Happy Centennial NASA Langley! As we quickly approach our capstone Centennial events, OCC takes a quick pause from a crescendo of extraordinary activities to issue this Special Edition Newsletter. As OCC has worked closely with the Centennial Program Manager Michelle Ferebee and deputies, Lindsay Rogers and Lisa Harvey, to help structure several once-in-a-hundred-year activities to meet and capitalize on legal authorities, the Office was also busy with a once-in-a-decade opportunity to host the Agency Legal Conference and Awards Dinner. Additionally as part of the Agency legal meeting, OCC was instrumental in the roll-out of a new enterprise level IT capability for the Legal Community called NASA Lawnet. This helps cement the Agency legal capability as one enabling team! So it has been a fast paced and fascinating time for the Office staff. Even more exciting, the Office hosted the Annual Agency Legal Awards Dinner during the Annual Legal Conference and two of our attorneys received the Agency’s top recognitions this year: Pete Polen received the prestigious Legal Leadership Award, and Shawn Gallagher received the coveted Meritorious Service Award. Several others also received team awards related to work on the new Agency Legal IT system and capability (see page 2). I join the OCC staff in proclaiming what an honor – and thrill – it is to be an integral part of our Center, our Agency and our Legal Team at this unique point in time.

W. Thomas “Tom” McMurry, Jr.
LaRC Chief Counsel

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The following is a non-exhaustive list of areas where OCC has supported the Centennial by ensuring proposed activities were in compliance with applicable ethics, intellectual property, contract, and fiscal laws. Congratulations on 100 successful years, LaRC!

- WIDELY ATTENDED GATHERING DETERMINATION FOR THE CENTENNIAL TRIBUTE RECEPTION
  (CELEBRATE, LANGLEY!)
- ETHICS AND SPACE ACT AGREEMENT REVIEW FOR CENTENNIAL HISTORY BOOK
- QUESTIONS ON INVITATIONAL TRAVEL FOR CENTENNIAL SPEAKERS
- INTELLECTUAL PROPERTY LAW REVIEW OF USE OF FOOTAGE FOR CENTENNIAL VIDEO
- REQUEST FOR ROYALTY-FREE LICENSE TO USE MUSICAL WORK COMPOSED FOR THE CENTENNIAL TRIBUTE
  (LANGLEY NOW HAS A THEME SONG!)
- ATTENDANCE DETERMINATION RELATED TO SPONSORED RECEPTION RECOGNIZING CENTENNIAL
- INTELLECTUAL PROPERTY/ETHICS LAW REVIEW OF PRESENTATION MATERIALS FOR LECTURE AT LOCAL UNIVERSITY
  (SUPPORTING LOCAL OUTREACH EFFORTS!)
- LEGAL OPINION ON PROPOSED AGREEMENT WITH HOTEL RELATED TO THE CENTENNIAL SYMPOSIUM
- FISCAL/ETHICS LAW REVIEW ON COINS AND OTHER PRESENTATION ITEMS
  (SWAG?)
- MANY FISCAL LAW REVIEWS ON PURCHASING FOOD ITEMS AT VARIOUS EVENTS
- ETHICS REVIEW ON PURCHASING PROMOTIONAL ITEMS
- RESPONSE TO QUESTION ON CENTENNIAL LOGO
- ETHICS REVIEW RELATED TO SPONSORSHIP OF CENTENNIAL SYMPOSIUM
- COORDINATION WITH THE OFFICE OF PROCUREMENT ON RESPONSIBILITIES OF NASA AND CONTRACTOR RELATED TO CENTENNIAL EVENT
- LEGAL OPINION ON REQUEST BY NONPROFIT ORGANIZATION TO HOST A FUNDRAISING EVENT IN RECOGNITION OF THE CENTENNIAL
- LEGAL REVIEW OF PROPOSED CENTENNIAL SUPPORT BY COOPERATIVE AGREEMENT PARTNER
- RESPONSE TO QUESTION REGARDING REQUESTING A CENTENNIAL COMMEMORATIVE POSTAGE STAMP

Whew!

Logo Credit: NASA Langley Research Center
Image Credit: NASA/Sandie Gibbs
The 2017 NASA General Counsel (GC)’s Conference, an annual event rotated among the Centers, was held from May 1-4, 2017, at the Norfolk Marriott Waterside in Norfolk, VA, and at LaRC. The theme of the agency-wide legal conference was “NASA’s First A—Aeronautics,” and featured elements from the past, present, and future. LaRC’s rich history was presented to participants in, “Highlights from Langley’s First Century” by NASA HQ historian William “Bill” Barry and LaRC’s own Walt Engelund. Former NASA GC Edward A Frankle provided additional historical reference in a presentation entitled, “Reflections on Crises, Creativity, and Commercialization.” Mr. Frankle was NASA’s long-serving GC from 1988-2002 and provided not only reflections but also thoughts and recommendations on topical issues.

LaRC OCC personnel participated in panel presentations on topics of current interest such as, “AETC Funding, the Economy Act, and Waiving Costs for Federal Partners,” by Shawn Gallagher. (For more information on this topic, see the related articles on page 7 and 9 of this newsletter.) Other panel presentations included, “New Aviation Horizons,” by Eric Rissling; “Development of Prototypes to Enable Commercial Use/Adoption of New Technology—How Do We Handle the Intellectual Property?” by Robin Edwards; “Mission Possible: Getting Back to the Mission after an Emergency,” by Ken Goetzke; “Freedom of Speech and the Federal Employee,” by Ken Goetzke; and “The Big 2016 Deputy Swap,” by Pete Polen and Donna Shafer. Michael Mark provided a presentation to the Acquisition Integrity Program breakout session entitled, “Intersections of Security Breaches and Debarment/Integrity Issues,” and Dacia Bruns served on a panel for the Employment Law breakout session discussing “Mediating to Win.” The conference also featured a number of special guest presenters including a welcome message from LaRC’s Deputy Director Clayton Turner. NASA’s Acting Associate Administrator for Diversity and Equal Opportunity, Janet E. Sellars, also presented on “Working Together to Advance Diversity and Inclusion.” Rounding out the celebration of LaRC’s “present,” participants enjoyed a tour of the Center to learn about LaRC’s current projects.

Moving on to the future of NASA and LaRC, special guest Dr. Jaiwon Shin, NASA’s Associate Administrator for Aeronautics, presented on the “Exciting Future for NASA Aeronautics.” Finally, the future of the agency legal community was highlighted through the roll-out of NASA Lawnet by LaRC’s Chief Counsel, Tom McMurry, Deputy Counsel, Pete Polen, and Patent Attorney, Andrea Warmbier, and OCIO Agency Applications Office. This new intranet community allows the agency’s legal offices to function more as one firm, enabling communities of practice and sharing of legal research and work products, among other benefits. Thank you to the speakers, tour guides, Exchange, Public Affairs, Transportation and other LaRC personnel that made this once-a-decade event such a success!
LaRC OCC hosted the 2017 Agency Legal Team Awards dinner on May 3, 2017, at the Half Moone Celebration Center in Norfolk, VA. Two of the Agency’s most prestigious Legal Awards went to Langley OCC members.

**Leadership Award—Pete Polen**

The Leadership Award is the highest and most prestigious award within the NASA legal community and recognizes attorneys who have demonstrated extraordinary leadership, above and beyond the scope of their normal duties.

**Meritorious Service Award—Shawn Gallagher**

The Meritorious Service Award implements the goal of recognizing sustained excellence within the legal team.

**Teamwork Awards**

Elaine C. McMahon and Andrea Z. Warmbier—Knowledge and Information Sharing System (KISS) Tools Team

Tom McMurry and Andrea Z. Warmbier for the KISS Culture Team

The Teamwork Award implements the goal of fostering a “One NASA Legal Team” and maximizing collaboration among and within the NASA legal community.

_Congratulations, Shawn, Elaine, Tom, Pete, and Andrea!_
Eat, Drink (Responsibly), and Be Merry – Food and Alcohol Guidelines at Langley

It’s Centennial summer at NASA Langley, which means it’s time for picnics, parties, and—sometimes—alcohol. But what do organizers need to do to ensure a safe and healthy gathering, and what are the rules for food and alcohol consumption on-Center? This article will address some of the common questions that OCC receives regarding catering, event organization, and alcohol use, and hopefully make it easier for everyone to responsibly enjoy a beverage of their choice this summer.

Plan Your Event through the Exchange

As an initial point, if you are planning to have a morale-boosting activity on-Center, you should be prepared to fill out an LF 268, the “Langley Research Center Facility Usage Request” form. This form asks for details about purpose and attendance, including whether any non-badged individuals will be attending and whether transportation or parking support is needed. The form also allows you to indicate what facility you would like to use, as well as your planned food and beverage choices. The form includes further instructions and contacts for potential security or IT issues.

You may also reserve a conference room through the LaRC Exchange. The reservation website can be accessed by going to the “Employee Services” tab on @LaRC, and clicking on “Reserve a Conference Room.” Reservations should be made as early as possible, and you may have to fill out an LF 268 in addition to scheduling the reservation on the website.

If you are going to have food or beverages at your event, you should plan to purchase them from the LaRC Exchange for several reasons. For one thing, the Exchange has an effective “right of first refusal” concerning institutional food services—that is, if you are going to be serving food on-Center, the Exchange should be the first organization you contact to provide catering services. This is partly because of the legal concerns that go along with catering: for example, compliance with food safety regulations and security screening of the caterer (imagine trying to have a pizza delivered to the Center without sending somebody to the gate to pick it up). Additionally, we are very lucky to have the Langley Exchange Food Service operating at LaRC, and seeking an outside caterer would be to ignore the great service we have right here on-Center.

This is not to say that there is no scenario in which outside catering of food might be warranted, especially if there is a volume of guests involved which the Exchange would not be able to accommodate—but in almost all cases, you should get in touch with them and discuss catering options before reaching out to any other businesses.

Alcoholic beverages that will be consumed on-Center must also be purchased through the Exchange. Additionally, the consumption of alcoholic beverages is not permitted on-Center until after 4:00 p.m. These rules are quite strict, and any exception must be approved by the Center Director. This applies no matter how small your activity! If you want to treat your team to a few casual beers, do it later in the day and purchase your alcohol through the Exchange…otherwise things will get a lot more complicated!

But Purchasing Alcohol through the Exchange is Expensive!

We commonly receive questions from supervisors and organizers asking why they need to buy alcohol through the Exchange, when they could theoretically find a cheaper alternative from an outside retailer. However, there are a number of considerations that make the Exchange a much more attractive option, from both a legal and monetary perspective.

For one thing, the alcohol policies and approval processes were established to ensure a safe and healthy work environment. Buying alcohol through the Exchange is also a re-investment into the Langley community, as your money is going toward organizational morale funds and other Exchange-related events and activities. These procedures also help protect both supervisors and employees from liability in the event of an accident.

What are the Rules for Drinking Alcohol on-Center, or Drinking at Lunch?

Although NASA does not have an overarching policy regarding alcohol consumption while on lunch break, supervisors do have recourse to take action when an employee is suspected of being impaired as a result of alcohol consumption. Employees who are concerned about a co-worker’s observable behavior on the job which suggests they may not be able to work safely should immediately alert the supervisor. Where a reasonable suspicion of impairment exists, supervisors have the authority to order an employee
Eat, Drink (Responsibly), and Be Merry – Food and Alcohol Guidelines at Langley (cont’d)

to report to the clinic for testing. If an employee is found to be under the influence, s/he may then be subject to administrative or
disciplinary actions, as appropriate. For more information and guidance, see the U.S. Office of Personnel Management’s handbook
on alcoholism in the workplace, at www.opm.gov.

Additionally, there are some positions that have special requirements in regard to alcohol consumption. An example is the “Bottle
to Throttle” waiting periods that apply to air crews and other designated positions. Additionally, if the employee is expected to per-
form certain duties such as operating heavy equipment or driving, s/he should not be allowed to perform those duties while under
suspicion of intoxication or impairment. Regardless, whenever there is a concern about safe work practices or other safety issues in
or around the Center, employees should always bring these issues to the attention of their supervisor.

What are the Other Restrictions on Facility Usage?

Facilities at Langley may be used to support the efficiency, welfare, and morale of Center employees. Civil servants, contractors,

the Exchange, and LaRC organizational units may all use LaRC facilities for welfare or morale-boosting purposes. Participation at
such events is generally open to guests and family of Langley employees, as well as federal retirees, contractors, and official vis-
itors. For more information, contact OCC or see Langley Policy Directive (LaPD) 9050.7. Remember that non-badged individuals
will need to obtain temporary badges in order to participate in Center activities. If any foreign nationals will be attending, they
must first be approved by the Center security team and request an LF 103 badge at least 10 days before the event.

Fundraising is typically not permitted on NASA facilities. Outside of the Combined Federal Campaign (CFC), and emergency or
disaster relief efforts organized by the President, OPM, or the NASA Administrator, federal regulations essentially prohibit official
support of fundraising for individuals or organizations. Informal collection efforts within offices or friend groups are usually ac-
ceptable, as long as they are coordinated by individuals within the office and not senior leaders. Except for CFC, Official commu-
nications channels (e-mails or @LaRC, for example) should not be used to fund-raise or spread awareness of a fund-raising cam-
paign, and there must not be any NASA-coordinated fundraising. The rationale for this is that the federal Government should not
appear to be “endorsing” any one charitable campaign, or favoring some employees or causes over others. So, if you want to fund-
raise, you can’t do it on federal property / federal time.

Additionally, LaRC facilities may not be used for any discriminatory or partisan political purpose, nor may they be used for profit-
making by an outside group. For more information, contact OCC or see LaPD 9050.8.

As a final note, most activities and facility use are scheduled on a first-come, first-serve basis—so get your requests in early! How-
ever, official functions hosted on-Center take precedence over non-official events. Therefore, it is possible (although not likely)
that a planned activity might be “bumped” from its space, if that space is needed for an official function or a Center-wide activity.

Following these simple rules will make the process a lot easier, and get your summer activity off to a good start. If you have addi-
tional questions about any of these rules or restrictions, or if you want to avoid any potential pitfalls of party-planning, feel free to
contact the Exchange or OCC. We are happy to give advice, and we want everyone to have a safe, happy, and relaxing summer!

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Space Law for VASTS Students

OCC was pleased to support the first session of the Virginia Aerospace Science and Technology Scholars (VASTS) summer program (June 17-23) with an overview on Space Law. OCC’s Hannah Kohler presented to high school students selected for the VASTS program on topics such as The Outer Space Treaty and the United Nations Committee on the Peaceful Uses of Outer Space, and answered questions from groups and individual students. Hannah also plans to present at the July 8 – July 14, 2017 and July 22 – July 28, 2017 VASTS sessions.
Reimbursable Agreements – Avoiding Working in Advance of Funds or Before an Agreement is in Place

Situations in which NASA organizations either begin work for another agency before an agreement is signed, or begin work before the funding agency provides the money to perform the work, have occurred in the past. If either of these situations arises, the repercussions of working without funds or an agreement in place can be serious.

If another agency is reimbursing NASA for the actual cost of the work NASA is to perform, such work cannot normally begin until both the agreement defining the work is signed by both parties and funds are provided to cover the cost of that work. NPR 9090.1, *Reimbursable Agreements*, lays out the rules regarding reimbursable agreements. Paragraph 2.2.3.4 of that regulation states:

“No commitments or obligations may be established, nor costs incurred under a reimbursable agreement until the agreement has been approved and signed by authorized representatives of both NASA and the customer and the following conditions are met:

a. Formal reimbursable funding authority has been issued to the performing Center(s) through the Fund Control Process contained in NPR 9470.1, *Budget Execution*.

b. If the customer is a non-Federal entity, a cash advance has been received by the Center, except where otherwise authorized by law and approved by the Center CFO.

c. If the customer is a Federal agency, an advance or funds citation has been provided. Advances may be requested from Federal customers via IPAC for agreements greater than $1 million or if determined by the NASA Center CFO to be in the best interests of NASA and the Center in order to maintain cash solvency.”

If work is being performed before signing the agreement or receiving the funds, NASA is using NASA appropriated funds to perform work for that customer. Unless NASA’s appropriations provide for performing the type of work covered by the agreement, such use of NASA funds is inappropriate and may violate the Antideficiency Act, 31 USC §1341. That statute provides that agencies may not expend funds in advance of appropriations. In addition, our appropriations statutes only permit us to spend appropriated funds as set forth in the appropriations statute, so if the activity is not covered by our appropriation, use of NASA funding for that activity violates the law. A willful violation of the Antideficiency Act is a crime that can be punished with a fine of up to $5000 and imprisonment for up to two years. 31 USC §1350. In addition, violations of the Act may subject civil servants to adverse personnel actions under 31 USC §1349.

If it appears that a violation of the Antideficiency Act may have taken place, an investigation must be conducted in accordance with Chapter 3 of NPR 9050.3, *The Antideficiency Act*. We have had to conduct a preliminary investigation of just such a situation at LaRC in order to determine if the Act had been violated. Needless to say, the seriousness of the situation can cause a lot of stress on personnel and organizations, hence it is highly advisable to verify that the actions required before beginning work under reimbursable agreements have been satisfied. These are not mere formalities that can be “cleaned up” later – rather, failing to heed the requirements of the law and regulation, could result in serious consequences. Note that if an Antideficiency Act violation is found, it must be reported to Congress. This is one instance where we do not want your name or the name of your organization being highlighted in this manner.

While it may be possible to avoid being found to violate the Antideficiency Act if the work does fall within the NASA mission (and thus funds are appropriated for that type of work), this still does not avoid the problem of working without an agreement being in place first. NASA funds cannot be used effectively as an advance to the customer which will then be “reimbursed” when the customer funding arrives because such an advance constitutes a loan to the customer. NASA has no authority to make loans to customers. In such cases, it is possible that when the customer’s funding arrives, it will have to be deposited to the Treasury. If that occurs, the servicing organization at NASA effectively is decrementing its appropriated funds by that amount, which may lead to other adverse mission impacts because funding will not be sufficient to carry out other activities within the organization’s mission.

In short, it always behooves us to ensure that an agreement has been signed and funds received from the customer before commencing work on fully reimbursable activities. Adhering to that practice will avoid the potential pitfalls found in the appropriations process and in the accounting for the way funds are received and expended. OCC stands ready to assist when questions arise as to the best practices to follow when entering into such agreements. Early involvement by OCC may be especially helpful for issues involving software and other intellectual property matters.
Copyright Rumors Debunked – Is Everything NASA Does a U.S. Government Work?

United States Government works are works prepared **solely** by officers or employees of the United States Government as part of their official duties. Some examples include written material, images, and computer code. A Government work is generally not subject to copyright in the United States and there is generally no copyright restriction on use, reproduction, preparation of derivative works, distribution, performance, or display of a Government work in the United States. Unless the work falls under an exception, anyone may, without restriction under U.S. copyright laws: reproduce the work in print or digital form; create derivative works; perform the work publicly; display the work; and distribute copies or digitally transfer the work to the public by sale or other transfer of ownership, or by rental, lease, or lending. But are there exceptions to the above rules? Absolutely. Here are a few exceptions to watch out for:

- Other people may have rights in the work itself or in how the work is used, such as publicity or privacy rights. Privacy and publicity rights protect the interests of the person or people who may be the subject of the work.
- Individuals cannot use U.S. Government trademarks or the logos of U.S. Government agencies without permission. For example, one cannot use an agency logo or trademark on one’s personal social media page.
- Individuals cannot use a U.S. Government work in a way that implies endorsement by a U.S. Government agency, official, or employee. For example, one cannot use a photo of a Government official wearing a product in an advertisement.
- Works prepared for the U.S. Government by contractors may be protected by copyright, which may be owned by the contractor or by the U.S. Government.
- Not all information that appears on U.S. Government websites is considered to be a U.S. Government work. For example, it is possible that some or all of the text, trademarks, logos, or images on a U.S. Government website may be protected intellectual property not owned by the U.S. Government, but used by permission of the rights holder. To ensure that you don’t mistakenly use protected intellectual property from one of our websites, check with the agency or program that manages the website unless the website provides clear terms permitting your intended use (s).
- The U.S. Government work designation does not apply to works of state or local governments. Works of state and local governments may be protected by copyright.
- Copyright laws differ internationally. While a U.S. Government work is not protectable under U.S. copyright laws, the work may be protected under the copyright laws of other jurisdictions when used in these jurisdictions. The U.S. Government may assert copyright outside of the United States for U.S. Government works.
- If you incorporate a U.S. Government work that is not your own in your paper or presentation, you should provide a credit to the source.

The intellectual property attorneys in our legal office routinely provide guidance regarding these issues as part of the Langley document review process, known as the Technical Publication Submittal and Approval System (TPSAS). Use of TPSAS for review of conference papers, journal submissions and other presentations, is mandated by NASA Procedural Requirement 2200.2, which governs the requirements for documentation, approval and dissemination of scientific and technical information. This system provides the necessary safeguards to ensure NASA is respecting the intellectual property rights of the Government and any third parties. For any questions regarding these issues, feel free to give one of our intellectual property attorneys a call.
The Government may obtain goods and services in a variety of ways. Of course, we can enter into contracts, grants or cooperative agreements for such things. But another way to obtain goods and services is to obtain them from another Government agency. The Space Act permits us to do this, but most agencies lack the flexible authorities the Space Act provides. There is another statute most agencies (including NASA) often use - The Economy Act, 31 USC §1535, which provides authority for agencies to obtain goods and services from other agencies as long as the requesting agency pays the providing agency the actual cost of the work performed or goods provided. What is meant by the term "actual costs"?

The GAO discusses the Economy Act in a chapter of its treatise on the principles of Federal appropriations law, often referred to as the Redbook because the volumes are in red. The Redbook is an authoritative source of GAO's interpretation of fiscal law. In discussing actual cost, the GAO states that such costs include the full cost of all work, materials or services. Redbook, 3d Edition, Vol. III, Chapter 12, pp. 12-37 through 12-42. GAO goes on to say, "actual costs" include such things as the salaries of personnel performing the work, to include gross compensation (i.e., salary plus the cost of the employees' benefits). Additionally, the cost of materials, consumable and indirect costs are "actual costs" that must be recovered. id. at 12-39. The reason for this conclusion is that if the full cost is not paid, then the portion of the cost that is not reimbursed falls on the agency performing the work, which is contrary to 31 USC §1301(a), which states that appropriations shall be applied only to the objects for which the appropriations were made. In such instances, the agency for whom the work was performed would receive an illegal augmentation to its appropriation because it is not bearing all of the cost of work performed for it. 58 Comp. Gen 674, 678 (1978).

Another aspect of the Economy Act is that often the work performed by the providing agency is done by contractors. Until relatively recently, when that was to happen, an interagency purchase request was processed by Procurement for work another agency would perform by NASA under FAR Part 17.5. The FAR was revised, however, to speak about "assisted acquisitions", which are defined as a type of interagency acquisition where the servicing agency performs acquisition activities on the requesting agency's behalf, such as awarding and administering a contract, task order or delivery order. FAR 17.502-1(b) requires a written interagency agreement before NASA can conduct an assisted acquisition. The Office of Procurement handles interagency agreements involving assisted acquisitions. The NASA FAR Supplement also states that when NASA is obtaining supplies or services from other agencies, the Economy Act authority will be used. NFS 1817.502-2(a).

On the other hand, the FAR states that if interagency reimbursable work is to be performed by civil servants (other than acquisition assistance) or where contracting is incidental to the purpose of the transaction, then the FAR will not apply to such transactions. For example, if NASA were to perform a wind tunnel test using support from the CMOE contract, this would not be viewed as an assisted acquisition because the CMOE contract already was awarded and NASA would not be issuing a new contract, task order or delivery order to perform the work. Similarly, if NASA obtains aviation charts from another Government agency that has a contract to prepare such charts and supply them to that agency, there would be no assisted acquisition because the other agency already has an inventory of such charts and did not take additional contracting action to meet NASA's needs. In these instances, the Office of the Chief Financial Officer handles such interagency transactions through use of Fiscal Service Forms 7600A and 7600B.

What is the take away from all of this? OCC, OP and OCFO must work together to determine the appropriate avenue to follow when meeting your needs that are provided by another Government agency, or where another Government agency desires that NASA provide a service or item for its use. Because the rules here can be quite nuanced and are in flux, it behooves you to ask these offices for advice and support as to the best way to meet your needs early in your involvement with work for, or by, others. OCC stands ready to assist in this process.
Personal Use of Government Resources and Equipment

It can be difficult to determine what is or is not an acceptable use of Government resources and equipment. In the interest of simplifying the regulations, OCC is providing the following guidance on personal use of Government resources.

Category 1: Never Ever!
- Do NOT commit any illegal activities, whether on-Center, off-Center, using NASA IT resources, using personal IT resources, in a box, or with a fox. Just don’t do anything illegal, please, whether using NASA equipment or not. See NPD 2540.1.
- Also, do not publicly communicate any Agency information that has not been authorized for release! Authorized public communications of Agency information are subject to 14 C.F.R. Sec. 1213 and applicable Agency policies.

Category 2: Never while on-Center or on NASA property—not even when using a personal device!
- Pornography—We should NEVER be looking at pornography while on NASA property, even if on break or off-duty. We should also NEVER look at pornography using NASA IT resources. Remember, our IT Security Team is very skilled—they can see what we are doing on Government devices! See NPD 2540.1.
- Partisan political activity—We should NEVER conduct partisan political activity while on NASA property, even if on break or off-duty, and even if we are using a personal device. As a Government employee, we still have a First Amendment right to engage in partisan political activity (except for activity prohibited by the Hatch Act), but we should not be doing so on LaRC grounds or using NASA equipment. Such activity could be seen as an endorsement of a political party or group by the federal Government. Any political activity should be conducted from a personal device at home or in a public space, and remember to disassociate with NASA by either (1) removing mentions of NASA or your job from social media sites, or (2) adding a clear disclaimer that the opinions expressed are personal and not the opinions of the U.S. Government.

Category 3: Not while on duty and not using NASA IT Resources (e.g. we must use a personal phone and a personal cellular data plan—don’t use NASA WIFI!)
- Commercial business or “for profit” activities—If we are going to conduct business activities (including online shopping, trading stocks, or managing a personal business), we may NOT do so while on duty or while using a Government device or wireless network. So, we can make business deals or business calls only while on break, on a personal device, and using personal data. See NPD 2540.1 and LAPD 2810.1.
- Fundraising—Similar to a commercial business activity, fundraising should only be done on personal time and on a personal device/network. NASA does not conduct fundraising outside of the CFC, and we should not do so while on duty. See NPD 2540.1 and LAPD 2810.1.
- Extensive hobbies—While we are allowed to use Government equipment and resources for limited personal use (see below), anything more extensive should be conducted on our own time and on our own devices/networks. Nothing we do at work or using NASA IT resources should result in more than “minimal expense” to the Government. See NPD 2540.1 and LAPD 2810.1.
- Other forms of “inappropriate use” or “prohibited activity” under NPD 2540.1H and LAPD 2810.1 include:
  - Personal use that could cause unnecessary congestion, delay, or disruption of service to the Government.
  - Using a Government system as a “platform” to gain unauthorized access to other systems.
  - Creating, copying, or transmitting unauthorized mass mailings about any subject.
  - Accessing, viewing, storing, or participating in anything related to gambling, illegal weapons, or terrorism.
  - Unauthorized monitoring of network traffic (including sniffers, scanners, or password crackers).
  - Downloading, installing, or using unauthorized peer-to-peer file-sharing software.
  - Overriding or defeating any Government security feature (such as installing unapproved software).
  - “Streaming” media (including commercial news broadcasts) is authorized provided it is approved by a supervisor does not violate other NASA policies, and does not interfere with official duties or result in loss of employee productivity.
  - Transmitting, reproducing, using, or distributing any unauthorized or controlled information that includes privacy information, copyrighted or trademarked material without appropriate licensing, proprietary data, or export-controlled software or data. We can be disciplined for accessing classified or protected Government information that has been inappropriately released to the public (such as WikiLeads).
Any activity that is inappropriate or offensive based on race, color, national origin, sex, religion, age, disability, genetic information, sexual orientation, gender identity, or status as a parent.

Harassment.

Category 4: Limited Personal Use

- Incidental Life / Personal Actions—It is acceptable to use Government equipment / resources for “limited personal use” in some scenarios. Personal use should not interfere with official duties or result in a loss of productivity. Personal use should be conducted at “minimal additional expense” to the Government, so it should not cause any cost except for normal wear and tear, small amounts of electricity and ink, etc.

- NPD 2540.1 gives the following examples of minimal additional expense to the Government, which may be acceptable when done infrequently: occasional brief personal local phone calls, infrequently sending personal e-mail messages, making single copies of a personal bill, receiving occasional personal faxes, and limited use of the Internet for personal and appropriate reasons.

- Remember the guidelines above! “Limited use of the Internet” should be conducted within policy guidelines—occasionally checking the news or updating your TSP on your lunch break is acceptable, while looking up pornography is NOT.

- Use of NASA IT resources is a privilege, not a right! Also keep in mind that you do not own the Government devices that have been issued to you. You should NEVER modify NASA IT or devices without explicit official permission! Examples of inappropriate personal use include uploading personal software, downloading games or inappropriate content, making configuration changes, or taking a device for repair or servicing anywhere but to a NASA IT technician. Any of the above offenses may result in discipline, personnel actions, and loss of access to NASA devices or IT resources.

Category 5: Limited Official Use—you MAY use your NASA email for these appropriate activities, when approved by your supervisor as part of your official duties.

- Activity with an approved professional society (such as involvement with the AIAA).

- Activity as a NASA liaison to an approved outside organization (such as a technical committee chair). While acting in such a role, you should not be involved in the administration of that organization.

- Emergency use.

A Reminder about Privacy

NASA employees and contractors do not have a right to privacy while using Government equipment or IT systems at any time. NASA IT security personnel have an extensive network designed to monitor and track system performance and flag improper use. Any use of Government equipment (including NASA-issued computers, tablets, and cell phones) or of Government IT systems (including any of the NASA WIFI networks) represents an understanding that such use is subject to Government surveillance and inspection, is not private, and is not anonymous. Even deleting your browser history, deleting “cookies,” or using “incognito mode” will not hide your activity from IT Security. Additionally, if you are using a personal device that is connected to a NASA WIFI network, your usage can still be tracked. Please remember these facts if you ever feel “tempted” to conduct some form of misuse, and save it for the appropriate time and place (i.e., off-duty, off-Center, or never—depending on the situation!) Always feel free to contact OCC at 757-864-3221 if you have questions or concerns, and browse responsibly!

Wait, Don’t Sign that Document!

Federal employees are periodically asked to sign documents by private companies, nonprofit organizations, and colleges/universities. These documents may include contracts, Space Act Agreements, non-disclosure agreements (NDAs), and/or software license agreements. However, authority to sign such documents is very limited to contracting officers and those with written delegated Space Act authority. Further, for NDAs and software license agreements, the terms of the contract/Space Act Agreement generally address these issues. Contact OCC if you have questions about what you can sign!
If you are a career Federal employee or contractor, chances are that at some point, you will be required to serve as a witness in an administrative process. In serving this role, it is important to remember that the administrative process is a right for Federal employees and we should respect the employee’s decision to exercise that right.

There are various venues in which an employee may file a grievance, complaint, or appeal, and witnesses may be asked to provide a statement, declaration, affidavit, deposition, and/or testimony, depending on the forum selected and status of the case. Administrative forums include the Merit System Protection Board (MSPB), Equal Employment Opportunity Commission (EEOC), the Office of Special Counsel, the NASA Investigator General’s office, the NASA grievance process, the union grievance process, the NASA Anti-Harassment Program, or the NASA Workplace Violence program, among others. Occasionally, a complaint may be brought in a Federal court, and witness participation may also be required in such judicial proceedings.

Administrative proceedings generally begin with witness interviews and written statements. As a witness, you can expect questions aiming to uncover who, what, where, and when incidents took place, and whether there were other witnesses. Proceedings can become more formal, requiring witness depositions and even testimony at a hearing. Although some of the formalities from the courtroom are adopted by administrative decision-makers, you may find that many of the rules are relaxed in administrative proceedings. For example, hearsay rules are not necessarily adhered to in administrative proceedings, much to the dismay of a private sector attorney-turned agency legal counsel. The relaxation of these rules is intended to give employees an opportunity to plead their cases, without becoming overly burdensome for either party.

Below are some tips on serving as a witness, whether it be by informal interview, written statements, deposition, or testimony:

- Always be truthful.
- Listen or read questions carefully and precisely answer only what is asked.
- Watch for questions that require clarification or are long and confusing. You can request that the fact-finder or opponent rephrase the question.
- Avoid arguing with the opponent.
- Don’t say “never” or “always,” since any exception could damage your credibility.
- Be yourself, but avoid joking, as it could suggest you are not taking the matter seriously, especially in the written record.

What if you have little knowledge of the facts or do not want to serve as a witness? Of course, you should bring that information to the attention of agency counsel, but recognize that your participation is at the discretion of an administrative decision-maker and there are Federal regulations requiring participation of civil servant employees in administrative proceedings. For example, the MSPB can require Federal employees to appear as witnesses without subpoenas, in accordance with 5 C.F.R. § 1201.33 as can the EEOC in accordance with 29 C.F.R. § 1614.109(e). Employees who fail to comply are subject to disciplinary actions and the agency may be subject to sanctions such as adverse inferences regarding the failure of the employee to appear as a witness.

Note that if you receive a subpoena for testimony or documents related to actions you have taken in your official capacity, you need to contact the Office of Chief Counsel so it can determine whether to authorize your testimony or release of documents. This is required by NASA Policy Directive 2010.1E, 14 CFR Section 1263, et. seq, and United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951). Regarding duty hours while serving as a witness, the Office of Personnel Management has clarified that a Federal employee who is summoned as a witness in an official capacity on behalf of the Federal Government is on official duty, not court leave. Court leave is generally reserved for employees summoned for jury duty or serving as a witness in their personal capacity.

Although serving as a witness can be uncomfortable, be assured that you are making a difference and that you will have help along the way. Participation in administrative and judicial proceedings is part of your job as a Federal employee, and is necessary in order to protect employees’ rights to object to actions and to ensure NASA appropriately addresses inquiries, grievances, complaints, appeals, and litigation.
RECENTLY ISSUED U.S. PATENTS
JANUARY 1, 2017—JUNE 30, 2017


- Alan T. Pope and Chad L. Stephens, NASA LaRC; Nina M. Blanson, Independent Inventor. Patent Number 9,623,324, issued April 18, 2017 for Physiologically Modulating Videogames or Simulations Which Use Motion-Sensing Input Devices


More Murphy’s Laws

Scott’s First Law: No matter what goes wrong, it will probably look right.

Finagle’s First Law: If an experiment works, something has gone wrong.

- Finagle’s Rules:
  - In case of doubt, make it sound convincing.
  - Experiments should be reproducible – they should all fail in the same way.

From Klipstein’s Laws Applied to prototyping and Production:

- A failure will not appear until a unit has passed final inspection.
- After the last of 16 mounting screws has been removed from an access cover, it will be discovered that the wrong access cover has been removed. Corollary: After an access cover has been secured by 16 hold-down screws, it will be discovered that the gasket has been omitted.

Summary of an Actual Lawsuit

*United States ex rel. Gerald Mayo v. Satan and His Staff*, 54 FRD 282, (W.D. PA, 1971) - Civil rights action against Satan and his servants who allegedly placed deliberate obstacles in plaintiff’s path and caused his downfall. Weber, J., dismissed case because service of process could not be obtained within the jurisdiction of the court, noting plaintiff failed to include with his complaint the required form of instruction for the US Marshal for directions as to service of process.
Memorable Quotes by Justice Ruth Bader Ginsburg

In our December 2016 newsletter, we promised to follow-up our tribute to Justice Antonin Scalia with quotes from Justice Ruth Bader Ginsburg, whom Justice Scalia often referred to as his “best friend.”

On Self-Control:
“...anger, resentment, envy, and self-pity are wasteful reactions. They greatly drain one’s time. They sap energy better devoted to productive endeavors.” – Baccalaureate Address at Brown University, May 26, 2002.

On Women on the SCOTUS:
“And when I’m sometimes asked when will there be enough [women on the Supreme Court]? And I say when there are nine, people are shocked. But there’d been nine men, and nobody’s ever raised a question about that.” – 10th Circuit Bench & Bar Conference, University of Colorado, Boulder, October, 2012.

On the Second Amendment:
“In my view, if the Court had properly interpreted the Second Amendment, the Court would have said that Amendment was very important when the nation was new, it gave a qualified right to keep and bear arms but it was for one purpose only, and that was the purpose of having militiamen who were able to fight to preserve the nation.” – Interview with John Hockenberry, The Takeaway, New York Public Radio, September 12, 2013.

On Bush v. Gore:
“In sum, the Court’s conclusion that a constitutionally adequate recount is impractical is a prophecy the Court’s own judgment will not allow to be tested. Such an untested prophecy should not decide the Presidency of the United States. I dissent.” – Bush v. Gore, 531 U.S. 98 (2000) (Ginsburg, R., dissenting).

On Dissenting:
“It’s not simply to say, 'My colleagues are wrong and I would do it this way.' But the greatest dissents do become court opinions and gradually over time their views become the dominant view. So that’s the dissenter’s hope: that they are writing not for today but for tomorrow.” – Interview with Nina Totenberg of National Public Radio (May 2, 2002).