suit mediations fits the bill.

There's always a risk of giving away too much information though in early mediation, and that's always a risk because mediations educate the opposing side if the case does not settle. He discusses whether early
mediations are recommended.

That's going to depend upon whether the case is fact intensive, whether expert opinions and analysis has to weight in to inform the decisions on the good or bad settlement. So earlier, our pre-suit mediations are not for everyone, but he discusses the common sense approach and the issues that should be discussed and analyzed with your client.

Picking the right place, jurisdiction: jurisdiction and venue issues, basic questions before you make those decisions, you need to look at demographics.

So if you're on the plaintiff substantive of law, is it favorable, procedural law is it favorable. The defendant's lawyers do the same thing, and this particular chapter is written by Tom Wasku, who is partner with the [unintelligible] law firm from Richmond, Virginia.

He talks about demographics and judges and as I said, the demographics of juries both from the plaintiff side and the defense side and gives you--and provides all of us a kind of an easy read guide set of guideposts, if you will, in understanding what the key issues are and form selection. Seeking and preparing litigation calls.

The lead author was Howard Burton. He was assisted by several other lawyers from his firm. He is with the Partridge Snow Firm in Providence, Rhode Island. This is one of the chapters where an example of a litigation whole letter is actually presented and addresses the timing of the issuance of the whole letter and it's contents.

Also, the intended audiences who should the whole letter go out to. It also looks at this perspective from the person sending in an evidence preservation letter. When do you want to do that? Obviously, I think the consensus is as early as possible to preserve as much evidence as possible.

The chapter also addresses the risks of sending out an untimely or ineffective whole letter. If you're on the corporate side or the defense side, the risks [oddly in sanctions] and [untellable] if evidence is lost. The next chapter or another chapter is discovering the modern age.
This is authored by Michael [Shulwalter] from Schiff Hardin law firm in Chicago, a larger law firm. It talks about planning, discovery and consistency, and discovery and transparency in discovery, particularly in the age of electronically stored information ESI, e-discovery. And I commend that to everyone on this phone call for purposes of adding kind of a high level, high altitude understanding of some of the problematic issues involved.

Expedited pre-suit discovery: this is authored by a friend of mine, Larry Kirth, who is currently the managing partner of Akermna, San Antonio office in San Antonio, Texas. It addresses issues of expedited discovery: when do you want it? When do you need it? When you must get it, witnesses leading the subpoena power of the court.

You have a witness who may be in failing health and near death. Pre-suit discovery: some of the same considerations. Many states may have rules like Texas. Texas has a rule 202 provision allows for pre-suit discovery to, not only preserve evidence of a witness who may not be with you at a later date for whatever reasons.

But also allows you to conduct pre-suit discovery to investigate clients before you file the claim. And that is a practice, which I've actually pursued recently last year in October, September last year [unintelligible]. Initial case assessment is a chapter of the book prepared by Mike Shalhoub and one of his partners Jill Owens from the Goldberg, Segalla firm in New York.

It provides a step-by-step menu and the question you would ask yourself as you begin to immerse yourself into the case. Initial interviews, initial legal analysis, and provide considerations for the reader if you typically represent plaintiffs or defendants, addressing issues of insurance, financial solvency, basically a common sense checklist of what to do and pitfalls to avoid.

Getting organized: this is and like I say, I have a favorite chapter in the book, but I will suggest that this is one the more creative things identified in the book. It was authored by Bob Christie from his law firm Christie law group in Seattle, Washington. When he gets a new case in, he actually creates a power point that it begins with just title slides.
And then he begins to back fill the case develops the plaintiff's trial theme, the defendant trial themes, and then he annotate the power point with key evidence hyperlinks to key documents or witness testimony. So at the end of a case, he could have a two hundred slide power point presentation, internal presentation where he can go to any issue in the case.

Flip a button and he's hyperlinked to a set of key documents or key witness testimony. I think it's a very effective technique. I've never used it before. I frankly had never thought about before. And this is again this is one of those epiphany moments that I had is I was editing this book.

I talked to him about this technique, and he says he's been using this technique ever since power point came in. So he's been in front of the curve. The--there's a chapter on summary judgment motions. This is a more or less a nuts and bolts guide to primarily summary judgement practice under rule fifty-six, in the federal rules.

The goal for movant, the objectives of a movant are identified and discussed, likewise, the objectives and goals of the responded obviously to defeat the motion. He talks about simplicity and focus on what to do and how to do it if you're a movant. And some of the strategies to help to see a summary judgment motion if you are the defendant.

Shifting risk with offers, prejudgment our judgment offers, this was actually published by lawyer in my firm, Alexander Wall. It focuses on federal rule sixty-eight when to make offers of judgment, when not to the practice tips shifting the risk.

It's a complicated formula both in rule sixty-eight. We have a state version also that has risk shifting that is fairly complicated. And everyone should understand these rules for each jurisdiction because misreading these rules and misinterpreting these rules could lead to highly negative results. Design and executing critical witness deposition: this was authored by Jerry Glass and one of his partners from the Dortch, Kerrigan law firm in New Orleans.

Basically a checklist of ten key points when you're preparing to take a critical witness expert of fact witness deposition in the case things to do and things to avoid. He also provide some demonstrative exhibit that he
has used as a result of testimony. And he's developed, and in fact by way of example did the witness actually recall the weather, no.

Did the witness--was she or he wearing a hard hat or other personal protection, no. Had he or she been to the facility prior to the day of exposure, no. All this could be graphically demonstrated on chart as being with really prepared, as the deposition is moving forward.

A similar chart is one he uses for experts. When he's taking the expert's deposition, he will go through simple questions like do you have a master's degree, no. Do you have a doctorate degree, no. Have you ever designed a product before, no? Have you ever developed a patent before?

And assuming that his own expert has contrary testimony that's all favorable, you can literally put a chart up in front of the jury and final argument with a bunch of no's on one side and a bunch of yes's on the other, which is a compelling graphic to demonstrate why your expertise more credible. Again ethos and logos on the opposing expert.

Making the kitchen hotter: how to file a motion to compel effectively keeping things simple, targeted, evidence preclusion as a primary goal to limit your opposing party. And who knows you may actually flush out the smoking gun, but practical considerations for filing motions to compel. It was written by David Pruitt from the life of Franklin firm in Birmingham, Alabama.

He also talks about the rule of what's good for the goose is good for the gander as frequently if you file a motion to compel the best defense is an offense. So those types of considerations are discussed. And then leaning ultimately to the final screenplay.

This is authored by Lee Hollis of again the life of Franklin firm in Birmingham, Alabama. Lee is also a friend of mine. He's a very impressive trial lawyer, has a very significant trial practice in Alabama and throughout the country actually. He basically takes everything we've been discussing and more obviously we have fifteen chapters there probably should be twenty, but we have fifteen.

But takes all the development of the case, the organization of the case that leads up to the moment where your policy and your motion and
[limiting]. You're polishing and finalizing the contents of your opening statement. You've had your jury input from focus groups and you're putting the final touches on your jury selection questions and [what are].

You're basically about to start the opening battle. He calls it the final screenplay. It's actually the last input that screenwriters is out before the actual movie starts. That's the essence of my presentation. I enjoyed working on the book. I've enjoyed talking to you about the book. The book I understand retails somewhere south of eighty dollars, approximately seventy-nine dollars.

I can't think of a better bargain for your money. You have lots of very creative insights about what we do for a living. Much of which you probably already know some of which I didn't know and now I do know. So I highly recommend this book as a quick, easy read a reference tool dependent upon where you find yourself in your practice.

I want to thank you very much. I think I've hit forty-five minutes almost on the dot. And I'll be glad to answer some questions as long as they're easy. So I'll open it up for questions.

Chandler Torbet Thank you Mr. McEntire, I would ask our operator to explain the question premises real briefly.

Operator At this time if you would like to ask a question, press star then the number one on your telephone keypad. Again, it's star one on your telephone keypad. We'll pause for just a moment to compile the Q & roster. There are no question at this time please continue.

Sawnie Mcentire You said there are no questions.

Operator Yes sir.

Sawnie Mcentire Okay, well that's all I have. I want to thank everybody who is on the line for participating. I think the ABA for the opportunity to speak. And Chandler I thank you for introducing me. So with that said, unless one of the two of you have any questions for me I guess we've reached a conclusion.
**Chandler Torbet**  Well thank you again Mr. McEntire for taking time to share with us your experience and wisdom on this matter and to tell us about this book. And thank you to everybody who joined us on the line.

We truly value your participation. Direct link to the recording of this podcast will be posted to the website at ambar.org\podcast. Please save the date for our next podcast scheduled Wednesday February thirteenth Mr. McEntire I just want to thank you again.

**Sawnie McEntire**  Thank you very much.

**Operator**  This concludes today's conference call thank you for participating you may now disconnect.