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## **GOLD BADGES CAN BE THE PROBLEM**

***“Ordinary” cops often know what’s best. They should act on it.***



*For Police Issues by Julius (Jay) Wachtel.* It wasn't Buffalo's best weekend. On Saturday evening, May 30, protesters besieged Niagara Square, the city's government center. Vandals quickly [capitalized on the disorder](#). After setting a bail bonds van on fire they tried (albeit, unsuccessfully) to torch City Hall, [then went on a looting spree](#). Two days later an S.U.V. "barreled through" a group of cops, [striking three](#). A state trooper was seriously injured, suffering a broken leg and shattered pelvis.

Lamenting that lawful protests were being used as "a cover to loot, to vandalize, to throw rocks, to try to injure," Mayor Byron Brown [declared an 8 pm curfew](#), to remain in effect through the following Sunday. He also implored his constituents to tone it down:

Protest with a purpose, and peacefully. If you don't have a purpose to protest, if you don't have a message to protest with, stay home...please do not protest unnecessarily...the message is out. We get it. We feel it...as a black man who happens to be mayor, or a mayor who happens to be black, I feel the sting and pain of racism every single day myself.

His heartfelt message had little effect. Two days later, on Thursday, June 4, [demonstrators blockaded City Hall](#). Police cleared the front of the building, making several arrests. Hours later, as curfew began but demonstrations continued, the city's nearly-60 strong tactical team moved in on protesters who remained in Niagara Square.

That's when "it" happened again. As often happens, "it" was [captured on video](#). As Buffalo's specially-formed riot squad marched towards the non-complying delinquents, [Mr. Martin Gugino](#), a septuagenarian "peace activist" [walked right up](#) holding "what

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appears to be a phone in his right hand and a helmet in his left.” A pair of officers positioned directly in front of their commander (he’s the one with the gold badge) promptly pushed Mr. Gugino away, by all appearances not very forcefully.



Alas, the elderly activist lost his balance and fell backwards. His head forcefully struck the ground, and a pool of blood promptly formed. While the formation kept going, one of the officers who shoved him knelt to render aid. But the one with the gold badge pushed him away. After all, the old-timer wasn’t their objective. Keep moving!



Alas, the officer obeyed. Without as much as kneeling to check the man’s pulse, his superior placed a quick radio call (assumedly, to summon medical help) and quickly rejoined the team. He in effect abandoned a stricken citizen. Momentarily officers at the front encountered a picketer and handed him down the line. The “job” was on!

A couple weeks ago in [“Punishment Isn’t a Cop’s Job”](#) we commented on the “impassivity,” the “look of indifference” on that long-serving Minneapolis cop’s face as he pressed his knee against a citizen’s neck. Two rookies were present, and at least one expressed concern that maybe – just maybe – George Floyd really *couldn’t* breathe. But the training officer ignored him.

Something very much like that happened again. Why?

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Perhaps because Buffalo P.D. conflated its team with a military unit. That identity likely took hold when the riot squad was conceived and was carried over into training, then into the field. Whatever the one with the gold badge wants, they get. And when a misguided leader abandoned the seriously injured man and relentlessly kept his “troops” moving towards their objective, the silver badges obeyed. So it’s their fault, too. After all, it’s not as though the cops were under attack. They were rounding up curfew violators! There was no reason that the team couldn’t have paused or that several members couldn’t have fallen out to carry out the core function of the police – their *raison d’etre*: helping citizens, even elderly truants.

But they didn’t. That “[lack of concern](#)” (the words of State Attorney General Letitia James) deeply troubled Erie County Executive Mark Poloncarz:

The officer who pushed the individual down, I think he realized right away the gentleman was severely hurt, and it looked like he was reaching down to help him. And then his superior seemed to push him to go forward. That one action, I hope, does not destroy the efforts of so many to reach that agreement for all, that we can work together.

Bottom line: a gold badge directed his officers away from their *real* job. And as in Minneapolis, the underlings went along. In other times there might have been little blowback. Not *this* time. Exploding in the media, the incident ricocheted through a deeply polarized landscape and provoked even more antagonism towards the ruling class. As in Minneapolis, worried politicians instantly reacted. Calling the episode “fundamentally offensive and frightening,” [Governor Andrew Cuomo promptly urged](#) that the two Buffalo officers be fired and criminally investigated.

He got his wish, and more. Within one day of the episode Buffalo’s mayor suspended both officers suspended without pay. (His action led every member of the team [to resign from the unit](#).) And merely one day after that, [both cops found themselves under arrest for 2nd. degree felony assault](#). To make the case stick Erie County prosecutors will have to prove that the officers *intended* to injure a person over the age of 65 and at least ten years older. Both cops pled not guilty and were released pending their next court date, on July 20.

Well, Mr. Gugino is *seventy-five*, so the age thingy isn’t at issue. (At this writing he’s thankfully improved and is in “serious but stable condition.”) Yet we’ve repeatedly watched the video and can’t fathom how the State intends to prove “intent to injure.” Both officers were marching directly in front of (and assumedly protecting) their commander. Mr. Gugino clearly interfered with the team’s progress, and that shove to get him out of the way doesn’t seem violent. For a prosecutor to argue that the officers

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*intended* to make him fall and crack his skull seems a very big stretch. Beyond a reasonable doubt? No way. On the other hand, [third-degree assault](#), which can be satisfied by reckless conduct alone, is a misdemeanor. Natch, in these ideologically charged times, county prosecutors – they’re politicians, after all – are unlikely to risk being accused of favoring rogue cops. Whether jurors might, who knows?

To be sure, what the silver badges did was nonetheless troubling. [A recently updated page](#) of DOJ’s “law enforcement misconduct” section points out that officers who fail to intervene when colleagues are violating someone’s Constitutional rights can be held civilly and criminally liable. That’s not news to the police, for whom such regulations are relatively commonplace. For example, [here’s an extract from the LAPD manual](#):

210.46 EMPLOYEE'S DUTY TO REPORT MISCONDUCT. The reporting of misconduct and prevention of the escalation of misconduct are areas that demand an employee to exercise courage, integrity, and decisiveness. Department Manual Section 3/813.05 requires that when an employee, at any level, becomes aware of possible misconduct by another member of this Department, the employee shall immediately report the incident to a supervisor or directly to Internal Affairs Group. Furthermore, an employee who observes serious misconduct shall take appropriate action to cause the misconduct to immediately cease. The fact that a supervisor is present and not taking appropriate action to stop the misconduct does not relieve other employees present from this obligation.

Minneapolis has had a like policy on the books for several years:

### 5-303.01 DUTY TO INTERVENE (07/28/16) (A-D)

- A. Sworn employees have an obligation to protect the public and other employees.
- B. It shall be the duty of every sworn employee present at any scene where physical force is being applied to either stop or attempt to stop another sworn employee when force is being inappropriately applied or is no longer required.

Ditto, Buffalo ([General Order 2019-010, Section 6.2E](#)):

### DUTY TO INTERVENE

Any officer present and observing another officer using force that he/she reasonably believes to

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be clearly beyond that which is objectively reasonable under the circumstances shall intercede to prevent the use of unreasonable force, if and when the officer has a realistic opportunity to prevent harm.

Thanks to current events, “duty to intervene” policies are being quickly adopted by agencies that lack them (for Dallas, click [here](#).) Yet our reading suggests that both existing and new policies tend to focus on use of force, not on rendering aid. They also fail to articulate that the obligation to help citizens in distress overrides supervisory directions. Of course, authorizing underlings to decide whether to obey orders is fraught with complications. Until police management experts untangle that issue, agencies ought at a minimum to abandon the military approach to police operations. They should also explicitly direct officers and supervisors to immediately stop and provide aid should someone appear to be in even moderate distress. And to remain there until, say, the medics arrive.

And yes, as far as we know, the (disbanded) unit’s leader still has that gold badge.