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Going With the Flow?

Skills and Professional Development

I love analogies almost as much as I love cars. Coworkers, family, and friends know to expect automotive analogies from me when working through most any issue. Even so, I try to keep in mind that what fascinates me can be soporific to others. I learned this early in my marriage when my wife, fighting insomnia, asked me to explain how anti-lock brakes work (she was out cold in three minutes). That said, take a moment to refresh your caffeine supply and let's continue.

Think about the highways where you live — what are the posted speed limits there? How fast do most drivers actually go? How much faster than the posted limit do you think you can drive with reasonable certainty that you won't be pulled over and issued a citation? On highways near me, I've observed that one can usually pass an officer monitoring traffic speed at up to 10 miles per hour over the limit and not be stopped for speeding.

Now suppose you do this, and you're stopped anyway, and the officer's citation accurately reflects your rate of speed relative to the posted limit. Do you expect that a judge will be receptive to an argument that lots of people travel at that rate without consequence? Do you have any defense to the charge that you broke the law? Chances are, all you can do is own up to it, promise to do better, and ask for leniency. You'll likely pay a fine, and perhaps your insurance rates will suffer as well.

How do you feel about the experience? Are you ashamed at your lapse in judgment? Are you contemplating self-reporting your conduct to the character and fitness board of your jurisdiction's bar? Or, do you just feel some combination of annoyed and unlucky? Do you judge others who get such tickets, or does your sympathy flow from the same place it'd come from if they told you a storm caused a tree branch to land on their car's roof? My guess is that most of us don't see those

citations for traffic tickets as evidence of moral turpitude, but neither do we see ourselves as entitled to avoid statutory consequences when those lines are crossed. Further, I suspect the deterrent effect on future infractions is often short-lived.

If you were in Finland, you may very well see much more at stake. There, speeding fines are based on the offender's salary. The upshot for some wealthy speeders has been newsworthy. For example, a former director of a global telecom firm was fined €116,000 for driving 75 km/h in a 50 km/h zone. The penalty is meant to approximate half a day's wages, so perhaps the citation didn't faze the recipient as much as it did those who read about it in headlines worldwide.

Regardless of the local consequences, I suspect the relative comfort with the prohibited behavior has something to do with actual harm, or rather the lack of it. We don't restrict speed because high speeds are inherently bad; we do it because the severity of injuries and destruction when a crash occurs are proportionally greater. We don't prohibit jaywalking because crossing in designated zones is an inherent virtue; we do it because a car striking a pedestrian is something no one wants to experience. So, we pragmatically break these rules in moments when we assess the circumstances, reasonably believe we can obtain personal objectives without causing any of the actual harm the rules are designed to help us avoid, and determine the risk of incurring the penalty is low (and also that the penalty is tolerable).

But back to my analogy. Suppose the Finland approach was applied to those who drive for work, and the penalty calculated on corporate earnings? Imagine an Amazon delivery van driver being cited for

speeding, and fined about US$13.7 million; it'd probably sound inconceivable to most of your company's employees (unless, perhaps, they saw the Hot Coffee documentary about that McDonald's suit in the 1990s). Nonetheless, it's an apt analogy for how penalties, fines, and damages are assessed against corporations for wrongdoing that often comes down to the actions and decisions of a small minority of individuals within the organization. In the corporate setting, individual actions aren't limited to individual consequences.

I plan to share this analogy with several of our employees during a training session in January. I hope it'll provoke animated discussions about false claims and anti-kickback statutes. Beyond just telling them where the boundaries are, what techniques do you employ to impart key compliance concepts to your teams?

NOTES

1 We're still in analogy-land, so let's not delve into radar-gun calibration issues today.

2 There are apparently other, far less noble, reasons why jaywalking ordinances are still popular, but that's a topic for another column.

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