

NASA Langley Office of Chief Counsel Newsletter



Volume 6, Issue II August 2014

I am pleased to issue the NASA Langley Office of Chief Counsel Newsletter for the third quarter of calendar year 2014. Every so often, we are asked if NASA has “real attorneys” and “why does NASA need attorneys?” To help answer the first question, this issue of the Newsletter includes an article that provides background on attorney credentials and includes a summary of the areas of law in which our attorneys provide advice and counsel. In later issues, we will answer the second question. Tom McMurry, relatively fresh from serving a detail at NASA HQ as the Executive to the Executive Council (including other responsibilities), provides an excellent summary of the Agency Governance and Agency-level governing councils. We have also included articles addressing the Buy America Act and why employment with NASA does not equate to a contract. Given that we are approaching election season, you will find an article addressing political activity; and I encourage you to take the ethics quiz that is included. If you ever wonder where your invention disclosure goes once submitted, we provide an explanation. We also extend congratulations to those employees who received a 2014 Patent Award and to those who received an issued patent since our last issue. Of course, we have not left out a little humor. Finally, just a few days ago we said goodbye to Dacia Bruns. Dacia was in a temporary position as an attorney on our Business Law Team. Dacia accepted a permanent position as an attorney with the Navy Military Sealift Command in Norfolk. Dacia did fabulous work here at Langley, and she will do the same for MSC. She earned the admiration of her colleagues in OCC, the NASA legal team, and her clients at the Center. We will miss her, and we wish her well in her new position. We hope you enjoy this issue, and we welcome your feedback.

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Chief Counsel

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Office of Chief Counsel Credentials

This article includes a general overview of the credentials and experience of NASA Langley Office of Chief Counsel (OCC) attorneys and provides a single sheet matrix showing the subject matter structure of OCC and attorneys associated with each subject matter area. This will help answer the question of whether NASA has “real attorneys” and set the scene for addressing the question of “Why does NASA need attorneys?” in later editions of the OCC newsletter.

OCC has 12 attorneys¹. A basic law degree is a Juris Doctor (JD) and an advanced law degree is a Master of Laws (LLM). All the attorneys attended and graduated from American Bar Association (ABA) accredited law schools, receiving their JD between 1974 and 2006. The law schools attended are:

American University College of Law
California Western School of Law;
The George Washington University GW Law;
Michigan State University College of Law;
Northern Kentucky University Chase College of Law;
Seattle University School of Law;
Suffolk University Law School;
University of Notre Dame Law School;
University of Richmond School of Law;
University of South Carolina School of Law;
University of Texas School of Law at Austin; and
William & Mary Marshall-Wythe School of Law

Four attorneys (33% of the office) have earned an LLM from ABA accredited programs; two received their LLMs from The George Washington University, GW Law (in 1980 and 1988) and the other two received their LLMs from The Judge Advocate General’s School, U.S. Army (in 1988 and 1996). All attorneys are members of at least one, and in some cases multiple – up to four - State Bars, having passed the associated State Bar exam(s). All attorneys are admitted to practice in at least one State Supreme Court and several are admitted to practice in various federal courts. Four attorneys are admitted to practice before the Supreme Court of the United States. Additionally, three attorneys have taken and passed the U.S. Patent and Trademark Office (USPTO) Registration Examination and are admitted to practice before the USPTO as patent attorneys.

Between these 12 attorneys, there is a combined experience base in excess of 272 years of legal practice. Over 117 of those years are the practice of law for NASA. Additionally, there is over 117 years of legal practice for the active duty military (76 years Air Force, 35.5 years Army, and 6 years Navy). Over 17 years of practice were as civil servants for military organizations (15.5 years with the Office of General Counsel for the Navy and 2 years with the Office of General Counsel for the Army). Finally, last but not least, there is 20 years of experience in private practice.

OCC is structured by areas of practice as shown on the attached matrix; these are general business law (Business Law Team - BLT), personnel law (Human Resources and Ethics Law Team - HR&ELT), and intellectual property (Intellectual Property Law Team – IPLT). The Chief Counsel and Deputy Chief Counsel manage the office, provide policy guidance to the teams and individual attorneys, and interface with the NASA General Counsel and NASA LaRC senior management.

¹ This article was written when OCC had 12 attorneys. Due to the departure of Dacia Bruns, OCC now has 11 attorneys.

Additionally, the office has two paralegal support staff and two legal assistants providing legal research and patent prosecution support to the attorneys. Finally, we have one administrative support person supporting both OCC and the Office of Human Capital Management.

In later editions of the OCC newsletter we will provide separate articles focusing on the type of work each the three teams performs in support of the NASA mission, the individuals making up the team, and how the support staff and management attorneys inter-relate and support the teams.

Business Law News

A Program Manager's Introduction to the Buy American Act

If a researcher wants NASA to buy a foreign-made instrument to conduct research here at LaRC, are there any potential problems? You can bet on it. Government agencies are required to purchase domestic supplies and services unless a legal exception is directly applicable.

There are numerous statutes and regulations directing Federal agencies to give absolute or qualified preferences to U.S. sources for the procurement of goods and services. Correspondingly, there are scores of exceptions and qualifications that have developed over the years in appropriations statutes, procurement laws, regulations, treaties, and Executive Orders. Taken together, "Buy American" is a body of law that is about as complicated and changeable as it gets. The best advice is to always endeavor to buy American supplies and services.

The alternative to "buying American" means being prepared to run a gauntlet of reviews and approval processes and, after that, paying additional expenses for import customs and duties. Exemptions or exceptions from customs and tariffs for government agencies are very limited. We normally pay the "full freight" if we import, thus increasing the overall cost to NASA. So, in those rare circumstances when we are allowed to purchase a foreign-made product, NASA project managers should plan on budgeting up to 30% above the purchase price for customs duties. The requirement to pay customs duties and tariffs is philosophically consistent with the preference for domestic products.

Originally enacted in 1933, the Buy American Act was a Depression-era measure to foster and protect American industry, workers, and capital. The Act generally requires that supplies and construction materials procured by the Government for use in the U.S. must be manufactured in the U.S. from components substantially of domestic origin. In the case of supplies, the statute permits waiver of this requirement if the Agency head or delegate determines that the requirement is inconsistent with the public interests, the cost of domestic materials is unreasonable, or the supplies are unavailable in the U.S. in sufficient commercial quantities or satisfactory quality.

The Buy American Act uses a two-pronged test to define a domestic end product. First, the article must be manufactured in the United States. Second, the cost of domestic components in the product must exceed 50 percent of the cost of all the components. The component test applies to small business set-asides and mega-conglomerate manufacturers alike.

In 1988, Congress enacted significant amendments to the Buy American Act in the Omnibus Trade and Competitiveness Act. The amendments prohibit Federal Agencies from procuring the *services* of any contractor or subcontractor owned directly or indirectly by citizens or nationals of a foreign country that is either not in good standing under an Agreement on Government Procurement or discriminates against U.S. products. Unlike the prohibitions in the Buy American Act that focus on where the product is produced, the 1988 prohibitions regarding the procurement of services is based on the nationality of the *owners* of the contractor providing the services and applies even if the source of the services is domestic.



As noted earlier, there are exceptions and they can be complicated. One of the more straightforward exceptions is the Buy American Act only applies to contracts exceeding the micro-purchase threshold (currently \$3000). Another reasonably available “loophole” is 41 U.S.C. 431, which waives the component test for acquisitions of commercially available off-the-shelf (COTS) items. The term “commercially available off-the-shelf item” means an item: 1) sold in substantial quantities in the commercial marketplace; and, 2) is offered to the Federal Government, without modification, in the same form in which it is sold in the commercial marketplace. Another exception is that the domestic preferences only apply to supplies used in the U.S. If they are used overseas they don’t have to be American products.

To summarize, the life of a program manager is much easier if everyone first looks for American supplies and services to meet our NASA contracting needs. But, if that super expensive special little import is absolutely necessary, contact OCC and OP to see if we can make things happen.

Governance By Council

NASA Governance: Quick Reference Guide

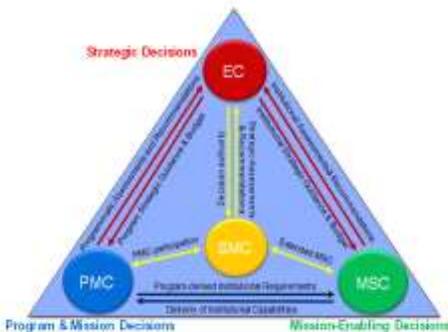
From 2013-2014 OCC supported Agency Governance by detailing Tom McMurry to HQ for one year to work as the Executive to the Executive Council (EC), the Baseline Performance Review (BPR) Manager, and as a team lead for the Office of Agency Council Staff (OACS). OACS and the Agency councils are completely supported by Center detailees, and the opportunity for others to apply to the Agency Executive positions will arise again in the late Fall, 2014. OCC encourages others at LaRC to apply for OACS detail positions for the excellent insights that the opportunities provide and for the chance to keep LaRC involved in supporting Agency-level governance. Upon his return, Tom developed the below background information on Agency Governance and the Agency-level governing councils.

NASA governance is addressed within NPD 1000.0A, the NASA Governance and Strategic Management Handbook (note: Rev B is in circulation for comment). The Handbook is promulgated by the Associate Administrator (AA) and describes:

- NASA’s Core Values - Safety, Integrity, Teamwork and Excellence that support the cornerstone of NASA’s culture – Mission Success.
- NASA’s Governance Principles – Lean Governance; Clear Roles, Responsibility and Decision-Making; Strategic Acquisition; and, Checks and Balances.
- NASA’s Strategic Management System that relates to Planning, Programming, Budgeting and Execution or PPBE.

This reference guide focuses on NASA’s governance principles and how NASA governs itself at the strategic level by making decisions and conducting reviews via councils. Governance by council is used where topics require high levels of integration, visibility, and approval - for example where technical and non-technical interests must be considered and where transparency helps understand how and why decisions were made. Governance by council also provides high-level oversight, sets requirements and strategic priorities, and guides key assessments of the Agency. NASA’s structure is well suited for governance by council as it requires balance between four categories of authorities: (1) Programmatic Authorities (Mission Directorates of Human Exploration Operations (HEOMD), Space Technology (STMD), Science (SMD), and Aeronautics Research (ARM), and their programs and projects); (2) Institutional Authorities - Technical Authorities (Offices of the Chief Engineer, Safety and Mission Assurance, Health and Medical); (3) Institutional Authorities - Mission Support (Mission Support Directorate (MSD) and HQ staff offices); and, (4) Institutional Authorities – Center Directors (CDs). The current organization of Agency councils resulted from a 2010 review (known as the “McKinsey Study”) and is depicted below.

Agency Council Structure:



This graphic depicts NASA’s four most senior level strategic decision making bodies. Additionally in late 2013 a Partnership Council (PC) was established, although its duration may be limited based on its charter. There is also a Baseline Performance Review (BPR) that is “council like” in that its membership aligns roughly with the SMC; however, it is not a decision making body and instead reviews program and project performance relative to baselines established by the PMC or applicable authority. **These councils are at the Agency level - Centers and Mission Directorates have similar and sometimes parallel structures at lower levels.**

Specific Council Information

- **The Strategic Management Council (SMC)**
 - The SMC consists of the Agency’s senior leadership including all Center Directors (CDs), all Mission Directorate Associate Administrators (AAs) and other AAs, the Directors of HQ Functional Offices, the HQ Technical Authorities, the Administrator, Deputy Administrator (DA), and Associate Deputy Administrators (ADAs) and the General Counsel. This is the hub of the Agency’s leadership. This council meets approximately 6 times per year and as necessary to consider and discuss matters of strategic interest to the Agency. The council is non-decisional but may serve as an “Extended” Executive Council (EC) or Mission Support Council (MSC) when desired by the chairs of those councils. The SMC members also routinely review and provide input to most decisions that are

considered by the EC and MSC. This review process also enables the General Council to provide input.

- **The Executive Council (EC)** ●

- The EC consists of the Administrator (Chair), DA, AA, ADA, Chief Financial Officer (CFO), Chief Technologist and Chief Scientist. The EC considers and decides upon strategic level budget and other matters that meet designated thresholds. The EC is scheduled to meet approximately every two weeks but may meet more or less frequently depending on the need for such high-level decision-making. The EC follows the decision making process that is discussed below and considers the input of SMC members when making decisions.

- **The Mission Support Council (MSC)** ●

- The MSC consists of the AA, ADA (Chair), MSD AA, CFO, Chief Information Officer (CIO), and Chief of Safety and Mission Assurance (S&MA). The MSC considers and decides upon strategic matters that impact the Agency's mission support and that meet designated thresholds. The MSC is scheduled to meet every other week but may meet less frequently based on the number of matters needing review and decision. Like the EC, the MSC follows the decision making process discussed below and also considers the input of SMC members when making decisions. When directed by the Chair, the MSC meets in an extended mode, which includes all of the SMC members participating in the meeting.

- **The Program Management Council (PMC)** ●

- The PMC consists of the AA (Chair), Chief Engineer (Alternate Chair), and most of the other members of the SMC. The PMC enables senior management review of programs and projects relative to the NASA Procedural Requirement (NPR) 7120 series regulations. The council meets approximately monthly but as needed based on major program or project development. The PMC results in advancement of projects through Key Decisions Points (KDPs) that establish baselines and goals in terms of schedule, budget, programmatic, technical and other considerations.

- **The Baseline Performance Review (BPR)**

- The BPR consists of the AA (Chair), Chief Engineer (Alternate Chair) and most of the other members of the SMC. The BPR enables routine senior management review of the performance of programs and projects in between and relative to KDPs set by the PMC. The Office of Chief Engineer facilitates monthly technical assessments of all of the major programs and projects within each Mission Directorate (MD) and reports on those assessments during the BPR. The MDs, including the MSD, and Centers also provide routine performance reports to the BPR. The BPR meets monthly at HQ on the second to last Thursday of each month and is non-decisional but is a key means for NASA's senior leaders to remain apprised of performance successes and challenges across the entire Agency.

- **The Partnership Council (PC)**

- NASA initially chartered the PC in late 2013 for one year as a subordinate council to the EC. The PC is chaired by the DA who serves as the Agency's decision authority on partnership policy and partnership issues that meet PC threshold criteria. Partnership Council members are advisors to the DA as the Council Chair. The PC was established to improve and streamline NASA's partnership approval process, to help ensure Agency partnerships are aligned with internal and external guidance and policy, and adjudicate partnership issues that cannot be resolved at lower levels. The council members include the DA, ADA, and ADA for Strategy and Policy, MD AAs, Center Directors and several other members of the SMC. The council meets at the call of the DA and may consider partnerships proposed at the Center level and reported up through the Space Act Agreement abstract process.

EC and MSC Decision Making Process

The EC and MSC follow a specific two-step decision-making process that is designed to facilitate well-scaled and considered strategic level decisions. The first step entails setting the criteria for the decision that is to be made. This is accomplished via a criteria-setting package that is developed to identify the precise decision to be made and the relevant considerations, stakeholders and success criteria that should apply to the decision. The criteria setting package is generally distributed to SMC members for review and comment prior to approval by the EC or MSC. Subsequently a decision package is developed in coordination with key stakeholders. SMC members also review and comment on decision packages prior to decisions by the EC or MSC. Decision-making authority rests with the Council chairperson and decisions do not require consensus. Membership of Councils reflects the people the Chair needs in the room to make an effective decision.

Office of Agency Council Staff (OACS)

When the current council structure was adopted, NASA also established the Office of Agency Council Staff (OACS). This office falls under and reports to the Chief of Staff. The office consists of a designated Executive for each council, analysts who support the development of packages for review and decision by the councils, and contractor support that helps facilitate council meetings and related logistics for the councils and for OACS. All OACS staff is rotational, generally by one-year assignment based on HQ calls, and is generally GS14 and 15 level civil service employees who are nominated by senior management.

Resources - For related information see: NPD 1000.0A (NASA Governance and Strategic Management Handbook – note that Version 1000.0B is in draft) (Especially Appendix D), NPD 1000.3D (NASA Organization) (Especially Chapter 6), NPD 1001.0B (2014 NASA Strategic Plan)

To Learn More About this Subject Matter - Consult Office of Agency Council Staff (OACS) and consider OACS outreach materials



Tales of Political Activity in the Federal Workplace

The Hatch Act prohibits federal employees from running as candidates in partisan elections, and from soliciting contributions and promoting candidates for political office while on duty and in the federal workplace (for more information on the Hatch Act, go to <https://osc.gov/Pages/HatchAct.aspx>). The U.S. Office of Special Counsel (OSC) investigates allegations of Hatch Act violations. When OSC finds that a violation has occurred, it may attempt to resolve the matter informally with the federal employee and the agency. If that effort fails, OSC may file a formal Hatch Act complaint before the Merit Systems Protection Board (MSPB). A recent OSC news release provides two interesting case studies:

Board Orders Postal Service Employee Removed for Violating the Hatch Act

In May 2014, the MSPB granted OSC's request to remove a U.S. Postal Service (USPS) employee from federal service for violating the Hatch Act. Specifically, OSC's complaint alleged that the employee twice ran in partisan elections for a seat in the U.S. House of Representatives. In addition, he solicited

political contributions for his campaigns. OSC and USPS repeatedly warned the worker that his actions violated the Hatch Act and requested that he comply with the law either by withdrawing from the elections or ending his federal employment. Despite these repeated warnings, the employee refused to comply with the law.

IRS Employee Agrees to 100-day Suspension for Hatch Act Violations

In June 2014, OSC entered into a settlement agreement with an Internal Revenue Service (IRS) employee who agreed to a 100-day unpaid suspension for violating the Hatch Act. OSC’s complaint alleged that, when fielding taxpayers’ questions on an IRS customer service help line, the employee repeatedly urged taxpayers to reelect President Obama in 2012 by delivering a chant based on the spelling of the employee’s last name. In the settlement agreement resolving the complaint, the IRS employee acknowledged that he had used his authority and influence for a political purpose and did so while at work.

The Office of Chief Counsel can provide employees and managers with guidance on the Hatch Act. It is important to remember, though, that investigation and enforcement of the restrictions is by agencies external to NASA. For more information, call our office at x43221.

Annual Ethics Training Begins Soon!

All current NASA employees who were required to file a financial disclosure report during 2014 must complete annual ethics training no later than October 31, 2014. Training may be taken online (through the SATERN system, starting in September) or at live training sessions on center (during October). For more information, watch your e-mail for your personalized invitation, or call the Office of Chief Counsel at x-43221. Although training is required for financial disclosure filers, all civil service employees are welcome to take this training.

Why Know the Ethics Rules? Just Guess!

Believe it or not, there is some sense of order to the ethics laws and regulations governing you as a Federal employee. We’ve picked a few situations below where you should be able to guess the appropriate number to use in each situation. Of course, to ensure compliance with these and other ethics rules, seek accurate information. Contact the Office of Chief Counsel, go to the Office of Government Ethics website at www.oge.gov, or turn to page 16 of this newsletter for the answers to the following:

MONEY:	Answer Column	Answer Choices
(a) Top bracket for reporting asset values on an OGE Form 278 Public Financial Disclosure Report)		(1) \$10
(b) A gift from a foreign government of this value or less is considered “minimal” under federal regulations, and may generally be accepted by Federal employees		(2) \$375
(c) Former SES/ST/SL employees whose 2014 annual salary exceeds this amount are subject to a one year “cooling off” period restricting contact with their former agency		(3) \$15,000

(d) A non-cash gift of this amount or below from a subordinate employee may normally be accepted without undue concern		(4) \$156,997.50
(e) For NASA employees not involved in certain procurement functions, the “de minimus” ownership amount in a company’s stock, below which a conflict of interest is usually not considered disqualifying		(5) Greater than \$50,000,000

DEADLINES:

(f) Annual Confidential Financial Disclosure Form (OGE Form 450) due for some GS level employees:		(1) October 31, 2014
(g) Annual Public Financial Disclosure Form (OGE Form 278) due for SES, ST and SL level employees:		(2) February 16, 2015
(h) Next Total Solar Eclipse potentially viewable from United States:		(3) May 15, 2015
(i) Upcoming deadline to complete Annual Ethics Training (online or in person) for filers of OGE Forms 450 and 278:		(4) August 21, 2017

TIME LIMITS:

(j) Under the ethics regulations, after this length of time has passed with no response, you are no longer considered to be seeking employment from an employer who received your unsolicited resume		(1) One hour
(k) Under NASA’s supplemental ethics rules, maximum length for which an outside employment request filed in February 2014 or later may be approved (5 CFR 6901):		(2) Three business days
(l) By Federal regulation, the length of time annual an annual ethics training session must last (5 CFR 2638.704(c)):		(3) Two months
(m) Under the STOCK Act, the maximum time allowed for an OGE Form 278 filer seeking post-government employment to disclose with who they are negotiating for employment, and if needed, file a written recusal statement:		(4) Five years

PERSONNEL POINTS

PROMISES, PROMISES: WHY YOU DON’T HAVE AN EMPLOYMENT CONTRACT WITH NASA

Recently there has been mention by employees of their “contract” with NASA. As it turns out, there’s a huge difference between laws governing federal employment in the private and federal (public) sector.

This article will not consider employment in state or local government, which is in yet another category, or benefits affected or governed by union/employer agreements. Bottom line: there is no employment contract with NASA, and here's why.

Each year there are a number of cases in federal employment law having their genesis in employees' unmet expectations and assumptions regarding the benefits of federal employment. These are sometimes based on coworkers tell them, as well as the belief that managers or human resources specialists have the power to bind the government in a promise or implied promise.

Many employment cases in court, especially the Court of Federal Claims, involve promises of a job, or continuation of a job, that employment or a promotion was promised under a contract or implied contract. Placement firms, headhunters, contract employment firms and the like have "contracts." However, most employment in the private sector, even if it takes place on federal property, is "at will." Civil servant employees took an oath of office, they did not sign a contract. This is true also of term appointments and temporary appointments. While the employee may be asked to sign an understanding that a term appointment is not guaranteed to be made permanent, he or she did not "agree" to a temporary or term appointment and thus cannot revoke that agreement in an effort to make a position permanent. Not that this hasn't been tried in the panoply of federal employee strategies to turn things to their advantage. "But I thought" and "had I known," while possibly worthy of sympathy, simply cannot be used to cause a liability against the U.S. Treasury, and that's what a federal employee salary or expenditure is—an expense that must be justified and documented. The Court of Appeals for the Federal Circuit explained that "absent specific legislation, federal employees derive the benefits and emoluments of their positions from appointment rather than from any contractual or quasi-contractual relationship with the government." *Chu v. United States*, 773 F.2d 1226, 1229 (Fed. Cir. 1985). In addition, employment by appointment precludes any breach of contract claim. *Army and Air Force Exchange Serv. V. Sheehan*, 456 U.S. 728, 738, 72 L. Ed. 2d 520, 102 S. Ct. 2118 (1982). The legislative exceptions are authorized personal services contracts, of which the most familiar examples are for professional medical services employing physicians, nurses, and other medical providers. Most of us are employed by appointment.

Federal service by appointment is subject to a closely regulated set of rules and regulations to prevent excess unanticipated liabilities or any unauthorized "raid on the Treasury." The default position is that money from the Treasury is not payable—a legal reason to pay money must be found if it does not exist in regulation. The document that authorizes pay at a certain grade is the Position Description. The document that authorizes salary is the Standard Form 50, and the document that authorizes pay on any particular day is the timecard you fill out in WebTads. Federal employees can claim travel compensatory time because Congress authorized it—prior to that statutory authorization, there was no way to earn that benefit. Certain claims, such as restoration of forfeited annual leave, are allowed upon the agency's justification that an "exigency" of the business existed such that an employee was unable to take leave prior to forfeiture. Without that, there can be no pay. Pay caps limit amounts of overtime or compensatory time earned to the GS 15 Step 10 (maximum pay under the General Schedule)—this is the maximum pay that Congress has authorized for any pay period. To place this in perspective, restrictions were even more onerous under the Federal Personnel Manual days. In order to be paid for extraordinary expenses that private sector folks take for granted, employees had to request reimbursement from the then-General Accounting Office's Comptroller General, whose attorneys would study the law and determine whether expenses were justified (legal to be paid) or not. In 1996, that function was transferred to the Office of Personnel Management (OPM) in the Executive Branch (see <http://www.gao.gov/legal/functions.html>). In those days, many decisions (most denying compensation) involved employees having to work uncompensated time or pay expenses out of their pocket because there was no authority to pay them absent legislation being enacted.

Decisions on pay and leave at OPM frequently revolve around employees' assertions that they are performing higher-graded duties and should be given a promotion, or should be paid more based on whatever justification can be found. A typical example is a case of an investigator whose duty station is her residence in a Rest of U.S. locality zone, but who claimed her duty station should be Fort Bragg in order to receive a higher locality pay, stating that much of her work was done there. The claimant argued that she was saving the government money in lots of other ways, as if to say that the net cost to the government would be neutral and that could be considered. However, OPM noted that regulations determine locality pay, period. See <http://www.opm.gov/policy-data-oversight/pay-leave/claim-decisions/decisions/2013/12-0032.pdf>.

Another frequent assertion is that a manager misinformed or misled an employee, promising a higher pay rate, promotion, and the like. One Air Force case involved an employee who claimed she would not have accepted the job if she had not been misled that the agency would pay her home leave to return to the United States from an overseas position. See <http://www.opm.gov/policy-data-oversight/pay-leave/claim-decisions/decisions/2013/12-0027.pdf>. OPM noted, "It is well settled by the courts that a claim may not be granted based on misinformation provided by agency officials. Payments of money from the Federal Treasury are limited to those authorized by statute, and erroneous advice given by a Government employee cannot stop the Government from denying benefits not otherwise permitted by law. See *OPM v. Richmond*, 496 U.S. 414, 425-426 (1990); *Falso v. OPM*, 116 F.3d 459 (Fed.Cir. 1997); and 60 Comp. Gen. 417 (1981). Therefore, that the claimant was initially told she was eligible for home leave by the Stuttgart CPAC does not confer eligibility not otherwise permitted by statute or its implementing regulations."

Another case involved an offer letter citing one pay rate, and then actual pay received being lower, due to the offer being based on an incorrect pay table. The employee argued that his offer letter was a binding offer leading to a contract and he was owed a higher rate of pay because that higher rate was the rate he thought he would get when he accepted the job. See <http://www.opm.gov/policy-data-oversight/pay-leave/claim-decisions/decisions/2012/12-0025.pdf>. As OPM noted again, misinformation even in an official offer letter did not create any entitlement not authorized by law.

So for those who don't understand why their manager can't arrange higher pay, it doesn't mean that your manager doesn't care about the hard work you're doing, and wouldn't like to reward you more if he or she could. There are limitations on what's possible in government service. We serve the public and will never have stock options. However, there are still plenty of flexibilities NASA has, as well as the challenging work and quality of the workforce. And employees continue to respond in the Federal Employee Viewpoint Survey that they agree NASA is one of the best places to work in the federal government, year after year.

Congratulations to Inventors of Recently Issued U.S. Patents

- **Vapor-Barrier Vacuum Isolation System** Leonard M. Weinstein and Karen M. Taminger - NASA LaRC. Patent Number 8,658,004, issued February 25, 2014

- **Methods of Making Z-Shielding** Donald Laurence Thomsen, III, Robert J. Cano, Brian J. Jensen, and Stephen J. Hales - NASA LaRC; and Joel A. Alexa, Lockheed Martin. Patent Number 8,661,653, issued March 4, 2014
- **Advanced Modified High Performance Synthetic Jet Actuator with Curved Chamber** Tian-Bing Xu, National Institute of Aerospace Associates; Ji Su, NASA LaRC and Xiaoning Jiang - TRS Ceramics, Inc. Patent Number 8,662,412, issued March 4, 2014
- **Locomotion of Amorphous Service Robots** Arthur T. Bradley, NASA LaRC. Patent Number 8,662,213, issued March 4, 2014
- **Sub-Surface Windscreen for Outdoor Measurement of Infrasound** Allan J. Zuckerwar and Qamar A. Shams - NASA LaRC. Patent Number 8,671,763, issued March 18, 2014
- **Compact Vibration Damper** Thomas G. Ivanco, NASA LaRC. Patent Number 8,672,107, issued March 18, 2014
- **Wireless Chemical Sensor and Sensing Method for Use Therewith** Stanley E. Woodard (Deceased), NASA LaRC; and Donald M. Oglesby and Bryant G. Taylor-Swales Aerospace. Patent Number 8,673,649, issued March 18, 2014
- **Process for Nondestructive Evaluation of the Quality of a Crimped Wire Connector** William T. Yost, K. Elliott Cramer and Daniel F. Perey - NASA LaRC; and Keith A. Williams, Sonicrimp, LLC. Patent Number 8,671,551, issued March 18, 2014
- **System for Repairing Cracks in Structures** Stephen W. Smith, John A. Newman, Robert S. Piascik, and Edward H. Glaessgen - NASA LaRC. Patent Number 8,679,642, issued March 25, 2014
- **Jet Engine Exhaust Nozzle Flow Effector** Travis L. Turner, Roberto J. Cano, Richard J. Silox, Ralph D. Buehrle, Christopher M. Cagle, Randolph H. Cabell, and George C. Hilton- NASA LaRC. Patent Number 8,683,807, issued April 1, 2014
- **Wireless Open-Circuit In-Plane Strain and Displacement Sensor Requiring No Electrical Connections** Stanley E. Woodard (Deceased), NASA LaRC. Patent Number 8,692,562, issued April 8, 2014
- **Fourier Transform Spectrometer System** Joel F. Campbell, NASA LaRC and Space Applications International Corporation. Patent Number 8,693,002, issued April 8, 2014
- **Method of Creating Micro-Scale Silver Telluride Grains Covered with Bismuth Nanoparticles** Hyun-Jung Kim, National Institute of Aerospace Associates; and Sang H. Choi and Glen C. King-NASA LaRC; and Yeonjoon Park, National Institute of Aerospace Associates; and Kunik Lee, Federal Highway Administration. Patent Number 8,691,612 issued April 8, 2014
- **Flap Side Edge Liners for Airframe Noise Reduction** Michael G. Jones, Mehdi R. Khorrami, Meelan M. Choudhari, and Brian M. Howerton,-NASA LaRC. Patent Number 8,695,915 issued April 15, 2014

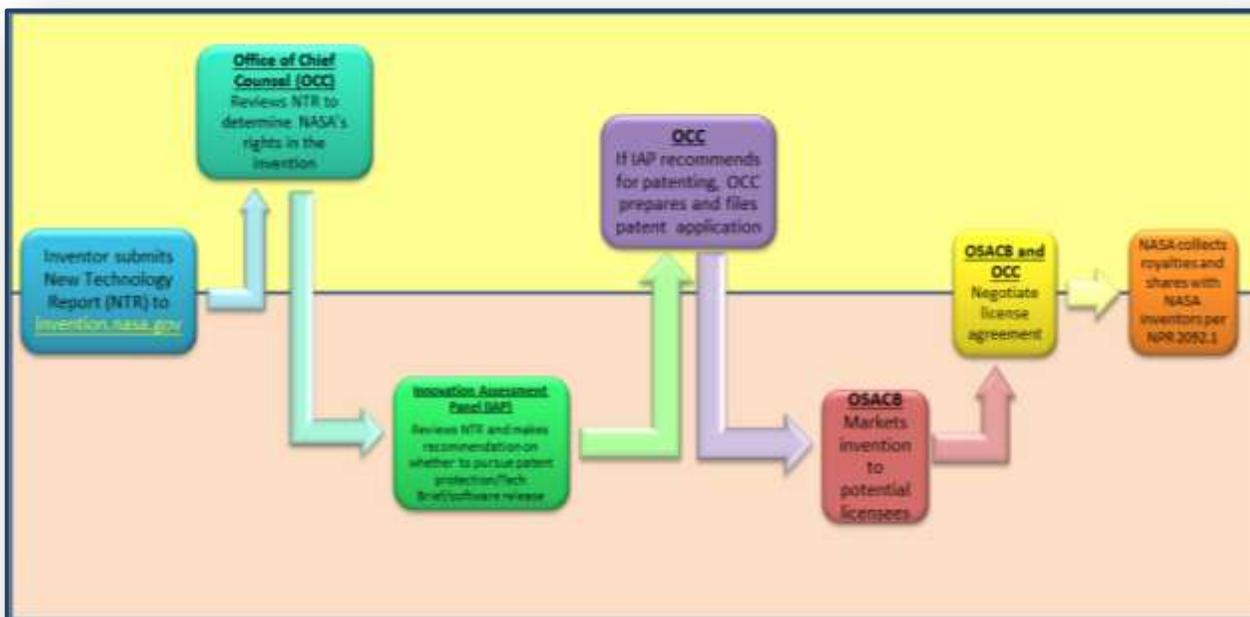
- **Negative Dielectric Constant Material Based on Ion Conducting Materials** Keith L. Gordon, NASA LaRC; and Jin Ho Kang and Cheol Park - National Institute of Aerospace Associates; and Peter T. Lillehei and Joycelyn S. Harrison, NASA LaRC. Patent Number 8,696,940 issued April 15, 2014
- **Elastically Deformable Side-Edge Link for Trailing-Edge Flap Aeroacoustic Noise Reduction** Mehdi R. Khorrami, David P. Lockard, James B. Moore, Ji Su, Travis L. Turner, John C. Lin, Karen M. Taminger, and Seun K. Kahng - NASA LaRC; and Scott A. Verden, VIGYAN. Patent Number 8,695,925 issued April 15, 2014
- **Systems, Apparatuses, and Methods for Using Durable Adhesively Bonded Joints for Sandwich Structures** Stanley S. Smeltzer, III, NASA LaRC; and Eric C. Lundgren, National Institute of Aerospace Associates. Patent Number 8,697,216, issued April 15, 2014
- **Asymmetric Dielectric Elastomer Composite Material** Brian K. Stewart, NASA LaRC. Patent Number 8,704,423, issued April 22, 2014
- **Preparation of Metal Nanowire Decorated Carbon Allotropes** Robin E. Southward, NASA LaRC; and Donavon M. Delozier and Kent A. Watson - National Institute of Aerospace Associates; and Joseph G. Smith, NASA LaRC; and Sayata Ghose, Oak Ridge National Laboratory; and John W. Connell, NASA LaRC. Patent Number 8,703,235, issued April 22, 2014
- **Landing Gear Door Liners for Airframe Noise Reduction** Michael G. Jones and Brian M. Howerton - NASA LaRC; and Thomas Van De Ven, Gulfstream Aerospace Corporation. Patent Number 8,708,272 issued April 29, 2014
- **Eddy Current Probe for Surface and Sub-Surface Inspection** Russell A. Wincheski, NASA LaRC; and John W. Simpson (Deceased), Lockheed Engineering & Sciences Company. Patent Number 8,717,012 issued May 6, 2014
- **Shape Sensing Using A Multi-Core Optical Fiber Having an Arbitrary Initial Shape in the Presence of Extrinsic Forces** Matthew D. Rogge and Jason P. Moore - NASA LaRC. Patent Number 8,746,076 issued June 10, 2014
- **Compact Active Vibration Control System for a Flexible Panel** Noah H. Schiller, Randolph H. Cabell, and Daniel F. Perey - NASA LaRC. Patent Number 8,760,039 issued June 24, 2014
- **Method for Ground-To-Space Laser Calibration System** Constantine Lukashin and Bruce A. Wielicki - NASA LaRC. Patent Number 8,767,210 issued July 1, 2014
- **Multi-Element Airfoil System** Travis L. Turner, Mehdi R. Khorrami, and David P. Lockard - NASA LaRC; and Martin J. McKenney, Raymond D. Atherley, and Reggie T. Kidd, ATK Space. Patent Number 8,763,958 issued July 1, 2014
- **Tailorable Dielectric Material with Complex Permittivity Characteristics** Kenneth L. Dudley, Holly A. Elliott, John W. Connell and Joseph G. Smith - NASA LaRC; Sayata Ghose, Oak Ridge Associated Universities, Inc.; and Kent A. Watson and Donovan Delozier, National Institute of Aerospace Associates. Patent Number 8,790,773 issued July 29, 2014

Intellectually Speaking

WHERE DOES YOUR INVENTION DISCLOSURE GO?



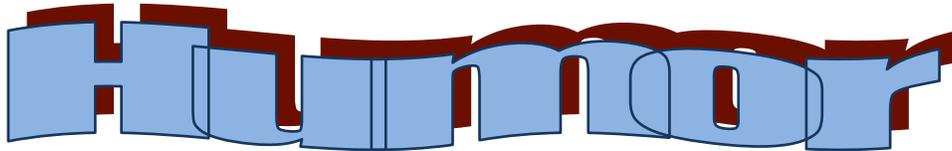
You have been working to figure out the solution to a problem that you have been dealing with for quite some time when – BAM! - you finally figure out how to make it work. Like any good NASA employee or contractor would do, you submit an invention disclosure (or as we call it, a new technology report (NTR)) to NASA. But then what happens to it? Where does it go? The Office of Chief Counsel (OCC) and Office of Strategic Analysis, Communications, and Business Development (OSACB) work closely together to review each NTR that is submitted to NASA Langley, and pursue patent protection and licensing of those technologies that are recommended for patenting by the Innovation Assessment Panel. Below is a basic outline of the review process for NTRs submitted to NASA Langley.





Congratulations to LaRC's 2014 Patent Award Recipients

LaRC's 2014 Patent Awards Ceremony was held on August 20th. In addition to recognizing 57 inventors named on 17 patents that issued in calendar year 2013, the ceremony also recognized the NASA Commercial Invention of the Year awardees, Qamar Shams and Allan Zuckerwar, and the recipient of the Federal Laboratory Consortium's 2014 Outstanding Technology Transfer Professional Award, Kathy Dezern. Jim Adams, NASA Deputy Chief Technologist, was the keynote speaker and Dr. Jeremy Pinier provided musical selections. The award recipients represented 21 different organizations across the Center. The Office of Chief Counsel again congratulates all award recipients!



Crayne's Law – All computers wait at the same speed.

Westheimer's Discovery – A couple of months in the laboratory can frequently save a couple of hours in the library.

Dunn's Law – Careful planning is no substitute for dumb luck.

The Sausage Principle – People who love sausage and respect the law should never watch either one being made.

Mollison's Bureaucracy Hypothesis – If an idea can survive a bureaucratic review and be implemented, it wasn't worth doing.

MORE COURTROOM HUMOR:

Q: Mrs. Jones, is your appearance this morning pursuant to a deposition notice I sent to your attorney?

A: No. This is how I dress when I go to work.

Q: What is your relationship with the plaintiff?

A: She is my daughter.

Q: Was she your daughter on February 13, 1979?

Q: The truth of the matter is that you were not an unbiased, objective witness, isn't it. You, too, were shot in the fracas?

A: No, sir. I was shot midway between the fracas and the naval.

***In light of college football season kicking off, below is a patented "Football Passer"
 (NOTE: Football not included)**

U.S. Patent April 20, 1976 Sheet 3 of 3 3,951,125

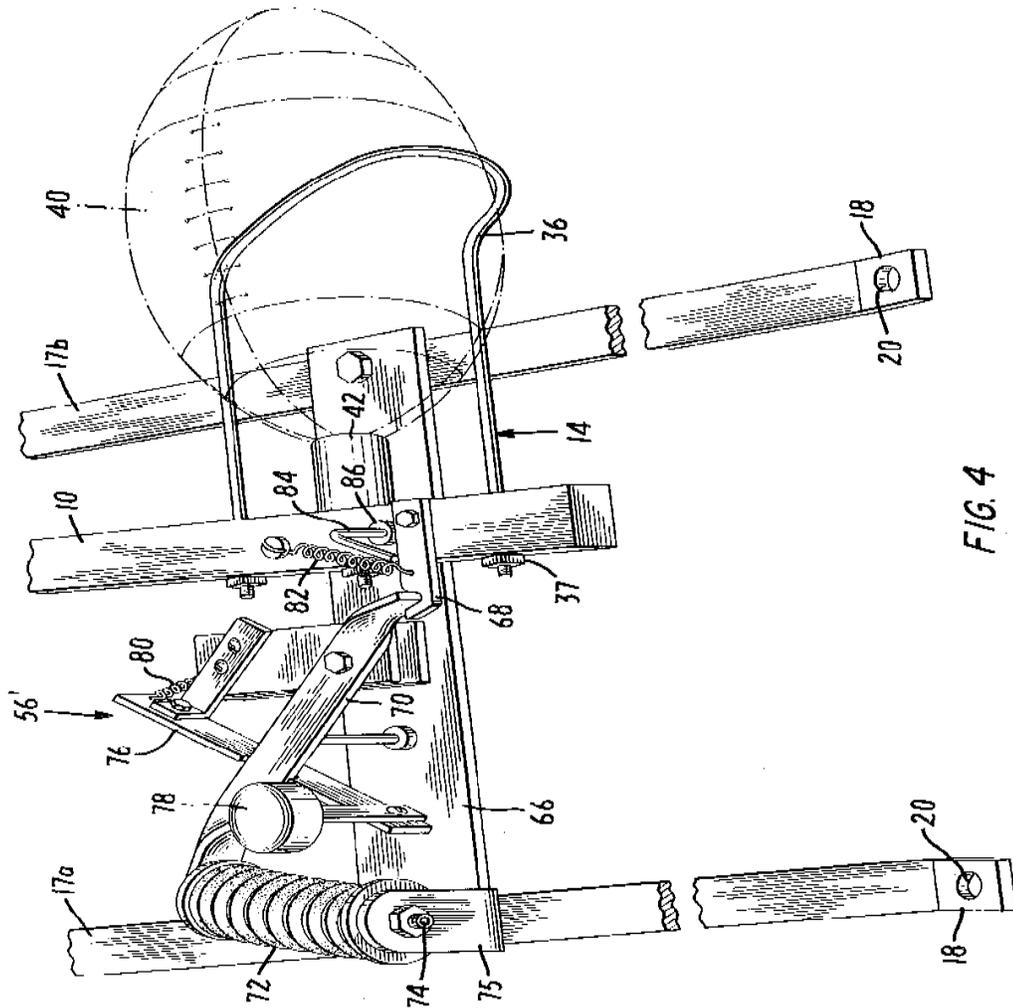


FIG. 4

KNOW THE ETHICS RULES (pp. 8-9) ANSWERS:

- | | | | | |
|--------|--------|--------|--------|--------|
| (a)(5) | (b)(2) | (c)(4) | (d)(1) | (e)(3) |
| (f)(2) | (g)(3) | (h)(4) | (i)(1) | |
| (j)(3) | (k)(4) | (l)(1) | (m)(2) | |