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<center>Optimizing Compliance With the Law</center>

The case of USA v Duke Energy Carolinas outlines sentencing guidelines that require an "effective compliance and ethics program" in order to prevent and detect actions that are unlawful. This program entailed many different criteria. In developing a plan for optimizing compliance with the law, these sentencing guidelines are a great start; however, in order to have more compliance within an organization, different attitudes and motivating factors should be taken into consideration. Moreover, the sentencing guidelines should be altered to fit the specific population of the organization in order to have the most compliance with the law as possible.

In order to shape the guidelines to promote more compliance, the attitudes and motivations of the target should be known. Understanding why those who did not follow the guidelines did so, as well as why those who did follow the law did so, can result in more compliance overall –" when it comes to ex ante intervention… we are able to predict that this component is likely to change the behavior of an unknown proportion of the population" (Feldman 10). Laws can be changed to fit three different populations as well as to change or mold the behavior of a population that has three different motivating factors. Those in different groups are motivated differently by different factors. Because of this, "For the legal policy maker to be able to use the rich knowledge about people's bounded ethicality, we need to create a multidimensional taxonomy of legal doctrines and of the various instruments that states can use in their attempt to modify human behavior" (Feldman 14).

First, Feldman claims that "wrongdoers" can be divided into three different types: erroneous wrongdoers, situational wrongdoers, and calculative wrong doers (Feldman 61). Erroneous wrongdoers are those who are not aware that they are doing something wrong because of their limited awareness. Situational wrongdoers are those who can rationalize and justify in some way some wrongdoing that they have committed. And calculative wrongdoers are those who deliberately engage in wrong behavior because it most likely benefits them.

Similarly, Friedman speaks to how laws affect behavior stating that "scholarship divides the factors that influence impact into three general categories… (Friedman 5-6). These are rewards and punishments, peer pressure, and inner sense. Punishments and rewards incentive and deter behavior. Peer pressure also changes your behavior based on what those around you are doing or how you believe those around you will think of you given that you either followed or disobeyed a law. And your inner sense speaks to your sense of morality in that you think deliberately if something is wrong or not.

For those who are erroneous wrong doers, the standard of that communicates the standards through training programs can be better enforced. Friedman points out that "Obviously, a message has an impact only when it reaches an audience…One must also ask whether the audience understands the message, and if not, how and why the message is misunderstood" (Friedman 4). If there are groups of the target who do not understand or know about the law, it is important to teach them it so that they are more likely to comply.

Situational wrongdoers on the other hand often do know that they are breaking the law. Nudges, "an intervention that changes behavior without creating economic incentives or banning other possibilities" (Feldman 21) can be implemented in areas where there is criminal

misconduct in order to push situational wrongdoers towards following the law. Nudges attempt to change behavior "…by changing the situation…the nudge approach aims to directly affect the individual's system 1 by changing the situation, debiasing , for the most part, attempts to encourage the person to use system 2 thinking" (Feldman 89). Nudges attempt to use different motivating factors to compel an individual to comply with the law where he otherwise wouldn't.

Finally, calculative wrongdoers are those who deliberately break the law for their own gain. Rewards and punishments will best deter these individuals from breaking the law and incentivize them to comply with it. Friedman points out that implementing rewards and punishments alone is effective because "perceived risks and benefits" changes people's behavior more than the actual rewards or punishments (Friedman 120). Moreover, introducing economic incentives and mechanisms to deter criminal conduct can help those who use system 2 to better comply with the law.

Certain tools can be implemented that tend that result in larger compliance within certain types of wrongdoers. However, it is more complicated than this in that "each of these 'factors' is not a single factor at all, but a cluster of factors" (Friedman 5-6). Additionally, some factors that might motivate one group to comply will have the opposite effect on other groups. Despite this, there are general techniques and tools that can be used to help optimize compliance with the law within certain groups.

Works Cited

Impact, supra at 96-152; Feldman, *Good People, supra*

Yuval Feldman, *The Law of Good People: Challenging States' Ability to Regulate Human Behavior* (New York, New York: Cambridge University Press, 2019)