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About the cover...
A corporate identity program should capture and unify all aspects of a corporation’s communications, both internal and external. Companies should try viewing corporate identity building as a five-step process: research, analysis, design, organization, and launch.
ew technical or business articles are written on research and development and, more specifically, on the management, spending, or process of R&D. There are many types of R&D, including some that are based in fundamental science and will have no practical payback for 20 years or more. Some R&D is very development-focused and is anticipated to have a payback within a few months.

Regardless of the focus of R&D, one must consider it as future-growth spending. Although R&D spending is often included in the selling and general administrative costs in a 10-K annual report disclosure and is included as a current-year expense, it is itemized to demonstrate to a potential investor that there is forward-looking spending for the well-being of the business in years to come.

Generally, the highest spenders on R&D are those companies involved in the pharmaceutical and medical device industries. These companies spend significantly on R&D, often near 20 percent of their annual gross sales. Other businesses that spend heavily on R&D are driven by “new” technology, such as those from Silicone Valley, and spend at a rate of 10 percent of annual gross sales. More mature technology-driven companies may spend 1 to 3 percent of annual gross sales on R&D.

The food industry is applied technology-driven, and those companies that do spend on R&D spend less than 1 percent of annual gross sales. Most regional and local food processors spend nothing on R&D and focus only on compliance and product quality. Certainly, it is true that compliance and product quality are absolutely needed for the business to survive. Another article in this magazine speaks about corporate identity or the effort made to brand a product and create a bond between the consumer and the business. Product quality, product branding and marketing, and compliance are investments into the current selling-buying relationship. However, R&D is an activity into the future selling-buying relationship.

A food business in Oklahoma cannot expect to be a thriving and growing business in 10 years, based on a sound business plan, unless there is some effort made in R&D. R&D is expensive. Someone must be assigned the responsibility, and there must be accountability of assets used toward new product or process deliverables. There are direct costs associated with R&D and some allocation of facility cost for support of R&D. Thus, the real base-line cost of product development-focused R&D may be double the salary and benefit cost for each full-time equivalent salaried employee involved in R&D.

Considering the cost associated with R&D and the need to do R&D for stability and growth of the food processor, it makes considerable sense for an Oklahoma food business to access the FAPC. The FAPC has technical and business specialists with abilities to plan and accomplish specific R&D projects on a specified timeline. Let us help you invest in the future of your business.
The microbial problem was traced to spinach produced by Natural Selection Foods of California.

The recent bagged spinach *Escherichia coli* outbreak is a devastating setback to the spinach and fresh-cut salad industries, especially this growing season.

The microbial problem was traced to spinach produced by Natural Selection Foods of California, a cooperative that is one of the largest U.S. producers of organic produce. The cooperative packages produce under a variety of names.

As of Oct. 6, 199 people had been infected with *E. coli* O157:H7 in 26 states. Of those infected, 102 were hospitalized, 31 developed kidney failure, and two elderly women and one 2-year-old child have died, according to the Centers for Disease Control and Prevention.

*E. coli* O157:H7 has now been recovered from 13 packages of spinach, said Peter Muriana, FAPC food microbiologist.

“Several possible scenarios can be considered that could lead to such an outbreak,” Muriana said. “Federal regulatory officials are trying to find out what the source of the contamination was, which is good because we need to know if a mistake was made by someone or if it was something unforeseen that could pose a problem again in the future if left unattended.”

*E. coli* is an inhabitant of the gastrointestinal tract of animals and is shed in their feces. A potentially lethal serotype of *E. coli* is *E. coli* O157: H7, which can produce bloody diarrhea and a toxin in the intestinal tract that can shut down kidney and liver function.

Wild animals, such as rabbits, mice or fox, could have shed *E. coli* O157:H7 in the spinach fields, Muriana said. The organism then could have been spread around the fields by workers’ shoes.

“Less likely, but still plausible, is that the *E. coli* was spread by human shedding via unsanitary practices of farm workers,” Muriana said.

Because of the size of the outbreak and widespread distribution of the contaminated produce, a more likely cause of the outbreak was something that could readily contaminate a large amount of product, such as the use of contaminated irrigation water or contaminated manure as fertilizer, he said. *E. coli* O157:H7 in the water could have contaminated the outer surface of the spinach, which somehow survived subsequent processing steps.

It is possible that if a chlorine-containing rinse solution was used, its capacity could have been exhausted, Muriana said. Chlorine-containing solutions have to be replenished to keep the oxidizing power of the chlorine high enough to be biocidal to bacteria.

Although the produce that was affected was not organically grown, in which manure is often used as fertilizer, investigators have found *E. coli* O157:H7 in manure in cattle pastures next to the farms linked to the tainted spinach that have the same DNA fingerprint as those taken from ill patients and recovered from unopened bags of spinach.

“This introduces the possibility of water run off from contaminated animal pasture into neighboring crop fields or into the water shed used for irrigation or perhaps the use of raw, uncomposted manure on crops,” Muriana said.

For more information, visit www.cdc.gov/foodborne/ecolispinach/current.htm or www.fda.gov/bbs/topics/NEWS/2006/NEW01466.html.
Unitherm Food Systems of Bristow, Okla., donated two electrolyzed water generators to the FAPC. 

FAPC Director Roy Escoubas praised Unitherm Food Systems for this donation. “Results show this state-of-the-art process would give food processors in Oklahoma a way to continue to improve their methods to make food safe for Oklahoma consumers,” Escoubas said.

The generators add electricity to salty water, resulting in a non-toxic solution that eliminates bacteria, yeast, molds and viruses on food, food processing equipment, or any other hard surface, said Jake Nelson, FAPC value-added meats processing specialist. “This generator has been installed in-line with the FAPC’s steam pasteurization unit and will be used for researching electrolyzed water’s effects on pathogens that may be found on freshly slaughtered carcasses, including beef, pork, and lamb,” Nelson said.

Generators apply an electrical current to a drinkable water solution, said Peter Muriana, FAPC food microbiologist. The small amount of salt in the water serves to conduct the current. “The electrolytic process results in the formation of water with an antimicrobial effect,” Muriana said. “This electrolyzed water is similar to the weak bleach solutions placed in swimming pools, but is more effective against harmful foodborne bacteria.”

In meat and poultry processing areas, electrolyzed water is approved for use by the U.S. Department of Agriculture and is generally recognized as safe.

The use of electrolyzed water does not stop with meat and poultry. It is currently being examined in other processing areas, including sanitary washes for fresh produce, vegetables, fresh-cut melons and shell egg processing, and processing environment. There are even applications addressing the use of electrolyzed water in animal production quarters, as well as in their drinking water.

Scientists in the department of animal science at OSU are investigating ways in which electrolyzed water solutions can be used in poultry and swine production facilities to improve animal health and reduce the risks of harmful bacteria getting into the food supply.

FAPC researchers are beginning to test the efficacy of electrolyzed water as an anti-microbial intervention for use on ready-to-eat meat items. Oklahoma-based SanAquel LLC, a partner company with Unitherm Food Systems, patented the electro-chemical activation process.

“Although it’s not a new process, few companies are demonstrating SanAquel LLC and Unitherm’s vision to implement electrolyzed water throughout a processing environment using automated generators, PVC plumbing, and spray nozzles to mist and fog the liquid as a sanitizing solution into bacteria-sensitive areas in processing facilities,” Muriana said.

Using electrolyzed water is cost effective because it eliminates chemical shipping and storage costs, Muriana said.

“A big advantage of electrolyzed water, over other types of antimicrobials, is electrolyzed water is safe to spray even in the presence of humans, which can hardly be said for other sanitizing solutions that may cause respiratory problems and must only be used after a production shift,” Muriana said.
Anatomy of a disclaimer

Employee handbooks and manuals as contracts

It is common practice among employers to issue employee manuals or handbooks to their employees. These handbooks generally outline company policies and procedures. Often, handbooks contain information regarding benefits and expected conduct.

Many handbooks also contain sections about improper conduct, disciplinary actions, and terminable offenses. These sections are included to give the employee a clear understanding of the types of conduct that will not be tolerated and to provide for actions that may be taken by the employer in cases of misconduct. From the perspective of the employer, the handbook represents a good-faith communication to the employee, intending to clarify as many aspects of employment as possible within a document. Employees, on the other hand, may see the handbook as a contractual offer that extends its terms beyond at-will employment.

Contracts

Traditionally, handbooks were regarded as containing guidelines that were revocable at the necessity of management. A more modern view treats handbooks as governing instruments of employment, more like a labor contract. Employers hand these materials out to employees expecting that the rules be followed. Accordingly, courts have concluded employees should abide by the promises they make. This is consistent with case law surrounding contract formation. In Oklahoma, the four traditional requirements of contracts are: (1) competent parties, (2) consent, (3) legal object, and (4) consideration (Russell v. Board of County Com’rs, Carter County, 952 P.2d 492 (1997)). Handbooks are sometimes considered more like less-traditional, unilateral contracts.

Unilateral contracts are basically offers of pay or other compensation for future performance. The identification of certain contracts as unilateral is mainly for academic purposes, and support for this notion in case law is sketchy at best. But, where courts have recognized unilateral contracts, handbooks have been found legally binding when the policies within meet the requirements of contract formation. In these cases, the theory applies when the employer has been deemed to have promised to abide by policy terms as long as employees perform accordingly. This is particularly true when policies state grounds for termination or processes of reprimand or state termination will only occur for cause.

In any area of law, cases with similar fact patterns can end up with different verdicts. It becomes necessary for the integrity of law to distinguish between the cases. For this reason, courts are fond of utilizing “tests” to assure consistency among holdings that may seem inconsistent otherwise. The test many courts will use when deciding whether handbooks and manuals should be regarded as contracts that expand the terms of employment has three parts that must be satisfied: (1) the text must contain a promise clear enough that an employee would reasonably believe that an offer has been made, (2) the handbook, etc. must be presented in such a way that the employee understands and reasonably believes it to be an offer, and (3) the employee must accept the offer by accepting work or continuing to work after being informed of the employment policies.

Disclaimers have been the most effective tool for avoiding liability stemming from disputes over the text of handbooks.

Disclaimers

Judicial opinion has differed as to the binding nature of a handbook as a contract, depending on the facts of each specific case. Unless a handbook specifically denies any intention of the employer to have it be part of the employment contract, the court has questioned whether the document was intended to define or expand the terms of employment.

Fortunately, judgments have hinged most often on two main issues: disclaimers and the actions of employers. Disclaimers have been the most effective tool for avoiding liability stemming from disputes over the text.
of handbooks. Clear and conspicuous statements denying the legal sufficiency of handbook policy statements are consistently upheld in the courts. The idea makes sense. If a contract relies on a promise, an employer needs simply to make certain that no promise is made. Still, just a skeletal claim that employees should not expect the company to be bound by its policies is not itself sufficient nor is it a particularly strong message for the company to send.

Many courts contend that any expressed denial of contractual intent included within a handbook or manual, even in very simple terms, is sufficient to defeat claims that such a contract exists. Yet, other courts disagree, choosing to look at other facts surrounding employment and even at the context of how the disclaimer is presented. In these latter cases, it is very likely that the case will go to trial. To cover all bases, care should be taken to see that the disclaimer possesses certain other characteristics.

**Terminology**

Obviously, a disclaimer must deny a potential claim. Word choice is important. The text must be clear and unambiguous. Since the idea is usually to ensure the contract continues to be one of “at-will” employment, it is best to use terms to that effect. Declaring employment is “at-will,” meaning that either side can end the contract by immediately ending employment, is effective.

Similarly, stating an employee may be discharged for “any reason” or at “any time” clearly makes the company’s position known to the employee.

**Placement**

Disclaimers should be placed in a policy document, so they are conspicuous. This practice results in a much stronger case for the employer, since it shows due diligence on the part of the company to inform its employees of the nature of the handbook. Even the most well-written disclaimer may be found insufficient if it is not prominently displayed. Locations that are viewed by courts as prominent include the front cover, front page, introductory paragraph, or signature page. Having the disclaimer in multiple places further strengthens its effect.

**Appearance**

In addition to content and placement, a carefully fashioned appearance of the disclaimer can yield a greater effect. Disclaimers in all capital letters, bold letters, or a much larger font have been awarded generous treatment from the courts. Some disclaimers have been considered ineffective because of a failure of the company to set them apart by appearance. In one case, the court held a disclaimer was sufficiently conspicuous when placed inside a prominent border. Most any method of setting the disclaimer text apart from the remainder of the policy statements should be effective.

**Communication & distribution**

Having a well-written, conspicuously placed disclaimer may still not be enough when faced with litigation. It is also imperative the company take seriously the duty of communicating this message to the employee. The effectiveness of the disclaimer is tied directly to the effectiveness of the communication at issuance. Employers have been consistently successful in cases where the company’s method of distribution of its policy statements has been shown to have made reasonable employees aware of its intent via the disclaimer.

If the handbook is widely distributed, it may not matter if an employee has read or signed it. If the employee bases a claim on the contents of the handbook, he becomes bound by the text of the handbook. Another method that has received positive treatment is having a company representative read the disclaimer aloud to the employee at orientation or other appropriate time immediately after hire. This representative could be a manager, supervisor, trainer, or other team member responsible for human resources or orientation activities.

**Timing**

Cases exist where a disclaimer is challenged because it was introduced during the course of a person’s employment. These cases have received attention even when the disclaimer was otherwise effective and the employee was shown to be aware of its existence and its terms.

Courts have come out mixed on this issue in general. Yet, it appears when a new policy is enacted and steps are taken to effectively com-

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In the spring 2006 issue of fapc.biz, corporate identity was defined simply as “all that constitutes the objective reality of a corporation.” This definition was derived from the Merriam-Webster definition of the term identity as “all that constitutes the objective reality of a thing.”

In that same issue, an exception was taken to the current general treatment of the subject by corporate identity “specialists.” These specialists place an emphasis on common and recurring themes and imagery, then transfer the imagery onto letterhead, logos, advertisements, and other marketing materials.

But, a corporate identity program should capture and unify all aspects of a corporation’s communications, both internal and external. A company is not defined only by its letterhead, its logo, its campaign slogan, or even its products. The larger and more lasting impression is made through its relationships with the world at large.

In the mid-’60s, two partners in a packaging and design firm in New York basically invented the corporate identity industry. The world-renowned firm of Lippincott & Marguiles had identified large, conglomerated businesses often had very diverse product lines and synergies between products could not be ignored, even when consumers would not relate those products to each other. Clive Chajet, who eventually purchased the firm from Walter Marguiles, related a simple truth about his industry in his book Image by Design: “A corporation’s image is what is perceived by its various audiences...a corporation’s identity is what it chooses to use to shape those perceptions.”

Simply stated, the identity of a company is a reflection of who that company is. A corporate identity program should not strive to change a community’s perception of a company but rather direct the company in how to project itself to be perceived most positively by a community. This is true regardless of the size of the company. The only way to avoid perception is to avoid detection, and to avoid detection would defeat the very premise of being in business. It follows that small businesses have the same needs for corporate identity programs as large businesses.

Unfortunately, for all but the substantially large companies, retaining true corporate identity firms is often cost prohibitive. Also, these firms tend to be found only in the largest of metropolises, and although technology can now overcome most regional boundaries, there is a certain cultural disconnect that may exist when businesses are separated by geography. Small and mid-sized companies, being disadvantaged by both price and place, may not find themselves in a position to find assistance cultivating their identity programs.

Yet, while access to reputable corporate identity specialists may be limited, all of the elements of a good program can usually be found close to home. There are probably local businesses that could each perform one of the necessary individual tasks of an identity program. A business could then contract the separate tasks while managing the program as a whole and do so at a lower cost than a national firm would command. To do this, businesses need to understand what activities constitute a good identity program.

Elements of a corporate identity program

Try viewing corporate identity building as a five-step process: research, analysis, design, organization, and launch. The system may seem familiar; similar processes govern many business activities, from R&D to product branding. While the system may seem intuitive, it is hardly simple. Like writing a business plan, much of the effort is bogged down in tedium. But, like a good business plan, the results more than outweigh the effort. The following discussion will focus on each individual step to help illustrate the method.

Step 1: Research

The first activity involves primary research. This is best accomplished through interviews. These interviews will be with internal and external audiences. Internal audiences include the principals of the business, employees, stakeholders, and current industry partners. Larger companies also would conduct interviews with employees of subsidiary businesses. External audiences would include target consumers, potential investors, and the financial community.
These interviews are used to determine perceptions of the different audiences. Executives should have a direction they want to take the company, but to get where they want to go, they must learn precisely where they are. These interviews are crucial to that end. Without them, the entire identity program becomes suspect.

The research step is easily the most costly and often the most time-consuming, which is why most businesses rarely include it. Secondary research data may be used to approximate some external perceptions, but there is really no substitute for having it done right.

**Step 2:** Analysis

Once the interviews have concluded, the data needs to be analyzed. There will be commonalities among the audiences’ perceptions. Some will be positive and some negative. Through analysis, the strongest recurrent themes are identified. These themes provide the foundation for the imagery and systems that constitute the identity program.

The ultimate goal of the analysis is to coordinate the way the business is perceived with the way it wishes to be perceived. Generate terms that exploit positive themes and address weaknesses. Corporate relationships heavily affect the direction of the branding program and must be considered during this exercise. This is actually much easier to do in practice than it might seem and is generally the most exciting part of the process for everyone involved.

**Step 3:** Design

Analysis will result in a collection of specific terms or phrases, which describe the chosen direction of the organization. These terms serve as a launching pad for design elements. These elements will compose the tangible portion of the branding program, defining the sights and sounds that will be most prominent in the corporate imagery. The elements will include color(s), visual imagery and logos, taglines, and many other aspects of the branding program.

Depending on the perceptions of a company, its current branding and imagery may be used significantly, sparingly, or not at all. Some companies have established enough goodwill that it would be unwise not to utilize their familiar branding, while other companies are looking for a fresh start. Some businesses may be entering new markets and find what worked in the previous market is not suitable for the new direction. This step of the process is where most businesses start their program, ignoring the research and analysis steps, often to their peril.

**Step 4:** Organization

Next, the design elements must be organized and incorporated into every aspect of the company’s communications. Labels, point-of-purchase materials, signage, and business cards are derived in this step. Letterhead, guidebooks, and advertisement slicks also are created. These are less conspicuous to the general public but are every bit as important to a good corporate identity program. It is likely that even the company buildings will enjoy some remodeling as a result. Much of this step boils down to some degree of tedious, concrete decision-making and can generally be handled by any advertising agency, reputable graphic design firm, or even a good marketing firm. The generation of handbooks and other guides containing technical specifications for every instance of the use of imagery is not many people’s idea of fun. Still, it is incredibly important for consistency and strength to have this information handy and unambiguous.

**Step 5:** Launch

Lastly, the design system is taken public. This often requires a massive logistical effort on the part of the company. Whether the tone of the launch is aggressive or subtle, all aspects of the launch must be deliberate. Obvious considerations include distribution channels, advertising, and other lines of communication.

Often not considered are internal documents and systems. Activities as basic as how telephone calls are answered may greatly impact the success of the identity program. Elements, such as mission and vision statements and product or corporate branding, should be visible throughout corporate and franchise offices and on all internal company materials. Remember, corporate identity is representative of the whole of the company’s actions.
New beverage trends increase sales

There has been impressive growth in the high-end segment of the beverage industry. In 2005, spirits produced more than $550 million in supermarket sales, and wine produced more than $4.3 billion. By 2008, fresh juice sales are expected to reach $1.4 billion (Food Technology, July 2006). The following sales increases occurred between 2003 and 2005: carbonated, functional, and ready-to-drink tea and coffee drinks up 66 percent; juice and functional beverages up 51 percent; milk, cream, and other dairy products up 48 percent; coffee and cocoa up 37 percent; and tea up 8 percent (Food Technology, July 2006).

Tea
Tea is experiencing increased sales in the United States in part due to its healthy connotation, the expanding market for upscale gourmet products, and the use of tea as a flavoring. Thought to be healthy because of its antioxidant content, green tea has shown to be quite popular with consumers, either alone or combined with other flavors. White tea is gaining in popularity as well and has been suggested to contain more antioxidants than green tea (Stagnito’s New Products, August 2005).

Another trend in the U.S. specialty tea market is display teas. Due to its increasing popularity, it should come as no surprise that tea is also slowly finding its way into a wide range of products as a flavoring. (Stagnito’s New Products, August 2005).

Juice
Due to concern over health issues such as cavities, diabetes, and obesity, many adults have begun to either stop or greatly reduce the volume of soft drinks consumed by themselves and their children. Searching for alternatives, some consumers have chosen juice, dairy products, or sports drinks. However, after looking at the label, they might be surprised to find the amount of calories and carbohydrates for some of these products is nearly the same as those for soft drinks. This has prompted some companies to offer low calorie/low sugar versions of their juices or to position their juices as “natural,” thereby easing the sting of the high calorie/carbohydrate count (Prepared Foods, July 2003).

Packaging
The innovations do not end with novel beverage formulas but extend to novel beverage packaging as well. In the international arena, a ready-to-drink tea in a self-cooling package is being produced in Germany. The cooling system is activated by turning the package upside down and pressing the bottom. (Stagnito’s New Products, January 2006). In Argentina, a wine is being marketed as the first to be produced in a 345 cm³ aluminum can. The can contains a special lining that prevents the wine from coming in contact with the aluminum, thus preserving its natural flavors and aromas (Stagnito’s New Products, January 2006).

Formulation and Processing
Many of these new beverages come with a unique set of challenges, requiring either special formulation or processing. Some fortifying ingredients may have distinct flavors, such as omega 3 fatty acids or soy protein. This may require a beverage be formulated with suitably strong flavors that can act as a mask while at the same time not be overpowering to the consumer. This may require limiting the use of fortifying ingredient to those beverages that have suitable flavor profiles and excluding them from those that do not. Many premium juice manufacturers utilize flash pasteurization, which quickly heats the beverage up to destroy pathogenic bacteria then quickly cools it back down to preserve quality. While this method helps maintain the natural color and fresh flavor of the juice, it does not destroy spoilage microorganisms. Therefore, these products must be kept refrigerated as opposed to some juices that are hot-filled and are shelf stable at room temperature.

Whether these trends prove to be true innovations or simply gimmicks to help products stand out in a competitive field remains to be seen.
Understanding the product costs

The FAPC opened its doors in 1997. During the past nine years, there has been a plethora of entrepreneurs that have requested assistance and direction on how to bring a food product to market. Although most have come with unique and interesting products and/or product ideas, they soon learn that it takes more than just a product for success. Some of the experiences and lessons learned will be covered in a series of articles.

Knowing the costs

One of the realities for survival and prosperity in the food business, or any business, is to have a good understanding of costs. The product may be good, but it must be sold in a competitive environment. The product may be “the world’s best,” “everybody likes it,” “grandma’s original recipe,” “organic,” “inorganic,” etc., but selling price must reflect the expectations of the buyer.

It is easy to sell a $2 product for $1 if somebody wants it. It is not easy to sell a $1 product for $2, unless there is some added feature that may or may not cost more. For example, bulk popcorn in a bag may cost $1 for a pound in a grocery store, microwave popcorn may cost $1 for a single serving bag in a vending machine, and it may cost $3 or more for a single serving bag at the movie theater. Value has been added by convenience and location. There are added costs for the “value” at each step. The movie theater could sell bulk unpopped corn at 25 cents per ounce and make money, but consumers would be unlikely to buy it even if poppers were provided. Value is the name, and cost is the game. They must both be in balance with the customers’ expectations.

“World’s greatest” salsa example

People come to the FAPC with a great product or great product idea they want to commercialize. They seldom have an idea what it costs to make but know that it costs a lot in the grocery store, so they should be able to make money.

For example, an individual might have an “original” salsa recipe that was hand-carried across the Rio Grande by someone’s grandfather two generations ago. It was written in Spanish with a dull pencil, sealed in a bottle to keep from getting wet, and recently found while digging in the garden. The bottle was opened, and the recipe was translated into English by the high school Spanish teacher. Subsequently, product was made and served at many family gatherings and to friends over several years’ time. There was never a complaint, and the unanimous opinion of those who tasted it for free was “you ought to sell this stuff and make some money.” This may be true if you have a good handle on processing costs, yields, marketing cost, selling cost, and margins along the way. This example provides a good story to put the label to romance the product and add value through marketing. It is doubtful that the end product is going to taste exactly like what was made in Mexico by the grandfather, but the story does not add cost and may help differentiate the product from other salsas.

Processing cost, or what it costs to make the product, is the first thing to consider. Ingredient cost can be calculated from the recipe and the price of each ingredient used without ever having to make any product. This is seldom done by an entrepreneur but always done by a larger company. If the numbers do not add up initially, something needs to be changed, or it may be a risky business proposition at the beginning.

During the initial stage for “start-ups,” ingredients are typically sourced in small volume from a local grocery store or home cupboard. In the next step, ingredients are sourced from a club store. This is about the stage many food entrepreneurs come to the FAPC for help. If ingredient costs are favorable using retail vendors, then there is some hope ingredient cost can be improved in the future and will cover some unforeseen costs that may show up later. Ideally, ingredient specifications should be written and ingredients sourced through specific vendors to control consistency and cost. Now, back to the example.

The new salsa processor/marketer has attended the FAPC Basic Training seminar and is diligently working on a business plan for the business. An appointment is made for recipe scale-up and to commercialize the original Mexican recipe. From the test results and initial processing yield, product cost calculation can be started. During the first visit, the original recipe is reviewed. Upon review, the original recipe calls for two 24-ounce bottles of “Pace” medium salsa, ½ cup diced onions, one 12-ounce bottle of Bohemian beer, 1 cup of canned Jalapenos, 2 tablespoons black pepper, etc. The first observation is, “Are you sure this is the original recipe from Mexico you found buried in your garden?” The second observation is home recipe development is done the same way in Mexico as in the United States. This looks like a good place to stop as cost is going to drop down in priority behind developing a practical recipe.
Oklahoma Quality Award

I have had the opportunity to be an examiner for the Oklahoma Quality Award. First of all, the work and responsibilities of an examiner are hard. The OQA uses the same criteria and scoring guidelines as the Baldrige Award. The only difference is that the OQA is on the state level, and the Baldrige Award is a national award presented by the U.S. president. Although my responsibilities as an examiner were tough and time consuming, the real commitment or “Staying the course for quality: Enduring and undeviating” as emphasized in the summer 2006 issue of fapc.biz, comes from the organizations that apply for the OQA.

The organizations that apply for the OQA are not doing this to satisfy a set of “customer-driven requirements,” but they are truly looking to not only improve the quality of their product but also for performance excellence, improved value to stakeholders and customers, improvement in overall organizational effectiveness and capabilities, and organizational and personal learning.

In my opinion, one of the current philosophies of total quality management is performance excellence as defined in the Baldrige criteria. The Baldrige uses a set of nonprescriptive criteria as a standard of excellence to help organizations achieve world-class quality. My intention is to use the criteria found in Baldrige as my stepping-stones to write articles for the next several issues of fapc.biz.

Leadership

The previous fapc.biz quality article described leadership and how leadership is the mechanism for creating a quality culture. Many owners, executive management, and management know by now that there are hundreds if not thousands of written materials and workshops available to gain leadership knowledge and skills, but I cannot move away from discussing leadership until I introduce Stephen R. Covey’s concept of Principle-Centered Leadership.

I, along with all of my colleagues at the FAPC, have attended Covey’s Seven Habits of Highly Effective People three-day workshop. This was an extremely motivating workshop and still challenges me daily to improve focus, communication, and balance for the FAPC and myself and has helped increase my productivity by staying focused on the right things. It is impossible for me to do more than introduce this form of leadership in this short article, but as a former mentor once told me, “Plant the seed and watch it grow.”

Covey points out there is much more than just planting the seed: “The only thing that endures over time is the law of the farm: I must prepare the ground, put in the seed, cultivate it, weed it, water it, and then gradually nurture growth and development to full maturity. There is no quick fix, where you can just move in and make everything right with a positive mental attitude and a bunch of success formulas. The law of the harvest governs. Natural laws, principles, operate regardless. So get these principles at the center of your life, at the center of your relationships, at the center of your management contracts, at the center of your entire organization.”

Covey states the law of the farm is part of the “Natural Laws.” Procrastinating and cramming do not work on the farm. You cannot wait until May to plant or even fertilize wheat that will be harvested in June, and you cannot take steers to be slaughtered for prime or choice beef without first having

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**The Seven Habits of Highly Effective People**

**Habit 1** - Be Proactive: The endowment of self-knowledge or self-awareness, an ability to choose your response (response-ability).

**Habit 2** - Begin with the End in Mind: The endowment of imagination and conscience.

**Habit 3** - Put First Things First: The endowment of willpower.

**Habit 4** - Think Win/Win: The endowment of an abundance mentality. Why? Because your security comes from principles.

**Habit 5** - Seek First to Understand...Then to be Understood: The endowment of courage balanced with consideration.

**Habit 6** - Synergize: The endowment of creativity...two minds producing solutions far better than what an individual proposes alone.

**Habit 7** - Sharpen the Saw is the habit of renewal: A regular, balanced renewal of the four basic dimensions of life (mental, physical, social/emotional, and spiritual). It circles and embodies all the other habits. It is the habit of continuous improvement that creates the upward spiral of growth that lifts you to new levels of understanding and living each of the habits as you come around to them on a progressively higher plane.
properly fed and fattened the animals. Other things must be done in season, according to natural cycles. Natural consequences follow violations in spite of good intentions. We are subject to natural laws and governing principles—laws of the farm and harvest.

**Principles versus values and practices**

Values and practices are what we do; they are an activities or actions that may work in one circumstance but not in another. Values are personal, temporary maps that show us where to go or what to do, given a particular situation. They can become obsolete when the situation changes.

Values represent our cultural influences, personal discoveries, and family scripts. They vary from person to person or, more accurately, from role to role. A single individual can carry with himself or herself several sets of values for each of his or her different roles—child, sibling, parent, spouse, friend, lover, executive—and these values can contradict each other and change over time depending on the person’s newly acquired experiences and insights.

Principles are why we do what we do and are like compasses that point us to “True North.” Principles are timeless, universal behavioral standards that have governed the social values of all the great human societies and civilizations. They apply to all people and all roles at whatever time and place and in whatever situation. Examples are fairness, equality, justice, integrity, honesty, and trust. When principles are internalized into habits, they empower people to create a wide variety of practices to deal with different situations.

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**Definitions**

**True North:**
A compass has a true north that is objective and external and reflects natural laws or principles, as opposed to values which are subjective and internal. Because the compass represents the endless truths of life, we must develop our value system with deep respect for “true north” principles.

**Natural Laws:**
Natural Laws are a universal set of principles that govern human behavior. Principles are not invented by us or by society; they are the laws of the universe that pertain to human relationships and human organizations. They are part of the human condition, consciousness, and conscience. Principles are rooted in unchanging natural laws that govern human and organizational effectiveness.

**Paradigm Shift:**
Change from one way of thinking to another. It is a revolution, a transformation, a sort of metamorphosis. It does not just happen, but rather it is driven by agents of change. Representing the notion of a major change in a certain-thought pattern—a radical change in personal beliefs, complex systems, or organizations or replacing the former way of thinking or organizing with a radically different way of thinking or organizing.

**Emotional Bank Account:**
A metaphor for the amount of trust one develops in a relationship. You can make deposits, and you can make withdrawals. There are six primary deposits one can make that build trust, and they include truly understanding the other person, attending to the little things, keeping commitments, clarifying expectations, showing personal integrity, and apologizing sincerely when you make a withdrawal. The key to all other deposits is making what is important to another person as important to you as the other person is to you.

You can imagine what withdrawals are: being disrespectful or discourteous, overreacting, and threatening. If you get overdrawn, you have a problem. Covey writes, “When the trust account is high, communication is easy, instant, and effective.” We all know how that is, and is it not a relief? When you have such a clear, mutual trust with someone, even if you disagree, discussions are easy and comfortable. You come to a shared understanding quickly. Think how efficiently a business would run if all discussions went this way.

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1 Oklahoma Quality Award, [http://www.oklahomaquality.com/](http://www.oklahomaquality.com/)
3 Principled-Centered Leadership, Stephen Covey

This article is part one of a two-part series. Part two will be published in the next issue of fapc.biz
municate the change, the disclaimer is deemed to be effective.

This makes sense considering the doctrine of at-will employment. Since the employee is employed at the will of the company and may quit or be terminated at any time, continuing to work after being introduced to the new policy implies the employee has agreed to the new terms of employment. This doctrine gets sketchy when the previous policy could have been construed as extending the employment contract past that of an at-will relationship. Any company already doing business will face this issue when they make policy changes, so careful thought will be required when communicating the new policies to existing employees.

**Due process**

One of the greatest advantages of disclaimers is the protection from due process suits. In almost all cases, employees, who have challenged their termination based on due process, have found their cases have no merit in law. The employee has argued provisions in the handbook provided an implied contract for employment. The at-will doctrine wins again here, supported overwhelmingly in case law.

**Other drawbacks**

Case law provides great support for employers who print disclaimers in their handbooks and manuals. However, disclaimers are not powerful enough to overcome all apparent promises implied in some handbooks. Companies may be found to have extended the terms of employment, despite disclaimers, when they enumerate specific acts that are grounds for termination.

Courts have viewed such passages as creating the terms of contracted employment, and those specified acts are the only grounds for termination for cause. Rather than spell out specific acts, it is much more prudent to focus the text on expectations of employees, leaving forms of and causes for reprisal to implication.

**Actions speak louder than words**

It is evident that proper disclaimers can be very effective for protecting employers from liability. But even though an employer provides employees with written policies, those policies can easily be undermined by contradictory actions by company representatives.

In cases like these, actions do speak louder than words, and courts award the actions a great deal more deference. Allowing acts by employees in violation of the policy statement implies that such acts are not actually cause for dismissal.

Inconsistent disciplinary actions by supervisors are no different than the blatant disregard for dischargeable conduct and may even compound the problem of litigation. At best, this dilutes the effect of the policy statement; at worst, it renders the policy statement utterly unenforceable.

**A matter of law**

There may be no way to eliminate the threat of litigation, but threat can be minimized. Employee handbooks will continue to be the source of lawsuits brought by disgruntled workers.

Companies must be prudent when drafting handbooks and manuals. Handbooks should contain only the information necessary to facilitate the proper work environment, and handbooks should be distributed in a manner that ensures all employees are aware of the policies stated within. Further steps should be taken when possible to certify employees have been exposed to the policy statement and understand its terms.

Disclaimers should be used to reinforce the terms of at-will employment and should be displayed boldly and prominently within the document. Make certain the disclaimer text (1) is

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**Example of an effective disclaimer**

"THIS HANDBOOK IS INTENDED AS A GUIDE FOR THE EFFICIENT AND PROFESSIONAL PERFORMANCE OF YOUR JOB. NOTHING HEREIN CONTAINED SHALL BE CONSTRUED TO BE A CONTRACT BETWEEN THE EMPLOYER AND THE EMPLOYEE. ADDITIONALLY, THIS HANDBOOK IS NOT TO BE CONSTRUED BY ANY EMPLOYEE AS CONTAINING BINDING TERMS AND CONDITIONS OF EMPLOYMENT. THE COMPANY RETAINS THE ABSOLUTE RIGHT TO TERMINATE ANY EMPLOYEE, AT ANY TIME, WITH OR WITHOUT GOOD CAUSE. MANAGEMENT RETAINS THE RIGHT TO CHANGE THE CONTENTS OF THIS HANDBOOK AS IT DEEMS NECESSARY, WITH OR WITHOUT NOTICE."

This is an actual disclaimer from a company handbook. The text was almost twice the size of the remaining text in the handbook. It was placed on the first page of the manual and was the only text on that page. It asserts with no ambiguity that no promises are made that modify the at-will relationship. Lastly, it preserves the company's right to alter the policy language (cited from 19 Williston on Contracts § 54:12 (4th Edition)).
prominent, (2) is prominently placed, (3) is unambiguous and no promise is made to extend employment terms past at-will, and (4) preserves the right to alter the policy language in the future. Remember a disclaimer may be negated by inconsistent actions by company representatives. Always have an attorney review any documents that may imply a contractual relationship because it is the business that lives with the consequences.

**Case law**

**Nationally**

_Dunaway v. International Broth. of Teamsters_, 310 F.3d 758 (D.C. Cir. 2002). At-will relationship not rebutted when employee manual drew no distinction between probationary and permanent employees.


_Gonsalves v. Nissan Motor Corp. in Hawaii, Ltd.,_ 100 Haw. 149, 58 P.3d 1196 (2002). Disclaimers may not be effective when they: (1) are not clear, conspicuous, and understandable; (2) contradict language in the manual; or (3) contradict subsequent oral or written statements by the employer. Such disclaimers do not preclude claims for breach of contract.

_Iowa Code § 1.421(1); f. Grimm v. U.S. West Communications, Inc.,_ 644 N.W.2d 8 (Iowa 2002). Relief could be granted when placement of disclaimers caused disclaimers to be ambiguous.

_Arch of Wyoming, Inc. v. Sisneros, _971 P.2d 981 (Wyo. 1999). “We determine as a matter of law whether or not a disclaimer is conspicuous and unambiguous. In making that determination, we consider the prominence of the text of the disclaimer and the placement of the disclaimers in relation to the other text in the handbook. We also construe the language of the disclaimer to determine whether it clearly stated the employer’s intention to retain at-will employment and to disclaim the formation of a contract for continued employment. We place particular emphasis on whether or not the employer reserved the right to alter the language of the handbook.” (citations removed)

_Bouwens v. Centrilift, _974 P.2d 941 (Wyo. 1999). A provision stating the employer would “give particular attention to the length of service with the Company” when making layoffs was not enforceable as an implied contract by an employee who was laid off because of the employer’s legitimate economic problems.


_Oklahoma cases_  

_Hinson v. Cameron, _742 P.2d 549, 108 (1987) Supreme Court of Oklahoma. ...employee manuals which delineate termination procedures or reasons for termination are not contractually binding on the employer.


_Tsotaddle v. Absentee Shawnee Housing Authority, _20 P.3d 153 (2001) Court of Civil Appeals of Oklahoma. Held (1) evidence established implied contract of employment, (2) evidence established due process property interest in continued employment, (3) evidence supported damages award.

_Russell v. Board of County Com’rs, Carter County, _952 P.2d 492 (1997) Supreme Court of Oklahoma. Employee handbook may form basis of implied contract between employer and its employees if four traditional contract requirements exist: (1) competent parties, (2) consent, (3) legal object, and (4) consideration.

_Hayes v. Eateryes, Inc., _905 P.2d 778 (1995) Supreme Court of Oklahoma. Vague assurances...place absolutely no substantive restrictions on the reasons the employer may terminate the employee.

_Selfridge v. Dollar General Corp., Inc., _9 P.3d 695 (2000) Court of Civil Appeals of Oklahoma. Held (1) employee handbook did not create implied contract preventing former employee from being terminated without good cause, (2) alleged statements of former employee’s supervisors did not give rise to implied contract, and (3) evidence was insufficient to support inference of retaliatory discharge claim.
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