

## Session No. 28

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**Course Title: Business and Industry Crisis Management, Disaster Recovery, and Organizational Continuity**

**Session 28: Business Ethics and Legal Considerations**

**Time: 1 hr**

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### **Objectives:**

- 28.1 Discuss the business ethics climate in the United States today.
  - 28.2 Discuss the impact of new technologies and the changing composition of the workforce on business ethics.
  - 28.3 Discuss the key components of a comprehensive ethics program.
  - 28.4 Discuss the legal implications of business contingency planning.
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### **Scope:**

This session concludes the discussion of ethics and introduces the related topic of legal liability in the context of business contingency planning. Recent articles and recent surveys covering business ethics supplement the coverage of ethics provided in chapter 12 of Lerbinger's text. The articles "Talking About Ethics" parts I and II published in *Association Management*, March and April 1999, respectively, provide a pragmatic and topical view of business ethics in the United States today.

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### **Readings:**

#### *Student Reading:*

Lerbinger, Otto. 1997. *The Crisis Manager – Facing Risk and Responsibility*. Mahwah, NJ: Lawrence Erlbaum Associates. Chapter 12, pages 292–314.

"A Framework for Ethical Decision Making". *The Ethics Connection* [on-line]. Santa Clara, CA: Markula Center for Applied Ethics, Santa Clara University. [Cited may 27, 1999.] At <http://www.scu.edu/ethics/practicing/decision/framework.shtml>.

*Instructor Reading:*

Copenhaver, John, and Iyer, Raja. 1994. "Mandatory Contingency Planning, Where Do We Go from Here?" *Disaster Recovery World III* [CD-ROM]. St. Louis, MO: *Disaster Recovery Journal*. Pages 24–26. Electronic version 3 pages. Originally appeared in *Disaster Recovery Journal*. Vol. 7, No. 3. [Cronin's or Miller's article can be read as an alternative.]

Cronin, Kevin P. 1993. "Legal Necessity." *Disaster Recovery World II* [CD-ROM]. St. Louis, MO: *Disaster Recovery Journal*. Pages 65–66. Originally published in *Recovery Magazine* [online] (Winter 1993).

Ferrell, O., Thorne LeClair, D., and Ferrell, L. 1998. "The Federal Sentencing Guidelines for Organizations: A Framework for Ethical Compliance." *Journal of Business Ethics* [on-line]. Vol. 17, No. 4. Dordrecht, the Netherlands: Kluwer Academic Publishers. Available at <http://www.wkap.nl/journalhome.htm/0167-4544>. Pages 353–363. [The Rexroad, Bishop, Ostrosky, and Leinicke article can be read as an alternative.]

"A Framework for Ethical Decision Making." *The Ethics Connection* [on-line]. Santa Clara, CA: Markula Center for Applied Ethics, Santa Clara University. [Cited May 27, 1999.] At <http://www.scu.edu/ethics/practicing/decision/framework.shtml>.

Lerbinger, Otto. 1997. *The Crisis Manager – Facing Risk and Responsibility*. Mahwah, NJ: Lawrence Erlbaum Associates. Chapter 12, pages 292–314.

Mahoney, Ann I. 1999. "Talking about Ethics – Part I." *Association Management*. Vol. 51, No. 3. Pages 45–53.

Mahoney, Ann I. 1999. "Talking about Ethics – Part II." *Association Management*. Vol. 51, No. 4. Pages 49–59.

Miller, Randall C. 1990. "Your Legal Liability in a Corporate Disaster." *Contingency Journal*. Page 12–13. [Copenhaver's or Cronin's article can be read as an alternative.]

Rexroad, W. Max, Bishop, T., Ostrosky, J., and Leinicke, L. 1999. "The Federal Sentencing Guidelines for Organizations." *The CPA Journal*. Vol. 69, No. 2. Page 26–31. [Ferrell's article can be read as an alternative.]

"Unethical Workers and Illegal Acts." 1999. *Society*. Vol. 36, No. 4. pages 2 and 3.

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**General Requirements:**

Complete the modified experiential learning cycle for objectives 28.1–28.4 at the conclusion of the session.

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**Objective 28.1 Discuss the business ethics climate in the United States today.**

**Requirements:**

Present the material by means of lecture and discussion as necessary.

The following questions are provided to stimulate discussion:

Is it possible that the 48% figure is just the tip of the iceberg?

The survey was conducted during a period of relative economic prosperity. Would ethical violations increase during an economic slump?

Complete the modified experiential learning cycle for this objective at the conclusion of the session.

**Remarks:**

I. Gauging the **ethical climate** – the good news.

A. Ed Petry, executive director of the Ethics Officer Association, makes the following statements concerning **business ethics**:<sup>1</sup>

1. “In the late 1970s and 1980s, business ethics was an **oxymoron**, a contradiction in terms.”
2. A **1997 business survey** (sent to 5,000 workers across the country, with 1,324 responses) conducted by the Association shows “a startling shift in public opinion...only 15 percent of U.S. workers surveyed believe poor ethics is an inevitable byproduct of business.”
3. “I think the public now has very low expectations of political figures and much **higher expectations** of their business and association leaders” (Mahoney part I p. 48).

B. The above-mentioned survey also points out that poor communication and leadership are the major sources of pressure resulting in unethical behavior, and that correcting these deficiencies provides a solution to the problem. The general tone of the two-part article “**Talking About Ethics**,” in the March and April 1999 issues of *Association Management* is that organizational and personal ethics issues have management’s attention and the situation is improving.

(The emphasis in the quotes above was added.)

II. The bad news.

A. Despite the optimistic shift in public opinion, the 1997 survey also indicates some **alarming statistics**:<sup>2</sup>

1. Presented with a list of 25 specific unethical or illegal acts, **48 percent** of the respondents admitted to committing at least one of the acts in the previous year.
2. The top five **unethical or illegal acts** admitted to were (from Mahoney part I p. 51) (overhead 28-1):
  - a. Cutting corners on **quality control** (16%).
  - b. **Covering up** incidents (14%).
  - c. **Abusing or lying** about sick days (11%).
  - d. **Lying or deceiving** customers (9%).
  - e. Putting **inappropriate pressure** on others (7%).
3. Workers also indicate that the situation is **getting worse**, with 57% indicating increased pressure to act unethically over the past five years and 40% stating that it's gotten worse over the past year (1996).

B. Even more alarming are some possible **implications** from what the survey did not ask.

1. The workers were asked only to list **violations attributed to pressure** due to such things as long hours, sales quotas, job insecurity, balancing work and family, and personal debt.
2. The survey **did not ask** about actions motivated by other reasons such as greed, revenge, and blind ambition.
3. **Ask the students**, Is it possible that the 48% figure is just the tip of the iceberg?
4. **Ask the students**, The survey was conducted during a period of relative economic prosperity. Would ethical violations increase during an economic slump?

### **Supplemental Considerations:**

None.

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**Objective 28.2 Discuss the impact of new technologies and the changing composition of the workforce on business ethics.**

**Requirements:**

Present the material by means of lecture and discussion as necessary.

Overheads/student handouts are provided for use if desired.

The following questions are provided to stimulate discussion:

How can unregulated access to the Internet cause ethical problems in the workplace?

Can Internet policies be too restrictive and stifle productivity?

Can the same policies and controls as are used for telephone usage (developed and refined over a period of many years) be used as a model for Internet usage?

Is this an ethical practice on the part of management?

Does the university and/or your employer have the right to monitor your e-mail even provided you use the e-mail system in a manner consistent with established policies?

Do any of the above percentages surprise you?

Would you expect 4% of employees to consider sabotage to be ethical?

Would you expect almost half of all employees to consider using office equipment for personal Internet shopping ethical?

Complete the modified experiential learning cycle for this objective at the conclusion of the session.

**Remarks:**

- I. The **changing composition** of the workforce (Mahoney part I p. 50).
  - A. In today's generic business, roughly **25–30 percent** of the total employee population are temporaries and contract employees.
  - B. **40–50 percent** of the total employee body has less than five years of service.
  - C. With this **high rate of turnover** and lack of strong affiliation with the business, business leaders cannot just assume that the employees will eventually absorb the desired core values and culture of the organization.

1. Leaders need to be **more aggressive** in establishing, implementing, and maintaining an ethics program for all employees, including temporaries and contract personnel.
2. In the absence of an aggressive program, individuals will tend to act according to their **own ethical codes** (which may not be a bad thing for some individuals) or be influenced by cultural forces which may not be aligned with those desired by leadership.

## II. **New technologies.**

- A. In addition to the challenges posed by a relatively fluid workforce, new technologies raise **ethical issues** that require consideration and resolution.
- B. Part II of the article “Talking About Ethics,” asks the question “In what ways is the new electronic era introducing **new tests of ethical principles?**” (p. 56). Areas of concern include:
  1. The ethical use of electronic resources such as the **Internet**.
    - a. When the Internet was relatively new, (early 1990s) the development of **coherent policies** concerning its use took up to three years.
    - b. In the absence of **explicit policies**, individuals will either look to organizational values or apply their own values to Internet use.
    - c. **Ask the students**, How can unregulated access to the Internet cause ethical problems in the workplace?
    - d. **Ask the students**, Can Internet policies be too restrictive and stifle productivity?
    - e. **Ask the students**, Can the same policies and controls as are used for telephone usage (developed and refined over a period of many years) be used as a model for Internet usage?
  2. Online **privacy** issues.
    - a. An organization with a publicly accessible Web site has the ability to **gather information** on users. Exactly what information can be gathered and how it is used has ethical implications.
    - b. Internet **tracking programs** are available for employers to use to monitor their employees’ Internet usage by subject and time. **Ask the students**, Is this an ethical practice on the part of management?

- c. E-mail can also be **monitored**. Clearly, the use of an organization's e-mail to pass along certain information (sexual or racial remarks, libel, etc.) is unethical, which supports monitoring.
  - d. On the other hand, does an organization have the right to monitor an employee's private e-mail correspondence (if personal use of e-mail is permitted by policy)? **Ask the students**, Does the university and/or your employer have the right to monitor your e-mail (their system) even provided you use the e-mail system in a manner consistent with established policies?
3. The dangers of **speed**.
- a. Technological advances manifest in wide access to e-mail, fax machines, cell phones, pagers, express mail, etc., allow for **rapid exchange of information**. People pass along information and want a reply almost instantly.
  - b. In many cases, resulting decisions and actions are **clear-cut**. A quick reaction poses no problem and is appropriate to the situation.
  - c. In situations involving **ethical questions**, time is required to reflect, examine alternatives, consider options, and look at potential ramifications before reaching and acting upon a decision. Decision makers may feel a sense of urgency to respond but should take the time necessary to factor in ethical considerations.
- C. A **1998 Ethics Officer Association nationwide survey** explored the impact of new technologies on unethical and illegal business practices. Forty-five percent of the respondents reported that they had engaged in one or more of 12 listed types of unethical behavior during the past year (1997).
- D. The same respondents classified the following technology-related actions as **unethical** (overhead 28-2). (Figures reflect percent of respondents rating action as unethical.)
- a. 96% – **Sabotage** systems/data of current co-worker or employer.
  - b. 96% – **Sabotage** systems/data of a former employer.
  - c. 93% – Access private computer files without permission.
  - d. 92% – Listen to **private** cellular phone conversations.
  - e. 87% – Visit **pornographic** Web sites using office equipment.
  - f. 70% – Use new technologies to unnecessarily **intrude** on co-workers' privacy.

- g. 67% – Create a potentially **dangerous situation** by using new technology while driving.
- h. 66% – Use office equipment to **network/search** for another job.
- i. 65% – **Copy** the company’s software for home use.
- j. 61% – Wrongly **blame** an error on a technological glitch.
- k. 59% – Make **multiple copies** of software for office use.
- l. 54% – Use office equipment to **shop** on the Internet for personal reasons.

(From Mahoney part II p. 53.)

- E. **Ask the students**, Do any of the above percentages surprise you? Would you expect 4% of employees to consider sabotage to be ethical? Would you expect almost half of all employees to consider using office equipment for personal Internet shopping ethical?

**Supplemental Considerations:**

None.

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**Objective 28.3 Discuss the key components of a comprehensive ethics program.**

**Requirements:**

Present the material by means of lecture and discussion as necessary.

Overheads/student handouts are provided for use if desired.

The following questions are provided to stimulate discussion:

Where do the components fit in the various levels of the onion model?

The article lists “focus on ethical leadership” first. Is ethical leadership required in each level of the onion model?

Is this framework for ethical decision making practical, especially in a crisis situation, when time for information gathering and deliberation is limited?

Compare the FSGO steps to the “12 Components of a Comprehensive Ethics Program” (overhead 28-5).” How are they similar and how are they different?

Complete the modified experiential learning cycle for this objective at the conclusion of the session.

## Remarks:

### I. **General** considerations.

- A. Previously, we discussed **codes of ethics** that are a necessary component of a comprehensive ethics program.
  - 1. Central to codes that in fact work is **employee involvement** in drafting and revising the code, incorporation of the code into rewards and recognition and administrative programs, and **overt adherence** to the code at all levels of the organization.
  - 2. Using Mitroff and Pauchant's "**onion model**" of crisis management from session 26 (overhead 28-4) as applied to codes of ethics and ethics program, such codes and programs require more than just strategies, plans, and procedures (level 4). A supporting infrastructure (level 3) is also required, and most importantly, the corporate culture (level 2) and individuals' values (level 1) must support an ethically oriented organizational and personal environment and culture.
- B. Supporting and strengthening each level of an **ethics program** are two critical issues that must be considered and acted upon by leaders (Mahoney part I p. 49):
  - 1. First, the **perception** of the program by those affected by it. People must believe in the code and the program if it is to work.
  - 2. Second, the **application of the program**. Business must be conducted in a manner consistent with the code and program. Selective application will destroy belief in the code and program and lead to cynicism.

### II. Key ethics program **components**.

- A. "Talking About Ethics – Part II" prescribes **12 components** "necessary to develop, implement, and manage an industrywide comprehensive ethics program" (p. 52). The order of the items from Mahoney's article has been rearranged to fit the components to the previously mentioned onion model. (Overhead 28-5.)
  - 1. **Vision** statement.
  - 2. **Values** statement.
  - 3. **Code of ethics**.
  - 4. Designated **ethics official**.

5. Ethics **task force** or committee.
6. Ethics **communication strategy**.
7. Ethics **help line**.
8. Comprehensive system to **monitor and track** ethics data.
9. Periodic **evaluation** of ethics efforts and data.
10. Ethics **training**.
11. Ethical behavior – **rewards and sanctions**.
12. Focus on ethical **leadership**.

- B. The components listed above are **generally arranged** from the outer level of the onion model (strategies, plans, procedures) to supporting infrastructure and development and maintenance of organizational and individual values and beliefs. Some of the components cut across multiple layers. **Ask the students**, Where do the components fit in the various levels of the onion model? The article lists “focus on ethical leadership” first. Is ethical leadership required in each level of the onion model?

### III. Ethical **decision making**.

- A. Supporting and resulting from a comprehensive ethics program is a framework for **ethical decision making**.
- B. We have previously discussed **decision making** in several contexts: risk-based decision making; risk management decision making; crisis decision making; and the layered functions (overhead 28-6) necessary for providing the relevant and concise information required by decision makers in crisis situations.
- C. **Ethical considerations** must be factored into the decision-making process at each layer, particularly in the values layer. As mentioned earlier, ethically focused deliberation and decision making generally requires time that may not be available in crisis situations. In such instances, decision makers are particularly reliant upon clearly stated and understood values that are a component of the overall ethics program.
- D. The Santa Clara University *Ethics Connection* Web site at <http://www.scu.edu/ethics/practicing/decision/framework.shtml> lays out the following **framework** for ethical decision making (overhead 28-7):

1. Recognize a **moral issue**.
  - a. Ask, Is there something **wrong** personally, interpersonally, or socially? Is there a **conflict** that could damage other people, the environment, animals, other organizations/institutions?
  - b. Ask, Does the issue go **deeper** than legal or organizational concerns? How does it affect the **rights and dignity** of stakeholders?
2. **Get the facts**.
  - a. Ask, What information is **relevant** to the issue.
  - b. Ask, Who are the **stakeholders** and what are their interests?
  - c. Ask, What are the available **options**. Have **relevant interests** been adequately considered?
3. Evaluate the **alternative actions** from various moral perspectives.
  - a. Determine which option provides the **most good** while doing the least harm.
  - b. Determine which option respects the **rights and dignity** of stakeholders while treating all stakeholders fairly.
  - c. Determine which option best supports the **common good**.
  - d. Determine which option promotes **ethical values** for the individuals and organization.
4. Make a **decision**.
  - a. Considering the above perspectives, choose the **best option**.
  - b. Decision makers should be able to **explain their reasoning** for choosing a particular decision.
5. **Act, then reflect** on the decision later.
  - a. **Monitor the impact** of the decision on stakeholders.
  - b. **Learn** from the decision and its impact.
  - c. Do not be afraid to **change a decision** and resulting course of action if a better option arises with additional information.

- E. **Ask the students,** Is this framework for ethical decision making practical, especially in a crisis situation when time for information gathering and deliberation is limited?

IV. **Legal considerations** in development of a comprehensive ethics program.

- A. As mentioned earlier in the discussion of ethics, the **Federal Sentencing Guidelines for Organizations (FSGO)** are an important consideration in the development of a comprehensive ethics program.

1. The **origins** of the FSGO trace back to the establishment of the United States Sentencing Commission in 1984 and the issuance of Federal Sentencing Guidelines in 1987.
2. The **FSGO were added in 1991** and apply to organizations and their liability for criminal acts of their employees and agents.
3. “In effect, FSGO greatly increased the responsibility of organizations to **police themselves** with regard to preventing and detecting the Federal criminal activity of their employees and agents” (emphasis added; Rexroad et al. p. 26).
4. “The main objectives of the FSGO are to **self-monitor and police**, aggressively work to deter unethical acts, and punish those organizational members or stakeholders who engage in unethical behavior” (Ferrell, Thorne LeClair, and Ferrell p. 354).
5. **Examples of business crimes** covered by the FSGO include fraud and deceit; offering, soliciting, or receiving a bribe; price-fixing, bid-rigging; embezzlement; larceny; copyright or trademark infringement; and insider trading. “Unethical” can be added to the description of these acts as illegal.

- B. The impact of an **effective compliance/ethics program** on FSGO penalties.

1. FSGO **base penalties** range from relatively nominal fines of \$5,000 to fines of over \$70 million. The fines are adjusted according to aggravating and mitigating factors.
2. **Aggravating factors** include: involvement of or awareness of high-level personnel; willful obstruction of justice; and a prior history of violations.
3. **Mitigating factors** include: an effective program for preventing and detecting violations; self-reporting of the offense; cooperation in the investigation; and acceptance of responsibility. All of the mitigating factors are linked to a comprehensive compliance/ethics program.

4. Obviously, it is in the **best interest** of a business to minimize potential fines and a comprehensive compliance/ethics program is a necessary risk management control to prevent and mitigate the impact of illegal/unethical acts.

C. **FSGO guidelines** for a compliance/ethics program.

1. The FSGO defines a compliance/ethics program as “a program that has been reasonably designed, implemented and enforced so that it generally will be **effective in preventing and detecting** criminal conduct” (emphasis added; Rexroad et al. p. 27).
  2. The FSGO prescribes, at a minimum, the following **seven steps** for an effective compliance program (Rexroad et al. p. 27) (overhead 28-8):
    - a. **Management oversight:** A high-level person in charge and accountable for the program.
    - b. **Corporate policies:** Establish policies and procedures that can reasonably reduce the probability of criminal conduct.
    - c. **Communication of standards and procedures:** The organization’s ethics policies must be communicated to every employee and agent.
    - d. **Compliance with standards and procedures:** The program must be effectively implemented with provisions for monitoring and reporting and a system for employees and agents to report violations without fear of retribution.
    - e. **Delegation of substantial discretionary authority:** The organization must guard against delegating authority to individuals with a propensity to engage in criminal conduct.
    - f. **Consistent discipline:** A discipline program must be in place and consistently applied.
    - g. **Response and corrective actions:** The organization must respond appropriately to suspected and actual violations, determine why the violation occurred, and institute corrective action.
- D. As mentioned above, these are only “**minimum steps**” for implementing a compliance/ethics program. Steps a, b, c and e lie within the outer two layers of the “onion model.” Steps d, f, and g start to address the organizational culture and individual’s values layers.

- E. **Ask the students,** Compare the FSGO steps to the “12 Components of a Comprehensive Ethics Program” (overhead 28-5). How are they similar and how are they different?

**Supplemental Considerations:**

The Santa Clara Ethics Connection Web site contains a wealth of ethics-related topics and links that may be of interest to the students and instructor. Additionally, the article “Talking About Ethics – Part II” contains a list of ethics-related Web sites. Both the articles cited above that cover the FSGO contain similar information, and it is only necessary to read one or the other.

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**Objective 28.4 Discuss the legal implications of business contingency planning.**

**Requirements:**

Present the material by means of lecture and discussion as necessary.

Overheads/student handouts are provided for use if desired.

Complete the modified experiential learning cycle for objectives 28.1–28.4 at the conclusion of this objective.

**Remarks:**

I. **Background.**

- A. Business contingency planning as extended to the entire business, and not just computer system protection and recovery, is a **relatively new area of business concern and attention**. Only in the past decade (since the late 1980s) has the focus of plans extended to businesswide programs, functions, and processes. (See objective 15.3 for a discussion of the evolution of business contingency planning).
- B. Accompanying the evolution of business contingency planning is the evolution of **legal requirements and liability considerations**.
- C. Business leaders, who previously considered and made decisions concerning business contingency planning based on financial considerations, need to extend their **consideration to legal requirements and liability protection**.

II. **Legal necessity.**

- A. Kevin P. Cronin’s article, “Legal Necessity,” originally published in 1993, discusses **statutory requirements, and evolving liability trends** for business contingency planning.

**B. Statutory and common law requirements.**

1. The Comptroller of Currency and the Federal Reserve have recognized the importance of business contingency planning and have implemented **federal laws** requiring banks to develop, test, and revise business contingency plans.
2. The requirement for such planning extends beyond mere electronic record keeping, as is evident in a statement in the 1989 revision to the Banking Circular on this topic: “The loss or extended interruption of (business operations, including central computer processing, end-user computing, local area networking, and nationwide telecommunications) poses substantial risk of financial loss and could lead to failure of an institution. As a result, contingency planning now requires an **institution-wide emphasis**, as opposed to focusing on centralized computer operations” (emphasis added; Copenhaver and Iyer p. 24).
3. The Joint Commission on Accreditation of Healthcare Organizations (JCAHO) has issued **similar requirements for healthcare providers** by stating the need for advance planning and emergency preparedness.
4. **Foreign Corrupt Practices Act (FCPA)** of 1977.
  - a. Although the name of this act implies no direct connection to **business contingency planning** on a national level, its provisions are now being applied in this context.
  - b. Implemented in 1977 in the aftermath of the 1973 Watergate crisis, the FCPA addressed the illegal nature of **manipulating corporate records to deceive** (in the Watergate case, to hide illegal campaign contributions from) interested parties.
  - c. The FCPA deals with the **fiduciary responsibilities of officers and directors** of publicly held corporations with respect to their handling of corporate assets.
  - d. Specifically, the act addresses the concept called the “**standard of care**,” by which the actions of officers and directors are judged with respect to their management of their corporation’s assets.
  - e. Through application of the FCPA, the question can and is being asked, Can corporate officers and directors be held **personally liable** for business losses that could have been prevented if an adequate business contingency planning process had been in effect? The authors of the two cited articles on this subject conclude, yes.
5. In addition to the above-mentioned statutory law, **common law** also requires officers and directors to exert reasonable efforts to investigate and become

informed about the condition of the corporation, its assets, and the conduct of its affairs.

- a. The so-called “**duty of trust,**” requires corporate leaders to manage and protect the best interests of shareholders.
- b. People in positions of responsibility who breach this “duty of trust” can be held **personally liable** to shareholders.
- c. How is this related to **business contingency planning**? “The answer is simple. Where the risk of loss of assets is significant and the impact of risk of loss is large, it would seem axiomatic that prudent men would take steps to protect the corporation and its assets.” (Miller p. 12.)
- d. Accordingly, corporate leaders should analyze their efforts to **protect the corporation and its assets** from the point of view of a jury. In the aftermath of a corporate disaster resulting in loss of assets, if they cannot demonstrate reasonable crisis management (all functions from risk assessment through recovery), they may and probably will be found liable.

### C. **Contractual requirements.**

1. Almost all businesses have contracts, explicit or implied, and many require **compliance** regardless of intervening circumstances such as disasters/crises.
2. Suppliers of goods and services may be required to **certify** that they have business contingency plans in effect to ensure business continuity, resumption, and restoration.
3. Government contracts are **increasingly requiring evidence and contractual guarantees** of bidder’s business continuity, resumption, and restoration capabilities.

### III. **Liability trends.**

- A. Both cited articles (Copenhaver and Iyer’s and Cronin’s) refer to the 60-plus-year-old landmark case of the ***T.J. Hopper*** to discuss liability trends.
  1. During a severe storm off the East Coast, **several vessels sank.**
  2. The vessels were **not equipped with radio receivers**, the availability of which would have allowed them to avoid the storm.
  3. Despite the fact that only **one shipping line** in the United States had fitted its vessels with radio receivers (transmitters for sending distress calls were common), the court found the lost vessels’ owners negligent.

4. The court balanced the relatively small cost of outfitting vessels with receivers against the risk of not having them and decided that the prevailing custom of not providing receivers was **negligent**.
- B. Today's corporations should **extend the analogy** of the *T.J. Hopper* case to their operations. One need only substitute business contingency planning for radio receivers to determine the necessity for comprehensive business contingency planning from a legal liability perspective.
  - C. Clearly, with the **abundance of resources** (books, articles, consultants, software, training, education, conferences, certification, etc.) available to assist in business contingency planning, corporate officers cannot claim ignorance of the process or lack of expertise to accomplish their planning responsibilities.
  - D. An **evolving issue** in liability concerns is standards of business contingency planning.
    1. As we saw in the *Exxon Valdez* disaster, plans that had been approved (by the State of Alaska) were available, but they **proved inadequate** for dealing with the disaster (only the outer level of the onion model was addressed).
    2. How will the legal system **judge the adequacy** of business contingency plans when the only existing standard is their success in dealing with the situation and averting loss?
    3. Along with **educating** corporate leaders on the necessity and value of business contingency planning, practitioners in this relatively new field need to **develop clear standards** on what constitutes adequate business recovery planning.

### **Supplemental Considerations:**

Any of the three articles cited provides the necessary background for the instructor. The article by Cronin is accessible on the Internet at the *Disaster Recovery Journal* Web site.

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<sup>1</sup> "Unethical Workers and Illegal Acts." 1999. *Society*. Vol. 36, No. 4. Page 3.

<sup>2</sup> "Unethical Workers and Illegal Acts" pages 2 and 3.