



Efficient & Effective Use of AI for Meaningful Witness Preparation

ISBA Civil Practice

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Efficient Use of AI

- Provides unlimited opportunities for witnesses to practice their testimony through simulated questioning
- Reduce preparation costs
- Builds greater ability to target areas for additional preparation
- Reduces stress through familiarization





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Effective Use of AI

Helps witnesses become more comfortable with the process and reduces anxiety that could impact their recall

Memory organization and timeline construction

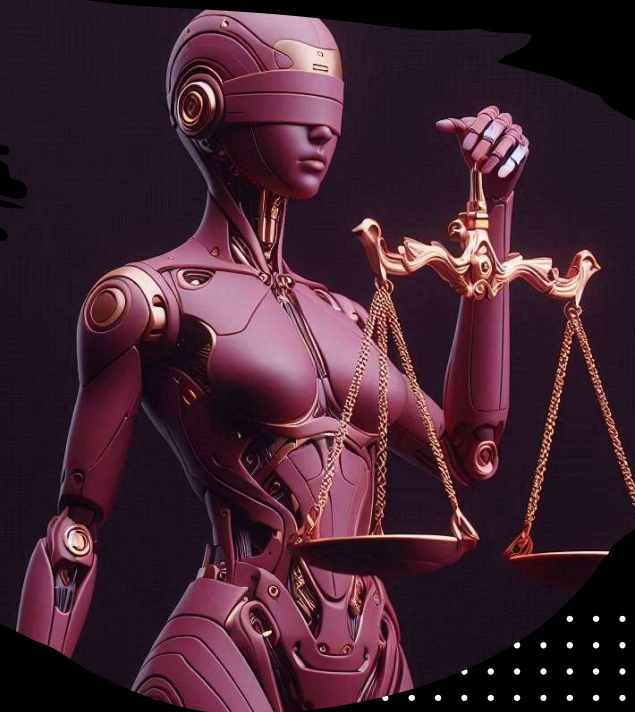
Directed and pointed constructive feedback

Greater confidence leads to increased success

Leads to better ability to handle inconsistencies or tough cross-examination

Meaningful Use of AI

- Promotes credible testimony
- Encourages witnesses to be appropriately cautious about claims and clear about what they do and don't remember
- Helps witnesses understand composure
- Results in more lasting behavioral changes
- Provides a neutral fact-finding approach



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Questions

Have you ever
incorporated AI into
your overall trial
practice?

Yes/No

Have you ever
incorporated AI for jury
selection or witness
preparation?

Yes/No

Articles

- Hoosier Justice: AI and Jury Selection in Indiana (Hoosier Justice: AI and Jury Selection in Indiana, Res Gestae, Sept. 2024, Vol. 68, No. 2, pp. 19-23)
- AI Assisted Jury Selection in Illinois: Promises and Perils (Promises and Perils: AI in Jury Selection in Illinois, Illinois Bar Journal, October 2024, Vol. 112 No. 10, pp. 26-31)
- Selecting the Right AI Tools for Witness Preparation (Indiana Lawyer, November 20, 2024)
- AI and Witness Preparation: A New Approach (pending publication)

Illinois Rules of Professional Conduct



Witness preparation, encompassing any advice or training provided to enhance the quality of a sworn testimony, is a cornerstone of effective legal practice

This duty stems from a duty to provide competent and diligent representation
Illinois Rules of Professional Conduct R. 1.3 (2024)

Formal ABA Opinion 508

“Effective Preparatory Guidance”



The ABA defined “effective preparatory guidance” as more than simply discussing anticipated testimony

It emphasized the need for comprehensive preparation to ensure accurate, credible & truthful statements (ABA Comm. On Ethics & Prof'l Responsibility (2023, August 5) Formal Op. 508)

Formal Opinion 508

- On August 5, 2023, the American Bar Association issued Formal Opinion 508 in which it enlisted numerous examples of permitted witness prep activities
 - Emphasizing the importance of telling the truth
 - A truthful answer of, “I don’t recall” is acceptable
 - Suggesting appropriate attire, demeanor & decorum
 - Asking the witness about their probable testimony & recollection
 - Discussing other testimony/evidence that may be presented & exploring witness’s version
 - Reviewing documents/physical evidence, including if necessary, refreshing witness’s memory
 - Identifying lines of testimony & expected cross-examination





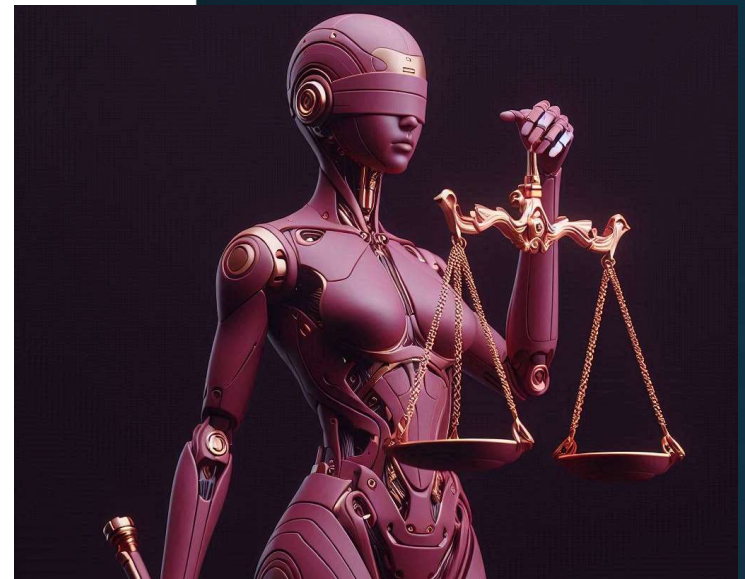
Other Examples of Permitted Witness Prep Activities

- Suggesting words, phrases or concepts to help the witness answer questions
- Telling the witness to wait until a question is complete before responding
- Advising the client to answer the question that is asked without volunteering information
- Testing the witness's recollection of events
- Refreshing the witness's recollection
- Discuss with the witness potential areas of cross-examination
- To test the witness's demeanor in response to cross-examination

Examples of Unethical Conduct in Witness Preparation

- The ABA also identified examples of unethical witness preparation
 - Counseling a witness to give false testimony
 - Helping a witness give false testimony
 - Advising a client to disobey a court order
 - Offering an unlawful inducement to a witness
 - Advising a witness to evade a subpoena to appear at a proceeding or to not attend any proceeding to which they have been summoned

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Preparation Process



The preparation process is not merely about rehearsing testimony, but about empowering witnesses to deliver truthful, accurate and persuasive statements

United States v. Brindley



The importance of witness preparation was affirmed at a bench trial in *United States v. Brindley*.

Federal agents raided Brindley's office and found four conflicting versions of witness question and answer forms used to prepare a client to testify. The prosecution contended that the conflicting question and answer forms were evidence that Brindley was coaching witnesses to lie under oath. As cited by: Hector, Matthew, The Beau Brindley Case: Witness Preparation v. Coaching, *Illinois State Bar Journal*, November 2015, Vol. 103, No. 11, p. 14; Finkel, Ed, The Perils of Witness Prep., *Illinois State Bar Journal*, May 2016, Vol. 104, No. 5, p. 20

Educating Witnesses About the Testimony Process



Familiarize them with courtroom procedures, roles of different participants & the types of questions they may encounter

Many witnesses are unfamiliar with these aspects of trial and may feel overwhelmed without proper guidance

Enhancing Communication Skills



Good Luck Mementos



Lack of Preparation



A lack of preparation can cause the witness to fill memory gaps with guesses or fabrications, leaving their statements vulnerable to cross-examination

Does Witness Preparation Work?



- Increased credibility
 - Prepared witness are perceived as being more credible because they use effective testimony delivery skills
 - A study by Boccaccino, Gordon & Brodsky found that witness prepping improved both accuracy and perceived credibility (Boccaccino, M.T., Gordon, T. & Brodsky, S.L., 2005, Witness Preparation Training with Real and Simulated Criminal Defendants, *Behavioral Sciences and the Law*, 23, 659-668)



Improved Trial Outcomes

- Studies suggest that witness prep can influence trial outcomes
 - Well-prepared witnesses are more likely to contribute to favorable verdicts (Boccaccini, M.T., 2002, What do we really know about witness preparation?, *Behavioral Sciences and the Law*, 20, 161-189)
 - Preparation is essential for achieving trial success (Singer, A., 1996, Practice Makes Perfect: The Psychology of Witness Preparation, *Trial*, 32(9), 70-74)

The Nordstrom Method for AI-Assisted Witness Preparation

This method is designed to streamline the preparation process while enhancing the accuracy and credibility of testimony (Nordstrom, R.R., 2024, November 20-December 3, Selecting the right AI tools for witness preparation, *Indiana Lawyer*, pp. 11, 16)



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Key Features of the Nordstrom Method



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Initial Session: Prepare a list of key questions for the witness to answer. During the first session, the witness records their responses using a voice-to-text device. This session should be conducted in a distraction-free environment and typically lasts less than an hour.



AI Analysis: After the initial recording, AI analyzes the statement, identifying areas for improvement and generating a word cloud to visualize key concepts and their frequency.



Follow-Up Session: In the second session, after the witness independently reviews the transcript of their statement, the attorney then discusses the AI-generated feedback, addressing any unclear or underdeveloped areas. Use positive feedback liberally. This collaborative review process fosters confidence and ownership in the witness's statement.

Nordstrom Method-Initial Session



In advance, the attorney prepares a series of key questions addressing fundamental aspects of the case

Questions are tailored to specific facts & circumstances of the case

Witness directed to a distraction-free environment

Witness records responses using a voice-to-text device

Plaud Recording Device - Initial Session



Nordstrom Method-Initial Witness Session Checklist

Step I



- The recorded statement should thoroughly address all relevant topics
 - Where & When: Date, time & environmental conditions
 - Physical evidence
 - Who: Conversations & actions taken
 - Why: Causation-what you did and what defendant did
 - What: Describe the event in detail as much as you can remember
 - How: Ongoing implications

Nordstrom Method-AI Analysis

Step II



The recorded statement is analyzed using AI tools to identify areas for improvement



AI algorithms can perform several AI algorithms can perform several key functions

Keyword analysis/word clouds
Emotional tone analysis
Content optimization



Submit statement to your AI program of choice

Poe
Claude
Chat GPT
Perplexity

Keyword Analysis: Word Cloud Context-Frequency-Sentiment

accident
leg
surgery
work
damage
trouble
ambulance
walking complications healing another serious recovery injuries standing three knee speed injury sudden years long time crash permanent sleeping ten never pins loud months healed unable pain fully



Nordstrom Method-Follow-Up Session

Step III



The witness independently reviews a transcript of their statement without the attorney present



This allows the witness, on their own, to reflect on their responses while identifying areas for improvement and clarification



The attorney then joins the witness, asks them how they feel about their statement & introduces the AI results (strengths & weaknesses) presented by the AI program being sure to use frequent positive feedback

Nordstrom Method-Prepping Expert Witnesses



The Nordstrom Method
can also be adapted for
expert witnesses

AI tools can analyze their
prior testimony, identify
potential vulnerabilities &
fact-check statements to
ensure consistency and
accuracy

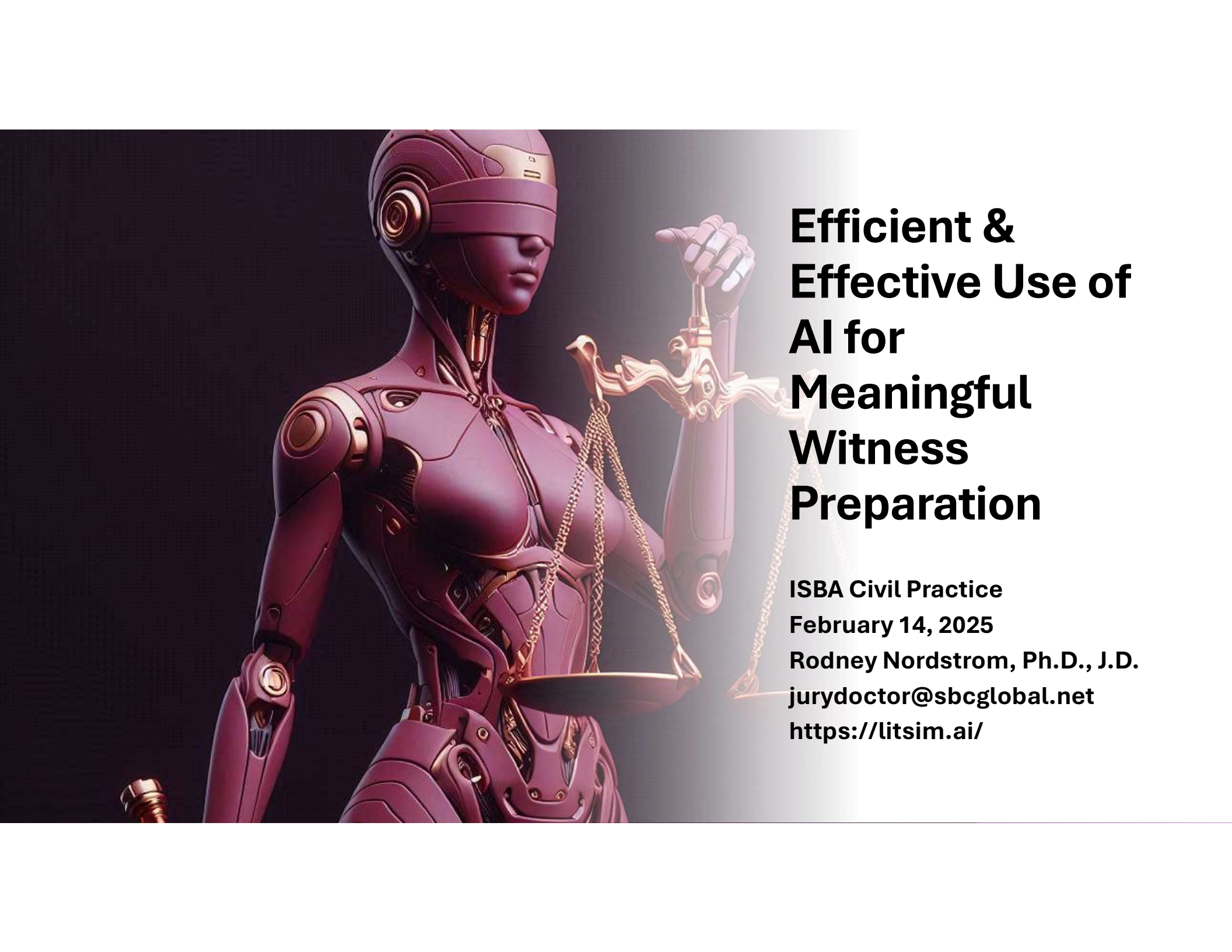
Final Thoughts



It is important to note that AI is a tool to assist attorneys, not a replacement for human judgment



Attorneys must carefully integrate AI-generated insights into their broader trial strategy, ensuring case theme consistency & adherence to ethical standards



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