



**Why Good Officers Give Bad Testimony: Practical Tips for Preparing Law Enforcement Officers**

(Session: Witness Preparation – It May Be the Difference Between Winning and Losing)

Adam Boesen, M.A.  
Julie Boesen, Ph.D.  
Boesen Litigation Consulting  
7301 Ranch Road 620 N  
Suite 155-109  
Austin TX 78726-4539  
(214) 205-5539  
[adamboesen@boesenlc.com](mailto:adamboesen@boesenlc.com)  
[julieboesen@boesenlc.com](mailto:julieboesen@boesenlc.com)

**Adam Boesen** is a founding partner and litigation strategist at Boesen Litigation Consulting, a national litigation consulting firm providing a spectrum of services, including strategic case assessment, theme development, witness preparedness, research trials, jury selection, and trial monitoring. Adam has been a senior advisor on over a thousand cases covering the range of civil and white-collar criminal claims in venues across the United States.

The following article is focused specifically on preparation of law enforcement officers facing suit under 42 U.S. Code § 1983.

This can be an alarming time to be a law enforcement officer accused of excessive force or willful indifference. We work with a lot of officers, and over the last year all have expressed to us in one way or another deep concerns that the social justice protests, the Derek Chauvin trial, and the increasing calls for sweeping police reform mean they won't get a fair trial. They openly wonder, "Will the jurors punish me just for being a police officer?" However, our research has shown that a vast majority of Americans from all walks of life do understand that there are "good cops" and "bad cops." Some jurors will have biases for certain, but most are willing to keep an open mind and do believe that the majority of officers are "good."

### Demeanor Creates Narrative

At trial, jurors believe job #1 is to figure out, "Is this a good cop or a bad cop?" Jurors come to judge a defendant the same way any of us sizes up a person we are meeting for the first time; by interpreting their demeanor first, and their words second. This means jurors' focus will be on scanning the officer for any signs of the officer's true personality. If an officer's demeanor signals frustration, aggression, annoyance, disinterest, smugness, anger, or any other negative attribute, jurors will come to assume this is an officer who cannot maintain their cool under pressure, and the burden of proof could shift in jurors' minds from the plaintiff onto the defense. This is all too common and clearly very dangerous. In contrast, when jurors see an officer who remains polite, professional, and engaged under pressure, they come to believe that is how the officer likely responded to the pressures of the incident of interest as well. An officer's demeanor creates a narrative in jurors' minds about whether the officers' decisions were based on training and good sound judgment, or not. Thus, an officer's demeanor under pressure can be more critical than either the evidence or the law.

### Why Good Officers Give Bad Testimony

Officers are often highly skilled at controlling their demeanor and remaining alert in threatening circumstances in the field. To be under oath is also to be under threat, but a completely different skill set is needed to deal with the threats of providing testimony than are needed in the field.

Good officers give bad testimony when they try to apply their field skills to testimony. These skills not only don't work, but they can also backfire spectacularly. In the field, officers are taught how to assert and maintain control of an engagement. Under oath, a witness has very little they can control. This can be more than disconcerting for an officer. If it catches them off guard, it can lead them to experience an array of emotions ranging from offense to vulnerability, or

even confusion. Worse, these emotions can escalate into the early stages of a physiological response we know as the fight/flight/freeze response. This can happen on the stand, or in a deposition, and it is very often catastrophic.

### Officers Need to Acquire Skills to Testify as a Defendant

Many officers have experience testifying in criminal court and so have developed testimonial skills. However, the skills required in the role of a defendant are vastly different from those needed to provide testimony against a criminal defendant. Witness skills training is a big part of what we do, but there are many things that counsel can do on their own. What follows is intended to be actionable by counsel.

### Knowledge Alone is Not Enough

Consider the following teaching analogy:

*Think of a child you are helping learn to ride a bike. You would likely start by talking to them until they understood the fundamentals. But what is going to happen when you set them on the bike for the first time? They will fall over, of course! Because talking about how to ride a bike is not enough to learn the skill of bike riding. The child needs time on the bike with either training wheels or a steadying hand. They also need to receive timely and actionable feedback on what they need to do differently any time they start to wobble. Most kids take some time to get through the practice stage. But at some point, they courageously put force into the pedals and launch themselves forward. It's like magic. Now they know how to ride! But they are not yet skilled enough to go out on their own. When they think they can ride safely they'll need to prove to you they are actually ready before they are allowed to ride alone.*

In the analogy above, three stages are represented: teaching, practicing, and testing. We have found that in most attorneys' witness prep, teaching is 90% of what is done. This is like telling a child how to ride a bike and expecting them to have acquired the skills to do so before they have even sat on the bike. We are not advising that counselors change anything from their carefully honed and time-tested witness preparation methods. Not at all. But we are recommending that they create time for steps that may be new. These steps are:

1. Teaching essential communication skills.
2. Conducting a practice session distinct from their standard prep activities.
3. Providing as realistic of a test as is possible.

### Step 1: Teaching the 5 Essential Communication Skills

Without time being spent on the importance of communication skills, witnesses often come to believe their job is to memorize their script and execute counsel's

case strategy because this is what the bulk of the prep time has been spent on. So, under oath the witness will tend to either regurgitate or provide spin control (or both), rather than listen closely, consider carefully, and deliver the simple truth. The following are 5 communication skills that are essential for effective testimony. By teaching these 5 skills counsel are making it clear that these skills are what is expected of the officer, not recitation or “spin.” Officers will differ in terms of which of the 5 skills are their personal strengths and weaknesses. But all 5 skills are essential, and so the goal for counsel is to identify and shore up the weaknesses.

1. **Listening Skills.** The question should be completed before the officer even begins to think of an answer. The officer must learn to listen to the whole question, or they will misinterpret it.
2. **Thinking Skills.** A witness must carefully consider and know their whole answer before they begin to speak it.
3. **Speaking Skills.** A witness needs to deliver their answer with calm conviction. A testifying officer should never use their voice tone for dominance and control the way they would in the field.
4. **Focus Skills.** Jurors believe the truth is simple and lies are complicated. Officers need to stay within the scope of the question or risk appearing dishonest. An officer who rambles or provides defensive explanations to simple fact questions will not be trusted by jurors.
5. **Demeanor Skills.** The officer’s demeanor on the stand will demonstrate to jurors the strength and depth of their character. Jurors will trust the officer who remains polite, professional, and engaged no matter how they are treated by opposing counsel.

### Step 2: Engage in Realistic Practice with Actionable Feedback

Witnesses need a chance to put the 5 skills into practice. Counsel can help them pivot to practicing their skills by making it clear that there will be a role play where the officer is to truly act as if they are on the record. If the officer wants to break character to ask a question, that is fine, but they need to know when they are “on” and “off the record,” or they will remain conversational, and the 5 skills won’t be utilized.

Counsel should call for timeouts when they see one of the 5 skills not being applied, and counsel’s feedback should be limited to the skill itself. Avoid providing messaging or strategy advice in the practice session, or you risk the session moving back into standard prep.

### Step 3: Pressure Testing

The value of a “pressure test” for counsel is that they will get a better understanding of what to expect of the witness under oath. The value to the witness is that it gives them insight into what to expect and how to deal with the

real pressures of testimony. The more realistic the test, the more it serves to inoculate the witness from the risk of feeling blindsided at deposition or trial. Witnesses perform differently in prep than under oath because the pressures of real testimony are not present in counsel's offices. To be under oath is to be under threat. That cannot be fully simulated in prep, but other pressures can be. The following tips can help to "up the pressure" when it comes time for testing.

- Real Testimony is Very Public
  - Bring in unfamiliar staff to observe.
  - Do not introduce the audience to the witness.
  - Tell the audience to stay stoic, aloof, and focused.
- Witnesses Likely Have Never Met Opposing Counsel
  - Have a talented colleague step into the role of examining counsel.
  - Do not introduce them to the witness.
- Under Oath Is on the Record with No Timeouts or Do-Overs
  - Examining counsel should stay in character if the witness asks for a timeout.
  - It's okay to take breaks, but always stay in character.
  - Conduct the test in an unfamiliar, formal setting.
  - Videotape the test.
  - Inform the witness they will have to explain and justify any unexpected testimony.

### The Lessons Are Universal

This article was developed to help counsel better understand why good officers sometimes return bad testimony, how devastating it can be for the outcome of a case, and what counsel can do to avoid unnecessarily bad testimony. However, many of the same challenges and solutions are relevant to defendant witnesses of all backgrounds and for the array of civil claims.