



# Virtuous Policing

Bridging America's Gulf Between  
Police and Populace



David G. Bolgiano  
L. Morgan Banks, III  
James M. Patterson

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# **Virtuous Policing**

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Between Police and Populace**

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# Foreword

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It is always an honor to be invited to write a foreword for a new book, but this one is special to me. I have known the authors for the better part of 20 years, and have been in their company at military and law enforcement conferences and training functions throughout the United States. I have been enlightened by their knowledge and experience, and inspired by their passion and commitment to the police officers and warriors of our country. This book is an expression of that passion and commitment. But it is far more than that—it is a labor of love, by three tried and true warriors, who are self-confessed “cop and warrior lovers.” Only they could write this book. But it is not for the faint-hearted. It pulls no punches, shuns no controversial topic, and glosses over no issues or problems that beset America’s law enforcement community in our day. They do not spare the rod for the ill informed or the ill intentioned—those terms are not mutually exclusive—who stand on the sidelines and cast stones at those who willingly risk their lives to protect their right to do so. Nor do they make excuses for those within the ranks of the cops and warriors—particularly those in leadership positions—who too often betray their oaths and duties by confusing risk avoidance with risk management.

Some may disagree with the authors’ conclusions, and some may be shocked by their candor. But I think that most readers—particularly that “vast majority of the good cops” described by the authors—will be inspired and encouraged to honestly and objectively survey the scene in search of real problems and effective solutions. During my 32 years of service as an FBI special agent, I had the privilege to meet and interact with literally thousands of America’s law enforcement officers. I have marveled at the number who selflessly left better-paying jobs and opportunities for a dangerous career of service, and I often wondered why. In fact, I’ve put that question to many whom I have met. As might be expected, the answers were as varied as the number of officers queried, and yet, there was a “golden thread” that ran through them that can best be described by these phrases, which I heard repeatedly: “I wanted to do something important,” “I wanted to make a difference,” “I wanted to give something back to my country and my community,” and “I wanted to help people.”

These statements, coupled with my personal observations of the officers' performances in the real world, encourage me to share the authors' high regard for the high aspirations of that vast majority of good cops. Too often those high aspirations are put to the test, as their job compels them to confront human nature at its worst. It would be unrealistic to think that none would become hardened or cynical as a consequence. The authors are not unrealistic. They neither ignore these realities nor exaggerate their effects. Most importantly, they strive to identify the causes—particularly those within the law enforcement community itself—and suggest solutions. Indeed, they honestly and courageously acknowledge the truth that not all cops and warriors are virtuous, and they candidly identify specific trends and friction points that work to separate the peacemakers from the communities they have sworn to protect and serve.

For those who may be prone to suspect the motives of these self-confessed lovers of cops and warriors, the title of this book—*Virtuous Policing: Bridging America's Gulf Between Police and Populace*—should be sufficient to allay such concerns. Knowing the authors as I do, I'm sure that they have no delusions about the obstacles to achieving this lofty goal, but being the warriors that I know them to be, I'm equally sure that they will not shrink before the challenges. If, as Winston Churchill once wrote, "virtuous motives, trammled by inertia and timidity, are no match for armed and resolute wickedness," then it follows logically that armed and resolute wickedness are no match for virtue that is untrammled by inertia and timidity. Clearly, the authors of this book are not trammled by either inertia or timidity. God bless them!

**John C. Hall**  
*Supervisory Special Agent*  
*Federal Bureau of Investigation (Retired)*

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# Preface

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In his gracious foreword to one of the authors' earlier works, *Combat Self-Defense*, Lieutenant Colonel Dave Grossman set forth his now-famous sheep, wolves, sheepdogs paradigm, in which law enforcement officers are cast as sheepdogs: the heroic societal shield between the flock and its predators. While police officers are indebted to Colonel Grossman for this, as well as for his body of work examining the behavioral dynamics of humans under combat conditions, the paradigm itself has been perverted to mean something never intended—that law enforcement officers are separate and apart from society or the flock. The sheepdog must *always* remain part of the flock; otherwise, a dangerous “us-versus-them” dynamic develops that is unhealthy to all good people and to society.

Recent events, such as the rioting, looting, and protesting that were the aftermath of the officer-involved shooting in Ferguson, Missouri, are too often driven by ignorance and emotion. While acknowledging that both ignorance and emotions are inseparable from the human condition, we will nevertheless endeavor to focus on tactical realities, legal principles, and well-settled ethical considerations in an effort to reach some ultimate truths about such cases. Right reason—not raw emotions—should drive any serious inquiry into these penultimate police–populace friction points.

In order to better understand these friction points, we will critically examine some specific fault lines and rifts between police and the populace. Our worst scenario is for the us-versus-them mindset to develop into an actual internecine warfare, as warned of in John Ross's 1996 prophetic tome *Unintended Consequences*. Or worse, where Ferguson becomes the new norm and police are forced to militarize themselves in order to survive. With the ubiquity of information—true and untrue—found on the Internet, technologies that have substantially diminished personal privacy interests, and omnipresent and sometimes overly intrusive laws, the friction points between heretofore law-abiding citizens and their police forces are in danger of increasing in number and magnitude.

Since it is doubtful that civilization could or would desire to turn back the clock of technology in a self-imposed curtailment of its wrath, the only things we *can* control are our laws and societal rules on how the police and the populace interact. Most of the law enforcement policies,



procedures, and leadership methods we analyze will be done through the overarching lens of the cardinal virtues: self-control, justice, competency, and moral courage. Using case studies of some famous and not-so-famous police–populace interactions, we pick at them solely with the intent of our society collectively and sincerely learning from its mistakes. If we keep sticking our face into the same chainsaw—a simple definition of insanity—we risk falling off the cliff into either anarchy or a police state.

The authors are self-admitted cop and warrior lovers. We have spent the better part of our professional lives working as law enforcement officers, serving as soldiers, training with both of them, or as prosecutors in the military and civilian courts. The “average” law enforcement officer swears an oath, pins on a badge, and places his or her life in jeopardy by agreeing to be that part of the flock that must deal with life’s unpleasant underbelly: murders, rapes, armed robberies, suicides, burglaries, petty thefts, prostitution, and drug dealings. As such, society owes them a degree of respect and deference.

But we also recognize that society places a great deal of trust in that average police officer. The powers to detain, investigate, and if necessary, take a life, are immense. All of this authority comes with concomitant responsibility. Most officers shoulder this admirably on a daily basis. It is for the vast majority of the good cops that we write this book. Having done so, we also acknowledge that it takes only a small minority of bad cops—especially in leadership positions—to spoil the lot. The evil minority of toxic police officers are either willfully ignorant or too pusillanimous by nature to be rehabilitated or made trusted members of the flock. Either way, they must be confronted by the collective good of our society with courage, justice, competency, and self-control. This must never be done with rage or vindictiveness. If ever our passions override our reason within these pages, we ask forgiveness. But, more importantly, we ask the reader to read beyond these errors in an effort to seek the greater truths possibly contained herein.

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## STYLE AND TERMINOLOGY

In order to keep this book readable and concise, we used the terms *police officer*, *cop*, and *law enforcement officer* to apply to all those sworn officers who protect the public, including policemen and women, sheriffs, deputies,



corrections officers, and military police. Additionally, we often used the word *he* or *man* for ease of reading and certainly intend no offense to those dedicated female officers who serve. Similarly, we used the term *soldier* to include all those military officers, warrant officers, noncommissioned officers, and enlisted personnel who serve in all of our services, including the Army, Navy, Marine Corps, and Air Force.

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# Acknowledgments

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We owe a personal debt of gratitude to some of the very best that law enforcement and the military have to offer in terms of leaders. Too large a group to single out everyone, we feel it is important to acknowledge those who have positively impacted our careers personally and have honorably and courageously served our great republic: Supervisory Special Agents John C. Hall, Urey Patrick, and Tom Petrowski of the FBI; Major General Gary L. Harrell, U.S. Army; former Navy SEAL, Maryland state trooper, and Secret Service agent Frank Larkin, now serving as a sergeant-at-arms, United States; Majors Jeffrey Rosen and Frank Melcavage, Baltimore Police Department; a host of fine operators from the military and law enforcement worlds, to include G. John Taylor, W. Hays Parks, Jason “Doc” Mark, Command Sergeant Major Mark Berry, Guy “Buddy” Johnson, George “Butch” Rogers, and Frank Barile of the Baltimore County Police Department; Jeff Kirkham, Mark Royka, Frank Short, and Jim Hicks at the Department of Defense and Drug Enforcement Administration; Gary Greco, Mike Braun, Tom Sheperd, Randy Watt, Tom Samples, and Bill Lewinski, Scott Burhmaster, and Patricia Thiem: the core team at Force Science Institute and all of that organization’s instructional staff of experts; the late Dr. Richard Ward at the University of New Haven; and Chief Dean Esserman of the New Haven Police Department. Last, all the terrific officers in southeastern New Mexico with whom we have worked intimately over the past few years. These persons individually and collectively epitomize the selfless qualities needed to make virtuous policing and leadership a reality. We wish to sincerely thank our publisher, Carolyn Spence, and the Taylor & Francis production team. Their patience, diligence, and suggestions made our book a better product. We, the authors, are responsible for any error, omission, or poor wording. None of these individuals, except where specifically cited, are responsible for any of the content of this book. That is the sole responsibility of the authors. We also wish to express our undying love and gratitude to our families for enduring our time away from them both on missions for our country and in writing this book.

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# About the Authors

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**David “Bo” Bolgiano, JD, MSS**, is a retired military officer and former Baltimore police officer with more than 34 years of combined service. He has served in multiple combat deployments with Special Operations Forces and in the 82nd Airborne Division in Iraq and Afghanistan. He last served as a faculty member at the U.S. Army War College. Bolgiano is the author of *Combat Self-Defense: Saving America’s Warriors From Risk Averse Commanders and Their Lawyers* and coauthor, with Jim Patterson, of *Fighting Today’s Wars: How America’s Leaders Have Failed Our Warriors*. Bolgiano currently trains, lectures, and testifies as a recognized use-of-force expert for police and military clients and audiences.

**Morgan Banks, PhD**, is a psychologist and retired colonel in the United States Army. With more than 37 years of service, most of them spent as an operational psychologist, he helped establish the Army’s Survival, Evasion, Resistance, and Escape Program, the psychological screening program for Army Special Forces personnel, and, prior to his retirement, was the Army’s and USSOCOM’s senior psychologist. Dr. Banks has worked extensively in the field of counterterrorism and has been deployed to both Afghanistan and Iraq. He has often written and lectured on the use and ethics of operational psychology.

**James M. Patterson, JD, LLM**, is a retired Special Forces–qualified Army Colonel with more than 36 years of service. He previously served with the 82nd Airborne Division, the 7th Special Forces Group, and the Asymmetric Warfare Group. He was also Command Judge Advocate for the 1st Special Forces Operational Detachment-Delta. A multiple-tour combat veteran of the Global War on Terror, Patterson also has experience as a sworn law enforcement officer in the American Southwest. He has written and lectured extensively in the fields of international law, use of deadly force, and operational law.

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# 1

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## *Introduction*

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Over the past two decades, we have had the honor to represent, treat medically and psychologically, or provide expert testimony on behalf of individuals charged criminally as the result of using deadly force in the line of duty. These young men and women—either law enforcement officers or warriors in the military—represent some of the finest human beings our republic produces. Full of courage, good intentions, and a desire to fight on the side of good against evil, they are also very human. Some are full of vim and vigor, possessing that bravado that many type-A alpha males and females exhibit. Others are quiet, patient, and even shy. Through the fault of others, they are thrust into an often negative limelight—sometimes even facing criminal charges for doing what society asks of them and for which society itself lacks the stomach or courage. These are men and women that respond when something “goes bump in the night.” Instead of cowering under the sheets, calling the police, and praying nothing goes wrong, these folks volunteer to investigate that “bump,” often to their physical peril.

After the dust settles, the bullets stop flying, and the last vestiges of the news media clear out, these police and military members’ real troubles often begin. Almost immediately, whether it is after a shoot-out with suspected insurgents in Iraq or a police officer’s use of force against a violent suspect in urban America, the second-guessers, naysayers, politicians, and others too afraid to physically try to “free those in Tibet” begin their chattering nincompoopery: “Why did the officer have to shoot that poor young man? He was only armed with a knife!” “Why didn’t they swarm the suspect?” “The police should have used minimum force.” “He was unarmed and surrendering.” The list could go on and on. But all of these postincident commentaries fail for two major reasons: They ignore the tactical dynamics of a close deadly force encounter, and they fail to take the side of the good guys.



Winston Churchill once stated, “I utterly refuse to remain neutral between the fire brigade and the fire.” Too often, those judging the actions of our young police officers and warriors expect or demand that it should be a fair fight. This is the definition of insanity. For if one refuses to acknowledge there are good guys, then why fight at all?

Time and time again, prosecutors, judge advocates, mayors, and even chiefs of police or military commanders—often themselves unskilled in the realities of a deadly force encounter and ignorant of the actual laws surrounding such encounters—superimpose their own notions of reasonableness onto a case after the fact. This is something our courts have often said:

We must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes “reasonable” action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.\*

Sometimes, political pressures, from either an angry civil rights group or a foreign government, compound this woeful ignorance or otherwise wrongly influence our system of justice. Either way, the least powerful person in the equation is sacrificed: the young warrior or police officer at the tip of the spear. If a general officer, or even the president of the United States, is not held legally accountable for the thousands of civilian, noncombatant deaths they cause when they order a Joint Direct Attack Munition (JDAM) bombing or Hellfire missile strike from an unmanned aerial vehicle, then how in good conscience can they hold young warriors responsible for unintended deaths resulting from split-second decisions of close-quarters combat?

This issue goes unnoticed by most in the press, who assume—wrongfully—that the military chain of command or civilian prosecutors know enough about the subject to make a wise and just determination when exercising their prosecutorial discretion. The fact remains that they do not. The press also often has an agenda other than seeking the truth: Titillating stories of a “rogue” cop or soldier sell more copies than the truth. But, especially in urban areas, all this does is widen the chasm

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\* *Smith v. Freland*, 954 F.2d 343, 347 (6th Cir. 1992).

between citizens and police. We, as a society, should collectively cringe and shame the media for repeating the irrelevant matter of an officer's or suspect's skin color. Absent some showing of a premeditated racial animus on either party, people simply do not have time to discern skin color during a violent encounter. Yet, all sides of the political spectrum of news outlets constantly strum the racial chord: "Unarmed *Black Male* Shot by *White Officer*."

One of the unfortunate but predictable results of this is a breakdown of the trust between the warrior and his or her leaders. When this happens, we often will see an increase in actual inappropriate behavior by the warrior. In other words, if the soldier or cop believes that he is "on his own," he will most likely still do what he thinks is right, but then he will cover it up, or he will act in a manner that increases the gap between himself and his leadership. When he believes that he is being asked to put his life at risk without the support of his leadership, he will find ways to justify actions that no one could question. Or, as a police officer, he or she will simply stop policing. And, in neighborhoods like Ferguson, where crime is a recurrent problem, it will be the citizens that suffer the most by this reduced enforcement.

When this lack of trust then extends to the population they serve, the social contract between the police or warrior and the people is destroyed. The result of this is most apparent in some of our large inner cities, where the police are not trusted, but only feared or hated. It is also readily apparent in modern combat zones where soldiers, even when shooting with provocation at a suspected jihadist insurgent, feel compelled to plant additional evidence at the scene. This is emblematic of the lack of trust between both warrior and leader, and warrior and the society in which he operates.

This is not to say that young police officers or soldiers do not have a clear duty and responsibility to act virtuously and within the scope of their lawful authority. If a soldier or cop randomly or carelessly shoots innocent civilians or noncombatants—essentially using force without lawful authority—then, he would be guilty of murder, manslaughter, or negligent homicide and should be fully prosecuted.

But, the overwhelming majority of our young men and women who volunteer to put on the uniform are not sociopaths. They do not wake up in the morning thinking, "I hope I get to kill someone today" (unless, of course, that someone is an Osama bin Laden-type terrorist). We expect virtue in our police and military ranks.