

DUTY TO INTERCEDE

Conceptual, Cultural & Legal Aspects



Webinar Recording



Please Watch the Entire Webinar

The remaining slides in this PowerPoint are from the webinar.

DISCLAIMER

The materials provided in this webinar are for general informational and educational purposes only. The materials are not intended to be and should not be considered legal advice or opinions. You should not act upon any information presented without first seeking legal counsel on your specific matter.

The use of information and video from actual incidents is only intended to enhance the training value of the content—not to discredit or criticize officers or agencies. Fact patterns cited are from press sources and/or from the relevant case law and have not been independently verified.

TODAY'S PRESENTERS



**CHIEF (RET.)
MICHAEL RANALLI**
Program Manager II
Lexipol



LAURA SCARRY
Partner, DeAno & Scarry, LLC
Attorney, Lexipol

OVERVIEW

- Duty to intercede – what is it?
- Legal and policy requirements
- How to make it work – tactically and culturally

LAW VS. POLICY

- Legal duty to intercede may be different than department policy requirements
- Legal – requires plaintiff to establish and prove certain elements
- Policy – may be more restrictive than law

LEGAL DUTY TO INTERCEDE

“Duty to intercede” cannot be possible without having one of three underlying violations first:

1. Excessive force
2. False arrest
3. Deprivation of medical care

FAILURE TO INTERCEDE



LEGAL DUTY TO INTERCEDE: CORRECTIONS

Also applies to corrections officers,
not just law enforcement

2nd CIRCUIT: DEFINITION

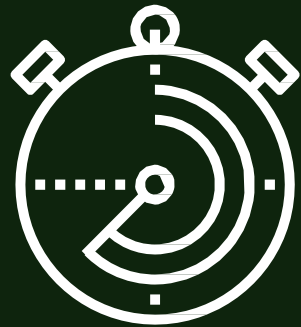
“A police officer is under a duty to intercede and prevent fellow officers from subjecting a citizen to excessive force, and may be held liable for his failure to do so if he observes the use of force and has sufficient time to act to prevent it.” *Figueroa v. Mazza*, 825 F.3d 89, 106 (2nd Cir. 2016)

7th CIRCUIT: PLAINTIFF MUST PROVE..

1. Officer alleged to have committed primary violation used excessive force on Plaintiff.
2. Defendant knew that Officer was/was about to use excessive force on Plaintiff.
3. Defendant had a realistic opportunity to do something to prevent harm from occurring.
4. Defendant failed to take reasonable steps to prevent harm from occurring.
5. Defendant's failure to act caused Plaintiff to suffer harm.

TIME MATTERS

“Liability will be imposed only if the bystander officer or supervisor has sufficient time to prevent the unlawful act.”



KEY ISSUES

- Affirmative duty to **act or report**, depending upon circumstances
- One officer may set an incident in motion that other arriving officers will not understand
- Must have a subjective component to the rule
- “Well, it was his/her call, I was just backup” is not good enough

KEY ISSUES

- Need to recognize when other officers need a “tap out”
- “It was just a matter of time before that guy did something like that” = cannot exist in police culture
- Not just about UOF cases

So how do we do this?

DUTY TO INTERCEDE POLICY: POLICE

300.2.1 DUTY TO INTERCEDE

Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. An officer who observes another employee use force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor.

DUTY TO INTERCEDE POLICY: CORRECTIONS

512.3.2 DUTY TO INTERCEDE

Any officer present and observing another staff member using force that is clearly not within this policy is expected, when reasonable to do so, to intercede to prevent the use of such force and in all cases report the use promptly to a supervisor.

INTERNAL LEGITIMACY

- Involvement of subordinates = good communication
- Crew Resource Management (CRM) and Threat Error Management (TEM)
 - ✓ Prevent *CFIT*: Controlled Flight into Terrain
 - ✓ Integration of CRM into everyday operations – not just UOF cases
- *Communication between peers*

CRM IN MEDICINE

- Team responsibility for care
- A belief/understanding of fallibility
- Peer monitoring
- Team member awareness of care status, team member status and available resources

CRM IN LAW ENFORCEMENT

Sources of risk:

- Malice
- Lack of training/experience/skill
- Anger
- Hormonal dump due to fear/strong emotional response

Follow-up depends on situation, but

malice = discipline/arrest

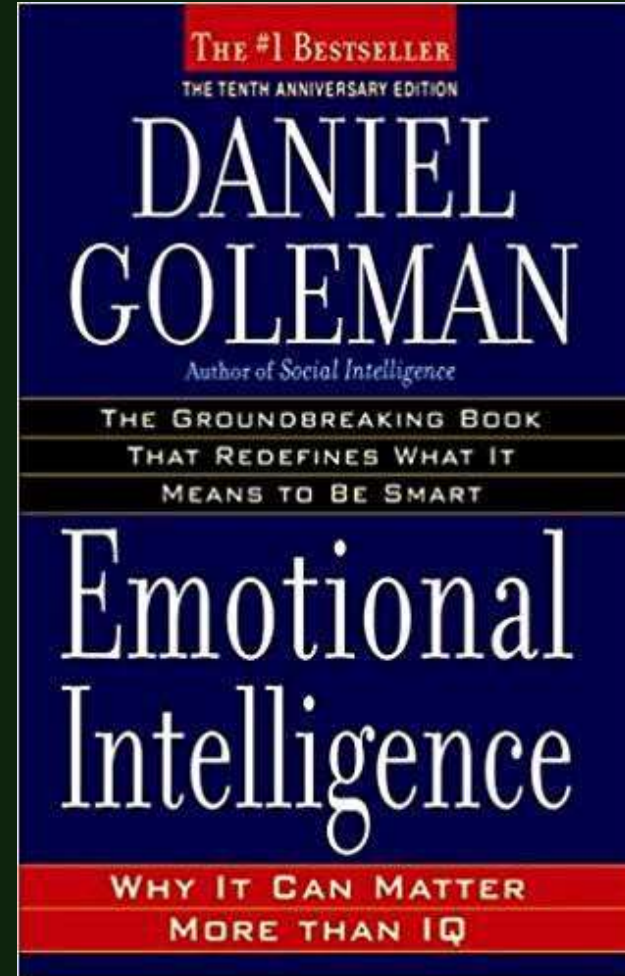
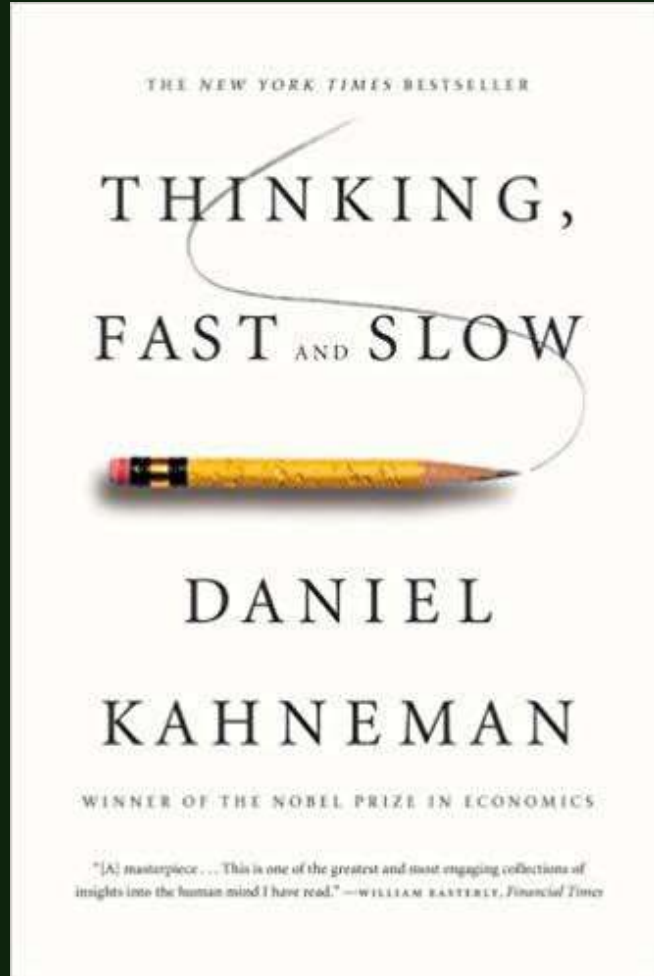
LEGITIMACY AS A GUIDE

- Legitimacy = Legal PLUS the right thing to do
- Critical components:
 - ✓ Solid legal foundation [BASIS OF DEFENSE]
 - ✓ Solid safety foundation [PRIORITY OF LIFE]
 - ✓ Solid goals and objectives for actions
[e.g., community complaints & buy-in]

LEGITIMACY AS A GUIDE

- Effective communication is essential – no “hint and hope”
- Must have respect on both sides of the message – delivery and receipt
- What would YOU want if it were you or a family member?
- Sometimes we are human and just need help...

THE PROCESS OF THINKING: RESOURCES



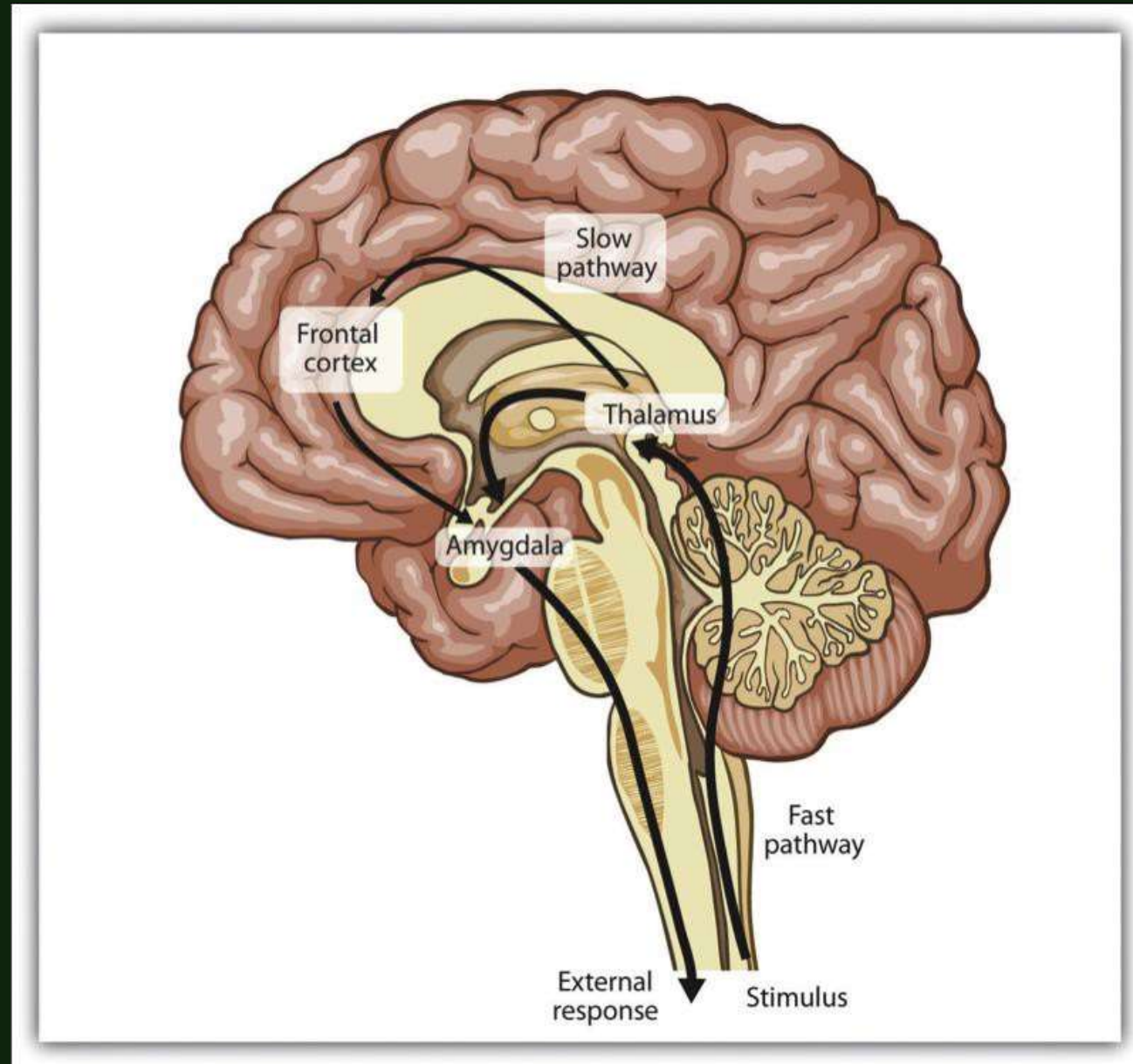
THE PROCESS OF THINKING

- System 1 is fast, intuitive, emotional, automatic and heuristic-based. Officers will rely on this when responding to rapidly unfolding, stressful situations.
 - ✓ May not have all information needed
 - ✓ Rely on experience, training and what is known about the situation – “WYSIATI”

THE PROCESS OF THINKING

- System 2 is slower, deliberate and requires effort and attention
 - ✓ Available with discretionary time

“AMYGDALA HIJACK”



VIDEO: SYSTEM 1 RESPONSE

Halloween scarecrow video

VIDEO: GLASCOX v. CITY OF ARGO

Glasscox v. City of Argo, 903 F.3d 1207
(11th Circ. 2018)

“AMYGDALA HIJACK”

Clues that help may be needed:

- Siren is left on
- Officer is screaming
- Officer’s positioning and actions show he/she is violating their own POL – need to professionally restore safety

IT IS ALL ABOUT PERSPECTIVE...

- All complex operations and equipment have REDUNDANT SYSTEMS
- Regardless of cause – malice, lack of experience/training, anger or hormonal dump – officers must view themselves as a REDUNDANT SYSTEM for each other
- No human being can be the master of all that an officer is required to do – need to accept this and help each other

KEY TAKEAWAYS

- All agencies need a duty to intercede policy
- All officers must understand what duty to intercede entails
- Duty to intercede must be built into agency culture
- Training should involve scenarios to identify the need for and practice interceding (reinforce policy)

QUESTIONS?

webinars@lexipol.com

MIKE RANALLI

mranalli@lexipol.com

LAURA SCARRY

lscarry@lexipol.com

FOR MORE INFORMATION

info.lexipol.com/duty-to-intercede

- Presentation slides
- Recording of webinar
- Articles and case law links