Charles A. “Pete” Polen., LaRC Acting Chief Counsel

With this the first 2018 issue of the OCC Newsletter, we say goodbye to a respected leader and hello to a new family member. Oh, and we do provide some articles on a variety of topics we hope you will find helpful in accomplishing your work.

In late December 2017, we learned that Langley’s Chief Counsel, Tom McMurry, was selected as NASA’s Deputy General Counsel. Tom did an exceptional job as Langley’s Chief Counsel, and we expect he will continue to perform in that manner as Deputy General Counsel. And on April 10th, we managed to expand the OCC team with the birth of Benjamin John to Jennifer Riley and her husband Brian. Congratulations Jenn and Brian.

In early January 2018, I received the honor of being appointed to serve as Langley’s Acting Chief Counsel. Since January 3rd, I have been on official travel or out of the office for official activity for seven weeks. The dedicated and capable OCC staff make periods of time like the one I just experienced much more tolerable. Andrea Warmbier, Acting Deputy Chief Counsel, and the rest of the OCC staff have done a phenomenal job ensuring Langley’s leadership and employees received accurate and helpful legal advice. The picture and caption below recognizes two of those employees, Robin Edwards and Michael Mark, for their valuable contributions to the Advanced Composites Project Team. They were recognized this past February as NASA’s Small Business Program 2017 Program/Science/Research and Development Team of the Year. Congratulations to Robin, Michael, and the ACP Team. I am thankful for each member of OCC and their contributions to Langley. Happy reading, and please send any feedback or questions our way.

Pete

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Special OCC Congratulations!

Congratulations to OCC Team Leads Robin Edwards (Intellectual Property Law Team) and Michael Mark (Business Law Team) and other members of the Advanced Composites Project Team for being selected as Program / Science / Research and Development Team of the Year. In citations dated February 28, 2018, the team was honored with agency-level Fiscal Year 2017 Small Business Advocates Awards for “outstanding efforts in developing and implementing innovative practices in support of the National Aeronautics and Space Administration’s Small Business Program.” This award is well-deserved recognition for the team’s dedication to and expertise in the Advanced Composites initiative. Congratulations, Robin and Michael!
Avoiding Endorsements and Commitments without Authority in Letters

OCC reviews a number of letters that NASA civil servant employees intend to send to outside individuals or organizations, supporting various efforts by those entities. The letters have titles such as “Letter of Reference,” “Endorsement,” “Letter of Commitment,” “Letter of Support” and “Letter of Intent”. Whatever the title, there are two primary concerns to consider: 1) endorsing non-Federal entities, products, services, and/or proposals, in violation of ethics statutes and regulations; and 2) committing Government resources without authority, in violation of fiscal law statutes and regulations. We have attempted to categorize the letters below and provide some general guidance to keep letters ethically and fiscally fit.

Reference Letters/ Personal Recommendations

Ethics regulations specify that Federal employees may not use or permit the use of their official position to endorse any non-federal person, product or service. (5 CFR 2635.702(b)). However, there is an exception for some personal recommendations. Under the regulation, a NASA employee may properly prepare a letter of recommendation or otherwise serve as a reference for someone who they have worked with in the course of their NASA employment, and that letter can properly be put on official NASA "meatball" letterhead stationery. (5 CFR 2635.702(b)). Of course, employees may choose to put the letter on personal letterhead. Similar references or letters can be provided for someone applying for a Federal job, and those letters need not be based on knowledge gained through NASA experience (e.g., a letter for a neighbor), but they must be applying for a Federal civil service job.

Please note that such references/letters of recommendation should focus more on the person (their character, knowledge, and skills) and less on their employer. Even though such letters can be on NASA letterhead, they are personal recommendations, provided at one’s own discretion. To minimize any risk of confusing the letter with an official agency position, a disclaimer should be added to the effect of, "this character reference is based upon my personal knowledge of the abilities of [insert name], whom I have known in the course of my NASA duties. It reflects my professional opinions and observations, and is not intended to be an official agency endorsement." Letters that are used to support noncitizen’s immigration and visa requests, however, must NOT be printed on NASA letterhead. Instead, the writer should make up a personal letterhead. One reason for this is the letter is ultimately to another Federal agency, and the NASA mission is not to tell it (USCIS) how to act on particular applications. Further, in some circumstances (adjustment of status for certain visas) there is a process whereby the agency expresses an official opinion. That process does end up at the HQ level, and a NASA employee’s letter might be confused with such a response.

Requested Endorsement of Non-Federal Entity or Product

Private sector entities sometimes request letters supporting their proposals or work performed under a contract. However, NASA cannot endorse non-Federal entities, products, services, proposals, and so forth; it is outside the scope of a Federal agency’s mission to make such endorsements. If required, we can provide a letter specifying necessary facts that are otherwise undocumented.

If such a fact-based letter is necessary, the following format could be used:

a. “As a NASA employee, I cannot endorse specific proposals or institutions” [Make clear the letter is not an endorsement].

b. “[The subject matter] is important to NASA’s mission...” [We can’t endorse the proposal, but we can address the need for research in an area. Make sure you are authorized to make such statements, and they are correct].

c. “I [or this branch] am/is/were/are currently involved in [similar research].” [Factual statements that are publically releasable are OK].

d. “Subject to other NASA mission requirements, I am willing to [serve as an informal NASA point of contact/co-write a paper/consider future collaboration].”

e. “Please note that this letter is not a commitment of agency resources.” [Make that clear].

In practice, such letters can be confused with endorsements and commitments, and should generally be avoided. Further, the required disclaimers often negate the content being
Avoiding Endorsements and Commitments without Authority in Letters (Continued)

requested, therefore rendering the letters meaningless.

Another issue to consider is whether the entity requesting the letter has a current or recent contract with LaRC. Feedback on LaRC contracts is collected by the Contracting Officer and/or the Contracting Officer’s Representative, so we should ensure that the information in the letter does not conflict with the official feedback on contracts.

**Letters of Support/Commitment**

Proposers responding to Government solicitations for federally-funded projects often request a “Letter of Support” or “Letter of Commitment,” documenting LaRC’s commitment of resources to support a proposed research effort, should it be selected for federal funding. These types of letters are described in LAPD 1050.1E, Section 6.i., which requires that such letters be reviewed by the Office of Chief Counsel and signed by someone with Space Act Authority (currently the Directors of the LaRC Aeronautics Research Directorate, Space Technology and Exploration Directorate, and Science Directorate), as delegated in Section 6 LAPD 1050.1E. Further, these letters must specify that LaRC’s efforts will be performed on a reimbursable basis through a separate Space Act Agreement the parties will execute if the proposal is selected. The letter must also include a Rough Order of Magnitude (ROM)¹ estimate, to provide the Signing Official with a basis for determining the effort is fair and reasonable.

Sometimes outside entities request civil servant expertise on various projects. Like facilities and funding, civil servant duty hours are Government resources with a value attached, and therefore, are subject to the same rules as committing other Government resources. A letter committing civil servant duty hours would still require a ROM and a Space Act Agreement signatory.

Please note that agreeing to commit Government resources without authority puts us at risk of an unauthorized commitment, a violation of NASA policy, or an Antideficiency Act violation. A sample of an appropriate Letter of Commitment follows this article. For additional guidance and points of contact for obtaining a Letter of Commitment, see the Space Act Agreement team’s website at [https://saa.larc.nasa.gov/center-letters-of-commitment/](https://saa.larc.nasa.gov/center-letters-of-commitment/).

**Nonbinding Letters of Intent**

What if a Government solicitation requires proposers to provide a letter signed by a LaRC official, but the required level of effort is not currently known? Further, what if it is anticipated that the NASA civil servant supporting the effort will participate as an unfunded collaborator, meaning tasks to be performed by the civil servant fall within the scope of his/her official duties, as determined by the supervisor, and any efforts performed by the civil servant would be subject to other official duties? In these rare cases, LaRC OCC has concurred with providing a nonbinding letter of intent, signed by a program manager or branch head. OCC recently worked with the Science Directorate to develop a template to address such circumstances, which is included as a sample following this article. Importantly, the letter should specify that it is not an endorsement or letter of commitment and that work performed by the unfunded collaborator is subject to official duties. These letters should only be used when necessary.

OCC reviews such letters to ensure they fall within the exemption specified in LAPD 1050.1E, Section 1.b. (5)v.

**Other Letters**

What about letters related to SBIR contracts, NASA Research Announcements with direct program funding, grants awarded by other agencies, and collaborative efforts? Many letters do not fall neatly into the categories above and therefore, it may be best to request a review from OCC.

¹To request a ROM, send an email to LaRC-DL-ii-costanalysis@nasa.gov. You may be asked to complete a Cost Input Sheet.
Left: Example template for a Nonbinding Letter of Intent

Subject: Nonbinding Letter of Intent for [Proposal Title] (the “Proposal”)

Dear Dr. [PI Name]:

This letter serves as an acknowledgement that I am identified as an unfunded collaborator in the proposal entitled [Proposal Title], submitted in response to (Announcement/Solicitation Number) issued by [Agency Name].

Should the proposal be selected, I will be very pleased to collaborate with you, subject to my official duties. [The subject matter] is important to NASA’s mission. I am currently involved in [similar research]. Subject to other NASA mission requirements, I am willing to [serve as an informal NASA point of contact/ co-write a paper/ consider future collaboration].

You may include a copy of this letter in support of your proposal efforts; however, this letter does not serve as an endorsement of your company or your proposal, nor does it serve as a commitment of NASA resources.

I wish you well in your preparation of the proposal and look forward to working with you if your proposal is accepted for award.

Sincerely,

[To be signed by the Collaborator]

Below: Example template for a Letter of Commitment

Subject: Cost Estimate and Commitment Letter for Support on Name of Project

Dear Dr. Name:

NASA Langley Research Center (LaRC) is very pleased to commit to provide your company with support on a reimbursable basis consistent with the types and levels indicated below. We understand that your requirements for such support may depend on your success with a proposal in response to the Request for Proposal (Announcement Number/BAA...) issued by the NASA/Other Agency for the Project. You may include a copy of this letter of commitment in support of your proposal efforts to demonstrate NASA’s level of commitment and likely costs; however, this letter does not serve as an endorsement of your company or your proposal.

NASA LaRC commits to provide technical expertise, facilities, and related support to XYZ, Inc. for implementation of its proposal, should NASA/Other Agency choose that proposal for contractual award. This NASA LaRC commitment is dependent upon the availability of personnel, facilities and NASA resources, including appropriated funds, required to provide the support as well as the successful negotiation of a reimbursable Space Act Agreement with NASA LaRC.

NASA LaRC commits to carry out the following responsibilities, on a reimbursable basis under a separate Space Act Agreement that shall be executed prior to LaRC’s execution of work, should your proposal be accepted. This commitment is based on the attached agreements that contain broad statements of work and NASA LaRC’s estimates of the cost to perform that work. It is expected that XYZ, Inc. will hold a final round of discussions to more specifically define the statements of work and resultant changes in costs, if any, to the finalized statements of work post selection.

I wish you well in your preparation of the proposal and all of us here at LaRC are looking forward to working with you when your proposal is accepted.

Sincerely,

LaRC Individual With Authority to Execute SAAs
Director,

Enclosure
(Cost Estimates from Excel worksheets for XYZ, Inc.)
News Alert for Innovators!

NASA's New Technology Reporting System (e-NTR) was recently revamped to provide a better experience for all of its users. You can check out the changes when you submit your new technology information at invention.nasa.gov. Some of the changes:

**Improved Experience:**

- ✔ Simpler and more intuitive user experience design to guide innovators through a step-by-step submission process.
- ✔ Decreased number of data fields to help shorten completion time and focus only on required information.

**Improved Workflow:**

- ✔ Improved NTR submission workflow to reduce NTRs "stuck" in review.

**Enhanced Tools:**

- ✔ "Address Book" to reuse innovator information, auto-save to reduce data loss, and a "Commenting" system for reviewers to make comments throughout the NTR.

If you were a user of the previous system, please log in with your original credentials and you will find all of your records in the dashboard.

One of the significantly revamped areas pertains to the disclosure of software related technology. Questions to be answered are dynamically selected to gather information needed to facilitate faster software release, while avoiding unnecessary questions.

Also be sure to check out the helpful FAQ’s on the e-NTR site to find out more information on topics like:

- Why are NTRs important to NASA?
- So am I required to submit NTRs?
- Is there a right time and a wrong time to submit an NTR?
- I want to give a paper about a new technology. When should I file the NTR?
- How can I find out the current status for my NTR?
- Will my reported technology get patented?
In our last newsletter, we talked about Advanced Sick Leave (ASL), the Voluntary Leave Transfer Program (VLTP), and the Voluntary Leave Bank Program (VLBP)—three ways that federal employees can receive paid leave during a medical emergency when they don’t have enough sick or annual leave.

Now, to complete our discussion of leave options for employees experiencing a personal or family medical event, here are the basics of FMLA and the related Federal Employees Family Friendly Leave Act. These options provide some additional flexibility for federal employees, and can be considered in addition to the spectrum of other leave categories to help navigate unexpected situations.

**The Family and Medical Leave Act of 1993 (FMLA)**

Under FMLA, Federal employees are entitled to take up to 12 weeks of unpaid leave per 12-month period of their employment. During this period, the employee may choose to substitute available paid leave (annual or sick) for the unpaid leave allowed under FMLA. The employer cannot hold approved FMLA absences against the employee, and the employee’s job is protected while they take FMLA leave. As long as certain criteria are met, FMLA can be used “all at once,” or intermittently as needed. FMLA leave can be used in the following scenarios:

- The birth of a child and associated care and bonding;
- The adoption or fostering of a child and associated care and bonding;
- An employee’s serious health condition, when it prevents the employee from performing the essential functions of their position;
- The care of an employee’s (1) spouse, (2) child, or (3) parent, when such family member has a serious health condition; or
- Any “qualifying exigency” resulting from an employee’s spouse, child, or parent’s involvement in covered active duty in the Armed Forces.

Note that the definition of “family member” under FMLA is quite narrow, and FMLA leave cannot be taken to care for a more distant family member. FMLA is often used as maternity / paternity leave in the federal government, as it allows employees to take up to 12 weeks off to care for their new infant.

Employees must provide 30 days’ advance notice of their intent to take FMLA leave, except in the event of serious emergencies. If an employee experiences a serious emergency that prevents them from providing advance notice to their agency, they should provide notice as soon as is practicable and explain the delay. An employee must provide medical documentation for any FMLA leave period upon the Agency’s request.

Once an employee has invoked FMLA leave, a supervisor must grant the employee’s request to take paid annual leave for all or part of the FMLA leave period. The 12-week FMLA period would continue to run even if annual leave is substituted, but the employee would be paid for any time covered by their annual leave request.

Employees are also entitled, in some scenarios, to take sick leave during their FMLA period. If an employee is experiencing a serious health condition and chooses to take FMLA, they can use their sick leave to cover all or part of the FMLA period if they wish. It is important to note that, under FMLA, a normal and healthy pregnancy is considered a “serious health condition.” Thus, a pregnant employee can invoke FMLA to attend prenatal appointments, recuperate...
...after delivery, and bond with her child. An employee whose partner is delivering a baby could take FMLA leave to care for and assist her, and also to bond with the child. Employees who have recently delivered a baby may also take paid sick leave during their FMLA period while they are recuperating. For more guidelines and information on the use of FMLA, visit the OPM website at www.opm.gov.

**The Federal Employees Family Friendly Leave Act and Sick Leave Usage**

In addition to FMLA protections, employees may sometimes use paid sick leave to care for a family member. The Federal Employees Family Friendly Leave Act allows for most Federal employees to use up to 104 hours of sick leave per year to care for an ill family member.

Under the Family Friendly Leave Act, an employee is entitled to use sick leave to care for family members in the following circumstances:

- When a family member is incapacitated by physical or mental illness, injury, pregnancy, or childbirth;
- When a family member is receiving medical, dental, or optical examination or treatment;
- When a family member has been exposed to a communicable disease and needs care to avoid jeopardizing the health of others; or
- To make arrangements following the death of a family member, or to attend the funeral of a family member.

Family members covered under the Family Friendly Leave Act include: spouse, spouse’s parents, children, children’s spouses, parents, siblings, sibling’s spouses, and “any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.” Thus, the definition of “family” covered by the Family Friendly Leave Act is much broader than that covered under FMLA.

The 104 hours of “family care” sick leave allowed under the Family Friendly Leave Act can be used separately or in conjunction with a period of FMLA unpaid leave for the care of a family member.

Additionally, employees may use up to 12 weeks (480 hours) of sick leave annually to provide care to a family member with a serious health condition. A serious health condition can include cancer, heart attacks, strokes, severe injuries, pregnancy, and childbirth. Any of the 104 hours of “family care” sick leave that the employee has taken during the year must be subtracted from the 12-week “serious health condition” sick leave entitlement. That is, an employee is entitled to a maximum of 12 weeks of paid sick leave annually for all aggregated family care. The Agency may request medical documentation for any use of sick leave.

These examples illustrate the many flexibilities that the FMLA / Family Friendly Leave Act structure grants federal employees. Employees should feel comfortable knowing that they can take care of themselves and their families in the event of a medical emergency, and that they have guaranteed leave in certain scenarios.
The U.S. Office of Special Counsel (OSC) updated its guidance on social media use by federal employees in February 2018. In light of these new guidelines, please take a moment to review the following “Hatch Act Social Media Quick Guide,” reprinted in full from osc.gov/Resources/Social%20Media%20Quick%20Guide%20FINAL%20r.pdf. This document broadly outlines what federal employees may or may not do on social media, and is meant to be a quick reference rather than a comprehensive summary of Hatch Act compliance.

### Hatch Act Social Media Quick Guide

*Please note that this Quick Guide is not comprehensive. For complete guidance, see Hatch Act Guidance on Social Media.*

#### FOR ALL FEDERAL EMPLOYEES

<table>
<thead>
<tr>
<th>Social Media Action</th>
<th>May Not Do Anytime</th>
<th>May Not Do on Duty or at Work</th>
<th>May Do Anytime</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Like, share, or retweet a post that solicits political contributions, including invitations to fundraising events</td>
<td>X</td>
<td></td>
<td></td>
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<tr>
<td>2. Post or tweet a message that solicits political contributions or invites people to a fundraising event</td>
<td>X</td>
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</tr>
<tr>
<td>3. Use an alias on social media to solicit a political contribution for a political party, candidate in a partisan race, or partisan political group</td>
<td>X</td>
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<tr>
<td>4. Use a social media account designated for official purposes to post or share messages directed at the success or failure of a political party, candidate in a partisan race, or partisan political group</td>
<td>X</td>
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<tr>
<td>5. Engage in political activity on a personal social media account if you use such an account for official purposes or post in your official capacity</td>
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<tr>
<td>6. Send to subordinates, or a subset of friends that includes subordinates, any message that is directed at the success or failure of a political party, candidate in a partisan race, or partisan political group</td>
<td>X</td>
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<tr>
<td>7. Use your official title or position when posting messages directed at the success or failure of a political party, candidate in a partisan race, or partisan political group</td>
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<tr>
<td>8. Post, like, share, or retweet a message in support of or opposition to a political party, candidate in a partisan race, or partisan political group</td>
<td>X</td>
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<tr>
<td>9. Like, follow, or friend the social media account of a political party, candidate in a partisan race, or partisan political group</td>
<td>X</td>
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<tr>
<td>10. Use an alias on social media to engage in any activity that is directed at the success or failure of a political party, candidate in a partisan race, or partisan political group</td>
<td>X</td>
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<tr>
<td>11. Accept invitations to, or mark yourself as “attending,” a fundraising event on social media</td>
<td>X</td>
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<tr>
<td>12. Include your official title or position and where you work in your social media profile, even if you also include your political affiliation or otherwise use your account to engage in political activity</td>
<td>X</td>
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<tr>
<td>13. Continue to follow, be friends with, or like the official social media accounts of government officials after they become candidates for reelection</td>
<td>X</td>
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</tbody>
</table>

#### FOR FURTHER RESTRICTED FEDERAL EMPLOYEES ONLY

[LaRC OCC note: Career SES employees, and certain non-NASA agencies]

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<th>May Do Anytime</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Share or retweet posts from, or the page of, a political party, candidate in a partisan race, or partisan political group</td>
<td>X</td>
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</tr>
<tr>
<td>2. Link to campaign or partisan material of a political party, candidate in a partisan race, or partisan political group</td>
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<tr>
<td>3. Post to or like the social media accounts or messages of a political party, candidate in a partisan race, or partisan political group</td>
<td>X</td>
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<tr>
<td>4. Engage in political activity on social media that is not done in concert with or on behalf of a political party, candidate in a partisan race, or partisan political group</td>
<td>X</td>
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</table>

February 2018

For more detailed guidance on social media use, see the “Hatch Act Guidance on Social Media” document produced by the OSC, available at osc.gov/Resources/HA%20Social%20Media%20FINAL%20r.pdf. This document provides more complex analysis using real-world examples to illustrate appropriate social media use. The OSC website has further resources on Hatch Act compliance for federal employees at osc.gov/pages/hatchact.aspx.

Image Credit: U.S. Office of Special Counsel at www.osc.gov
What’s in Your Wallet?
(Travel Cards are Mandatory for all Official Travel Expenses)

According to a February 2018 NASA IG audit, during fiscal year (FY) 2017, NASA made over 112,000 purchase card transactions totaling more than $75 million and approximately 413,000 travel card transactions totaling about $62 million. The IG audit found NASA had generally effective controls in place to detect misuse, fraud, waste, and abuse (oig.nasa.gov/docs/IG-18-014.pdf). However, the IG also found the NASA travel card program had one particular weakness: travelers did not consistently use the travel card for official travel expenses as required.

Federal law and federal regulation mandate that Government cardholders use the travel card for official travel expenses unless specifically exempted (Travel and Transportation Reform Act of 1998, Public Law 105-264; and, Federal Travel Regulations §301-51). The IG audit found that NASA travel cardholders may be inclined to use a personal credit card, rather than their Government travel card, in order to receive bonuses and rewards offered by credit card or hotel companies.

When travel cards are not used for payment of official travel expenses, not only are NASA travelers failing to comply with the law, but sales refunds received by NASA from JPMorgan are reduced. The refunds NASA is supposed to receive from JPMorgan are based on the dollar or “spend volume” on the credit cards during a specified time period.

The IG recommended two responses by NASA: 1) Establish a procedure, which may be risk-based, to monitor whether travelers are using their travel cards for all official travel expenses; 2) Remind NASA travel cardholders, and require acknowledgment in writing of their understanding, that all official travel expenses are to be paid with the travel card unless an exemption applies in which case the travel voucher or supporting documentation should include an explanation.

So, when traveling on official travel, be sure you know what’s in your wallet!

Left: OCC staff members Pam, Jenn, Hannah, Dacia, and Mike stand under the fan of the 14 x 22 –Foot Subsonic Wind Tunnel at NASA Langley Research Center, during a tour with the Assistant U.S. Attorney assigned to represent NASA LaRC.

The wind tunnel facility was constructed in 1970, and can produce speeds of 348 feet per second, with a drive power of 12,000 horsepower. The fan blades are constructed of wood for safety, ease of repair, and because wood (unlike metal) will not expand when heated.
RECENTLY ISSUED U.S. PATENTS

OCTOBER 1, 2017—MARCH 31, 2018

- Ya-Ping Sun, Clemson University; John W. Connell, NASA LaRC; L. Monica Veca, Clemson University. U.S. Patent Number 9,783,424 issued October 10, 2017 for “Highly Thermal Conductive Nanocomposites.”


- Jin Ho Kang, National Institute of Aerospace Associates; Emilie J. Siochi, NASA LaRC; Ronald K. Penner, ATK Space; Travis L. Turner, NASA LaRC. U.S. Patent Number 9,796,159 issued October 24, 2017 for “Electric Field Activated Shape Memory Polymer Composite.”


- Yeonjoon Park, Independent Inventor; Sang Hyouk Choi, NASA LaRC. U.S. Patent Number 9,824,885 issued November 21, 2017 for “Method of Fabricating Double Sided Si(Ge)/Sapphire/Ill-Nitride Hybrid Structure.”


- Arthur T. Bradley, NASA LaRC. U.S. Patent Number 9,902,446 issued February 27, 2018 for “Locomotion of Amorphous Surface Robots.”


Image Credit: Pixabay

Congratulations, Inventors!
From a deposition:

Q: Was he considered a good employee?
A: He was good, but undependable.

Q: Well, on that morning you went to wake him up around midnight or so to tell him to be there at 5:00 and he was here at 5:00, wasn’t he?
A: Yeah, it shocked me too!

From the deposition of an economist:

Q: You determined that in your best judgment, to fully compensate Mr. White for the present value of his future loss of projected earning capacity, Mr. White would have to be paid approximately $123,000 in cash today, true?
A: Yes.

Q: Now, if the tooth fairy flitted into the room and increased that number by 25% and sprinkled that additional $35,000 on Mr. White as additional compensation for the present value of his projected future lost earning capacity, then according to your model and your calculations that additional $30,000 would be overcompensation to Mr. White, wouldn’t it?
A: If the tooth fairy gave him an extra $30,000...if the tooth fairy did it, then that would certainly make him re-evaluate his belief in the tooth fairy.