Spring 2025 DOECAA Conference

Agenda, Presentation Materials and Speaker Bios



TABLE OF CONTENTS

Welcome Letters

Agenda

Attendee List

Presentation Materials

- The Continued Executive Order Impacts on DOE Contracting
- The Manhattan Project and Oak Ridge's Origin
- Legal Ethics: Preventing Criminal or Fraudulent Conduct on the Part of an Organizational Client
- Great Power Decoupling: Implications for Government Funded R&D
- Navigating the Shift in Environmental Priorities and Policies Under the New US Administration
- Developments in Employment Law
- Government Affairs Update

Speaker Bios

- Stephanie Barna, Of Counsel, Covington & Burling LLP
- Robyn Burrows, Partner, Government Contracts, Blank Rome
- Joe Campbell, General Counsel, Savannah River National Laboratory
- Debbie Carfora, Associate Morgan, Lewis & Bockius LLP
- Dominique Casimir, Partner, Government Contracts, Blank Rome
- Paul Doucette, Government Relations, Battelle
- Michael Eastman, Vice President, Employment Advisory Services, Inc.
- Jill Fortney, Attorney Advisor, Department of Energy
- Reggie Jones, Chair, Federal Government Contracts Department, Fox Rothschild
- David Keim, Director of Communications and Community Engagement, ORNL
- Nadine M. Lacombe, General Counsel, Argonne National Laboratory
- Professor Alex Long, The University of Tennessee, College of Law
- John McGahren, Partner Morgan, Lewis & Bockius LLP
- Devon Mobley-Ritter, Counsel, Lawrence Livermore National Laboratory
- Tyler Owens, Government Relations, ORNL
- Justin Poore, Senior Managing Counsel, Sandia National Laboratories
- Meyer Seligman, Director, Government Relations, NREL
- Ryan Shannon, Associate, Lewis Thomason
- Steve Ventura, Associate General Counsel, UT-Battelle
- Quinn Windham, Associate General Counsel, UT-Battelle, LLC



Dear DOECAA members, speakers, and conference attendees:

The DOECAA Board and I are delighted to welcome you to the Spring 2025 DOECAA conference in Oak Ridge, Tennessee! We are excited to see that over 125 of you have registered to attend and can't wait to see you. As you will see from the agenda and the attached materials, the upcoming conference promises to be extremely timely, informative, and engaging.

I want to extend the DOECAA Board's heartfelt thanks to our site hosts at Oak Ridge National Laboratory—led by David Mandl, Ivan Boatner, and Gibson Smith—who generously volunteered to provide us with a venue, an exciting list of tours, social events, and several speakers. We all look forward to learning more about ORNL's impressive history and promising future!

Everyone has been extraordinarily busy, and the legal environment is especially uncertain. The time our volunteers—including our panelists and the DOECAA Board—have dedicated to sharing knowledge and building our community, along with the time our attendees will spend engaging with us, is more precious and appreciated than ever.

The DOECAA Board and I continue to be grateful for the support that Matt Williams and Devon Mobley-Ritter provide for CLEs (with invaluable support from Chris Parlo and colleagues at Morgan Lewis). This year, we will be expanding the number of jurisdictions in which we seek credit thanks to their work.

The DOECAA Board will also be discussing upcoming plans to celebrate DOECAA's 25th year anniversary at our upcoming Fall Conference in Washington, DC, along with other initiatives we are pursuing based on the survey results and input from you. We hope you will attend the member meeting to discuss.

Please do not hesitate to reach out to me or any of the DOECAA Board members should you have any feedback. Thank you for joining us.

Sincerely.

Saurabh Anand, DOECAA President

Sanand3@stanford.edu



April 11, 2025

Dear Colleagues,

On behalf of the Office of General Counsel at Oak Ridge National Laboratory (ORNL), it is my great pleasure to welcome you to the Spring 2025 DOECAA Conference. We are honored to host such a distinguished group of attorneys serving the Department of Energy (DOE) and National Nuclear Security Administration (NNSA) and their respective contractors during these important times.

This conference presents a unique opportunity for us to engage in critical conversations regarding the impacts of recent Executive Orders on DOE contracting, the future of government-funded research and development, the evolving environmental priorities and policies emerging under the new administration and other timely topics. Your insights and experiences are invaluable as we navigate these important issues and work towards effective solutions that advance our mission while ensuring compliance and accountability.

We are also excited to offer you the chance to explore ORNL various facilities during the conference. I encourage you to take advantage of the guided tours of the Advanced Plant Phenotyping Laboratory (APPL), a cutting-edge research facility at the forefront of decoding, designing and deploying the crops of tomorrow; the Frontier Supercomputer, a true marvel of technology; as well as our Graphite Reactor, the Manufacturing Demonstration Facility (MDF), and the High Flux Isotope Reactor (HFIR). These facilities, like others throughout the DOE Complex, are places where bright minds work together to advance America's security and prosperity through transformative science and technology.

Thank you for your participation, for the expertise you bring, and for your ongoing dedication to our shared goals. Together, let us embrace the challenges ahead and continue fostering a collaborative legal community across the DOE Complex.

I look forward to fruitful discussions and a productive conference.

Sincerely,

David Mandl General Counsel

Agenda





Conference Agenda - DOECAA SPRING 2025 CONFERENCE

April 15, 9:30 a.m. EDT – April 16, 2:00 p.m. EDT

Oak Ridge National Laboratory Conference Center 1 Bethel Valley Road Oak Ridge, Tennessee 37830

Site Host – Oak Ridge National Laboratory

David Mandl, General Counsel; Ivan Boatner, Associate General Counsel mandldi@ornl.gov; boatneria@ornl.gov

Tuesday, April 15, 2025

Time	Topic/Event	Speaker(s)
9:00 a.m.	Breakfast Available	
9:30 a.m9:45	DOECAA Welcome	Saurabh Anand, DOECAA
a.m.		President; Chief Laboratory
		Counsel, SLAC National
		Accelerator Laboratory
		·
		David Mandl, General Counsel, UT-
		Battelle, LLC
9:45 a.m10:00	Opening & Welcome from ORNL	Dr. Stephen Streiffer, Laboratory
a.m.		Director, ORNL
10:00 a.m. –	The Continued Executive Order Impacts on	Robyn Burrows, Partner,
11:15 a.m.	DOE Contracting	Government Contracts, Blank Rome
		Dominique Casimir, Partner,
		Government Contracts, Blank Rome
		Reggie Jones, Chair, Federal
		Government Contracts Department,
		Fox Rothschild
		Devon Mobley-Ritter, Counsel,
		Lawrence Livermore National
		Laboratory
11:15 a.m. –	Networking Break	
11:30 a.m		

Time	Topic/Event	Speaker(s)
11:30-12:15 p.m.	The Manhattan Project and Oak Ridge's	David Keim, Director of
	Origin	Communications and Community
		Engagement, Oak Ridge National
		Laboratory
12:15 – 1:30	Communities of Practice Working Lunch	
p.m.		
1:30 – 2:30 p.m.	Legal Ethics: Preventing Criminal or	Professor Alex Long, The
	Fraudulent Conduct on the Part of an	University of Tennessee, College of
	Organizational Client	Law
2:30-3:00 pm	Transfers for Tours	
3:00 – 4:30 pm	ORNL Tours (optional-sign up required)	
5:00 p.m. – 7:00	Networking Reception ¹	Location: American Museum of
p.m.		Science and Energy, 115 E. Main
		Street, Oak Ridge, Tennessee

Wednesday, April 16, 2025

Time	Topic/Event	Speaker(s)
8:30 a.m.	Breakfast Available	
9:00 a.m. – 10:15	Great Power Decoupling: Implications for	Stephanie Barna, Of Counsel,
a.m.	Government Funded R&D	Covington & Burling LLP Nadine M. Lacombe, General Counsel, Argonne National Laboratory
		Justin Poore, Senior Managing Counsel, Sandia National Laboratories
10:15 a.m. – 11:15 a.m.	Navigating the Shift in Environmental Priorities and Policies Under the New US Administration	John McGahren, Partner and Debbie Carfora, Associate Morgan, Lewis & Bockius LLP; and Joe Campbell, General Counsel, Savannah River National Laboratory, and Quinn Windham, Associate General Counsel, UT-Battelle, LLC; Jill Fortney, Attorney Advisor, Department of Energy
11:15 a.m. – 11:30 a.m.	Networking Break	-
11:30 a.m. – 12:30 p.m.	Developments in Employment Law	Ryan Shannon, Associate, Lewis Thomason Steve Ventura, Associate General Counsel, UT-Battelle Michael Eastman, Vice President, Employment Advisory Services, Inc.

¹ Separate ticket purchase required. See event website for details.

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Time	Topic/Event	Speaker(s)
12:30 p.m. – 1:30	DOECAA Business Meeting/Lunch	
p.m.	Breakout Lunch for Attorneys New to the DOE Complex (Cumberland Conference Room 219)	
1:30 p.m. – 2:15 p.m.	Government Affairs Update	Meyer Seligman, Director, Government Relations, NREL Tyler Owens, Government Relations, ORNL Paul Doucette, Government Relations, Battelle

CLE accreditation being sought in:

California Ohio

ColoradoPennsylvaniaIllinoisSouth CarolinaLouisianaTennesseeMissouriTexasNew MexicoVirginiaNew YorkWashington

North Carolina

Attendee List





Spring 2025 Conference Registered Attendees

Kevin Amery Battelle
Shade Amole* Fermilab

Saurabh Anand SLAC National Accelerator Laboratory

Adam Andersen* Idaho National Laboratory
Reed Andrus* Idaho National Laboratory

Russell Austin Battelle

Laurie Ball Y-12 National Security Complex

Nathan Bankson Kansas City National Security Campus
Sam Barkley National Renewable Energy Laboratory

Stephanie Barna Covington & Burling LLP

Ritu Bhatnagar* SLAC National Accelerator Laboratory

David Billetdeaux* Pacific Northwest National Laboratory

Greg Bingham HKA Global Inc.

Ivan Boatner Oak Ridge National Laboratory

Jake Bolinger Haynes Boone
Robert Bracknell* Jefferson Lab

Joe Burks* Bechtel

Robyn Burrows Blank Rome LLP

Jack Burgin Kramer Rayson LLP

Brian Cable* Bechtel

Joseph Campbell Savannah River National Laboratory

Debra Carfora Morgan, Lewis & Bockius LLP

Dominique Casimir Blank Rome LLP

Jonathan Celniker Lawrence Livermore National Laboratory
Kristen Clark* Pacific Northwest National Laboratory

Sean Coletti Idaho Environmental Coalition

Jonathan Conte Fluor

Tara Dalton Oak Ridge National Laboratory

Dan DeVore Oak Ridge National Laboratory

Lea Dickinson Haynes Boone

Brenna Duncan Bechtel

David Dziengowski Morgan, Lewis & Bockius LLP

Paul Ehlenbach* Lawrence Livermore National Laboratory (retired)

William Elias Sandia National Laboratories

Paul Ellison* Fermilab Matthew Ennis Fluor Beth Fancsali* Fermilab

Andrea Ferencei Y-12 National Security Complex

Jill Fortney Department of Energy

Sandra Fowler Waste Treatment Completion Company

G. Drew Fuller Oak Ridge National Laboratory

Hanford Tank Waste Operations and Closure Bert Gawthorp

Kansas City National Security Campus Jordan Gerken

Ivy Gibson* Fermilab

Danielle Goins Oak Ridge National Laboratory

Alexandra Hall* National Renewable Energy Laboratory

Todd Harrington Battelle

Chip Hicks **Energy Solutions**

Caitlin Hoch-Nussbaum Y-12 National Security Complex

Rob Humphries Bechtel

Craig Hunsaker* Idaho National Laboratory

Shawn Irish Battelle

Shontavia Johnson Savannah River National Laboratory

Eric Johnson National Renewable Energy Laboratory

Reggie Jones Fox Rothschild LLP

John Jung* **Argonne National Laboratory**

Reed Koenig* National Renewable Energy Laboratory

Nadine Lacombe **Argonne National Laboratory**

Melanie LaFond Fluro Marine Propulsion

Mark Langguth* **Argonne National Laboratory** Melissa Lawson

Oak Ridge National Laboratory

Aida Lebbos Southeastern Universities Research Association

Ann Lee Lawrence Livermore National Laboratory Therese Leone Lawrence Berkeley National Laboratory

^{*} Virtual attendee

Kevin Licciardi Princeton Plasma Physics Laboratory
Cindy Lovato-Farmer* Pacific Northwest National Laboratory

David Mandl Oak Ridge National Laboratory

Julia Mata

Lawrence Berkeley National Laboratory

Derek Maughan*

Pacific Northwest National Laboratory

John McGahren Morgan, Lewis & Bockius LLP

Maxine McReynolds Los Alamos National Laboratory

Mark Meagher Meagher GC Law, LLC

Luke Meier Blank Rome LLP

Kristen Merrick* National Renewable Energy Laboratory

Foy Meyer Savannah River Site

Josh Miller Kansas City National Security Campus

Devon Mobley-Ritter Lawrence Livermore National Laboratory

Linda Montgomery* INL Foundation

Jane Morris Ames National Laboratory

John Myer* Husch Blackwell LLP

Jenny Nelson* National Renewable Energy Laboratory

Rachel Nichols Argonne National Laboratory

James Ouellette Bechtel
Scotch Perdue Fluor
Sarah Perry Bechtel

Mark Christian Pfizenmayer United Cleanup Oak Ridge LLC

Robert Pittelkow National Renewable Energy Laboratory

Justin Poore Sandia National Laboratories
Steven Porter Steven L. Porter, Consultant
Michael Pratt Sandia National Laboratories
Dorene Price* Brookhaven National Laboratory

Deborah L. Quinn Savannah River Site

Dan Raker Argonne National Laboratory

Andrea Reagan Fluor

Brandon Regan Watt, Tieder, Hoffar, & Fitzgerald LLP

Pam Reynolds* Huntington Ingalls Industries

Alan Rither* Pacific Northwest National Laboratory

Alec Rubenstein* Fermilab

^{*} Virtual attendee

Rhonda Scales* Jefferson Lab

Tiffany Schafer Argonne National Laboratory

Nicole Shoemaker* National Renewable Energy Laboratory

Anissa Siefken* Pacific Northwest National Laboratory

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John Stolpa National Renewable Energy Laboratory

Ashley Strittmatter United Cleanup Oak Ridge LLC
Andrew Thiros* Los Alamos National Laboratory

Rebecca Tie* Lawrence Livermore National Laboratory
Michelle Timm* National Nuclear Security Administration

Heidi Timmerman University of Tennessee

Kayla Towe Y-12 National Security Complex

Paul Underwood Savannah River Site

Pranava Upadrashta* Argonne National Laboratory

Quentin Vaughan Lawrence Livermore National Laboratory

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Brian Wanamaker Kanadevia Inova

Thomas Watson Strategic Petroleum Reserve

Paul White* National Renewable Energy Laboratory

Matthew F. Williams Lawrence Livermore National Laboratory

Brandon Wilsey Watt, Tieder, Hoffar, & Fitzgerald LLP

Bethany Wilson Kramer Rayson LLP

Cyndi Wimberly* National Nuclear Security Administration

Jared Windham Oak Ridge National Laboratory

Matthew Wing Kramer Rayson LLP

Daryl Witherspoon Hanford Mission Integration Solutions
Kellen Wittkop* National Renewable Energy Laboratory

Chuck Young Y-12 National Security Complex

James Zirkle* GTI Energy

^{*} Virtual attendee

Presentation Materials









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The Continued Executive Order Impacts on DOE Contracting

Presented by:

Robyn Burrows, Blank Rome LLP
Dominique Casimir, Blank Rome LLP
Reggie Jones, Fox Rothschild LLP
Devon Mobley-Ritter, Lawrence Livermore
National Laboratory

DOECAA April 15, 2025

Today's Speakers



Robyn Burrows
Blank Rome, Partner
Government Contracts
Washington, D.C.
robyn.burrows@blankrome.com



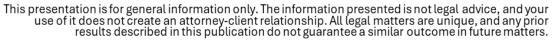
Dominique Casimir
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Reggie Jones
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Devon Mobley-Ritter
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Agenda

- DEI & Gender Ideology EOs and Litigation Update
- DOE / NNSA Implementation
- Spending Freezes
- Workforce Reduction
- Nonpayment and Terminations for Convenience
- Tariffs





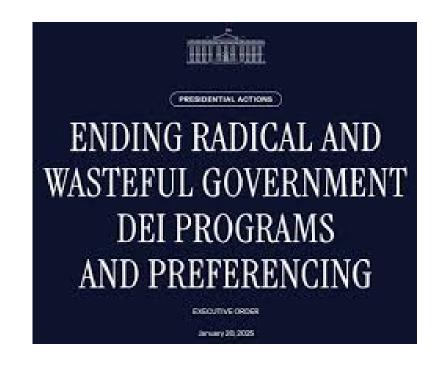


Litigation Update: Executive Orders Related to DEI and Gender Identity

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EO 14151: Ending Radical And Wasteful Government DEI Programs & Preferencing

- Effective: January 20, 2025
- Applies To: Federal Agencies
- Mandates the termination of all DEI programs and DEI-related positions within federal agencies.
- Federal agencies must provide the Office of Management & Budget director with lists of federal contractors who provide DEI training to federal employees and federal grantees who received federal funding to advance DEI or environmental justice programs.





EO 14173: Ending Illegal DEI and Restoring Merit Based Opportunity

- Effective: January 21, 2025
- Applies To: Government Contractors & Private Sector Employers
- Ended 60 Years Of Affirmative Action Plans For Government Contractors Revoking EO 11246



- Requires Government Contractors & Award Recipients Comply With New Certifications
- Directs Federal Agencies, by May 21, 2025, to submit reports identifying companies that have "egregious and discriminatory programs" and to, among other things, identify nine companies to be the subject of potential civil compliance investigations



Pending Litigation Related to DEI Executive Orders







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EO 14168: Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government

- Effective date: January 20, 2025
- Applies to: Federal agencies and employees (implications for contractors)
- Establishes as US policy that there are two sexes: male and female, determined "at conception" and states that "sexes are not changeable..."



- Federal agencies must use "sex" not "gender;" must take action to comply with the EO's two-sex only policy
- Sex-segregated spaces such as restrooms, locker rooms, etc. are to be based on biological sex rather than gender identity in federal facilities and the Attorney General is directed to issue guidance on single sex spaces in workplaces more broadly
- Federal systems and identification documents (including passports) are to recognize only "male" and "female" designations



Additional Gender-Related Executive Orders







This presentation is for general information only. The information presented is not legal advice, and your use of it does not create an attorney-client relationship. All legal matters are unique, and any prior results described in this publication do not guarantee a similar outcome in future matters.

Pending Litigation Related to Gender Executive Orders







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DOE Implementation of DEI & Gender Ideology EOs



DOE/NNSA Contracting Officer Responses to Gender Ideology EO

- Directives to suspend activities/programs promoting gender ideology.
 - Review outward facing media, activities, policies, etc. that may promote gender ideology and/or are inconsistent with EO.
 - Review subcontracts, Strategic Partnership Program agreements, etc.
- NNSA forecasted additional guidance, but unlikely given pending litigation.



January 23, 2025 DOE Memorandum re: DEI, Justice 40, and CBPs



Secretary of Energy

January 23, 2025

MEMORANDUM FOR HEADS OF DEPARTMENTAL ELEMENTS AND NATIONAL LABORATORIES

From: INGRID

ACTING SECRETARY

Executive Order on Ending Radical and Wasteful Government DEI Programs and Preferencing, and Agency-Wide Policy to Promote

Equal Opportunity

Agency-Wide Policy Suspending Justice 40, Community Benefits Plans and DEI initiatives

The Department of Energy (DOE), as a federal agency, must comply with the U.S. Constitution and its amendments, federal civil rights laws, and the statutory mission of the Department for the benefit of the American people. In accordance with the Executive Order, Ending Readical and Wasteful Government DEI Programs and Preferencing, effective immediately and until functioe, excert as otherwise required by law, I am directing a suspension of:

- diversity, equity, and inclusion (DEI) policies, procedures, programs, activities reviews involving or relating to DEI objectives and principles until further noti
- · requiring, using, or enforcing Community Benefits Plans (CBP); and
- requiring, using, or enforcing Justice40 requirements, conditions, or principles any loans, loan guarantees, grants, cost sharing agreements, funding opportuni announcements, contracts, contract awards, or any other source of financial assistance.

This suspension encompasses a broad spectrum of activities, including but not limited to e personnel actions and training; awarding and assessments of grants, loans, loan guarantees sharing agreements, or other funding opportunities of any kind; contracting; permitting; procurement announcements and actions; and the releasing of reports, studies, and congre correspondence. This includes all studies, reports, assessments, permitting actions, or gra are either ongoing, set to be released, already under review, or have not yet begun.

The suspensions and reviews are necessary to facilitate a comprehensive review of the Department's ongoing activities and to align these efforts with Constitutional principles, toivil rights laws, Congressional authorizations and requirements of the Executive Order, a Administration's priorities and objectives for the Department.

As such, all DEI, CBP, and Justice40 conditions already in place are not to be required, use enforced during this review period, unless approved in writing by the Secretary (Acting) or desionee January 23, 2025: Directs Heads of Departmental Elements and National Laboratories to suspend Justice40, Community Benefits Plans, and DEI initiatives.

Any requirement or obligation regarding DEI, Justice40, and CBP shall be removed from all FOAs/NOFOs, grants, cost-sharing agreements, contracts, loans, loan guarantees, and any other funding awards. This applies to any and all program requirements. Contracting Officers, Grant Officers, and Loan Officials shall take immediate action to remove such requirements and obligations from all DOE contractual and financial assistance instruments. Contracting Officers will be provided with substitute language by the Senior Procurement Executive, in consultation with the Office of the General Counsel.



January 28, 2025 DOE Memorandum for Assistance Awards



Department of Energy Washington, DC 20585

January 28, 2025

MEMORANDUM FOR ALL DEPARTMENT OF ENERGY ASSISTANCE AWARDS

FROM: KEITH BOYEA

Keith Boyea Boyea Date: 2025,01.28

HEAD OF CONTRACTING ACTIVITY

OFFICE OF CLEAN ENERGY DEMONSTRATIONS

SUBJECT: Activities associated with DEI Programs and CBP

The President has issued 43 Executive Orders, Presidential Memoranda, and Proclamations, including an Executive Order entitled Ending Radical and Wasteful Government DEI Programs and Preferencing. DOE is moving aggressively to implement this Executive Order by directing the suspension of the following activities in any loans, loan guarantees, grants, cost sharing agreements, such as cooperative agreements, contracts, contract awards, or any other source of DOE funding:

- Diversity, Equity, and Inclusion (DEI) programs and activities involving or relating to DEI objectives and principles;
- · Community Benefits Plans (CBP); and
- Justice40 requirements, conditions, or principles.

Recipients and subrecipients must cease any activities, including contracted activities, and stop incurring costs associated with DEI and CBP activities effective as of the date of this letter for all DOE grants, cooperative agreements, loans, loan guarantees, cost sharing agreements, or other DOE funding of any kind. Recipients are responsible for communicating and enforcing this direction with all subrecipients and contractors. Costs incurred after the date of this letter will not be reimbursed. This letter will be incorporated into your award with the next modification.

Additional guidance will be forthcoming. Recipients who have DEI and CBP activities in their awards will be contacted by their Grants and Agreements Officer to initiate award modifications consistent with this Order.

 January 28, 2025: DOE's implementation of EO entitled, Ending Radical and Wasteful Government DEI Programs and Preferencing.

Government DEI Programs and Preferencing. DOE is moving aggressively to implement this Executive Order by directing the suspension of the following activities in any loans, loan guarantees, grants, cost sharing agreements, such as cooperative agreements, contracts, contract awards, or any other source of DOE funding:

- Diversity, Equity, and Inclusion (DEI) programs and activities involving or relating to DEI objectives and principles;
- Community Benefits Plans (CBP); and
- Justice 40 requirements, conditions, or principles.



January 28, 2025 DOE Directive to M&O Contractors



Office of Science Washington, DC 20585

January 28, 2025

MEMORANDUM FOR OFFICE OF SCIENCE SITE MANAGERS
AND SITE OFFICE CONTRACTING OFFICERS

FROM: JUSTON K. FONTAINE Juston K. Fontaine Optimally suggred by Auston K. Fontaine Optimal Vision M. Fontaine Optimal Vision M.

DEPUTY DIRECTOR FOR OPERATIONS AND HEAD OF CONTRACTING ACTIVITY

SUBJECT: Executive Order on Ending Radical and Wasteful Government DEI

Programs and Preferencing

On January 23, 2025, the Acting Secretary issued a memorandum titled, "Executive Order on Ending Radical and Wasteful Government DEI Programs and Preferencing, and Agency-Wide Policy to Promote Equal Opportunity." The Memorandum directs all Departmental Elements to disseminate the Memorandum to applicable contractors and ensure full compliance.

In accordance with the Memorandum, Office of Science site office contracting officers responsible for Management and Operating (M&O) contracts are directed to:

- Take immediate action to remove such requirements and obligations from all DOE M&O contracts. This includes Diversity, Equity, and Inclusion (DEI) policies, procedures, programs, activities, and reviews involving or relating to DEI objectives and principles.
- Suspend all DEI programs under the M&O contract, including those related to employee training, hiring, evaluation, promotion, and discipline.

This direction applies to all costs incurred under an M&O contract and the M&O's cost reimbursement subcontracts. Please coordinate with your respective National Laboratories to take immediate action to implement these changes.

If you have any questions, please contact Steven C. Jones at steven.jones@science.doe.gov.

Attachment

cc: Harriet Kung Jessica Halse Steven Jones January 28, 2025: Memorandum for Science Site Managers and Site Office Contracting Officers.

In accordance with the Memorandum, Office of Science site office contracting officers responsible for Management and Operating (M&O) contracts are directed to:

- Take immediate action to remove such requirements and obligations from all DOE M&O contracts. This includes Diversity, Equity, and Inclusion (DEI) policies, procedures, programs, activities, and reviews involving or relating to DEI objectives and principles.
- Suspend all DEI programs under the M&O contract, including those related to employee training, hiring, evaluation, promotion, and discipline.



January 31, 2025 Office of Science Memo + March 11 Rescission



Department of Energy

Office of Science Consolidated Service Center 9800 South Cass Avenue Lemont, Illinois 60439

P.O. Box 2001 Oak Ridge, Tennessee 3783

January 31, 2025

On January 20, 2025, the President of the United States signed an Executive Order (E.O.) titled, "Ending Radical and Wasteful Government DEI Programs and Preferencing." The order includes, in part, a requirement to terminate all Diversity, Equity and Inclusion (DEI) performance requirements for employees, contractors, or grantees.

To implement the E.O., the Department of Energy (DOE) directs the immediate suspension of the following activities in your financial assistance awards:

- Diversity, equity, and join (DEI) program a lactivities involving or relating to DEI objectives and print
- Community Benefits Plans
 *; or
- * In lieu of the CBP, the Department of the CBP, the CBP,

Therefore, effective immediately, you shall suspend all DEI, CBP/PIER Plans and Justice40 activities associated with all financial assistance awards issued by the U.S. Department of Energy's Office of Science (SC), Consolidated Service Center – Office of Grants and Cooperative Agreements. DOE will not enforce any award requirements related to the above activities during this suspension pending the outcome of a review of the Department's ongoing activities.

If you believe any activity listed above is required by law, or if you have any questions, please contact the undersigned Contracting Officer by e-mail at cynthia.anderson@science.doe.gov.

CYNTHIA ANDERSON Digitally signed by CYNTHIA ANDERSON Date: 2025.01.31 10:53:58 -06'00'

Cynthia A. Anderson DOE Contracting Officer



Department of Energy

Office of Science Consolidated Service Center

P.O. Box 2001 Oak Ridge, Tennessee 37831

9800 South Cass Avenue

Lemont, Illinois 60439

March 11, 2025

SUBJECT: RESCISSION OF NOTICE OF SUSPENSION OF DEI, CBP/PIER PLANS AND JUSTICE 40 RELATED ACTIVITIES UNDER FINANCIAL ASSISTANCE AWARDS

DOE believes that few, if any, funding agreements issued by the Office of Science are "equity-related" under section 2(b)(i) of Executive Order 14151, 90 FR 8339, entitled *Ending Radical and Wasteful Government DEI Program and Preferencing*, nonetheless, out of an abundance of caution it is rescinding the following communication effective immediately: DEI, CBP/PIER Plans and Justice40 related activities suspension letter dated, January 31, 2025.

However, pursuant to DOE's enforcement authority and in accordance with current administrative priorities, any Diversity, Equity, and Inclusion (DEI), Community Benefit Plan (CBP), Promoting Inclusive and Equitable Research (PIER) Plan or Justice40 activities provided for in your funding agreement(s), for the time being, are voluntary. DOE will compensate you for all activities undertaken pursuant to the terms of your funding agreement(s).

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DOE/NNSA Contracting Officer Responses

 Directives to suspend DEI-related policies, procedures, programs, etc. under M&O contracts.

- Exceptions may be submitted to CO for Secretarial approval.
- Does not preclude DEI programs/activities outside of M&O contract (i.e., prohibition applies only to costs incurred under M&O contract).



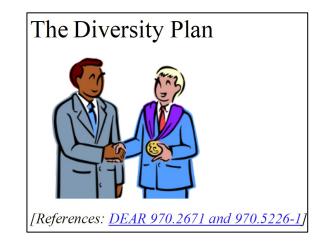
DOE/NNSA Contracting Officer Responses, Cont'd

- Class deviation removing DEAR 970.5226-1 from contracts.
- Removal of DEI-related PEMP goals.

CLASS DEVIATION FINDINGS AND DETERMINATION DEPARTMENT OF ENERGY ACQUISITION REGULATION (DEAR) 970.5226-1

- 2. The DEAR clause at 48 CFR 970.5226-1 requires M&O contractors to submit a "Diversity, Equity, Inclusion, and Accessibility" Plan to promote diversity to the Contracting Officer for approval within 90 days of contract award and to update such plans annually.
- 3. This deviation eliminates the requirement to include the "Diversity Plan" clause prescribed at 48 CFR 970.2671-2. Contracting Officers should:

It is hereby determined that a class deviation to eliminate the requirement to utilize and enforce the clause at 48 CFR 970.5226-1 is appropriate pending formal amendment of the DEAR.





February 28, 2025 DOE Memo re: Preliminary Injunction



Department of Energy Washington, DC 20585

February 28, 2025

REVISED MEMORANDUM REGARDING ALL DEPARTMENT OF ENERGY FUNDING OBLIGATIONS, CONTRACTS, AND AWARDS

FROM: BRENT ALLEN, DEPUTY GENERAL COUNSEL FOR ENVIRONMENT AND LITIGATION

SUBJECT: National Association of Diversity Officers in Higher Educatio al. v. Donald J. Trump et al., No. 1:25-cv-00333-ABA (D. Md.

You are hereby advised that a preliminary injunction has been entered in the case of NADOHI Trump, No. 1:25-ev-00333-ABA (D. Md.), ECF No. 45 (February 21, 2025). This case challen three provisions in Executive Order 14151, Ending Radical and Wasteful Government I Programs and Preferencing, Executive Order of January 20, 2025, 90 Fed. Reg. 8339 (Jan. 2025) and Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, Executive Order of January 21, 2025, 90 Fed. Reg. 8633 (Jan. 31, 2025).

Please read this guidance carefully and reach out to agency counsel if you have any spec questions.

DOJ Guidance and Court Order

Please review the attached memorandum from the Department of Justice ("DOJ") furd describing the scope of the preliminary injunction and further required actions, and the attac court order. Please comply with all terms of the DOJ guidance, this memorandum, and the courter

A couple of notes regarding retroactivity and Stop Work orders:

- The court order does not require that DOE change any prior funding agreements that w
 terminated or formally modified before 6:20 p.m. EST on February 21, 2025.
- Any Stop Work order in effect that was issued pursuant to or cites Executive Order 14
 or Executive Order 14173 (even if it was issued before 6:20 p.m. EST on February
 2025) must be rescinded.
- Any Stop Work order issued to a recipient of a funding agreement that has been flagged being or is arguably "equity-related" must be rescinded whether or not it cites Execut Order 14151 or Executive Order 14173.
- A general Stop Work order—not issued pursuant to Executive Order 14151 or Execu
 Order 14173—issued to a recipient of a funding agreement that is not "equity-related" is
 remain in effect and the funding agreement may be modified or terminated.

Notably, the DOJ guidance also requires:

DOJ Guidance and Court Order

Please review the attached memorandum from the Department of Justice ("DOJ") further describing the scope of the preliminary injunction and further required actions, and the attached court order. Please comply with all terms of the DOJ guidance, this memorandum, and the court order.

Any <u>non-equity-related</u> funding agreements that were awarded based on an application that included a Community Benefits Plan (or something similar), DEI terms, or Justice40 terms where a Stop Work Order or guidance document was issued pursuant to Executive Order 14151 or Executive Order 14173 <u>should not</u> be <u>terminated</u> or <u>modified</u> in any way. DOJ has advised that Stop Work Orders and guidance documents that direct recipients to cease any work pertaining to DEI, Community Benefit Plans (or something similar), or Justice40 requirements based on Executive Order 14151 or Executive Order 14173 must be rescinded. However, your office may make those requirements voluntary if it so chooses. If you choose this option, please add the appropriate language, below:

BLANKROME

DOJ Guidance re: Preliminary Injunction of EOs 14151 & 14173

Termination Provision

- DOE does not read injunction as forbidding actions taken in good faith based on "separate authority" and made wholly independent of the termination provision. Agencies must document their independent decisions.
- Must rescind stop work orders issued on basis of termination provision.

Certification Provision

 Must remove certification provision from contracts/grant awards. Recipients no longer required to make certification.

Enforcement Provision

Do not bring any enforcement action in reliance on investigation provision.

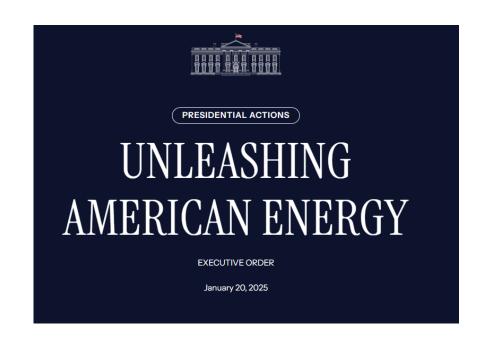


Spending Freezes



EO 14154 – Unleashing American Energy

- January 20, 2025: Agencies must pause disbursement of funds appropriated under IRA and IIJA.
- January 21, 2025: OMB memo clarified that funding pause applies only to funds supporting programs, projects, or other activities related to Sec. 2 of EO.



Investment and Jobs Act (Public Law 117-58). This pause only applies to funds supporting programs, projects, or activities that may be implicated by the policy established in Section 2 of the order. This interpretation is consistent with section 7's heading ("Terminating the Green New Deal") and its reference to the "law and the policy outlined in section 2 of th[e] order."



January 20, 2025 DOE Memorandum



The Secretary of Energy Washington, DC 20585

January 20, 2025

MEMORANDUM FOR HEADS OF DEPARTMENTAL ELEMENTS

FROM:

OGRID C. KOLB

SUBJECT:

Agency-wide Review of Program and Administrative Activities

As we navigate through this transition period for a new Administration within the Department of Energy (DOE), it is imperative to ensure a deliberate approach to the Administration's programmatic and administrative policies and priorities. To that end, effective immediately and until further notice, prior to any actions or decisions on all herein described activities, a review under varying criteria will be undertaken to ensure all such actions are consistent with current Administration policies and priorities, including budgetary priorities.\(^1\) The broad spectrum of actions include but are not limited to: personnel actions, awarding of grants, loans, funding opportunities, and cost sharing agreements; contracting, procurement announcements, and actions; rulings, decisions or other actions on any applications, enforcement action, or settlements of any contested matter; submissions to the Federal Register for publication; and the publication or announcement of reports, studies, congressional correspondence, and public statements. This includes all studies or reports that are either ongoing, set to be released, are already under review, or have not yet begun.

The reviews are necessary to facilitate a comprehensive review of the Department's ongoing activities and to align these efforts with Congressional authorizations and the Administration's priorities, to ensure that resources are allocated efficiently, and that the Department's initiatives are in line with the statutory mission of DOE and the priorities of the Administration.

As discussed below, a process will be in place for the submission of requests for action by the Secretary (acting) to ensure the important work of the Department continues to serve the American people.

Scope of Actions

 Personnel Actions: All personnel actions, including appointments, promotions, and transfers, are to be halted. This includes both internal staff movements and external hiring processes, unless expressly and unambiguously authorized with the prior approval of the acting Secretary, after the date of issuance of this order. Procurement Announcements and Actions: Any announcements or awards regarding procurement opportunities and contracts are to be put on hold, other than for routine building operations and supplies for contracts with a value of less than \$100,000. This includes, but is not limited to, requests for proposals (RFPs), requests for quotations (RFQs), and contract negotiations. Such approvals will be made in writing by the Secretary (acting) or the Head of Departmental Element with the prior approval of the Secretary (acting).

Laboratories, approvals must be obtained by the Head of Departmental Element with concurrence by the Administration designee within the Departmental Element. If reports or studies are subject to statutory or other requirements, a



With respect to NNSA, nothing herein is intended to contradict 50 USC Ch. 41but to be construed broadly consistent with the Secretary's authority thereunder, include \$2402(d).

January 27, 2025 Temporary Pause on Financial Assistance



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

January 27, 2025

M-25-13

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Matthew J. Vaeth, Acting Director, Office of Management and Budget

SUBJECT: Temporary Pause of Agency Grant, Loan, and Other Financial Assistance

rograms

The American people elected Donald J. Trump to be President of the United States and gave him a mandate to increase the impact of every federal taxpayer dollar. In Fiscal Year 2024, of the nearly \$10 trillion that the Federal Government spent, more than \$3 trillion was Federal financial assistance, such as grants and loans. Career and political appointees in the Executive Branch have a duty to align Federal spending and action with the will of the American people as expressed through Presidential priorities. Financial assistance should be dedicated to advancing Administration priorities, Focusing taxpayer dollars to advance a stronger and safer America, eliminating the financial burden of inflation for citizens, unleashing American energy and manufacturing, ending "wokeness" and the weaponization of government, promoting efficiency in government, and Making America Healthy Again. The use of Federal resources to advance Marxist equity, transgenderism, and green new deal social engineering policies is a waste of taxpayer dollars that does not improve the day-to-day lives of those we serve.

This memorandum requires Federal agencies to identify and review all Federal financial assistance¹ programs and supporting activities consistent with the President's policies and requirements.² For example, during the initial days of his Administration, President Donald J. Trump issued a series of executive orders to protect the American people and safeguard valuable taxpayer resources, including Protecting the American People Against Invasion (Jan. 20, 2025), Reevaluating and Realigning United States Foreign Aid (Jan. 20, 2025), Putting America First in International Environmental Agreements (Jan. 20, 2025), Unleashing American Energy (Jan. 20, 2025), Ending Radical and Wasteful Government DEI Programs and Preferencing (Jan. 20, 2025), Ending Radical and Wasteful Government DEI Programs and Preferencing (Jan. 20,

 Agencies to identify and review all federal financial assistance programs for consistency with President's policies and requirements.

To implement these orders, each agency must complete a comprehensive analysis of all of their Federal financial assistance programs to identify programs, projects, and activities that may be implicated by any of the President's executive orders. In the interim, to the extent permissible under applicable law, Federal agencies **must temporarily pause** all activities related to obligation or disbursement of all Federal financial assistance, and other relevant agency activities that may be implicated by the executive orders, including, but not limited to, financial assistance for foreign aid, nongovernmental organizations, DEI, woke gender ideology, and the green new deal.



¹ 2 CFR 200.1 defines Federal financial assistance to mean "[a]ssistance that recipients or subrecipients receive or administer" in various forms, but this term does not include assistance provided directly to individuals. For the purposes of this memorandum, Federal financial assistance includes: (a) all forms of assistance is paragraphs (1) and (2) of the definition of this term at 2 CFR 200.1; and (ii) assistance received or administered by recipients o subreciments of any type except for assistance received directly by individuals.

subrecipients of any type except for assistance received directly by individuals.

Nothing in this memo should be construed to impact Medicare or Social Security benefits

February 7, 2025 Memorandum re: IRA and IIJA Funds



Department of Energy

Washington, DC 20585

February 7, 2025

MEMORANDUM FOR DISTRIBUTION

FROM: CHRISTOPHER S. JOHNS

DEPUTY CHIEF FINANCIAL OFFICER
OFFICE OF THE CHIEF FINANCIAL OFFICER

SUBJECT: Financial Implementing Guidance for Administration Direction

This memorandum communicates guidance received by the Office of the CFO regarding the financial implementation of the Administration direction provided in the Acting Secretarial Memorandum, "Agency-wide Review of Program and Administrative Activities," issued on January 20, 2025 (January 20 Memo). The financial implementing guidance reflects current requirements of the Acting Secretarial Memorandum and follows District Court Orders issued regarding handling of awards and obligations.

Consistent with the requirements of the January 20 Memo, actions taken by DOE during the transition period are to be reviewed to ensure that DOE initiatives are in line with the statutory mission of DOE. Therefore, financial transactions using IIJA and IRA funds and new awards using base funds must be reviewed and approved by DOE policy officials.

OCFO has developed an internal DOE workflow process to facilitate review of actions by the appropriate Administration Designee. The Administration Designee is the Senior political appointee assigned to a Departmental Element. If no appointee is assigned to a Departmental Element, the Administration Designee is the Acting Under Secretary. For Departmental Elements reporting directly to the Deputy Secretary that do not have an assigned political appointee, the Administration Designee is the Chief of Staff or his designee. For questions regarding the workflow process, please contact Tom Fields, Deputy Director for Strategic Resources, at tom.fields@hg.doe.gov or by Teams.

Detailed financial implementing guidance will be distributed to the DOE financial management community and will be updated as needed. This memorandum expires 90 days from issuance, or when otherwise amended or cancelled.

 Approval from DOE senior political appointee needed before any money tied to Inflation Reduction Act and infrastructure awards go out the door.

Consistent with the requirements of the January 20 Memo, actions taken by DOE during the transition period are to be reviewed to ensure that DOE initiatives are in line with the statutory mission of DOE. Therefore, financial transactions using IIJA and IRA funds and new awards using base funds must be reviewed and approved by DOE policy officials.



Impacts of DOE Spending Freezes on National Labs

- February 12 hearing of House Science Committee addressed impacts of spending freeze on national labs.
- Argonne \$37M in research activities on hold, affecting 140 staff.
- Lawrence Livermore \$7M frozen for grid resiliency project.
- Los Alamos \$200k in current funding.
- Idaho National No anticipated impacts yet.



Workforce Reductions



DOE/NNSA Employee Terminations

Voluntary Resignations

 2,600 DOE employees accepted buyouts in second round of voluntary resignation offers, more than doubling the 1,217 who accepted in first round in January.

Layoffs

- 1,200-2,000 DOE employes laid off.
- 8,500 "nonessential" jobs at DOE/NNSA at risk.

NNSA

- Rescindment of termination of ~300 NNSA employees.
- Currently exempt from pending RIFs.



Terminations



Trump Presidential Action Tracker

- **▶** In the nearly 3 months since 1/20/25 Inauguration, the President has:
 - Issued 153 Executive Orders, Proclamations, and Memoranda
 - Rescinded 106 Executive Orders and Presidential Memoranda
- > Legal Challenges (as of 4/8/25)
 - 159 lawsuits filed challenging various actions
 - Of those:
 - 42 have been Successful Challenges
 - 24 have been Unsuccessful Challenges
 - Source: www.law360.com/trump-legal-challenges



Terminations as a Result of EOs and DOGE

Government Contracts and Grants have been terminated on an unprecedented scale thus far in 2025.

Pace of spending retrenchment is not anticipated to slow in the near term.

Thus far, USAID contract terminations dwarf those of other agencies. USAID represents 2/3 of terminations to date.

Other top agencies impacted by the retrenchment include:

- Department of Energy
- Social Security Administration
- General Services Administration
- Department of Health & Human Services





What Should M&O Contractors Do Today?

Determine What's Mission Critical

- > Proactively review award portfolios to identify awards at risk of termination.
 - Perform risk assessment based on EOs and current DOGE cost cutting activities.
 - Update frequently as cost cutting efforts are fast moving and unpredictable.
- ➤ Evaluate current overall business continuity and develop scenarios whereby material amounts of scope is terminated and DOE leans more heavily on the M&O contractor.
- "DOGE YOURSELF" Look for cost optimization areas.
- > Forego planned capital outlays or capital investment projects based on risk assessment.



What Is Termination for Convenience?

- "[G]ives the Government the broad right to terminate without cause and limits the contractor's recovery to costs incurred, profit on work done, and costs of preparing the termination settlement proposal." *Enron Fed. Sols., Inc. v. United States*, 80 Fed. Cl. 382, 406 n.21 (2008) (quoting Ralph C. Nash, Jr. & John Cibinic, Jr., *Administration of Government Contracts* at 1073 (3d ed.1995)).
- "As early as 1863, Rule 1179 of the Army Regulations provided that contracts for subsistence stores, 'shall expressly provide for their termination at such time as the Commissary-General may direct." See Nash & Cibinic at 941.
- Developed as a means to end the massive procurement efforts that accompanied major wars. Id.

What Is Termination for Convenience?

- Implemented through 8 separate T4C clauses under FAR Subpart 49.
- FAR 52.249-6 Termination (Cost Reimbursement) is expressly included in all cost reimbursement management and operating contracts, under DEAR 970.4905-1 (Terminations for Convenience of the Government & Default)
- FAR 52.249-6 Termination (Cost Reimbursement). Subsection (a) states: "The Government *may* terminate performance of work under this contract in whole, or from time to time, in part if the *Contracting Officer* determines that a termination is in the Government's interest."
- Christian Doctrine Implied in all contracts regardless of whether it is expressly spelled out. G.L. Christian & Associates v. United States, 312 F.2d 418 (Ct. Cl. 1963)



Termination for Convenience Settlement

- FAR 49.201(a): "A settlement should compensate the contractor fairly for work done and the preparations made for terminated portions of the contract, including a reasonable allowance for profit. *Fair compensation is a matter of judgment and cannot be measure exactly*. In a given case, various methods may be equally appropriate for arriving at fair compensation. *The use of business judgment, as distinguished from strict accounting principles, is the heart of a settlement*."
- FAR 49.201(b): "The primary objective is to negotiate a settlement by agreement."



Termination for Convenience Settlement

- Business judgment is great, but FAR 52.249-2(h)(i) and FAR 52.249-6 (h)(5)(i) expressly state that the Cost Accounting Principles of FAR 31 apply
- 49.206-2 identifies two bases for settlement proposals:
 - ➤ Inventory Basis. 49.206-2(a) (Preferred)
 - > Total Cost Basis. 49.206-2(b)



Termination for Convenience – Recoverable Costs

- Costs incurred and not paid up to that portion of the Contract
 - FAR 52.249-2(g)(1); FAR 52.249-6 (h)(1)
- Profits on costs incurred
 - FAR 52.249-2(f)
- Costs of preparing the T4C Settlement Proposal Legal, Accounting, Experts
 - FAR 52.249-2(g)(3); FAR 52.249-6 (h)(3)



Termination for Convenience – Recoverable Costs

Indirect and Other Direct Costs	Personnel & Products Costs	Facilities & Equipment	Termination Settlement Costs	
Overhead costs. G&A costs. Indirect costs that are charged as direct costs (i.e., supervisory personnel, freight charges, equipment repairs, small tools, travel, telephone, office expenses, quality assurance, engineering, manufacturing management, production control, material control, purchasing, etc.).	Employee compensation that cannot be reasonably discontinued.	Idle facility or idle capacity costs despite unsuccessful efforts to discontinue them, up to a reasonable period of time.	Reasonable settlement costs. Such costs may include costs incurred internally by the contractor as part of the	
	Severance payments when reasonably required.	Facilities capital cost of money.	settlement process and costs of counsel, and costs of outside consultants. In-house personnel should keep time sheets tracking	
	Costs for items the contractor cannot use or hold without incurring a loss.	Unexpired lease costs if a reasonably necessary lease for performance cannot be terminated. Any alterations to leased property.	settlement related efforts.	
Pre-contract costs, if necessary under the circumstances and Subcontractor claims		Loss of useful value of special tools, machinery, and equipment.	Other prep (production planning, initial arrangements).	



FAR 49.104 (Duties of Prime Contractor Upon Receipt of Notice of Termination)

- Stop work immediately on the terminated portion of the contract;
- Terminate all subcontracts;
- Advise the TCO if you cannot stop work;
- Perform the unterminated portions of the contract;
- Protect and preserve property in the contractor's possession in which the Government has or may acquire an interest and as directed by the TCO, deliver the property to the Government



FAR 49.104 (Duties of Prime Contractor Upon Receipt of Notice of Termination)

- Notify the TCO of any legal proceedings related to the terminated portion of the contract;
- Settle outstanding liabilities and proposals arising out of termination of subcontracts, obtaining any approvals or ratifications required by the TCO;
- Promptly submit the contractor's own settlement proposal, supported by appropriate schedules; and
- Dispose of termination inventory, as directed or authorized by the TCO

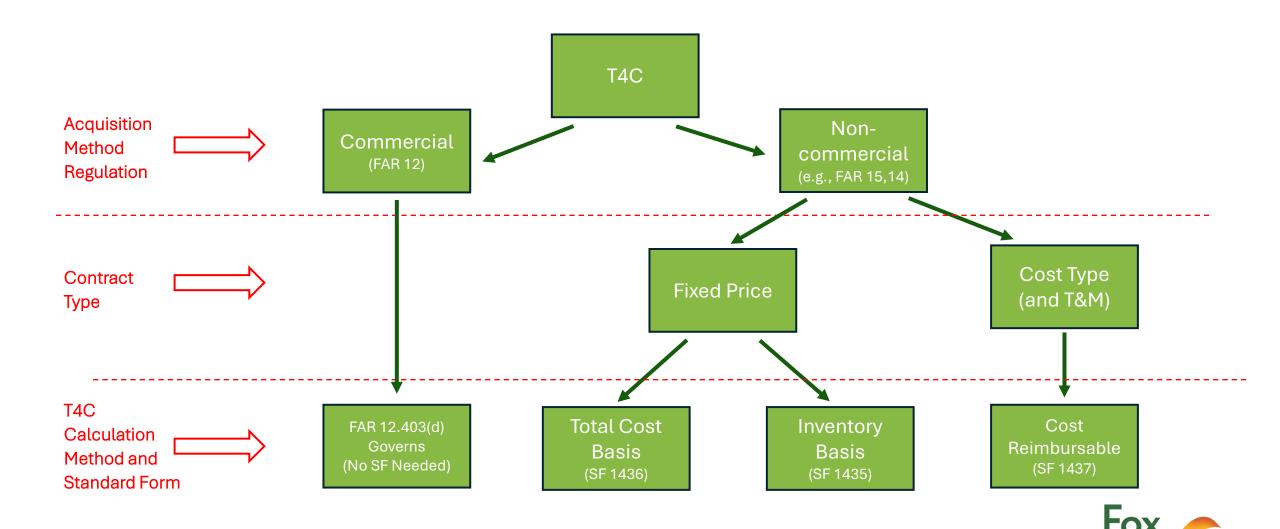


FAR 49.206-1 (Submission of Settlement Proposals)

- The contractor should promptly submit to the TCO a settlement proposal for the amount claimed because of the termination.
- Settlement proposals must be on the prescribed forms:
 - SF 1436 (Settlement Proposal (Total Cost Basis) & Certificate of Current Cost or Pricing Data)
 - SF 1439 (Schedule of Accounting Information)
 - SF 1440 (Application for Partial Payment)



Termination Standard Forms



FAR 49.104 (Duties of TCO After Issuance of Notice of Termination)

- Direct the action required of the prime contractor;
- Examine the settlement proposal and, when appropriate the settlement proposals of the subcontractors, including accounting review of the settlement proposal by DCAA/DCMA/OIG;
- Promptly negotiate settlement with the contractor and enter into a settlement agreement



FAR 49.104 (Duties of TCO After Issuance of Notice of Termination)

- Promptly settle the contractor's settlement proposal by determination of the elements that cannot be agreed on, if unable to negotiate a complete settlement
- Issue a unilateral decision, which is appealable under the Contract Disputes Act



Government Audits of TSPs

What the contractor should expect will be audited in a negotiated contract TSP.

- Prime contractor settlement proposals over \$2 million are required to be submitted for audit.
- Agency staff reductions will likely impact the timeliness audits.
- Audits of FAR 15 settlement proposals includes an evaluation of the contractor's accounting and termination policies, practices, and internal controls.

Contract data and supporting files that will be examined as part of a TSP audit:								
Price Proposal	Cost Estimates	Bills of Material	Production schedules and Records	Shipping Documents	Purchase Orders			
Cost and Profit Forecasts	Audited Financial Statements	Tax Returns	Contract Reporting	Communication with Govt Tech Resources	Managerial Information			



TSP Preparation Best Practices

- Ensure Costs Are Reasonable
- Reject Impractical Proof Requirements
- Claim All Allowable Costs
- Charge Indirect Costs Directly
- Avoid Loss Adjustments
- Submit A Timely Proposal
- Obtain Professional Assistance



Tariffs



"America First" Trade Policy – Tariffs

- Address "unfair and unbalanced trade"
- Reduce the trade deficit
- Bring back manufacturing and manufacturing jobs to the US
- Address national security concerns
- Raise tax revenue
- Foreign policy (e.g., Venezuela oil tariff)





Targeted Countries – So Far



- China
- Mexico
- Canada
- April 2, "Liberation Day":
 - Universal baseline tariffs of 10% effective April 5;
 - Reciprocal tariffs targeting 56 countries + EU;
 - Paused for 90 days as of April 9...
 - Except for China



Targeted Countries – So Far



- China
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 - Universal baseline tariffs of 10% effective April 5;
 - Reciprocal tariffs targeting 56 countries + EU;
 - Paused for 90 days as of April 9...
 - Except for China



Reciprocal Tariffs (Announced April 2)

Universal baseline tariffs: 10% (effective April 5)

Reciprocal tariffs: Varying rates for 57 countries (effective April 9)

Country	Tariff Rate	Country	Tariff Rate	Country	Tariff Rate
Algeria	30%	Iraq	39%	Nigeria	14%
Angola	32%	Israel	17%	North Macedonia	33%
Bangladesh	37%	Japan	24%	Norway	15%
Bosnia and Herzegovina	35%	Jordan	20%	Pakistan	29%
Botswana	37%	Kazakhstan	27%	Philippines	17%
Brunei	24%	Laos	48%	Serbia	37%
Cambodia	49%	Lesotho	50%	South Africa	30%
Cameroon	11%	Libya	31%	South Korea	25%
Chad	13%	Liechtenstein	37%	Sri Lanka	44%
China	34%	Madagascar	47%	Switzerland	31%
Côte d'Ivoire	21%	Malawi	17%	Syria	41%
Democratic Republic of the Congo	11%	Malaysia	24%	Taiwan	32%
Equatorial Guinea	13%	Mauritius	40%	Thailand	36%
European Union	20%	Moldova	31%	Tunisia	28%
Falkland Islands	41%	Mozambique	16%	Vanuatu	22%
Fiji	32%	Myanmar (Burma)	44%	Venezuela	15%
Guyana	38%	Namibia	21%	Vietnam	46%
India	26%	Nauru	30%	Zambia	17%
Indonesia	32%	Nicaragua	18%	Zimbabwe	18%



The International Emergency Economic Powers Act (IEEPA) – The Fentanyl Wars

- IEEPA grants the President authority to regulate economic transactions in response to a national emergency stemming from an "unusual and extraordinary threat originating outside the United States. The President has stated that the Fentanyl Crisis meets this definition.
- IEEPA has never been used before to justify imposition of tariffs. Possible Constitution Challenge. Under our Constitution, Congress has authority for imposing tariffs, not the Executive Branch. The President argues that Congress has ceded authority under IEEPA.

Countries targeted by IEEPA are Canada, Mexico and China.

- The President imposed a 20% tariff on all products from China due to the alleged failure to curb the sustained influx of synthetic opioids, including fentanyl. These are effective now.
- **Duties against Canada and Mexico were announced**. They were delayed, then reinstated, then qualified again. The current status is:
 - All goods that qualify for preferential treatment under the United States-Mexico-Canada
 (USMCA) will not be subject to IEEPA tariffs at the time of entry from March 7, 2025 through
 April 2, 2025.
 - All products that do not meet the USMCA requirements will remain subject to the IEEPA tariffs from March 4, 2025.

The US-Mexico-Canada Agreement (USMCA) Advantage: Avoid 25% Tariff under IEEPA

USMCA is now of greater interest to many companies who did not worry previously about whether a good qualified for duty-free status. To avoid the 25% IEEPPA tariffs for products coming from Mexico and Canada:

- Make sure you know the rules.
 - To qualify, the product must meet USMCA country of origin. (In general, a significant portion of materials must come from North America or certain manufacturing operations must occur in North America)
 - Rules are specific to different industries (for example, automakers must ensure that 75% of a vehicle's content by value originates in North America);
 - Just because you can mark the product "made in Canada," doesn't mean it's eligible for USMCA duty-free treatment (for example, flooring panels manufactured in China and further processed in Canada have a country of origin of China for duty-purposes, but are considered a product of Canada for marking purposes). It's complicated!

Tariff Scorecard – Where Are We Today?

China – Section 301 of the Trade Act of 1974 duties of 25% or 7.5%

China – 10% Universal Baseline+ 125% IEEPA on all products, no exclusions

Canada – 25% IEEPA tariffs on non-USMCA products (energy 10%, potash 10%)

Mexico – 25% IEEPA tariffs on non-USMCA products (potash 10%)

All countries – 25% Section 232 of the Trade Expansion Act of 1962's Steel and Aluminum tariffs and "derivative" products. Exception to Section 232 duties if derivative made abroad from steel that was "melted and poured" in the U.S. or aluminum that was "smelted and cast" in the U.S.

Duties are Cumulative (Stacked). Many products from China are now subject to a whopping 175% duty (25% for Section 301, 25% for Section 232, 125% for IEEPA)

Questions?



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Government Contracts
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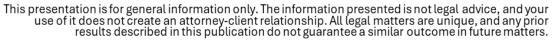
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APRIL 15, 2025 | OAK RIDGE, TENNESSEE

The High-Stakes History of Oak Ridge

Department of Energy Contractor Attorney Association (DOECAA) Spring Conference

PRESENTED BY:

David Keim

Chief Communications Officer, ORNL



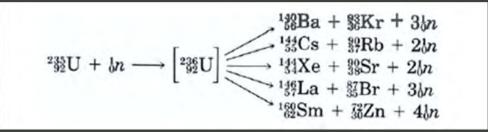
ORNL IS MANAGED BY UT-BATTELLE LLC FOR THE US DEPARTMENT OF ENERGY



Scientists discovered nuclear fission in 1938 and immediately knew it could change the world









Albert Einstein Old Grove Road Nassau Point Peconic, Long Island

August 2nd, 1939

F. D. Roosevelt,
President of the United States,
White House
Washington, D.C.

Sir:

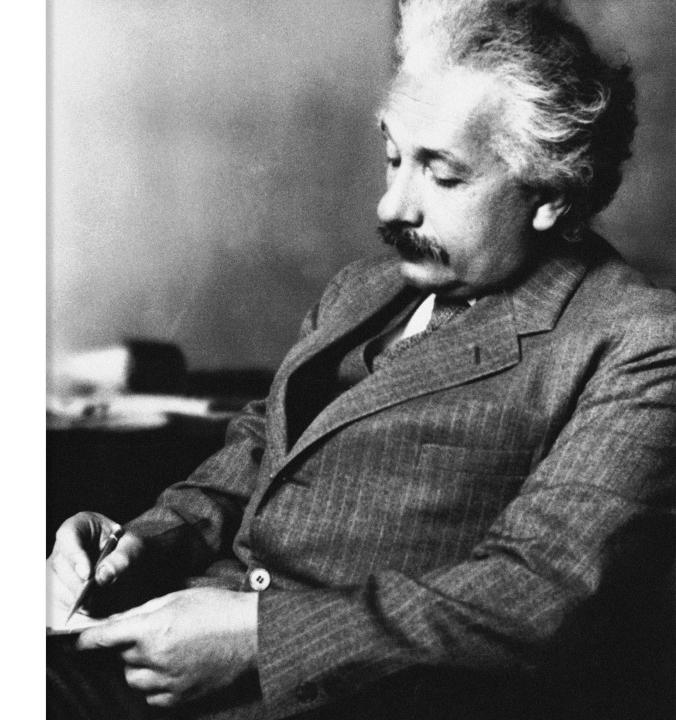
Some recent work by E. Fermi and L. Szilard, which has been communicated to me in manuscript, leads me to expect that the element uranium may be turned into a new and important source of energy in the immediate future. Certain aspects of the situation which has arisen seem to call for watchfulness and, if necessary, quick action on the part of the Administration. I believe therefore, that it is my duty to bring to your attention the following facts and recommendations:

In the course of the last four months it has been made probable - through the work of Joliot in France as well as Fermi and Szilard in America - that it may become possible to set up a nuclear chain reaction in a large mass of uranium, by which vast amounts of power and large quantities of new radium-like elements would be generated. Now it appears almost certain that this could be achieved in the immediate future.

This new phenomenon would also lead to the construction of bombs, and it is conceivable - though much less certain - that extremely powerful bombs of a new type may thus be constructed. A single bomb of this type, carried by boat and exploded in a port, might very well destroy the whole port together with some of the surrounding territory. However, such bombs might very well prove to be too heavy for transportation by air.

The United States has only very poor ores of uranium in moderate quantities. There is some good ore in Canada and the former Czechoslovakia, while the most important source of uranium is Belgian Congo.

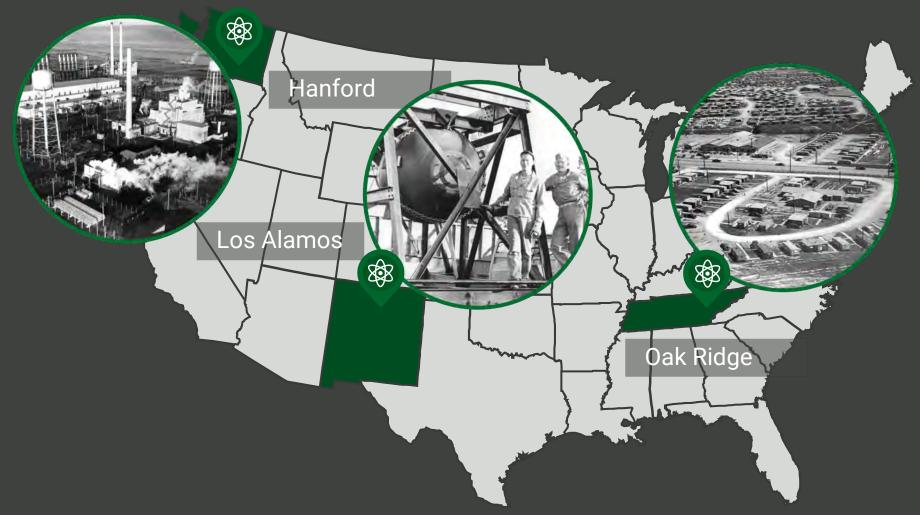
In view of this situation, you may think it desirable to have some permanent contact maintained between the Administration and the group of physicists working on chain reactions in America. One possible way of achieving this might be for you to entrust with this task a person who has your confidence and who could perhaps serve in an inofficial capacity. His task might comprise the following:







The federal government, military, industry and academia built and operated labs, plants, and towns at 3 primary sites







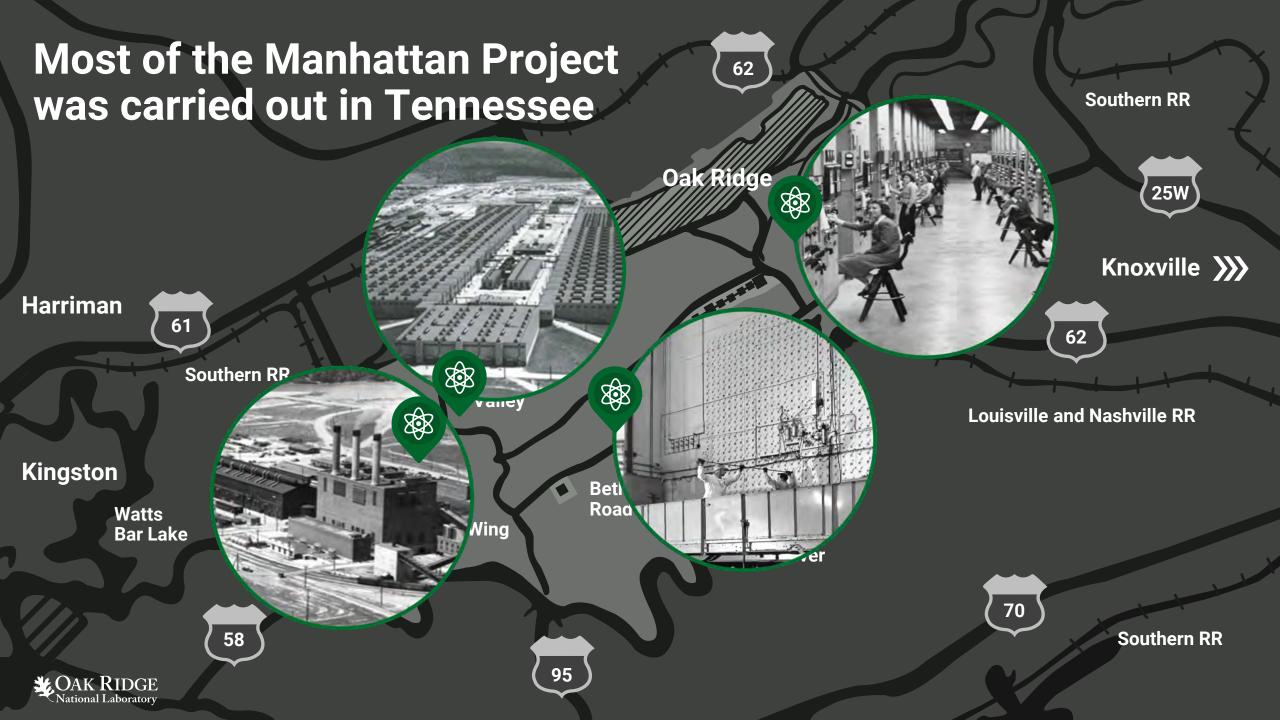


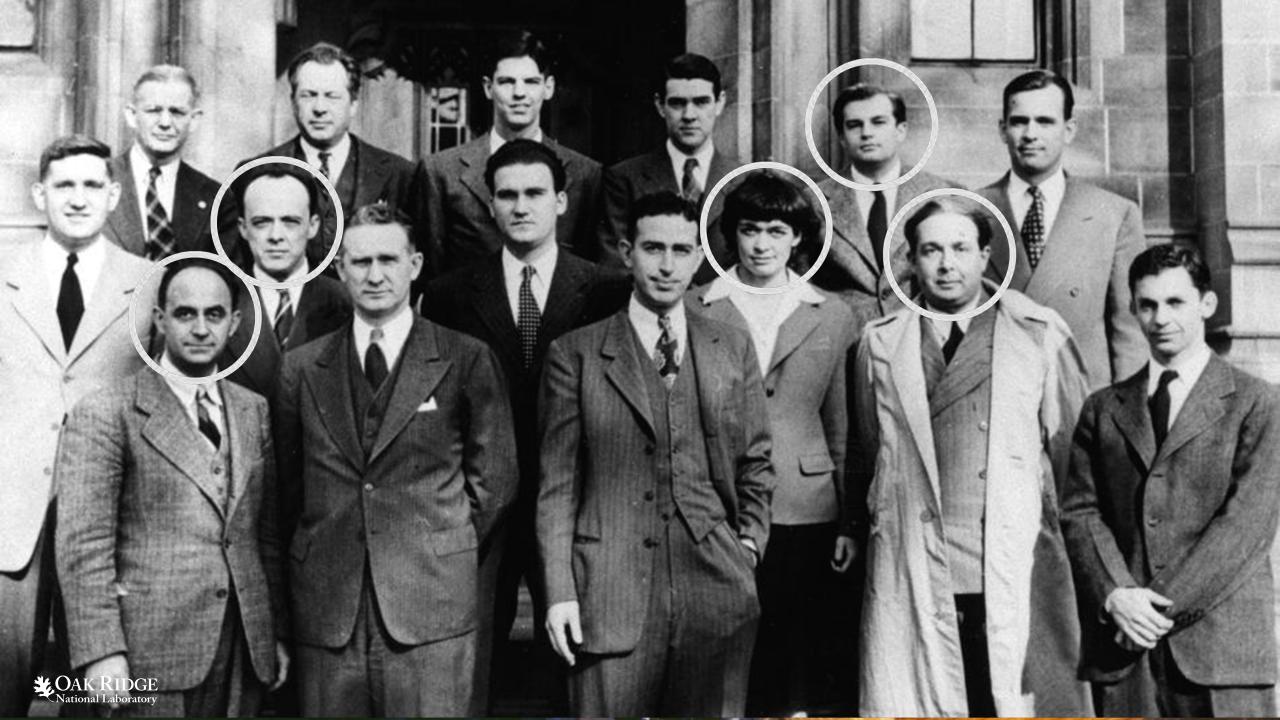




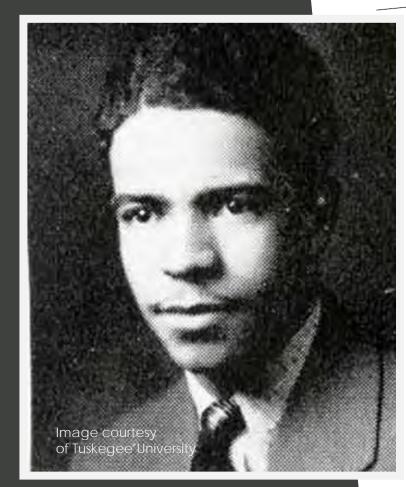








Not everyone was welcome in Oak Ridge



31.

Effect of the Temperature of the Moderator on the Velocity Distribution of Neutrons with Numerical Calculations for H as Moderator

E. P. Wigner and J. E. Wilkins, Jr.

September 14, 1944

Abstract. In this paper we set up an integral equation governing the energy distribution of neutrons which are being slowed down uniformly thoughout the entire space by a uniformly distributed moderator whose atoms are in motion with a Maxwellian distribution of velocities. The effects of chemical binding and crystal reflection are ignored. When the moderator is hydrogen, the integral equation is reduced to a differential equation and solved by numerical methods. In this manner we obtain a refinement of the dv/v^2 law.

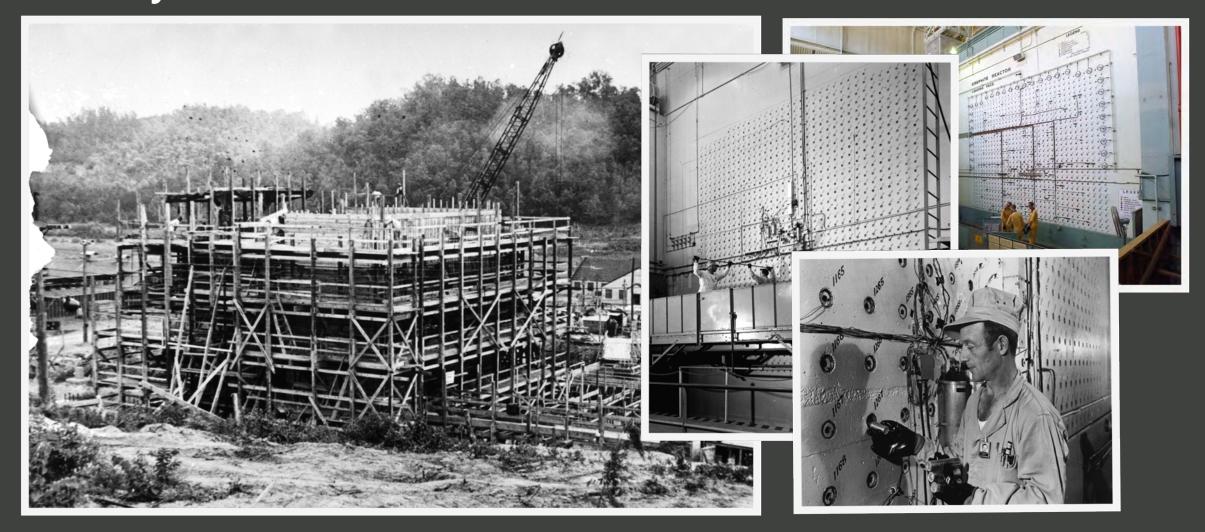
1. There are two particularly simple problems in connection with the energy distribution of neutrons which are present in a medium of finite temperature. In the first problem the slowing down is uniform throughout the entire space which is itself uniformly filled with the slowing down material. In this case the neutron distribution is evidently the same all over space. In the second problem the neutrons enter a half space from one side with uniform intensity and diffuse into it. The question in this case is the density distribution of neutrons at large distances from the boundary plane of the half space and the exponential relaxation length of the neutron density. We shall be interested

There are three phenomena which make the calculation of the energy disonly in the first problem. tribution of the neutrons somewhat complicated. These are the finite velocity of the particles with which they collide, the effect of the chemical binding on the scattering cross section, and finally the effects of crystal reflection. We shall disregard the last two effects and the calculation to be given will therefore be valid only in a monoatomic gas. Messrs. Seitz and Goldberger are engaged in the study of the crystal effect and Mr. Teller has made considerations on the where N(v) dv is the number of effect of the chemical binding.

≇.Oak Ridge National Laboratory

Eugene Paul Wigner

ORNL was created to build the world's first fully functional nuclear reactor



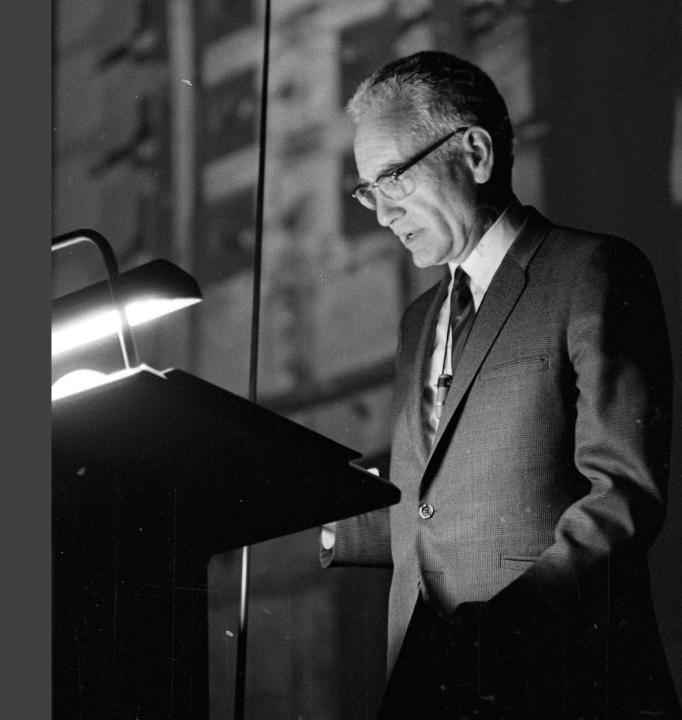






We nuclear people have made a Faustian bargain with society. On the one hand, we offer an inexhaustible source of energy. But the price that we demand of society for this magical energy source is both a vigilance and a longevity of our social institutions that we are quite unaccustomed to."

Alvin M. Weinberg, 1972

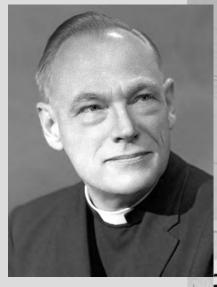




UT professors were central to establishing a national laboratory at Oak Ridge



Katharine Way



William Pollard



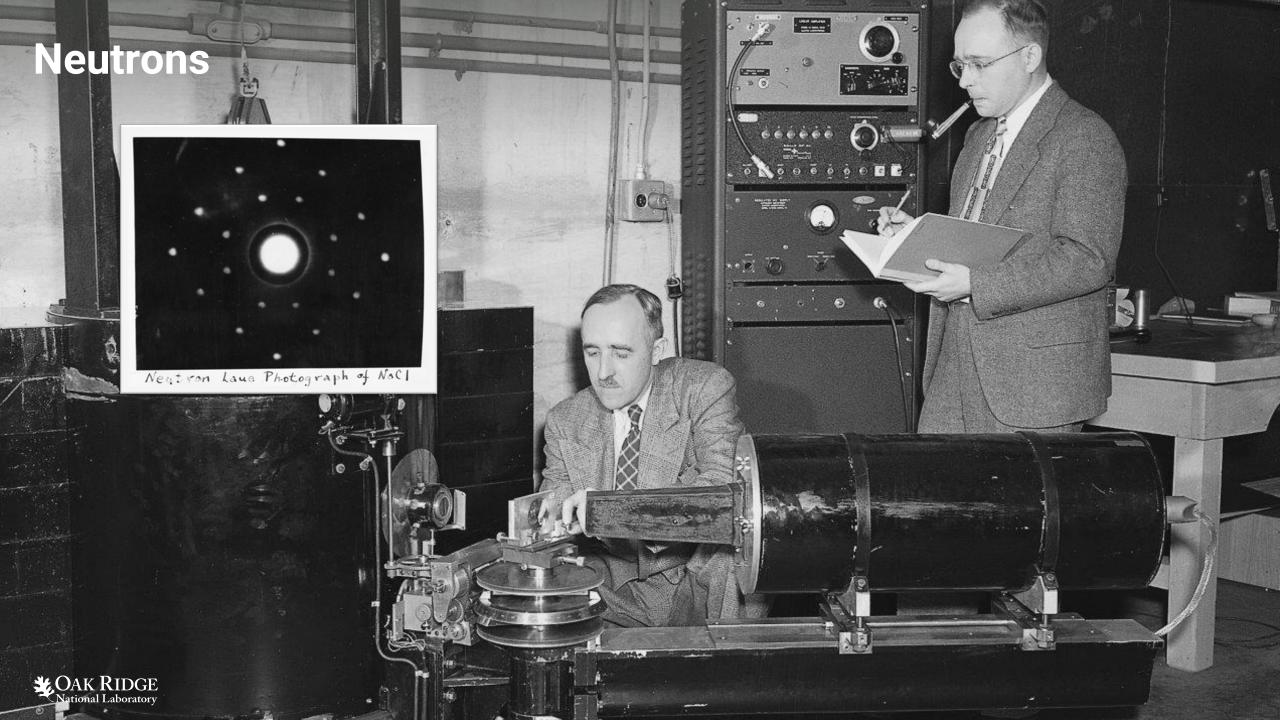


Meat elements to r spurred decades of discovery, innovation and impact



La	Се	Pr	Nd	Pm	Sm	Ευ	Gd	Tb	Dy	Но	Er	Tm	Yb	Lu
Ac	Th	Pa	U	Np	Pu	Am	Cm	Bk		Es	Fm	Md	No	Lr





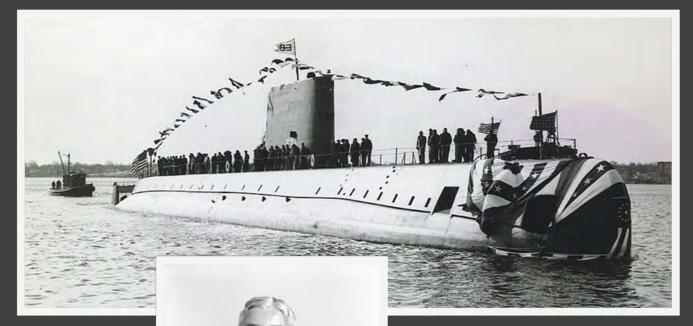






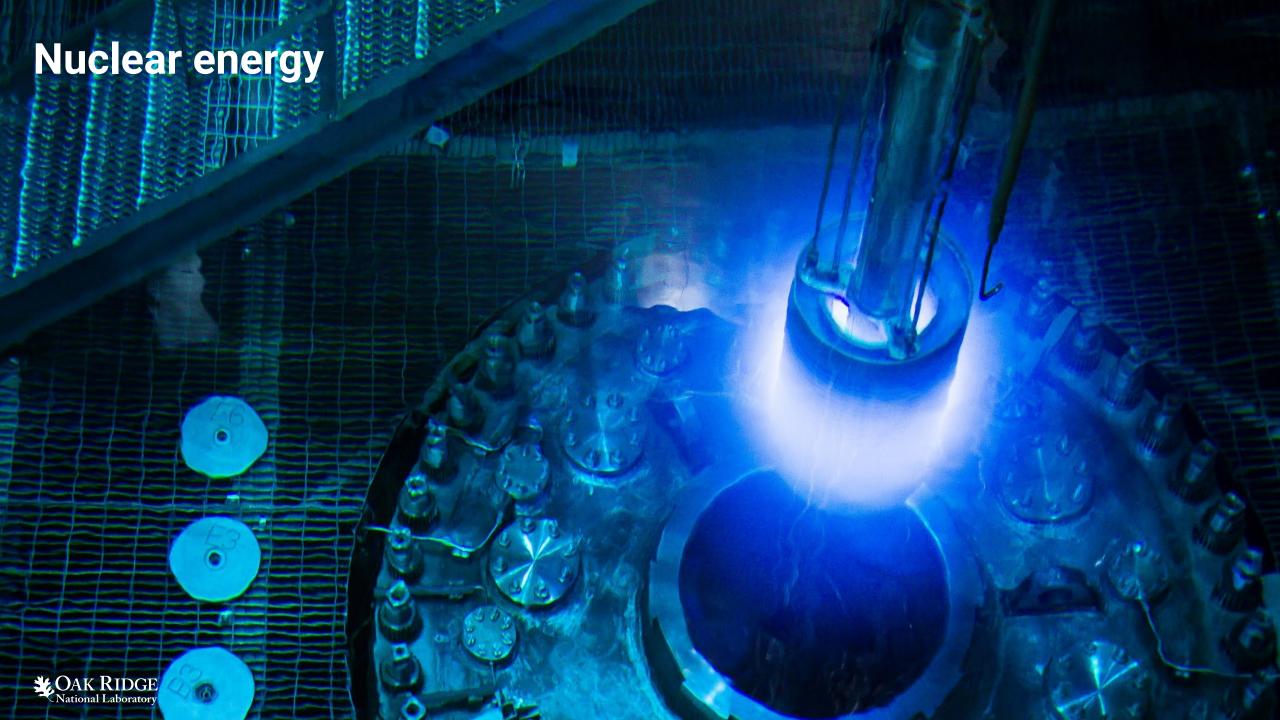


Nuclear energy



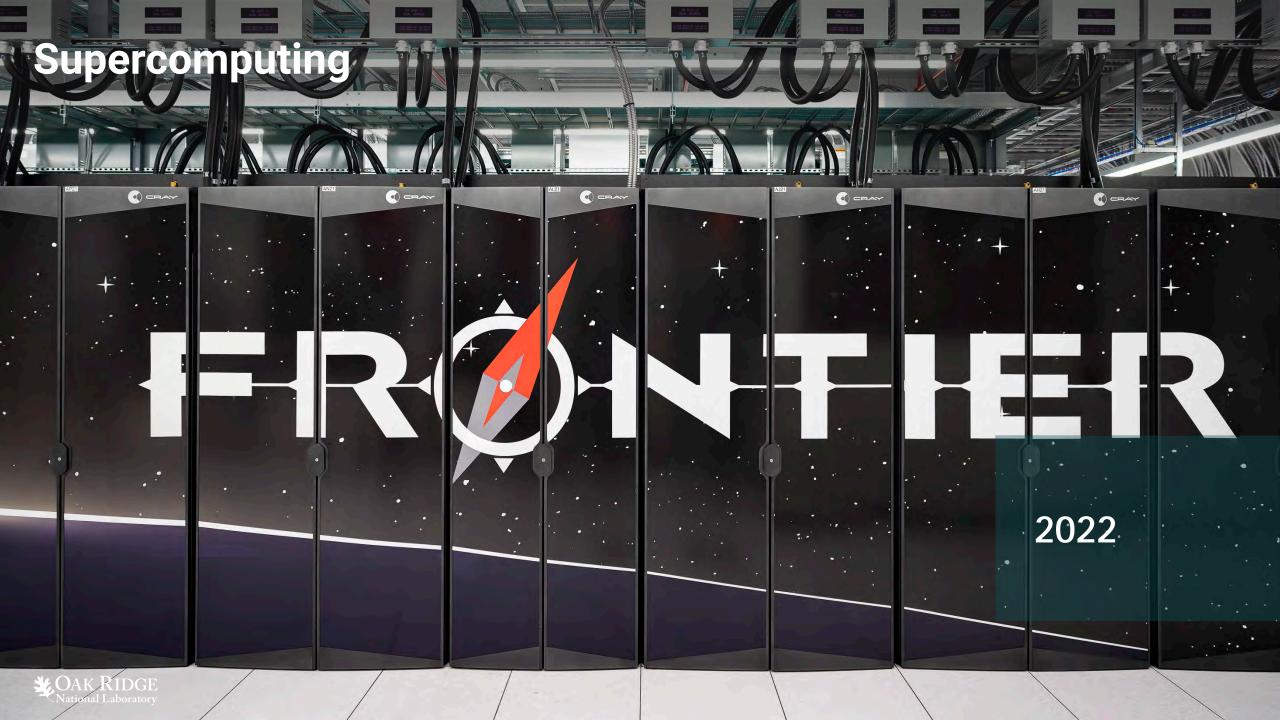


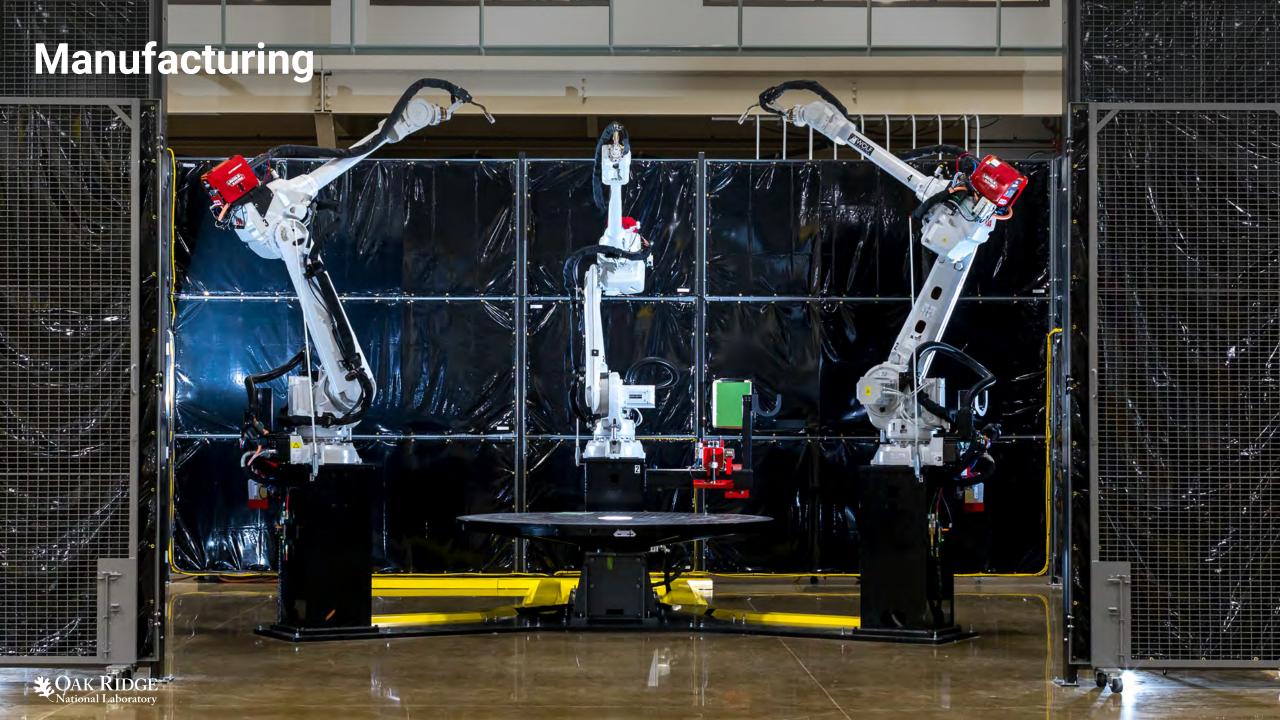




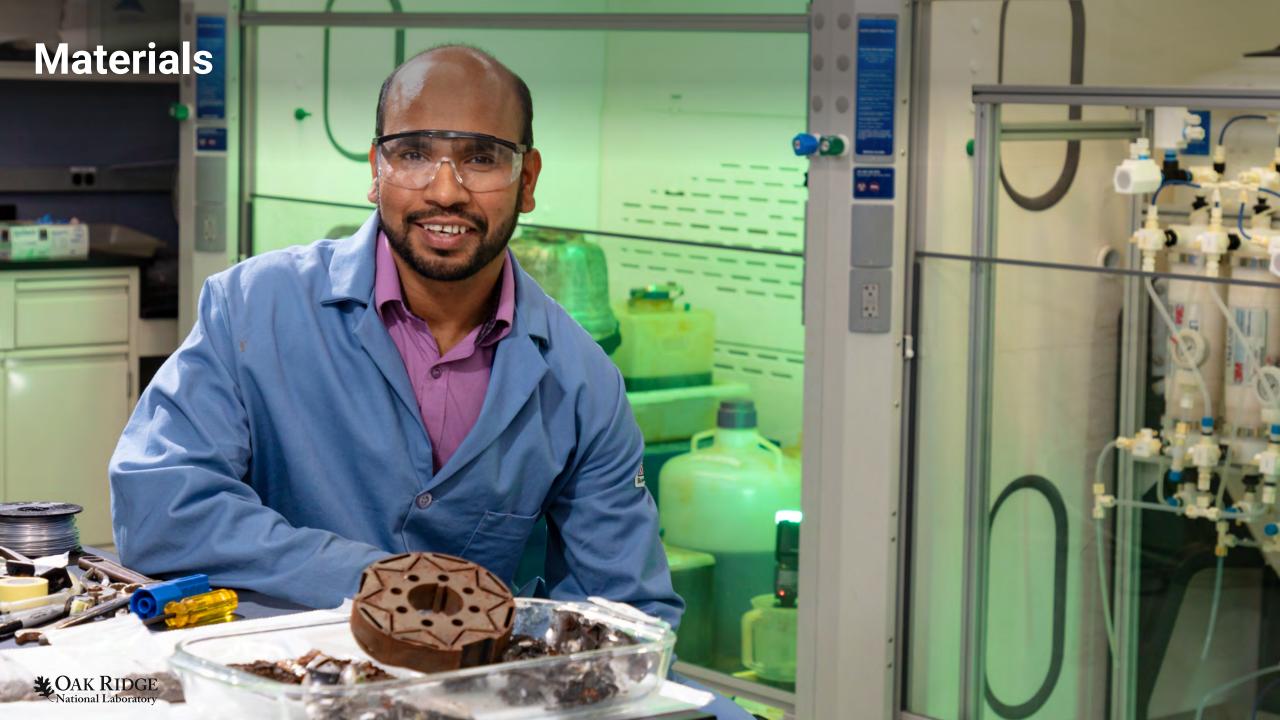














ORNL innovations have had billion-dollar impacts



Fueleconomy.gov \$1B \$1B in cost savings

Ceramic matrix composites \$150B Gas turbines

Cesium extraction \$1.3B Nuclear waste processing

Reactor life extension \$20B \$60-year licenses for >75% of US fleet

Advanced alloys > Chrome-moly steel in widespread use

Ion implantation Integrated circuits and medical implants

Cryopreservation Livestock and endangered species management

Centrifuge technology > \$1B > Vaccine purification and isotope enrichment

Instrumentation > \$1B > Products and spinoffs from ORTEC and TENNELEC

Reactor technology Light water, high temperature, and molten salt concepts

PUREX Nuclear fuel reprocessing techniques used worldwide

Medical radioisotopes > \$5B/year > Multibillion dollar industry (>100 million procedures per year)

1940s Today



ORNL delivers translational research for national priorities

We apply our signature strengths to the most compelling S&T challenges





ORNL by the numbers





ORNL's distinctive user facilities bring thousands of R&D partners to Tennessee each year



Building Technologies Research and Integration Center



Manufacturing Demonstration Facility



Carbon Fiber Technology Facility



National Transportation Research Center



Center for Nanophase Materials Sciences



Oak Ridge Leadership Computing Facility

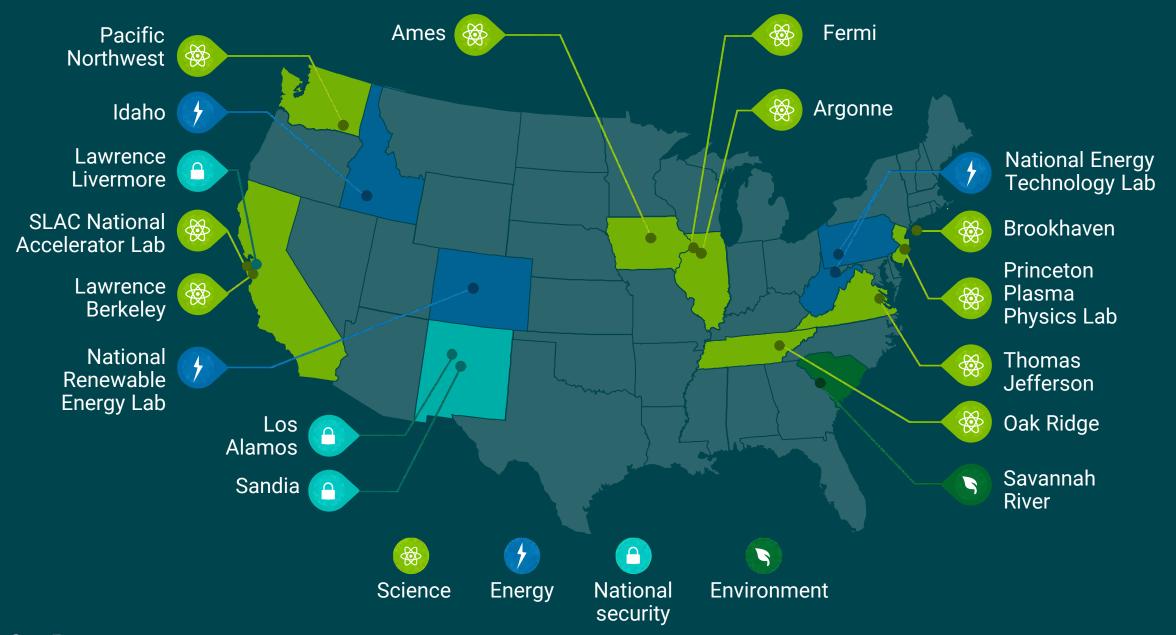


High Flux Isotope Reactor



Spallation Neutron Source







ACCELERATING INNOVATION









GENERATION



CAD US



"Energy is the essential ingredient that enables everything we do."

- Secretary of Energy Chris Wright





ORNL is helping to solve the Energy Challenge To provide ... without ... to a affordable, growing intractable irreparable conflict over reliable, global harm to the population environment secure resources energy



If you're asked what ORNL does, you can say that the lab ...



Produces 250 isotopes to kill cancer, power NASA, secure ports, and more



Applies trustworthy Al to scientific discovery



Designs high-speed wireless charging systems for EVs



Makes lighter, stronger materials to save billions of \$ and emissions



Runs one-of-a-kind research facilities for scientists world-wide



Helps keep the power grid reliable, resilient and secure



Advances affordable and reliable nuclear energy



Models black holes, exploding stars, and the birth of the universe



3D-prints cars, boats, homes, and more



Studies how diseases and medicines behave



Develops ways to recover, reuse, or use fewer rare earth minerals



Seeks physics beyond the Standard Model



Helps companies bring innovations to market



Deploys innovations for more competitive manufacturing



Demonstrates essential steps toward fusion energy



Improves biofuels for airplanes and industrial use



Builds and operates the world's fastest supercomputers



Explores quantum power and potential



Invests time and talent in our communities



Builds self-driving labs for faster discoveries



Keeps citizens and infrastructure safe



Equips teams to deliver scientific breakthroughs



Builds safer, longer-lasting batteries



Helps to train the next generation of scientists



Follow ORNL's latest discoveries, economic impacts, and solutions for energy and security



DOECAA Conference, April 15, 2025 Professor Alex B. Long







Today's Lineup

- The Duty to Inquire Into and Assess the Facts and Circumstances of Each Representation (ABA Opinion 513 (2024))
- Bonus Content! A Lawyer's Discretion to Report When a Client Commits a Crime Against the Lawyer or Against Someone Associated with, or Related to, the Lawyer. (ABA Opinion 515 (2025))
- A Lawyer's Obligations When Advising an Organization About Conduct that May Create Legal Risks for the Organization's Constituents (ABA Opinion 514 (2025))
- Wrongful Discharge Claims by In-House Counsel

Today's Program



Scenarios that Raise Attorney Ethics Issues



ABA Model Rules of Professional Conduct



Polling – Pick the Best Answer



Discussion

Warmup



True or false: In December 2024, a lawyer responded to a demand from opposing counsel that the lawyer's client issue a complete retraction of an allegedly defamatory statement by citing Monty Python's *The Holy Grail*.

(A)True

(B)False



But to answer your specific question as to Ms. Troye's intentions as to a retraction, I think Monty Python expresses it best:



With best wishes, I remain,

Sincerely,

s/Mark S. Zaid

Mark S. Zaid

cc: Olivia Troye

You are in-house counsel for Becker Co., a publicly-traded corporation that specializes in environmental cleanup. The company was recently hired to do a cleanup of a hazardous chemical spill. You helped negotiate the employment contract and agreed to provide advice to the company concerning its compliance with environmental regulations and other matters during the cleanup process. Company president Jacob Becker schedules a meeting with you to discuss some concerns with the cleanup project.



Toxic



He explains that the project is running over budget and that the cleanup isn't going as well as expected. Becker begins talking about how another company would sometimes take the personal dust monitors used to detect harmful particulates off workers before the end of the shift, hang them in clean air, and program the monitors to shut off before the end of a shift. Thus, the company was able to report lower levels of respirable dust as part of its reporting obligations under federal regulations.

"Pretty clever, huh," Becker asks you.
You don't say anything in response. "Just out of curiosity," Becker winks and says, "what would the penalties for something like that be and how likely to do you think it is that government regulators would catch such behavior?"



Toxic

You know what the penalties are and generally how likely it is that a company could get away with such conduct.

You are also worried about the potential increase in workers' compensation claims and possible tort actions if Becker acts on his "hypothetical" idea.

How will you respond to Becker?



Question: What is the lawyer's ethical obligation this scenario?

- (A) Tell the president that the lawyer cannot answer that question.
- (B) Tell the president that the lawyer cannot represent the company on this cleanup matter any longer.
- (C) Ask the president for more information concerning the matter.
- (D) Go ahead and answer the question, since the president has not informed the lawyer that the company is doing anything illegal.

ABA Op. 513 (2024)

The Duty to Inquire Into and Assess the Facts and Circumstances of Each Representation



ABA Model Rule 1.16: Declining or Terminating Representation

(a) A lawyer *shall inquire into and assess the facts and circumstances of each representation* to determine whether the lawyer may accept or continue the representation.

ABA Op. 513 (2024): Duty to Inquire Into and Assess the Facts and Circumstances of Each Representation

- "some level of inquiry and assessment is required before undertaking each representation. The scope and extent of the required inquiry and assessment will vary."
- Comment 2: "the required level of a lawyer's inquiry and assessment will vary for each client or prospective client, depending on the nature of the risk posed by each situation."



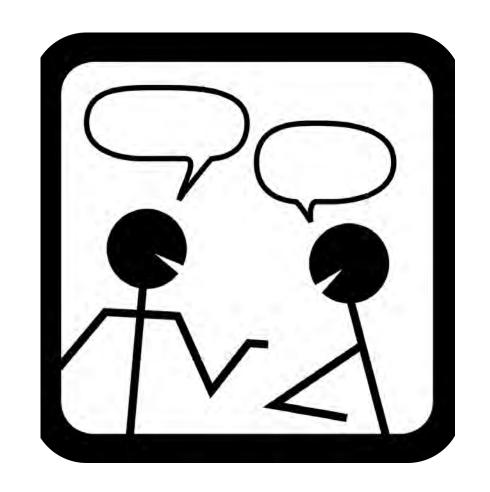
ABA Op. 513 (2024): Duty to Inquire Into and Assess the Facts and Circumstances of Each Representation

"When Rule 1.16(a) was amended, it
was anticipated that only certain
representations would necessitate a
significant inquiry, namely, those
where there appeared to be a
heightened risk of crime or fraud
typically because of the nature of the
representation or because of the
appearance of 'red flags.'"



Assume you conduct a reasonable inquiry into the president's plans, and the president assures you that he was just asking the question about the dust monitors for his own education and that the company absolutely will not engage in such behavior. You reasonably believe him.

Can you continue the representation?



Question: True or False: the lawyer can continue the representation.

(A) True

(B) False

ABA Op. 513 (2024): Duty to Inquire Into and Assess the Facts and Circumstances of Each Representation

 "If, having conducted a reasonable, risk-based inquiry, the lawyer determines that the representation is unlikely to involve assisting in a crime or fraud, the lawyer may undertake the representation. This will be the usual case."



Question: True or False: Assuming you reasonably believe the president's intention to follow the law, you can answer the president's questions about how likely regulators are to catch such dust monitoring cheating and what the penalties are for such conduct.

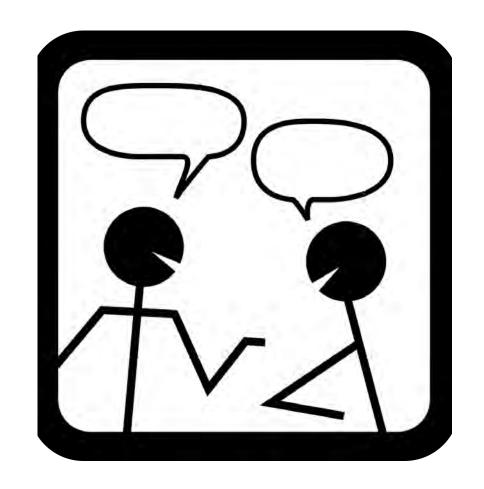
- (A) True
- (B) False

ABA Model Rule 1.2(d) and 1.4(a)(5)

Rule 1.2(d): A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

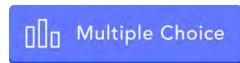
Assume instead that you conduct a reasonable inquiry into the president's plans, and the president makes clear the company really does plan to engage in cheating of the dust monitors.

What is your ethical obligation?



Question: Assume instead that you conduct a reasonable inquiry into the president's plans, and the president makes clear the company really does plan to engage in cheating of the dust monitors. What is your ethical obligation?

- (A) Withdraw from the representation.
- (B) Resign.
- (C) Advise the client about the lawyer's ethical obligation not to assist or counsel the client in conduct the lawyer knows is criminal or fraudulent.
- (D) All of the above.



ABA Model Rule 1.16: Declining or Terminating Representation

(a) A lawyer shall inquire into and assess the facts and circumstances of each representation to determine whether the lawyer may accept or continue the representation.

Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: . . .

(4) the client or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud, despite the lawyer's discussion pursuant to Rules 1.2(d) and 1.4(a)(5) regarding the limitations on the lawyer assisting with the proposed conduct.

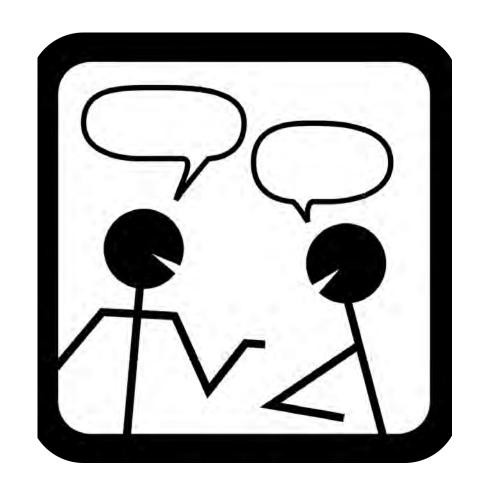
ABA Model Rule 1.2(d) and 1.4(a)(5)

• Rule 1.2(d): A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

• Rule 1.4(a)(5): A lawyer shall ... consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

Assume instead that you conduct a reasonable inquiry into the president's plans, and you believe that there is a *high probability* that the client seeks to use your services for criminal or fraudulent activity.

What is your ethical obligation?



Question: You believe that there is a high probability that the client seeks to use your services for criminal or fraudulent activity. What is your ethical obligation?

- (A) You may continue the representation since you lack actual knowledge of any intent to commit a crime or fraud.
- (B) Withdraw from the representation.
- (C) Resign.
- (D) Inquire further.



ABA Op. 513 (2024): Duty to Inquire Into and Assess the Facts and Circumstances of Each Representation

 "In those circumstances, the lawyer must inquire further—indeed, the lawyer's inquiry would not otherwise be reasonable—or decline the representation."



Question: TRPC Rule 1.2(d) prohibits a lawyer from counseling a client to engage, or assisting a client, in conduct that the lawyer knows or reasonably should know is criminal or fraudulent. According to the ABA, when, among other ways, does a lawyer "know" that a client is seeking advice or counsel on a transaction that is criminal or fraudulent?

- (A) When the lawyer reasonably believes the client intends to engage in such conduct.
- (B) Only when the lawyer knows with 100% certainty that the client intends to engage in such conduct.
- (C) When the lawyer engages in willful blindness to the facts.
- (D) All of the above.



Assisting a Client in Criminal or Fraudulent Conduct

Rule 1.2(d): knowingly counseling or assisting a client in a crime or fraud

ABA Formal Ethics Op. No. 491: where the facts known to the lawyer "indicate a high probability that a client seeks to use the lawyer's services for criminal or fraudulent activity, a lawyer's conscious, deliberate failure to inquire amounts to knowing assistance of criminal or fraudulent conduct."



Question: Assume that after inquiring about Becker's plan, you conclude that there is not a high probability that Becker intends to engage in this dust monitoring and plans to use your answers to help carry out his plan. Which of the following describes an appropriate response on your part?

- (A) Discussing the legal consequences of Becker's planned course of action.
- (B) Assisting Becker to make a good faith effort to determine the validity, scope, meaning, or application of the law.
- (C) Giving an honest opinion about the actual consequences that appear likely to result from a client's conduct.
- (D) All of the above.



Assisting a Client in Criminal or Fraudulent Conduct

Rule 1.2(d): lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law

Comment 9: a lawyer may also give an honest opinion about the actual consequences that appear likely to result from a client's conduct without assisting or counseling the client to engage in criminal or fraudulent conduct.

Tennessee Rules of Court Supreme Court Rules

Tennessee Government

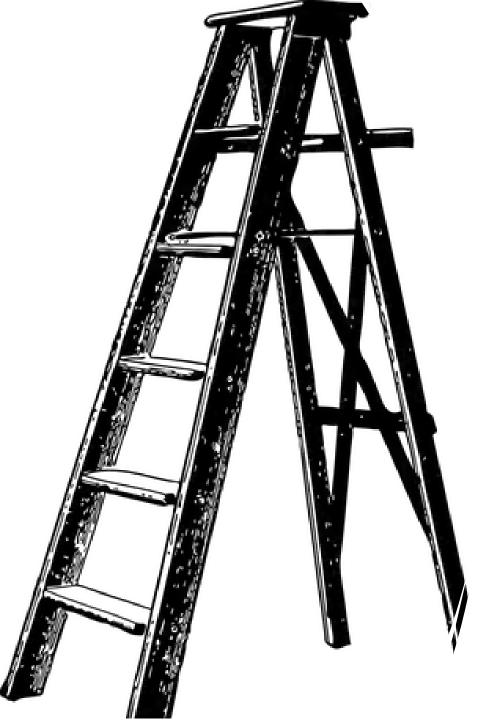


A few weeks after Becker leaves your office, you speak to one of the onsite managers of the cleanup project about another matter. He lets slip the fact that his immediate superior at the site has instructed managers to do the very thing that Jacob Becker had mentioned to you earlier – generating false data from the personal dust monitors and then reporting that data to federal authorities. What is your ethical obligation at this point?

Question: A few weeks after Becker leaves your office, you speak to one of the onsite managers of the cleanup project about another matter. He lets slip the fact that his immediate superior at the site has instructed managers to do the very thing that Jacob Becker had mentioned to you earlier – generating false data from the personal dust monitors and then reporting that data to federal authorities. What is your ethical obligation at this point?

- (A) To keep your big yap shut and let the company go about its business.
- (B) To do what is best for your client, Jacob Becker.
- (C) To refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law.
- (D) To notify the appropriate federal agency.





Protecting Organizational Clients from Constituent Misconduct: Upthe-Ladder Reporting

- Rule 1.1: includes inquiry into facts and legal elements
- Rule 2.1: Can include more than just the law.
- Rule 1.4: Communication

• Rule 1.13

Protecting Organizational Clients from Constituent Misconduct: Up-the-Ladder Reporting

Rule 1.13(b): If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law.



Protecting Organizational Clients from Constituent Misconduct: Up-the-Ladder Reporting

Rule 1.13, comment 9: The duty defined in this Rule applies to governmental organizations. Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these Rules. ... [I]n a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulation. This Rule does not limit that authority. "



Preventing Criminal or Fraudulent Conduct on the Part of an Organizational Client

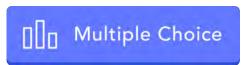
An individual who inhales excess levels of the particulate matter at Becker's worksite is almost certain to develop a serious respiratory illness. You have gone up the Becker corporate ladder all the way to the company's highest authority about the information concerning the dust monitor fraud. But no one in the company gives you any assurance that the company will cease its actions. Can you report the company's actions to the relevant state and federal agencies?



Toxic

Question: An individual who inhales excess levels of the particulate matter at Becker's worksite is almost certain to develop a serious respiratory illness. You have gone up the Becker corporate ladder all the way to the company's highest authority about the information concerning the dust monitor fraud. But no one in the company gives you any assurance that the company will cease its actions. Can you report the company's actions to the relevant state and federal agencies?

- (A) Yes, in order to prevent reasonably certain death or substantial bodily harm to the employees in question.
- (B) Yes, to the extent you reasonably believe necessary to prevent substantial injury to the organization from this violation of law.
- (C) Both (A) and (B).
- (D) Your duty of confidentiality prohibits you from reporting outside the confines of the company.



Exceptions to the Lawyer's Duty of Confidentiality Certain Death or Substantial **Bodily Harm**

- Model Rule 1.6(b): A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
- (1) to prevent reasonably certain death or substantial bodily harm
 - Note: this rule varies dramatically from state to state ...

Tennessee's Version of the "reasonably certain death or substantially bodily harm" exception



- (c) A lawyer <u>shall</u> reveal information relating to the representation of a client to the extent the lawyer reasonably believes disclosure is necessary:
- (1) to prevent reasonably certain death or substantial bodily harm

Exceptions to the Lawyer's Duty of Confidentiality – Prevent or Rectify the Consequences of Client Misconduct

- Model Rule 1.6(b): A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
- (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
- (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services
- History of the exception
- State variations

Exceptions to the Lawyer's Duty of Confidentiality – To Prevent Substantial Injury to the Organization Itself

Model Rule 1.13(c): [I]f

- (1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and
- (2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

Up-the-Ladder Reporting

Up the ladder of Sarbanes-Oxley



- Must report "material" violation of securities law to CLO
 - If not satisfied with response, report to audit committee, committee of outside directors, or board itself (if no such committee exists)
- May satisfy reporting duty by reporting to legal compliance committee (if one exists). Can stop there.



Bonus Content: Hypothetical

• A lawyer meets a client in the lawyer's office to discuss a matter that the lawyer is handling for the client. The client becomes angry with the lawyer, removes a firearm, shoots the lawyer or the lawyer's paralegal in the shoulder, and then flees the office and the building.

• Can the lawyer report all of this information to law enforcement authorities?



Question: Can the lawyer report all of this information to law enforcement authorities?

- (A) Yes, because none of this information is protected by the attorney-client privilege, so the lawyer owes no duty of confidentiality.
- (B) Yes, in order to prevent reasonably certain death or substantial bodily harm to others.
- (C) No, because there is no applicable exception to the lawyer's duty of confidentiality.
- (D) Yes, because there is an implicit exception to the lawyer's duty of confidentiality that permits disclosure.



ABA Op. 515 (2025): Can the lawyer report all of this information to law enforcement authorities?

 "A lawyer who is the victim of a crime by a client or prospective client may disclose information relating to the representation to the appropriate authority in order to seek an investigation and potential prosecution of the alleged offender or other services, remedy, or redress. To the extent that the information would otherwise be subject to the lawyer's duty of confidentiality under Model Rule of Professional Conduct 1.6, the information is subject to an implicit exception to the Rule."





Which of the following is not an actual attorney ethics news item from within the past year?

- A. Colorado lawyer censured after calling other lawyer a "terrible f----g lawyer" and "a disgrace to the Colorado Bar" in a demand letter.
- B. Massachusetts lawyer publicly reprimanded after mistakenly emailing opposing counsel with plan to avoid judge's phone call.
- C. Tennessee lawyer suspended after punching Alabama football fan in a bar.
- D. Florida lawyer disbarred after filing a notice of appearance while suspended, abandoning a client, and listing an Irish pub as his address with the Florida Bar.



ABA Op. 514 (2025)

A Lawyer's Obligations When Advising an Organization About Conduct that May Create Legal Risks for the Organization's Constituents



Applies where

- (1) a lawyer is giving advice to an organization client through a constituent about future action the organization may choose to take;
- (2) the constituents are likely to have their own legal interests at stake; and
- (3) the lawyer does not intend to create a clientlawyer relationship with the constituent or otherwise to assume fiduciary or contractual duties to the constituent



Example: when a lawyer advises a constituent regarding what representations to make on the organization's behalf in a government filing or in a transactional document.



"Taking a less cautious or more aggressive approach may be in the interest of the organization but such an interest may not be shared by the individual signing his or her name to the disclosure, because the benefits and risks of an aggressive approach may be different for the individual."



To whom does the lawyer in this situation owe a fiduciary duty?



Question: To whom does the lawyer in this situation owe a fiduciary duty?

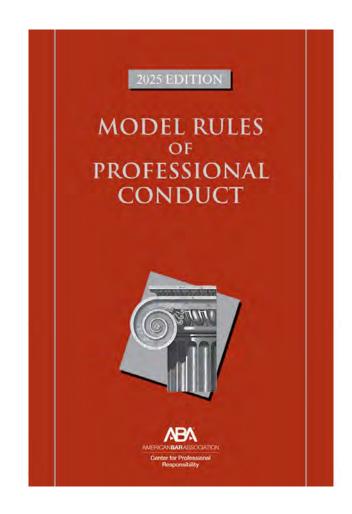
(A) The organization.

(B) The constituent.

(C) Both

ABA Model Rule 1.13(a)

 "A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents."



- "The question we address here is whether the professional responsibilities of a lawyer representing the organization require the lawyer to inform the organization when proposed future conduct may pose legal risk for the organization's constituents."
- Relevant rules
 - 1.1 (competence)
 - 1.4 (communication)
 - 2.1 (advice)





 "It may be important to an organization client to know not only when potential future conduct creates legal risk to the organization but also when the conduct creates legal risk to the organization's constituents, such as employees, officers, or board members, who will be acting on the organization's behalf."

- "Many organizations' decision makers have an interest in the constituents' welfare and seek to treat the constituents fairly. Many would want to take account of the potential costs and disruption if its constituents encountered legal problems because of their work for the organization."
- "Moreover, particularly if the client is an organization of a sufficiently large size, the organization may have contractual duties of indemnification in place as to the constituents impacted that could both reduce the costs or disruption for those constituents and be directly relevant to the risk to the organization itself."





"In certain circumstances, even if the importance of this information is uncertain, the organization's lawyer may conclude as a matter of professional judgment that the organization is best served by being advised, through its duly authorized decision makers, when a proposed course of conduct poses a significant legal risk to constituents; to make a well-informed decision, the decision makers might want to have the opportunity to consider that they are putting individual constituents at legal risk, and the nature and extent of the risk." In-House Counsel and Wrongful Discharge Claims

In-House Counsel and Wrongful Discharge Claims

Patty was in-house counsel at Initech Corp., where she was responsible for the company's compliance with state regulatory requirements in several different jurisdictions. Patty became concerned that the company was violating usury laws in numerous states by charging an interest rate above statutory limits and not registering as a loan institution.



In-House Counsel and Wrongful Discharge Claims

In keeping with her ethical obligations under Rule 1.13, Patty attempted to convince constituents within the company to comply with applicable law. She reported up the corporate ladder in an attempt to resolve the situation but was repeatedly told to ignore any violations of state usury law. After addressing her concerns with Initech's CEO, Patty was fired a few days later.

Question: Patty now wants to bring a wrongful discharge claim against Initech. Is she likely to succeed?



Patty now wants to bring a wrongful discharge claim against Initech. Is she likely to succeed?



Wrongful Discharge in Violation of Public Policy

- An exception to the at-will employment rule exists where "the termination of employment constitutes a violation of a clear and substantial public policy."
- To state a claim under the public policy exception to at-will employment, [a plaintiff] must allege "(i) that his employer terminated him; (ii) that a clear and substantial public policy existed; (iii) that [Mr. Pang's] conduct brought the policy into play; and (iv) that the discharge and the conduct bringing the policy into play are causally connected."
- Pang v. Int'l Document Servs., 356 P.3d 1190 (Utah 2015).

2025 EDITION

MODEL RULES OF PROFESSIONAL CONDUCT





Decisions not Allowing Such Claims

- Pang v. Int'l Document Servs., 356 P.3d 1190 (Utah 2015).
- In-house alleges he was fired for his compliance with Rule 1.13
- "even if some of the rules may reflect a public policy of sufficient magnitude to override at-will employment, rule 1.13, upon which Mr. Pang exclusively relies, clearly does not."

2025 EDITION

MODEL RULES OF PROFESSIONAL CONDUCT





Decisions not Allowing Such Claims

- Pang v. Int'l Document Servs., 356 P.3d 1190 (Utah 2015).
- "First, the rule regulates private conduct between attorneys and their clients, not matters of broad public importance.
- "And second, the rules of professional conduct articulate a strong, countervailing policy of allowing organizational clients to obtain the representation of their choice, and this policy outweighs any Mr. Pang has raised in this case."

Decisions not Allowing Such Claims: Whistleblower Statutes

• Minnesota:

- "An employer shall not discharge, discipline, penalize, interfere with, threaten, restrain, coerce, or otherwise retaliate or discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because:
- (1) the employee, or a person acting on behalf of an employee, in good faith, reports a violation, suspected violation, or planned violation of any federal or state law or common law or rule adopted pursuant to law to an employer or to any governmental body or law enforcement official; ...
- (3) the employee refuses an employer's order to perform an action that the employee has an objective basis in fact to believe violates any state or federal law or rule or regulation adopted pursuant to law, and the employee informs the employer that the order is being refused for that reason; ...
- (5) a public employee communicates the findings of a scientific or technical study that the employee, in good faith, believes to be truthful and accurate, including reports to a governmental body or law enforcement official;



Decisions not Allowing Such Claims: Whistleblower Statutes



- Kidwell v. Sybaritic, Inc., 749
 N.W.2d 855 (Minn. Ct. App. 2008).
- In-house attorney fired after he sent an e-mail message to Sybaritic's top management expressing his concerns about certain activities of the company that he asserted were unlawful.

Decisions not Allowing Such Claims: Whistleblower Statutes



- Kidwell v. Sybaritic, Inc., 749
 N.W.2d 855 (Minn. Ct. App. 2008).
- "a former employee may not maintain an action under the whistleblower act if the alleged report is a communication that was made to fulfill the employee's job responsibilities."
- The attorney's email was in fulfillment of his responsibilities as in-house counsel.

Decisions Allowing Such Claims



Decisions Allowing Such Claims: In general

- "it is virtually certain that, without the prospect of limited judicial access, in-house attorneys—especially those in mid-career who occupy senior positions confronted with the dilemma of choosing between adhering to professional ethical norms and surrendering to the employer's unethical demands will almost always find silence the better part of valor.
 Declining to provide a limited remedy under defined circumstances will thus almost certainly foster a degradation of in-house counsel's professional stature."
 - General Dynamics Corporation v. Superior Court, 876 P.2d 487 (Cal. 1994).

Decisions Allowing Such Claims

- Crews v. Buckman Labs. Int'l, Inc., 78
 S.W.3d 852, 857 (Tenn. 2002)
- Plaintiff discharged from her position as in-house counsel for defendant Buckman Laboratories International, Inc. for reporting to disciplinary authorities that Buckman's general counsel was engaged in the unauthorized practice of law.
- Plaintiff brings a common-law wrongful discharge claim.



Decisions Allowing Such Claims

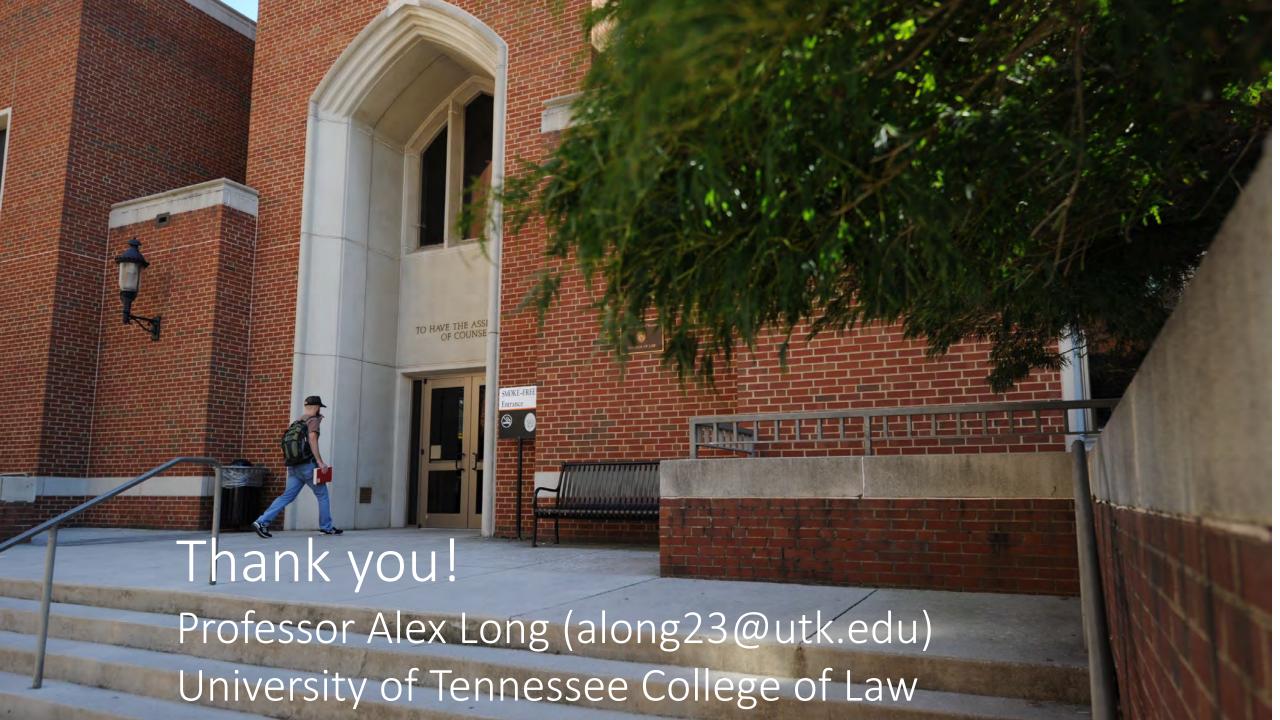
- Crews v. Buckman Labs. Int'l, Inc., 78
 S.W.3d 852, 857 (Tenn. 2002)
- Does the lawyer's duty of confidentiality prohibit the lawyer from bringing a claim (which would require the disclosure of confidential information)?
- See Model Rule 1.6(b)(5) (to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client).



Decisions Allowing Such Claims

- Crews v. Buckman Labs. Int'l, Inc., 78
 S.W.3d 852, 857 (Tenn. 2002)
- Plaintiff's report furthered the substantial public policy against the unauthorized practice of law.





Great Power Decoupling: Implications for Government Funded R&D

2025 Spring DOECAA Conference April 16, 2025

Stephanie Barna, Of Counsel, Covington & Burling LLP Nadine M. Lacombe, General Counsel, Argonne National Laboratory Justin Poore, Senior Managing Counsel, Sandia National Laboratories





Agenda

- History & Context
- Recent Legislation
- Compliance & Risk Mitigation in a Managed Research Environment
- Q&A and Discussion

History & Context





Nixon's Landmark Visit to China



Before President Nixon's historic visit in 1972:

- China was largely isolated, with limited international relationships following decades of internal conflict and the Cultural Revolution's upheaval.
- China's economy was predominantly rural, centrally planned, and lagged far behind Western countries.



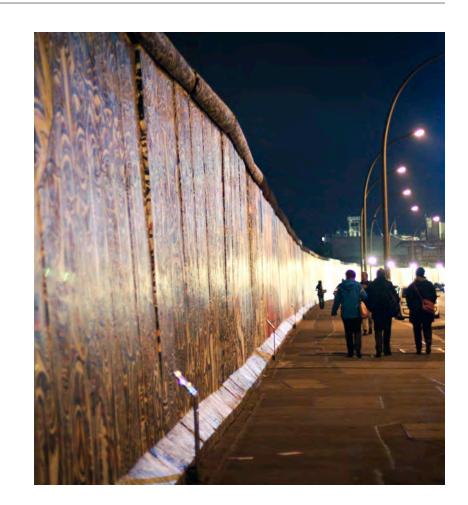
Visit viewed as a "diplomatic breakthrough" that transformed China's economic and geopolitical landscape by:

- Significantly thawing Cold War tensions and paving the way for China's reintegration into the international community.
- Enabling subsequent economic reforms and opening avenues for international trade and foreign investment.



Origins of Competition

- Post-Cold War power vacuum and globalization
 - Dissolution of the Soviet Union in 1991 creates strategic openings
 - Globalization accelerates economic and political interactions
- China's economic reforms under Deng Xiaoping
 - Launch of "Reform and Open Door" policies in December 1978
 - Establishment of Special Economic Zones (SEZs) in the early 1980s
- Tiananmen Square and U.S. reactions
 - June 4, 1989, massacre leads to international condemnation
 - U.S. imposes economic sanctions and suspends military cooperation
- China resumes sovereignty over Hong Kong from British in 1997





Economic Interdependence and Tensions

- China's accession to WTO in 2001
 - Boost in China's exports to global markets
 - Surge in manufacturing outsourcing from the U.S. to China
- Rapid growth of China's economy
 - China becomes the world's second-largest economy by 2010
 - Share of China's population living in extreme poverty declines from 67% to less than 1%
- Rising U.S. trade deficit with China and emerging trade tensions
 - U.S. trade deficit with China reaches \$419 billion in 2018
 - Increasing U.S. concerns about intellectual property rights and unfair trade practices





Strategic and Military Rivalry

- China's military modernization and regional assertiveness
 - Military budget increases annually since 2000
 - Expansion of naval capabilities, including aircraft carriers
- Obama Administration begins the "Pivot to Asia"
 - Strategic refocus announced in November 2011
 - Diplomatic and military shift from the Middle East and Europe to Asia
 - Enhanced U.S. alliances with Japan, South Korea, and the Philippines
- Territorial disputes, freedom of navigation operations
 - China's artificial islands construction in the South China Sea
 - Regular U.S. naval patrols to assert freedom of navigation
- U.S. National Defense Strategies of 2017 and 2022 prioritize great power competition with China as primary U.S. challenge





Technological and Cyber Competition

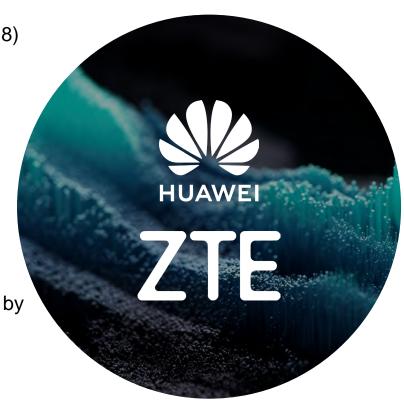
- Cybersecurity concerns, major incidents
 - June 2015 OPM hack exposes records of 22 million U.S. federal employees
 - Increasing concerns over cybersecurity and espionage activities
- Artificial Intelligence and critical technologies race
 - China's "Next Generation AI Development Plan" published July 2017
 - China's 2017 National Intelligence Law requires intelligence cooperation from Chinese entities
 - U.S. initiatives for AI research investment and export controls
 - National Artificial Intelligence Act, NDAA for FY 2021
 - Commerce Dep't, Bureau of Industry and Security, "Framework for Artificial Intelligence Diffusion," January 2025





Technological and Cyber Competition (cont.)

- U.S. restrictions on Chinese technology companies
 - Commerce Dep't temporarily blocks U.S. firms from selling to ZTE (April 2018)
 - FY 2018 NDAA bans USG use of Huawei/ZTE equipment (August 2018)
 - Commerce Dep't blacklists Huawei (May 2019)
 - FCC bans sale and import of new communications equipment from five Chinese companies (November 2022)
 - FY 2021 NDAA establishes "1260H" list of Chinese military companies operating in the U.S.
 - effective June 2026, DoD may not contract with listed companies;
 - effective June 2027, DoD may not procure items with components made by listed companies in their supply chains
 - FY 2022 NDAA bans federal agency procurement of SMIC, ChangXin, or Yangtze semiconductors, effective December 2027





Trade War and Diplomatic Struggles

- Trump Administration tariffs and the "Phase One" trade deal
 - Tariffs imposed beginning in July 2018, peaking in 2019
 - "Phase One" trade deal signed January 15, 2020
- Human rights concerns
 - Reports of mass detention and forced labor in Xinjiang UAR since 2017
 - U.S. sanctions on Hong Kong officials following 2020 National Security Law
- COVID-19 pandemic and worsening diplomatic relations
 - Mutual accusations of responsibility over pandemic handling
 - Closure of consulates in Houston and Chengdu in July 2020
- Trump 2.0 imposes 10% tariffs on imports from China in February 2025 and raises tariffs to 20% in March
 - China retaliates with tariffs and export controls against U.S.
 - China threatens new antitrust investigations





Recent Developments

- The Biden Administration's emphasis on alliances
 - Formation of AUKUS defense pact in September 2021
 - Strengthening of Quad partnership
- Export controls and semiconductor industry restrictions
 - U.S. CHIPS & Science Act signed into law in August 2022
 - Commerce Dep't, Bureau of Industry and Security restrictions on exporting advanced chips to China, October 2022, October 2023, December 2024
- Growing Taiwan Strait tensions and security dilemmas
 - Increased Chinese military incursions into Taiwan's air defense zone
 - Heightened U.S. arms sales and diplomatic visits to Taiwan





Future Outlook and Strategic Considerations

Implications for global stability and trade (ongoing)

- Risk of economic decoupling and supply chain disruptions
- Potential impacts on global security architecture and alliances

Challenges in finding diplomatic solutions (ongoing)

- Continued ideological, political, and economic divides
- Complex international pressures and domestic political constraints

Potential paths forward (competition, confrontation, cooperation)

- Scenarios ranging from increased dialogue to escalation in tensions
- Importance of establishing clear communication channels and crisis management protocols

Recent Legislation



Legislation Restricting Foreign National Visits





- Recent Legislative Proposals
- The FY2025 National Defense Authorization Act
- More to come?



SAND2025-03868C

Proposed: Intelligence Authorization Act Sec. 436



 Prohibited National Laboratories from admitting "covered foreign nationals" and prohibited access to "the premises, information, or technology of the National Laboratory."

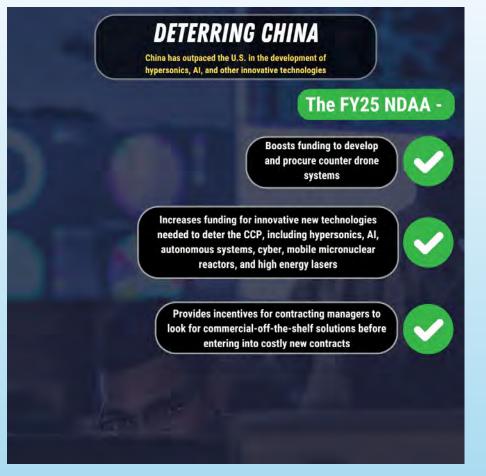
- Covered Foreign Nationals:
 - (i) The People's Republic of China.
 - (ii) The Russian Federation.
 - (iii) The Islamic Republic of Iran.
 - (iv) The Democratic People's Republic of Korea.
 - (v) The Republic of Cuba.
 - Excludes Lawful Permanent Residents
- Waiver Process: Secretary of Energy, in consultation with DOE-IN and FBI, must certify in writing that benefit outweighs risk.
- Unanimously supported by Senate Intelligence Committee on June 12, 2024
- Not adopted into NDAA









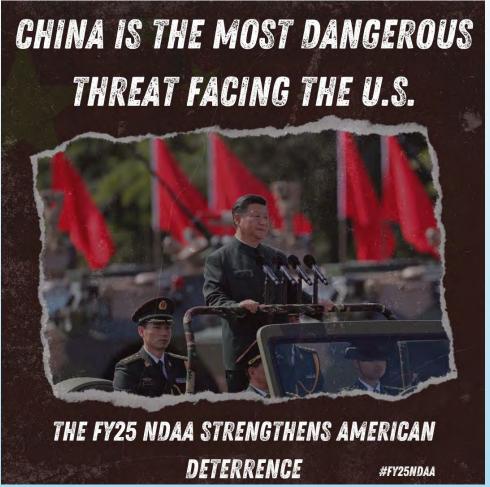


Source: House Armed Services Committee









Source: House Armed Services Committee









Source: House Armed Services Committee





• Exclusions:

- US Citizens and Lawful Permanent Residents
- IAEA Inspectors
- Treaty compliance: Information exchanges in support of US nonproliferation, counterproliferation, and counterterrorism activities
- Facilities "not directly associated with or directly funded to perform the mission, functions, and operations of the" NNSA.

Waiver Process:

- Secretary of Energy, through the NNSA Administrator, certifies to Congress 30 days in advance that:
 - (A) the visit is in the interest of US national security;
 - (B) no classified data will be revealed;
 - (C) the Secretary or Administrator has consulted with the heads of "other relevant departments or agencies" to mitigate risks; AND
 - (D) a background review was completed and did not uncover any "unreported affiliation" with covered foreign nations' military or intelligence.







- Prohibits DOE/NNSA from admitting citizens or agents of covered foreign nations to nonpublic areas of covered facilities.
- Covered Foreign Nations:
 - (i) The People's Republic of China.
 - (ii) The Russian Federation.
 - (iii) The Islamic Republic of Iran.
 - (iv) The Democratic People's Republic of Korea.
- Covered Facilities:
 - (A) a national security laboratory;
 - (B) a nuclear weapons production facility; or
 - (C) a site that directly supports the protection, development, sustainment, or disposal of technologies or materials related to the provision of nuclear propulsion for United States naval vessels.







• Exclusions:

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- IAEA Inspectors
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- Implementation challenges:
 - Facilities
 - Employees / Contractors / Visitors
 - Waivers
 - What might come next?

Compliance & Risk Mitigation in a Managed Research Environment



FLURRY OF ACTIVITY

Legislation

Committee Hearings

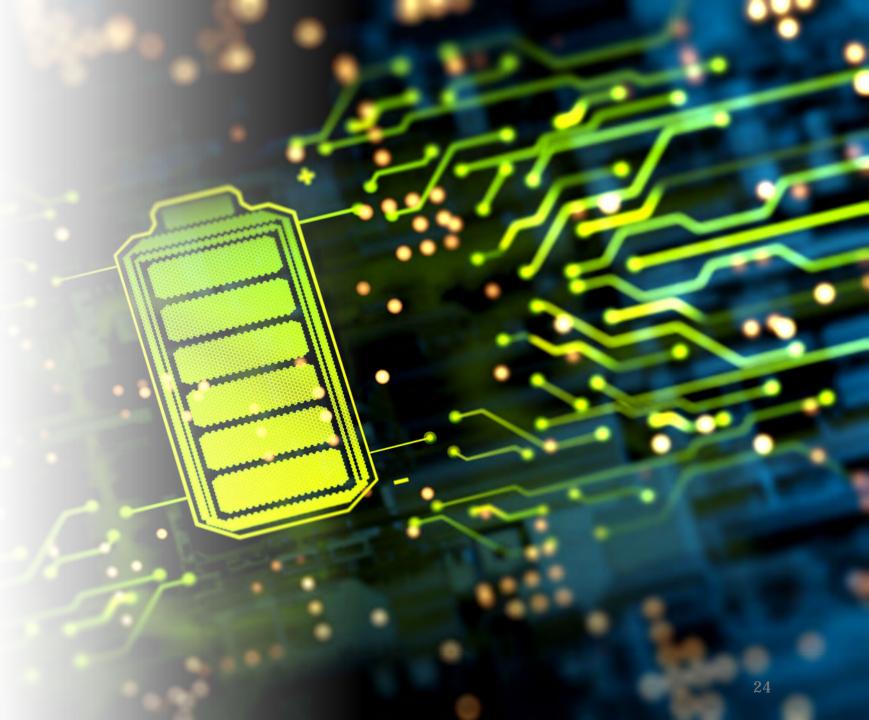
Department of Energy Orders / Memos

Executive Orders

Media

• •





NEW LEXICON – effective April 15, 2025

MANAGED RESEARCH ECOSYSTEM

SENSITIVE COUNTRIES

- State Sponsors of Terrorism (SSTs)
- Countries of Risk (not previously Sensitive Countries List)
- Other Designated Countries (new category)

POTENTIAL IMPACT

Facility Users, Other Visitors

• Site Access: pre-access and onsite mitigation requirements

Employees

- Travel
- Equipment Use
- CI Review







DOE ORDERS – Research Security

- DOE Policy 485.1 Foreign Engagements with DOE National Laboratories
- DOE Order 550.1 Official Travel
- DOE Order 483.1 Cooperative Research and Development Agreements
- DOE Order 481.1E Strategic Partnership Projects
- DOE Order 142.3B Unclassified Foreign National Access Program
- DOE Order 486.1A Foreign Government Sponsored or Affiliated Activities
- DOE Order 205.1C DOE Cyber Security Program
- DOE Order 470.4B Safeguards and Security Program
- DOE Order 470.5 Insider Threat Program
- DOE Order 206.2 Identity, Credential, and Access Management

DRAFT DOE ORDER 142.3c

PROPOSED CHANGES (to DOE O 142.3b):

- Clarifies that remote access is covered by order
- Requires additional background information from FN applicant
- Indices checks for SCL prior to access (except for user agreements)
- Prohibits COR hosts for SSTs
- Requires CI consultation
- FN host must have expertise sufficient to comprehend activities of visitor

SHELVED INDEFINITELY??







GATE ACT (pending legislation)

Guarding American Technology from Exploitation

- Sponsored by U.S. Senator Tom Cotton (Arkansas)
- Bans "covered foreign nationals" from China, Russia, Iran, North Korea and Cuba from visiting or working in National Labs
- "Covered foreign nationals" does not include legal permanent residents or naturalized citizens
- Prohibits access to premises, information and technology of the labs
- Revokes access approvals prior to effective date
- Establishes waiver process: risk/benefit certification, consultation and congressional notice





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2025 EXECUTIVE ORDERS

14159 Protecting the American People Against Invasion

14161 Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats

14163 Realigning the United States Refugee Admissions Program

14160 Protecting the Meaning and Value of American Citizenship

14165 Securing Our Borders

14188 Additional Measures to Combat Anti-Semitism

14169 Reevaluating and Realigning United States Foreign Aid

14179 Removing Barriers to American Leadership in Artificial Intelligence

14198 Progress on the Situation at Our Southern Border

14200 Amendment to Duties Addressing the Synthetic Opioid Supply Chain in the People's Republic of China 2.5

14204 Addressing Egregious Actions of The Republic of South Africa

14211 One Voice for America's Foreign Relations

14218 Ending Taxpayer Subsidization of Open Borders

14150 America First Policy Directive to the Secretary of State

14224 Designating English as the Official Language of The United States

14228 Further Amendment to Duties Addressing the Synthetic Opioid Supply Chain in the People's Republic of China





OTHER CONGRESSIONAL ACTION

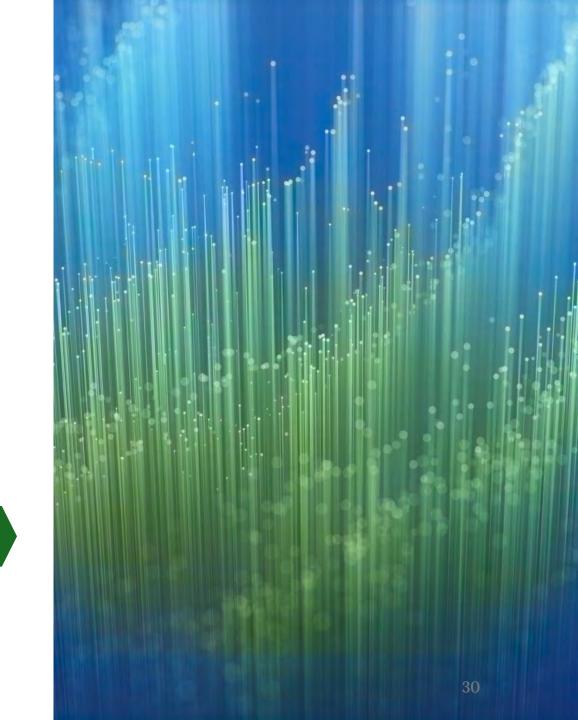
Energy Subcommittee Hearing -From Transformative Science to Technological Breakthroughs: DOE's National Laboratories Hearing to Examine Research
Security Risks Posed by Foreign
Nationals from Countries of
Risk Working at the Department
of Energy's National
Laboratories and Necessary
Mitigation Steps

12 Feb. 2025

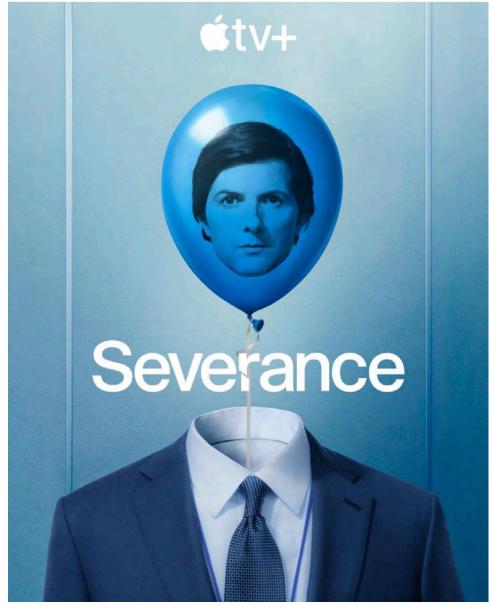
20 Feb. 2025







MEDIA (& Legal Implications)









MANAGED RESEARCH - Risks

EMPLOYMENT / PERSONNEL

- Title VII National Origin
- State / Local Human Rights Laws
- Travel
- Retention / Morale
- Recruitment (In)

SECURITY / MISSION

- Site Access / Facilities Use / Cyber
- Collaboration
- Publication
- Recruitment (Out)
- Mission Impact





MANAGED RESEARCH - Mitigation Strategies

- **Data**: partner with HR, Tech Transfer, Outreach, Security / CI teams
- Scenario Planning: data calls, RIFs, impact to mission
- **Policies**: review and update FNAP, cyber / IT and other related policies
- Review and update user agreements
- Listening Sessions
- Town Halls
- Work Share
- FAQs
- Immigration Counsel Sessions
- Immigration Orientation







Q&A and Discussion





Presenters



JOHN MCGAHREN
Partner
Morgan Lewis &
Bockius LLP



DEBBIE CARFORA Associate Morgan Lewis & Bockius LLP



JOSEPH S. CAMPBELL General Counsel Battelle Savannah River Alliance, LLC



OUINN WINDHAM
Associate General
Counsel
UT-Battelle, LLC
Oak Ridge National
Laboratory

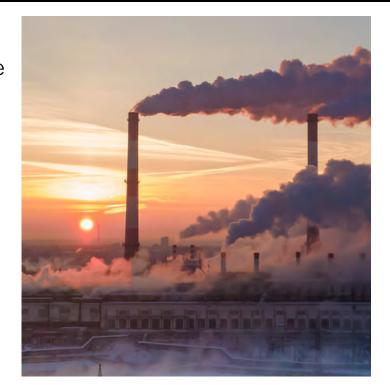


JILL FORTNEY Attorney Advisor Department of Energy

Morgan Lewis

Executive Orders and Other Initiatives Driving Environmental Priorities and Policies

- Unleashing Prosperity Through Deregulation
- 2. Ensuring Lawful Governance and Implementing the President's Department of Government Efficiency Deregulatory Initiative
- 3. Agency Reduction and Reorganization Plans
- 4. Powering the Great American Comeback Initiative



The State of Chemical Regulations

- Biden-era Procedures for Chemical Risk Evaluation Under the Toxic Substances Control Act (TSCA)
 - On March 10, the EPA announced plans to begin rulemaking to reconsider the 2024 TSCA risk evaluation procedural rule.
- 2. Biden-era Implementation of Workplace Chemical Protection Programs (WCPPs)
 - The Methylene Chloride Example



Toxic Substances Control Act

Potential Impacts

Joseph Campbell

General Counsel, Battelle Savannah River Alliance, LLC /

Savannah River National Laboratory

April 16, 2025

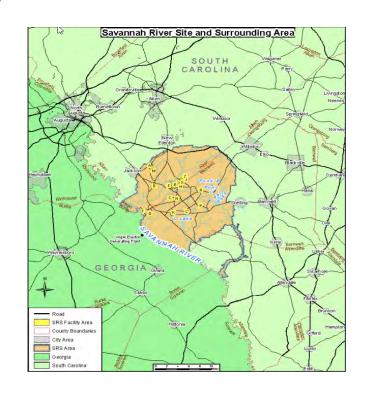




Savannah River Site (SRS) Overview

SRS borders the Savannah River and encompasses about 310 square miles of Aiken, Allendale, and Barnwell counties in South Carolina. SRS is about 12 miles south of Aiken, South Carolina, and 15 miles southeast of Augusta, Georgia. The Savannah River flows along the Site's southwestern border.

Effective October 1, 2024, the primary authority, accountability, and Site stewardship responsibility for SRS transitioned from DOE-EM to NNSA.



Site Entities

Contractors		Responsibilities
Savannah River Nuclear Solutions (SRNS) is the SRS management and operations (M&O) contractor	Savannah River NUCLEAR SOLUTIONS	Site oversight, ensuring safe and efficient operations at SRS, managing landlord services and supporting both DOE-EM cleanup (excluding liquid waste operations) and NNSA activities.
Battelle Savannah River Alliance (BSRA) is the M&O contractor for the Savannah River National Laboratory (SRNL)	Savannah River National Laboratory	Applied research and development in environmental remediation and risk reduction, nuclear materials processing and disposition, nuclear detection and national security, and clean energy applications.
Savannah River Mission Completion (SRMC) is the liquid waste operations contractor	SRMC	Responsible for treating and disposing of radioactive liquid waste and tank closures.
Centerra-SRS is the onsite security force.	CENTERIA SAGMANAH MONDA SITE	Uniformed force to protect DOE and NNSA security interests at the Site.

Tenants		
U.S. Department of Agriculture	Oversees SRS's natural	
(USDA) U.S. Forest Service-	resources through an	
Savannah River (USFS-SR)	interagency agreement with	
	DOE-SR	
University of Georgia (UGA)	Operates the Savannah River	
	Ecology Laboratory (SREL)	
University of South Carolina	Oversees the Savannah River	
(USC)	Archaeological Research	
	Program (SRARP)	
Ameresco Federal Services	Maintains a cogeneration power	
	plant that uses renewable	
	materials to supply steam,	
	eliminating the need for coal.	

TSCA and SRNL





TSCA Chemical Substance Inventory

The Toxic Substances Control Act
(TSCA) Chemical Substance Inventory contains
all existing chemical substances manufactured,
processed, or imported in the United States
that do not qualify for an exemption or
exclusion under TSCA. This may be your
starting place for interaction with EPA on TSCA
regulatory matters.



The New "TSCA"

The Toxic Substances Control Act of 1976 provides EPA with authority to require reporting, record-keeping and testing requirements, and restrictions relating to chemical substances and/or mixtures. Certain substances are generally excluded from TSCA, including, among others, food, drugs, cosmetics and pesticides.

Most notably, TSCA addresses the production, importation, use, and disposal of specific chemicals including polychlorinated biphenyls (PCBs), asbestos, radon and lead-based paint.

On June 22, 2016, the Frank R. Lautenberg Chemical Safety for the 21st Century Act (Lautenberg Chemical Safety Act) was signed into law amending TSCA.

The new law included:

- Mandatory requirement for EPA to evaluate existing chemicals with clear and enforceable deadlines,
- Risk-based chemical assessments,
- Increased public transparency for chemical information, and
- Consistent source of funding for EPA to carry out the responsibilities under the new law.

EPA to develop regulatory requirements so that the chemical no longer presents unreasonable risk.

SRS Existing TSCA Programs

• SRS had PCB, Asbestos, and Lead programs but, other than TRI Reporting, did not focus on these new TSCA evaluations.

Example-- Asbestos 1 (Chrysotile Gaskets)

- Realization that TSCA risk evaluation and risk management activities could significantly impact our operations.
- December 2023 through March 2024 SRNS worked closely with DOE-EM and DOE-HQ to successfully obtain SRS exemption in the final rulemaking:
 - "(ii) Any person may commercially use chrysotile asbestos sheet gaskets for processing nuclear material at the Savannah River Site until December 31, 2037."

SRS Compliance with TSCA 3.3.4 Toxic Substances Control Act (TSCA)

SRS complies with Toxic Substances Control Act (TSCA) regulations when storing and disposing of lead, asbestos, and organic chemicals, including polychlorinated biphenyl (PCBs)...

In April 2024, EPA finalized prohibitions and workplace protections under TSCA for methylene chloride to protect human health for specific conditions of use. SRS has several facilities that will continue to use methylene chloride under a Workplace Chemical Protection Program (WCPP). These include use as a laboratory chemical and use in solvent welding.

In December 2024, EPA finalized prohibitions and workplace protections under TSCA for trichloroethylene, perchloroethylene, and carbon tetrachloride. Similar to methylene chloride, SRS is assessing its conditions of use for these chemicals to determine if their future use is prohibited or allowed under a WCPP. If allowed, SRS facilities will develop WCPPs in accordance with the compliance schedule identified in the regulations.

Morgan Lewis

SRS TSCA Workgroup WCPP Development SubCommittee

Compliance with WCPP determined by Industrial Hygiene (IH) Testing

- WCPP is similar to a Chemical Hygiene Plan (CHP) required by OSHA Lab standard
- Requires initial and periodic exposure monitoring
- Requires an "Exposure Control Plan" for any exposures above the "Action Level"
- Some ECEL limits are much lower than any existing occupational exposure limits
- Important to ensure the user has the capability to detect to these limits with current instruments and/or analytical methods
- If samples for exposure need to be sent to an offsite IH Lab, does the lab have the capability to analyze to these new exposure limits. Is a contract for the work in place?
- Deadlines set for initial compliance established for each chemical

COMPLIANCE GUIDE FOR THE WORKPLACE CHEMICAL PROTECTION PROGRAM UNDER THE TOXIC SUBSTANCES CONTROLACT (TSCA)

EPA Workplace Chemical Protection Program (WCPP)

Broader workplace environments where individuals may be exposed to chemicals regulated under **TCSA**

Focus

Morgan Lewi

To establish safe working practices and procedures for laboratory personnel, ensuring compliance with OSHA's Laboratory

Standard (29 CFR

1910.1450).

Purpose

-Hazard identification and assessment

Content

- -Control measures (e.g., engineering controls, administrative controls, PPE)
- -Training and communication
- -Emergency procedures

Applies to all individuals in the workplace who have the potentia for exposure to a chemical regulated under TCSA

Scope

OSHA Chemical Hygiene Plan (CHP)

Focus

Laboratory

hazardous

settings where

chemicals are

used, stored, or

To establish safe working practices and procedures for laboratory personnel, ensuring

Purpose

handled. ensuring compliance with OSHA's Laboratory

Standard (29 CFR 1910.1450).

Content

-Standard operating procedures (SOPs)

-Control measures (e.g., fume hoods, ventilation)

-Personal protective equipment (PPE) requirements

-Information and training for employees

-Procedures for prior approval for high-hazard work

-Medical consultations and examinations

Scope

Applies to all laboratories that use, store, or handle potentially hazardous chemicals and all personnel who work in these facilities.

Morgan Lew

SRNL Uses of Methylene Chloride

 GC/MS SVOA method - Methylene chloride is the primary solvent for organics analysis; its non-flammability and polarity make it an ideal solvent for high-rad tank waste analysis.

Non-flammable solvent used in research work with plutonium and TRU waste residue

 SRNL uses a maximum of ~20L per year, some years much less than that depending on the sample load.

SRNL Comments to Proposed MeCl₂ Rulemaking

SRNL commented on the proposed rulemaking on June 28, 2023, with three primary questions:

- 1. Clarification on Laboratory Chemicals condition of use in the R&D environment
- 2. Availability of methylene chloride for R&D research from vendors and distributors
- 3. Consideration of methylene chloride for DOE missions as essential to national security interests and critical infrastructure

Methylene Chloride

- Final Rule published in Federal Register 5/8/2024
- Effective Date: 7/8/2024
- Compliance required within 2.5 years
- 2016 identified as High Priority Chemical
- 2020 Risk Evaluation determined the MeCl₂ presents an unreasonable risk of injury to health under its conditions of use
- Proposed rulemaking in May 2023

Methylene Chloride

Final Rule

- Prohibits all manufacturing (including import), processing, and distribution in commerce of methylene chloride <u>for consumer use</u> other than for the paint and coating removal.
- Prohibits most industrial & commercial use except those conditions of use specifically listed in the Rule.
- Prohibitions begin as early as February 2025 for distributing in commerce any MeCl₂ or MeCl₂-containing products to retailers

Federal Register :: Methylene Chloride; Regulation Under the Toxic Substances Control Act (TSCA)

Conditions of Use (not prohibited)

Uses that are <u>not</u> prohibited could continue with strong, achievable, worker protections:

- Manufacturing (Domestic)
- Manufacturing (Import)
- Processing: processing as a reactant (AIM Act refrigerants)
- Processing: incorporation into a formulation, mixture, or reaction products
- Processing: recycling
- Processing: repackaging
- Industrial and commercial use as a laboratory chemical (includes R&D use)
- Industrial and commercial use as a paint and coating remover from safety critical, corrosionsensitive components of aircraft and spacecraft owned or operated by DOD, NASA, DHS, FAA
- Industrial or commercial use as a bonding agent in the production of specialty batteries for military or space applications
- Disposal

Workplace Chemical Protection Program (WCPP)

- No person to be exposed to airborne concentrations of methylene chloride above the allowable limits
- Proposed (now final) inhalation exposure limits (Existing Chemical Exposure Limit, or ECEL):
 - 8-hour time-weighted average (TWA): 2 ppm (OSHA is 25 ppm) (action level = 1 ppm)
 - 15-minute TWA: 16 ppm (OSHA is 125 ppm)
- Additionally includes monitoring, recordkeeping requirements, dermal requirements
- Compliance required within 2.5 years for Federal facilities; earlier for other industrial/commercial facilities
- Written WCPP
- Initial monitoring required; repeat monitoring every 5 years if < action levels

SRNL TSCA Compliance Report



- 1. Utilize CHMEMS chemical inventory for chemicals
- 2. Contact Researchers with chemical inventory or use
- Issue communications to raise awareness within SRNL
- 4. Determine use and number of days used per year
- 5. Ask if there is an alternative chemical
- Develop written "Workplace Chemical Protection Program"
- 7. Schedule exposure monitoring for compliance with the ECEL (exposure limit)
- 8. Develop an "Exposure Control Plan" if necessary
- 9. Develop a disposal plan if necessary
- 10. Consider marking chemicals in inventory as TSCA
- 11. Establish purchase control measures (approval to purchase)



Individual Contractor Efforts - SRNS

- Developed a system of CHMEMS reporting as new chemicals were identified
- Reached back to individual SRNS chemical users to determine criticality of particular chemical
- Raise awareness to Design Engineering about potential future chemical limitations or unavailability
- Prepare sitewide Environmental Bulletins for site contractors/tenants explaining the rulemaking, its potential impacts, and requirements.
- Participate in DOE-HQ and EPA work groups
- Track TSCA regulations

Moving Forward

- Continue to track TSCA chemicals and provide input regarding impacts on operations as early as possible
- Work as cooperatively as possible
- Adjust to changing regulatory climate as needed
- Develop and issue Environmental Bulletins for new chemicals
- Continue to develop WCPPs; implement as required
- Maintain engagement with HQ and other work groups to foster knowledge and best practices



The State of Chemical Regulations Continued

- 3. Legal challenges to Biden-era chemical rules
 - East Fork Enterprises, et al., v. EPA (Methylene Chloride)
 - United Steel, et al., v. EPA (TCE)
- 4. Congressional Review Act

National Enforcement and Compliance Initiatives

- Highest level of hazardous air pollutants affecting human health relative to other areas
- Inspections for high-risk facilities
- PFAS continues to be a hot button topic
- Unlawful import and subsequent sale of hydrofluorocarbons (HFCs)
- EPA may not "shut down any stage of energy production ... or power generation absent an imminent and substantial threat to human health or an express statutory or regulatory requirement."
- Cannot burden or significantly disrupt energy production or power generation
- Concurrence before any enforcement actions regarding a requirement of a rule under reconsideration are taken

Potential Impacts and Next Steps

- Rolling back and revising regulations will likely go through public notice and comment.
- EPA staffing levels could prolong the timelines for regulatory changes.
- Current rules will remain in place until any new regulations take effect.
- Prolonged legal battles will increase uncertainty around targeted regulations and compliance efforts.
- Enforcement discretion may allow time to understand and adhere to forthcoming regulatory changes.
- Important to monitor state-level regulatory and legislative developments, as states may respond to federal deregulation by introducing additional restrictions and requirements for chemicals.

DEI Update:

The Evolution of Law on Diversity, Equity, and Inclusion Efforts in the Workplace

2025 Spring DOECCA Conference April 16, 2025



Ryan T. Shannon



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Roadmap

1. Where have we been?

2. Where are we going?





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Title VII of the Civil Rights Act of 1964



- (a) Employer practices. It shall be an unlawful employment practice for an employer—
- (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
- (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.



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What did Title VII do really?

- Create a "colorblind" workplace?
- Set out a minimum requirement for the larger goal of diversity in the workplace?







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1978 Regents of Univ. of California v. Bakke

Facts

- Two admissions programs: the regular admissions program and the special admissions program.
- Applicants in the special admissions program were not measured against those in the regular admissions program.
- Admissions spots were set aside for the special admissions program.
- Bakke was rejected twice.



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1978

Regents of Univ. of California v. Bakke Justice Powell's Opinion

- Title VI was enacted directly in response to the discrimination against Black persons with the use of federal money.
- Strict scrutiny applies under the Equal Protection Clause.
- Goal of achieving a diverse student body is a compelling interest.
- But the special admissions program goes too far.



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1979 United Steelworkers v. Weber

Facts

- Kaiser's skilled craft workforce was almost exclusively white.
- CBA included affirmative action plan.
- 50 percent of openings in training programs were reserved for Black employees.



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1979 United Steelworkers v. Weber

Supreme Court

- Rejected a "literal" interpretation of Title VII.
- The affirmative action plan does not violate Title VII.
- The plan was limited and temporary.



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Johnson v. Transportation Agency Facts

- The Transportation Agency adopted an affirmative action plan to promote minorities and women into positions within a traditionally segregated job classification.
- Paul Johnson was passed over for a promotion in favor of a female employee applicant.
- The Transportation Agency hired a female applicant over Johnson, though Johnson appeared to have more and more relevant experience and scored better on the interview.



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1987

Johnson v. Transportation Agency

Supreme Court

- Followed the criteria announced in Steelworkers v. Weber
- Consideration of sex as one factor in a promotion decision does not violate Title VII.
- Compared the Transportation Agency's plan to the Harvard Plan



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2023 SFFA v. Harvard

Facts

- Harvard and the University of North Carolina used affirmative action in their admissions plans.
- While race was only a "plus" in considering an applicant for admission, it could be a determinative tipping point.
- Students for Fair Admissions claim these affirmative action plans violate the Equal Protection Clause and Title VI of the Civil Rights Act.



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2023 SFFA v. Harvard

Supreme Court

- Emphasizes that the Equal Protection Clause eliminates *all* racial discrimination.
- Finds Harvard's and UNC's affirmative action plans violate the Equal Protection Clause.
- Programs lacked measurable objectives, employ race in a negative manner, involve racial stereotyping, lack meaningful endpoints.
- Widely understood to effectively end the use of race in college admissions.



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What does *SFFA* mean for affirmative action in employment?



- Justice Gorsuch's concurring opinion lays the groundwork for applying *SFFA* to Title VII.
- Circuit court opinions following Justice Gorsuch's lead on Title VII.
- College admissions affirmative action jurisprudence and employment affirmative action jurisprudence have generally tracked with one another.
- *SFFA* lawyers sued two large law firms alleging that their fellowship programs violated Section 1981 of the Civil Rights Act of 1866.



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Trump Administration Enforcement

- Executive Orders
- Seeking enforcement against entities that rely on federal funding.







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Trump Administration Enforcement

GEORGIA RECORDER =

GOVERNMENT/POLITICS ENERGY/ENVIRONMENT EDUCATION HEALTH CRIMINAL JUSTICE CIVIL RIGHTS

DC BUREAU

States ordered by U.S. Education Department to certify school DEI ban or lose funds

BY: SHAUNEEN MIRANDA - APRIL 3, 2025 1:47 PM





UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

April 3, 2025

Reminder of Legal Obligations Undertaken in Exchange for Receiving Federal Financial Assistance and Request for Certification under Title VI and SFFA v. Harvard

Requested Certification:

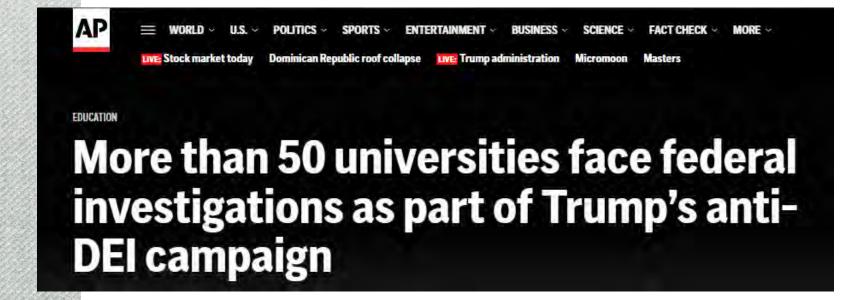
On behalf of [SEA/LEA], I acknowledge that I have received and reviewed this Reminder of Legal Obligations Undertaken in Exchange for Receiving Federal Financial Assistance and Request for Certification under Title VI and SFFA v. Harvard. I further acknowledge that compliance with the below and the assurances referred to, as well as this certification, constitute a material condition for the continued receipt of federal financial assistance, and therefore certify our compliance with the below legal obligations.



Trump Administration Enforcement

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- EO: "Ending Illegal Discrimination and Restoring Merit-Based Opportunity"
- "I further order all agencies to enforce our longstanding civil-rights laws and to combat illegal private-sector DEI preferences, mandates, policies, programs, and activities."
- Directs AG to submit recommendations for enforcing civil rights laws against the private sector by May 21.



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Trump Administration Enforcement

• Executive Order targeting law firm DEI practices

In addition to undermining democratic elections, the integrity of our courts, and honest law enforcement, Perkins Coie racially discriminates against its own attorneys and staff, and against applicants. Perkins Coie publicly announced percentage quotas in 2019 for hiring and promotion on the basis of race and other categories prohibited by civil rights laws. It proudly excluded applicants on the basis of race for its fellowships, and it maintained these discriminatory practices until applicants harmed by them finally sued to enforce change.

My Administration is committed to ending discrimination under "diversity, equity, and inclusion" policies and ensuring that Federal benefits support the laws and policies of the United States, including those laws and policies promoting our national security and respecting the democratic process. Those who engage in blatant race-based and sex-based discrimination, including quotas, but purposefully hide the nature of such discrimination through deceiving language, have engaged in a serious violation of the public trust. Their disrespect for the bedrock principle of equality represents good cause to conclude that they neither have access to our Nation's secrets nor be deemed responsible stewards of any Federal funds.





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Trump Administration Enforcement

FOR IMMEDIATE RELEASE

March 19, 2025

EEOC and Justice Department Warn Against Unlawful DEI-Related Discrimination

Employers' DEI Policies, Programs, and Practices Can Violate Title VII of the Civil Rights Act of 1964

WASHINGTON – Today, the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Justice (DOJ) released two technical assistance documents focused on educating the public about unlawful discrimination related to "diversity, equity, and inclusion" (DEI) in the workplace.

DEI is a broad term that is not defined in <u>Title VII of the Civil Rights Act of 1964</u>. Title VII prohibits employment discrimination based on protected characteristics such as race and sex. Under Title VII, DEI initiatives, policies, programs, or practices may be unlawful if they involve an employer or other covered entity taking an employment action motivated—in whole or in part—by an employee's or applicant's race, sex, or another protected characteristic.

In the past five years, DEI policies, programs, and practices have become increasingly prevalent in many of our nation's largest and most prominent businesses, universities, and cultural institutions. The widespread adoption of DEI, however, does not change longstanding legal prohibitions against the use of race, sex, and other protected characteristics in employment.



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Trump Administration Enforcement

8. Can an employer excuse its DEI-related considerations of race, sex, or another protected characteristic, provided that the protected characteristic wasn't the sole or deciding factor for the employer's decision or employment action?

No. For there to be unlawful discrimination, race or sex (or any other protected characteristic under Title VII) does not have to be the exclusive (sole) reason for an employer's employment action or the "but-for" (deciding) factor for the action. An employment action still is unlawful even if race, sex, or another Title VII protected characteristic was just one factor among other factors contributing to the employer's decision or action.[34]







KNOXVILLE MEMPHIS NASHVILLE 9. Can an employer justify taking an employment action based on race, sex, or another protected characteristic because the employer has a business necessity or interest in "diversity," including preferences or requests by the employer's clients or customers?

No. Employers violate Title VII if they take an employment action motivated—in whole or in part—by race, sex, or another protected characteristic.[35] Title VII explicitly provides that a "demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination."[36]

In particular, client or customer preference is not a defense to race or color discrimination. [37] Basing employment decisions on the racial preferences of clients, customers, or coworkers constitutes intentional race discrimination. Employment decisions based on the discriminatory preferences of clients, customers, or coworkers are just as unlawful as decisions based on an employer's own discriminatory preferences. [38]

Title VII allows employers to raise a bona fide occupational qualification (BFOQ) as an affirmative defense in very limited circumstances to excuse hiring or classifying any individual based on religion, sex, or national origin. The exemption applies where religion, sex, or national origin is a bona fide occupational qualification "reasonably necessary to the normal operation of that particular business or enterprise." However, this very limited carve-out for BFOQ excludes race and color.[39]

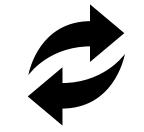
Title VII does not provide any "diversity interest" exception to these rules. Nor has the Supreme Court ever adopted such an exception. No general business interests in diversity and equity (including perceived operational benefits or customer/client preference) have ever been found by the Supreme Court or the EEOC to be sufficient to allow racemotivated employment actions. [40]



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End of Heightened Burden Requirement?

Supreme Court Poised to Rule for Straight Woman in Discrimination Case



Justices across the ideological spectrum and lawyers on both sides agreed that an appeals court erred in requiring members of majority groups to meet a heightened burden.

4. Do Title VII's protections only apply to individuals who are part of a "minority group," (such as racial or ethnic minorities, workers with non-American national origins, "diverse" employees, or "historically under-represented groups"), women, or some other subset of individuals?

No. Title VII's protections apply equally to all workers. Different treatment based on race, sex, or another protected characteristic can be unlawful discrimination, no matter which employees or applicants are harmed.[4] This has been the long-standing position of the EEOC and the Supreme Court.[5]

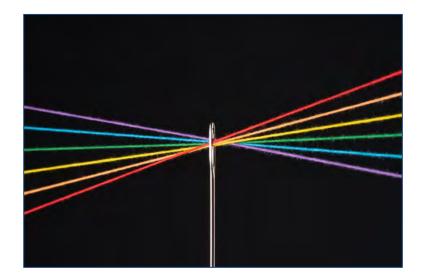
The EEOC does not require a higher showing of proof for so-called "reverse" discrimination claims. [6] The EEOC's position is that there is no such thing as "reverse" discrimination; there is only discrimination. The EEOC applies the same standard of proof to all race discrimination claims, regardless of the victim's race. [7]



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Key Takeaways

- Prepare for any consideration of race, color, religion, sex, or national origin, to be declared in violation of Title VII.
- But do not overreact or overcorrect.





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Key Takeaways

- Merit Based
- "All Backgrounds"



Unlawful limiting, segregating, or classifying workers related to DEI can arise when employers separate workers into groups based on race, sex, or another protected characteristic when administering DEI or any trainings, workplace programming, or other privileges of employment, even if the separate groups receive the same programming content or amount of employer resources.[31]

Employers instead should provide "training and mentoring that provides workers of all backgrounds the opportunity, skill, experience, and information necessary to perform well, and to ascend to upper-level jobs." [32] Employers also should ensure that "employees of all backgrounds . . . have equal access to workplace networks." [33]



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Questions or Comments?

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*The contents of this presentation are for informational purposes and should not be considered legal advice. This presentation does not establish an attorneyclient relationship.



DEVELOPMENTS IN EMPLOYMENT LAW: FEDERAL CONTRACTORS AND E.O. 14173

DOECCA SPRING 2025 CONFERENCE APRIL 16, 2025

MIKE EASTMAN (meastman@easiconsultants.com)

ABOUT EMPLOYMENT ADVISORY SERVICES, INC. (EASI)

For more than 35 years, our team of experienced analysts and consultants have partnered with employers of all sizes and across all industries to help them proactively identify, assess, and mitigate their employment discrimination risks and to ensure they have strong civil rights compliance programs in place.

All materials presented at this conference and discussions based upon them are designed to provide accurate information regarding the subject matters covered. They are provided with the understanding that EASI is not engaged in rendering legal, accounting, or similar services.

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PRIMARY FEDERAL CONTRACTOR CONCERNS

- Real world impact of E.O. 14173
 - Rescission of E.O. 11246
 - New contractor responsibilities
- False Claims Act essentials
- What is no longer required
- What is still required
- Addressing common questions
- Assessing DEI practices



RESCISSION OF E.O. 11246

- On January 21, 2025, President Trump signed E.O. 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, a new E.O. that:
 - Formally rescinded E.O. 11246, among many other orders
 - Directed all federal agencies to enforce "longstanding civil-rights laws and to combat illegal private-sector DEI preferences, mandates, policies, programs, and activities"
 - Directed OFCCP to cease:
 - Holding contractors and subcontractors responsible for taking "affirmative action"
 - Promoting "diversity"
 - Allowing or encouraging contractors and subcontractors to engage in workforce balancing based on race, color, sex, sexual preference, religion, or national origin



NEW CONTRACTOR RESPONSIBILITIES

- The new Executive Order doesn't simply rescind E.O. 11246, but further requires:
 - Federal agencies to insert into federal contracts and grant awards a contract clause requiring the contractor or grant recipient to
 - Agree that compliance with federal anti-discrimination laws is "material to the government's payment decisions" under the False Claims Act
 - Certify they do not "operate any programs promoting DEI that violate any applicable federal anti-discrimination laws"



FALSE CLAIMS ACT ESSENTIALS

- Incentivizes private claimants to enforce government contracts
 - Successful claimants can receive up to 30% of amounts recovered
- One risk for government contractors:
 - False certification is a theory of liability under the FCA where companies falsely claim that they are complying with the requirements of a government contract
 - o False certification can be implied or explicit



FALSE CLAIMS ACT ESSENTIALS

- One element of a FCA claim is "knowledge"
- The law seeks to hold "ostrich" individuals accountable who bury their heads in the sand and fail to make simple inquiries that would make them aware of false claims
- Limited inquiry required
 - "[I]ndividuals and contractors receiving public funds have some duty to make a limited inquiry so as to be reasonably certain they are entitled to the money they seek."
 - The "inquiry need only be reasonable and prudent under the circumstances."



SHORT TERM IMPACT

- Following the rescission of EO 11246 federal contractors are no longer required to:
 - Develop race and sex AAPs pursuant to 41 C.F.R. Parts 60-2 and 60-4
 - Notify applicants that they "will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin"
 - Insert the EO 11246 "flow down" clause into covered subcontractors and purchase orders
 - Post OFCCP's "Pay Transparency Nondiscrimination Provision"
 - Retain the records required of OFCCP's Internet Applicant Rule
 - Produce records to OFCCP on any of the above requirements



SHORT TERM IMPACT

- Following the rescission of EO 11246 federal contractors are still required to:
 - Comply with state and local nondiscrimination and affirmative action obligations
 - Comply with state and local pay reporting requirements
 - File EEO-1 reports
 - File VETS-4212 reports (assuming jurisdiction thresholds are met)
 - Prepare Disability and Veterans affirmative action programs and comply with OFCCP's implementing regulations (again, assuming jurisdiction thresholds are met)



IMPLEMENTATION AND ENFORCEMENT

Contracting agencies moving forward with new contract clauses

Compliance Statements:

In compliance with Executive Order, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, dated January 21, 2025, the contractor agrees that its compliance in all respects with applicable Federal anti-discrimination laws is material to the government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code; and, by virtue of submitting a quote/offer, the contractor certifies that it does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws."



IMPLEMENTATION AND ENFORCEMENT

- One-off agency enforcement of equal employment rules focusing on DEI measures
 - Equal Employment Opportunity Commission
 - Federal Communications Commission
- Role for OFCCP?
 - No express role, but...

OFCCP will implement "all enforcement options" to ensure that federal contractors have "wound down" their E.O. 11246 AAPs

Catherine Eschbach, OFCCP Director email to staff, March 24, 2025



Do I have to "unwind" my AAPs by April 20th?



- Do I have to "unwind" my AAPs by April 20th?
 - There are a handful of thing prudent employers should be doing to prepare for a post-11246 world
 - Stop distributing female and minority goals to leaders and TA
 - o Revise the EO "flow down" clause to remove references to E.O. 11246
 - Review and perhaps revise your organization's EEO/AA policies
 - o Review and perhaps revise your organization's vendor notification templates
 - o Review and perhaps revise the organization's union notification template
 - Review your organization's EO "tagline" to remove references to female/minority affirmative action
 - Remove OFCCP's "Pay Transparency Nondiscrimination Provision"
 - Monitor for an updated version of EEOC's "Know Your Rights" poster



- Do I have to "unwind" my AAPs by April 20th?
- What is "illegal" DEI?



- Do I have to "unwind" my AAPs by April 20th?
- What is "illegal" DEI?
 - The Administration has not been able to answer that question
 - Our "working" definition is
 - Any policy, program, or practice that requires, encourages, incentivizes, or results in employment decisions based on or because of a federally protected characteristic, such as race or sex



- Do I have to "unwind" my AAPs by April 20th?
- What is "illegal" DEI?
- Can there be "legal" DEI?
 - Yes, and the courts agree. A 2024 decision by the U.S. Court of Appeals for the Fourth Circuit indicates that there are such things as lawful diversity and inclusion programs:

"To be clear, employers may, if they so choose, utilize D&I-type programs. What they cannot do is take adverse employment actions against employees based on their race or gender to implement such a program. And as recounted above, the evidence presented at trial in this case was more than sufficient for a reasonable jury to conclude that is precisely what Novant Health did to Duvall."

Duvall v. Novant Health, Inc., 95 F.4th 778, 791 n.10 (4th Cir. 2024).



- Do I have to "unwind" my AAPs by April 20th?
- What is "illegal" DEI?
- Can there be "legal" DEI?
- Is Congress considering legislation to codify E.O. 11246?



ADDRESSING COMMON QUESTIONS

- Do I have to "unwind" my AAPs by April 20th?
- What is "illegal" DEI?
- Can there be "legal" DEI?
- Is Congress considering legislation to codify E.O. 11246?
- Can I continue to establish equal opportunity monitoring programs?
 - Yes. E.O. 14173 does not prohibit federal contractors from taking lawful, proactive steps to monitor compliance with applicable federal nondiscrimination requirements, and there are compelling reasons for federal contractors to continue doing so



ADDRESSING COMMON QUESTIONS

- Do I have to "unwind" my AAPs by April 20th?
- What is "illegal" DEI?
- Can there be "legal" DEI?
- Is Congress considering legislation to codify E.O. 11246?
- Can I continue to establish equal opportunity monitoring programs?
- Can I continue engaging in targeted outreach?
 - E.O. 14173 does not prohibit federal contractors from engaging in targeted outreach and recruitment activities designed to ensure that all qualified individuals have an opportunity to apply for open positions



ADDRESSING COMMON QUESTIONS

- Do I have to "unwind" my AAPs by April 20th?
- What is "illegal" DEI?
- Can there be "legal" DEI?
- Is Congress considering legislation to codify E.O. 11246?
- Can I continue to establish equal opportunity monitoring programs?
- Can I continue engaging in targeted outreach?
- Others?



ASSESSING DEI PRACTICES



Evaluate Identify Determine Assess Scrutinize Does the policy or Highest legal and Is the characteristic Does the policy or practice impact a Does the policy or reputational risk: practice involve the race, color, religion, practice limit eligibility hiring, promotion, consider eliminating, use of one or more sex, sexual orientation, separation or to certain demographic revising, or re-evaluating gender identity, or protected to ensure proper legal groups? compensation characteristics? national origin? scrutiny has been met. decision? Does implementation Moderate legal and Does the policy or Does the policy or of the policy or reputational risk: practice impact a practice negatively practice promote scrutinize whether policy N impact or stereotype term, condition or inclusion of or identify or practice is inclusive in veterans or individuals privilege of name only; consider some (but not all) with disabilities? employment? revising to mitigate risk. demographic groups? Lower legal and Lower legal risk; Lower legal risk; Little to no legal or reputational risk varies reputational risk varies reputational risk: reputational risk: based on visibility, based on visibility, carefully review to carefully review the language, current cultural language, current cultural ensure compliance or political climate: or political climate: language used and with other legal carefully review to ensure carefully review to ensure continue to monitor. obligations. neutrality. neutrality.



Identify

Determine

Evaluate

Assess

Scrutinize

Does the policy or practice involve the use of one or more protected characteristics?

N

Little to no legal or

reputational risk:

carefully review the

language used and

continue to monitor.

Examples may include:

EEO Policies

EO Taglines

Community Engagement

EEO/Harassment Training

Is the characteristic race, color, religion, sex, sexual orientation, gender identity, or

Does the policy or practice negatively impact or stereotype veterans or individuals with disabilities?

national origin?

Lower legal and reputational risk: carefully review to ensure compliance with other legal obligations.

Examples may include:

Veteran Hiring Initiatives Disability Inclusion Programs Does the policy or practice impact a hiring, promotion, separation or compensation decision?

Does the policy or practice impact a term, condition or privilege of employment?

Lower legal risk;
reputational risk varies
based on visibility,
language, current cultural
or political climate:
carefully review to ensure
neutrality.

Examples may include:

Representation Analytics Publishing Demographic Data Without "Goals" Does the policy or practice limit eligibility to certain demographic groups?

Does implementation of the policy or practice promote inclusion of or identify some (but not all) demographic groups?

Lower legal risk;
reputational risk varies
based on visibility,
language, current cultural
or political climate:
carefully review to ensure
neutrality.

Examples may include:

Some DEI or Bias Training Pronoun Policies Highest legal and reputational risk: consider eliminating, revising, or re-evaluating to ensure proper legal scrutiny has been met.

Examples may include:

Hiring Quotas Closed ERGs Closed Promotional, Mentoring, or Training Opportunities

Moderate legal and reputational risk: scrutinize whether policy or practice is inclusive in name only; consider revising to mitigate risk.

Examples may include:

Open ERGs Some DEI or Bias Trainings Targeted Recruitment



QUESTIONS?





Speaker Bios





Stephanie Barna

Stephanie Barna draws on over three decades of U.S. military and government service to provide advisory and advocacy support and counseling to clients facing policy and political challenges in the aerospace and defense sectors.

Prior to joining the firm, Stephanie was a senior leader on Capitol Hill and in the U.S. Department of

Defense (DoD). Most recently, she was General Counsel of the Senate Armed Services Committee, where she was responsible for the annual \$740 billion National Defense Authorization Act (NDAA). Additionally, she managed the Senate confirmation of three- and four-star military officers and civilians nominated by the President for appointment to senior political positions in DoD and the Department of Energy's national security nuclear enterprise, and was the Committee's lead for investigations.

Previously, as a senior executive in the Office of the Army General Counsel, Stephanie served as a legal advisor to three Army Secretaries. In 2014, Secretary of Defense Chuck Hagel appointed her to be the Principal Deputy Assistant Secretary of Defense for Manpower and Reserve Affairs. In that role, she was a principal advisor to the Secretary of Defense on all matters relating to civilian and military personnel, reserve integration, military community and family policy, and Total Force manpower and resources. Stephanie was later appointed by Secretary of Defense Jim Mattis to perform the duties of the Under Secretary of Defense for Personnel and Readiness, responsible for programs and funding of more than \$35 billion.

Stephanie was also previously the Deputy General Counsel for Operations and Personnel in the Office of the Army General Counsel. She led a team of senior lawyers in resolving the full spectrum of issues arising from Army wartime operations and the life cycle of Army military and civilian personnel. Stephanie was also a personal advisor to the Army Secretary on his institutional reorganization and business transformation initiatives and acted for the Secretary in investigating irregularities in fielding of the Multiple Launch Rocket System and classified contracts. She also played a key role in a number of

high-profile personnel investigations, including the WikiLeaks breach. Prior to her appointment as Deputy, she was Associate Deputy General Counsel (Operations and Personnel) and Acting Deputy General Counsel.

Stephanie is a retired Colonel in the U.S. Army and served in the U.S. Army Judge Advocate General's Corps as an Assistant to the General Counsel, Office of the Army General Counsel; Deputy Staff Judge Advocate, U.S. Army Special Forces Command (Airborne); Special Assistant to the Assistant Secretary of the Army (Manpower & Reserve Affairs); and General Law Attorney, Administrative Law Division.

Stephanie was selected by the National Academy of Public Administration for inclusion in its 2022 Class of Academy Fellows, in recognition of her years of public administration service and expertise.

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Robyn N. Burrows | Partner Government Contracts

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Robyn Burrows represents clients on a wide range of government contracts matters. Robyn has experience preparing and negotiating complex claims and has litigated disputes before the boards of contract appeals and state and federal courts. Robyn has a particular focus on emerging supply chain and cybersecurity issues and has counseled numerous clients on Section 889 compliance. She also provides counseling on cost/pricing issues, domestic preferences, protection of contractor data and intellectual property, and suspension and debarment matters. Robyn has experience navigating clients through False Claims Act investigations and regularly assists clients in high value bid protests before the Government Accountability Office and U.S. Court of Federal Claims.

Robyn has also developed particular experience with Department of Energy contracts, and has handled matters involving whistleblower complaints, civil investigative demands, subcontractor disputes, cost-allowability issues, and other unique DOE requirements applying to M&O contractors. She recently assisted in successfully representing an M&O contractor in resolving a significant subcontractor termination dispute in federal district court.

Before joining Blank Rome, Robyn represented construction clients in federal contracting matters. During law school, Robyn was a research editor for the *George Mason Law Review*. She interned with the Honorable R. Terrence Ney of the Fairfax County Circuit Court, and with the administrative judges at the Office of Hearings and Appeals of the U.S. Department of Housing and Urban Development.

Admissions

· District of Columbia

• Virginia

Memberships

- American Bar Association
- Board of Contract Appeals Bar Association
- Virginia Bar Association

Education

- Houghton College, BA, summa cum laude
- George Mason University School of Law, JD, cum laude

Recognitions

- 2024–2025, Ones to Watch, Commercial Litigation, listed in Best Lawyers in America©
- 2024, "Rising Star" in Government Contracts, listed in Law360
- 2023–2024, listed in The Legal 500 United States
- 2019–2020, listed in Capital Pro Bono Honor Roll

Professional Activities

Robyn is a member of the Public Contract Law Section of the American Bar Association, where she serves as: Vice Chair – Contract Claims & Disputes; and Vice-Chair – Cybersecurity, Privacy and Emerging Technology.

She was appointed to serve as Associate Editor for the section's quarterly *The Procurement Lawyer* journal for the 2021–2022 and 2022–2023 terms.

Robyn serves on the Washington, D.C. Bar Government Contracts Steering Committee.



Mr. Joseph Campbell

Mr. Campbell is the General Counsel for the Savannah River National Laboratory (SRNL) and Battelle Savannah River Alliance, LLC, a management and operations (M&O) contractor at the Savannah River Site. He leads the Office of General Counsel in identifying and managing legal and other risk-related challenges to ensure SRNL staff are well-positioned to focus on their mission: "Putting Science to Work." Mr. Campbell is a retired Special Agent of the Federal Bureau of Investigation. He also serves on the board of the Center for African American History, Art and Culture in Aiken, South Carolina.

Morgan Lewis



DEBRA CARFORA ASSOCIATE

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Debra Carfora represents national and international clients in complex litigation and crisis management, focusing on environmental, toxic tort, and administrative law matters before federal courts, including appellate courts. As a former trial attorney and senior trial counsel for the Environmental Defense Section of the Environmental and Natural Resources Division at the US Department of Justice, Debbie's practice focuses on environmental litigation and matters requiring complex statutory and regulatory interpretation. She is adept at negotiating and litigating matters involving government agencies or flowing from government agency actions and rulemakings.

Debbie served as lead counsel in a series of related cases brought by local governments, state agencies, and environmental organizations against a US agency asserting violations of the Clean Water Act (CWA) and the Resource Conservation and Recovery Act (RCRA) in connection with cross-border flows of polluted water from Tijuana, Mexico into San Diego County. Debbie led a trial team defending a challenge to the Environmental Protection Agency's (EPA's) denial of an administrative petition under the Toxic Substances Control Act (TSCA) and sat first chair in a de novo bench trial, the first such legal test under Congress's 2016 revisions to the law.

Debbie has briefed and argued several dispositive motions under the Administrative Procedure Act (APA) and contributed to numerous litigation teams defending claims brought under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Debbie has represented US agencies in complex settlement negotiations under the Clean Air Act, TSCA, CERCLA, CWA, and APA. In addition to litigating matters, Debbie was assigned to a multi-agency task force, including the Office of Management and Budget, that counseled a government agency related to significant rulemakings.

Debbie's years of experience handling high-profile environmental litigation and regulatory counseling make her a highly valued member of Morgan Lewis's environmental practice. She advises clients in connection with multiple CERCLA enforcement actions and related cost recovery and contribution litigation. She also advises clients regarding rules promulgated by the EPA under its TSCA authority. Debbie was a key player on a team that negotiated a favorable settlement in connection with allegations of negligent radiation exposure.

Through her years of practicing administrative law, Debbie has made significant contributions to cross-practice teams handling government negotiations and challenges to government agency rulemaking or adverse decision-making. Debbie is part of a litigation team advising a client in connection with a challenge to an adverse agency decision arising under the Employee Retirement Income Security Act.

Prior to attending law school, Debbie worked for ExxonMobil Corporation, an experience that makes Debbie uniquely positioned to quickly identify, understand, and propose solutions that address the needs of her clients and their downstream business partners.

Prior to beginning her legal practice, Debbie served as a law clerk to Judge George L. Russell, III in the US District Court for Maryland. Debbie also served as law clerk to Judge Anne K. Albright in the District Court of Maryland for Montgomery County. While attending the Catholic University of America Columbus School of Law, Debbie served as a notes and articles editor for the *Catholic University Law Review*.

AWARDS AND AFFILIATIONS

Former Trial Attorney and Senior Trial Counsel, US Department of Justice, Environment and Natural Resources Division, Environmental Defense Section (2015-2021)

ADMISSIONS

- District of Columbia
- Maryland
- New Jersey
- US Court of Appeals for the Third Circuit
- US District Court for the District of Maryland
- US District Court for the District of New Jersey

CLERKSHIPS

• Clerkship to Judge George L, Russell, III of the US District Court for the District of Maryland (2013 - 2015)

EDUCATION

- Catholic University of America, Columbus School of Law, 2012, J.D., magna cum laude
- West Chester University of Pennsylvania, 2000, B.A.

SERVICES

- Environmental Counseling & Litigation
- Litigation, Regulation & Investigations

REGIONS

North America

PUBLICATIONS

1/27/2025 - US Congress Employs Congressional Review Act to Target EPA Final Rule on TCE

12/3/2024 - EPA Releases Final National Strategy to Prevent Plastic Pollution

8/22/2024 - DC Circuit Makes Clear Loper Bright Did Not End Deference to Agency Factual Determinations

5/30/2024 - New TSCA Risk Rule Gives EPA Broad Discretion On Science, Law360

5/13/2024 - Risk Evaluation Rule Tees Up Litigation on How EPA Considers Chemical Use in Commerce

8/8/2023 - Recent EPA Actions Show Why Companies Must Understand Products' Individual Chemical Constituents

3/20/2023 - Reduce, Reuse, Regulate: The Current State of Plastic Waste Legislation in the United States

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Dominique L. Casimir | Partner Government Contracts

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CO-CHAIR, GENERAL LITIGATION PRACTICE GROUP

Dominique Casimir is a *Chambers*-ranked partner at Blank Rome LLP, where she serves as Co-Chair of the General Litigation practice group. She concentrates her practice on addressing the cascade of issues confronting government contractors today, including complex disputes, internal and government investigations, enforcement, litigation, suspension and debarment, and strategic counseling. Dominique's litigation experience is extensive, with notable successes in bid protests at the U.S. Court of Federal Claims, the Government Accountability Office, and the Federal Aviation Administration Office of Dispute Resolution for Acquisition, as well as in claims litigation before the Boards of Contract Appeal. She has a proven track record in significant government contracts litigation involving issues such as the statute of limitations, contractor key personnel matters, and the AbilityOne program. Additionally, Dominique has secured arbitration wins in prime-sub disputes and has facilitated efficient, negotiated dispute resolutions for her clients without resorting to litigation.

She maintains a robust and active internal investigations practice, regularly handling ethics- and hotline-related investigations, employee misconduct investigations, alleged procurement fraud, and False Claims Act violations. Her experience includes leading complex, document-intensive internal investigations in response to Civil Investigative Demands and other crisis-driven inquiries. Additionally, Dominique provides regulatory counseling to ensure her clients comply with a broad array of FAR and DFARS requirements, including Department of Defense cybersecurity mandates.

Dominique is regularly advising clients navigating shifts related to the new

presidential administration and executive orders. This includes developing risk mitigation strategies, particularly as it pertains to diversity, equity and inclusion programs.

As a former co-chair and current vice-chair of the ABA Public Contract Law Section's Committee on Debarment and Suspension, Dominique is exceptionally adept at advising clients facing exclusion from government programs in the form of suspension or debarment. She capably leverages decades of experience when advising contractors facing potential exclusion from government programs, including those complex parallel proceedings involving the Department of Justice. Dominique advises clients on mandatory or voluntary disclosures to government entities. She has appeared before the Suspending and Debarring Officials of numerous federal agencies, and routinely advises clients on how best to navigate threats to their eligibility for federal contracts and awards.

Client and Peer Recognition

Dominique's talents and dedication have not gone unnoticed. In particular, Dominique's clients value her assertiveness and her judgment. *Chambers USA* highlights her as "an excellent and practical business-oriented attorney" and "an experienced litigator." *Legal 500 United States* echoes this sentiment, with clients describing her as "a hard-nosed litigator, who will not shy away from a battle when one is needed." As another client has noted, Dominique "pushed back on the government lawyers, in a nice but insistent way, as they were being unreasonable." In 2023, *Legal 500 United States* reported that one of Dominique's clients described that she "showed up to fight for me every day, at any time, and made sure I knew that I was not alone. Dominique made sure that I was well informed and also helped to provide a voice of reason within my disputes that made all of the noise go away."

Over the course of more than 20 years at two leading law firms, Dominique has cultivated a highly desirable mix of talents, skills, judgment, and relationships. She leverages these attributes to provide top-notch client service, helping government contractors address legal risks so they can focus on achieving their business objectives.

Select Engagements

- United States ex rel. Faulkner v. Bd. of Trustees of Leland Stanford Junior Univ., No. 20-CV-00636-VKD, 2024 WL 4982992 (N.D. Cal. Dec. 3, 2024) (successfully defended Stanford University from a qui tam suit, obtaining a full declination from the Department of Justice and then winning a subsequent motion to dismiss the underlying False Claims Act complaint).
- KPMG LLP v. United States and Deloitte & Touche LLP in successful prosecution of a bid protest; No. 22-866, 2023 WL 4613034 (Fed. Cl. July 3, 2023).
- KPMG LLP, B-420949 and B-420949.2 (Nov. 7, 2022) (successfully represented KPMG LLP in a bid protest challenging the award decision of

- the United States Air Force in a procurement for visible accessible understandable linked trusted (VAULT) subject matter expert support).
- Clear Global Solutions, LLC, B-419402 (Feb. 5, 2021) (successful defense of Department of Energy award to Strativia LLC).
- Bauer Technologies, Inc. B- 415717.2, B- 415717.3 (June 22, 2018) (successful defense of Defense Information Systems Agency contract awarded to Taurean General Services).
- Calibre Systems, Inc. B- 414301.3 (September 20, 2017) (successful defense of VA contract awarded to Booz Allen Hamilton).
- Northrop Grumman Systems Corporation, B-412278.7, B-412278.8 (October 4, 2017) (successful defense of DHS contract award to Raytheon in multiple protests alleging OCIs).
- ManTech Advanced Systems International, Inc., B-413717, Dec. 16, 2016, 2016 CPD ¶ 370.
- Raytheon Company in successful defense against a bid protest; Lockheed Martin Corp., B-411365.2, Aug. 26, 2015, 2015 CPD ¶ 294.
- Deloitte Consulting, LLP; Booz Allen Hamilton, Inc.; CALIBRE Systems, Inc., B-411884, et seq., 2015 WL 9701026 successfully represented contractor team arrangement protester CALIBRE Systems, Inc./Ernst & Young LLP in bid protest challenge to Defense Health Agency contract award.
- Motorola Solutions, Inc. in successful defense against a bid protest; Harris Corporation, B-409148.3, B-409148.4, Jul. 30, 2014 CPD ¶ 225.
- Motorola Solutions, Inc. in successful prosecution of a bid protest; B-409148;
 B-409148.2, Jan. 28, 2014 2014 CPD ¶ 59.
- Savvee Consulting, Inc. in successful prosecution of a bid protest;
 B-408416; B-408416.2, Sep. 28, 2013, 2013 CPD ¶ 231.
- Raytheon Missile Systems in successful defense against a government claim asserted under the Contract Disputes Act; ASBCA No. 58011, 13-1 BCA ¶ 35241 (Jan. 28, 2013).
- Systems Application & Technologies, Inc. v. United States in successful prosecution of a bid protest; 107 Fed. Cl. 795 (2012).
- Raytheon Company v. US in successful defense against a government claim asserted under the Contract Disputes Act; 104 Fed. Cl. 327 (2012) recon. denied, Raytheon Company v. US, 105 Fed. Cl. 351 (2012).
- Raytheon Company in successful prosecution of a bid protest; B-404998, Jul. 25, 2011, 2011 CPD ¶ 232.
- Columbus Technologies and Services in successful defense against a bid protest; Earth Resources Technology, Inc., B- 403043.2, B- 403043.3, Oct. 18, 2010, 2010 CPD ¶ 248.
- Mission Essential Personnel in successful defense against a bid protest;
 WorldWide Language Resources, Inc., B-299315.7, B-299315.8, Aug. 12, 2010, 2010 CPD ¶ 208.

Admissions

- District of Columbia
- Maryland
- United States Court of Appeals for the Federal Circuit

United States Court of Federal Claims

Memberships

- American Bar Association
- Board of Contract Appeals Bar Association
- Court of Federal Claims Bar Association

Education

- Georgetown University, BA
- Harvard Law School, JD

Recognitions

- 2023-2024, Government Contracts Law, listed in Chambers USA
- 2023, Section Chair's Special Recognition Award, by the American Bar Association Section of Public Contract Law
- 2017–2024, listed in The Legal 500 United States
- 2021–2024, Government Contracts "Next Generation Partner," listed in The Legal 500 United States
- 2017–2020, Government Contracts "Next Generation Lawyer," listed in *The Legal 500 United States*
- 2020–2022, listed in Capital Pro Bono Honor Roll
- 2017, listed in Working Mother of the Year
- 2016, "Trending 40 Lawyers Under 40," listed in Legal Bisnow

Professional Activities

Dominique serves as a member of the Public Contracts Section of the American Bar Association ("ABA"), as well as vice chair of ABA's Section of Public Contracts Law Committee on Debarment and Suspension and vice chair of their Diversity Committee. She previously served as the Section liaison to the ABA's Commission on Racial & Ethnic Diversity in the Profession. Dominique also serves on the board of the Contract Appeals Bar Association and served on the 2022 *Law360* Aerospace & Defense Editorial Advisory Board.

Languages

Spanish

Reggie Jones Partner

Reggie is Chair of the firm's Federal Government Contracts Department.

He has a well-established federal compliance and litigation practice with a focus on large, complex claims prosecution and defense,



litigation and alternative dispute resolution, as well as significant internal investigations with potential civil and criminal False Claims Act implications. Reggie's clients include national and international corporations, including defense contractors and suppliers, design and engineering firms, and large national construction contractors. He has also represented the U.S. Department of Energy (DOE) and the National Nuclear Security Administration (NNSA), a semi-autonomous agency within the DOE, to provide litigation support for the agency's defense of numerous cases before the Civilian Board of Contract Appeals and the U.S. Court of Federal Claims.

Reggie litigates bid protests, claims and disputes before the Government Accountability Office (GAO), the various Boards of Contract Appeals, and the U.S. Court of Federal Claims. He represents clients in connection with claims and performance disputes, including terminations, past performance evaluation challenges, DCAA/DCMA audits and

investigations, Organizational Conflicts of Interest (OCI), Rights in Data challenges, and suspension and debarment proceedings. Reggie regularly works to resolve complex and sensitive matters with the counsel with the Department of Justice (DoJ), the Department of Defense (DoD), the U.S. Army Corps of Engineers (USACE), the Naval Facilities Engineering Command (NAVFAC), the General Services Administration (GSA), the Small Business Administration (SBA), and the Environmental Protection Agency (EPA).

Reggie advises clients on transactional, project administration issues including contract and subcontract negotiations, teaming arrangements and strategic alliances, and contract negotiations due to changes in corporate structure. Reggie assists clients in developing, implementing, maintaining and improving their federal business ethics and compliance programs. He also works with clients to help them comply with and manage:

- DFARS cybersecurity requirements, including the Cybersecurity Maturation Model Certification (CMMC)
- Affirmative Action Plans (AAP)
- Equal Employment Opportunity (EEO) rules and regulations
- Federal Small Business Subcontracting Plans
- The SBA's All Small mentor-protégé program
- The Buy American Act (BAA)
- International Traffic in Arms Regulations (ITAR) and export control issues
- Contract Cost Principles and Procedures under FAR Part 31
- The Truth in Negotiations Act (TINA)

Combating Trafficking in Persons Regulations (CTIP)

Reggie has conducted numerous internal investigations, assisted with voluntary disclosures, and defended numerous civil False Claims Act cases, including whistleblower claims brought by private relators (*Qui Tam*) and the various Offices of Inspector General (OIG).

In the area of commercial and federal construction, Reggie assists clients with claims prosecution and defense before federal and state courts, boards of contract appeals, and in commercial arbitration and mediation. Representative claims include constructive changes, delay, acceleration, and lost labor productivity claims, differing site conditions, defective specification claims, as well as defense of design and construction management professionals against professional negligence and breach of contract claims. Representative projects include central utility plants, nuclear fuel fabrication facilities power plants, petrochemical facilities, water filtration and water treatment plants, mixed-use retail/residential, hotels, convention centers, hospitals, parking structures, universities and museums, as well as bridge and highway projects.

Reggie is a member of the firm's Executive Committee and a former Managing Partner of the Washington, D.C. office.

Before Fox Rothschild

Prior to joining Fox, Reggie was a partner with a federal government contracts and construction litigation boutique. He also served as a Captain in the U.S. Army (3/77 Armor Battalion, 3rd Brigade, 1st Armor Division and the 28th Transportation Battalion) from 1991 to 1996, serving four of

those years in Germany, Hungary, Croatia and Bosnia-Herzegovina. While in law school, Reggie was a member of *University of Georgia Law Review*.

Beyond Fox Rothschild

Reggie is currently serving on the Board of Directors of the Greater Washington Board of Trade where he has been involved with the Connected DMV Task Force's Framework, Governance, & Law Solution Group, the Vaccine Task Force, and the WTOP Business Insights radio spots. Previously, Reggie served on the Board of Directors of the Washington Building Congress (WBC), the Board of Directors for the Virginia Chapter of the Associated Builders and Contractors (ABC Virginia Chapter), and as Chair of the Construction Division of the American Bar Association's Section of Public Contract Law.

He has authored numerous scholarly and business-friendly articles on federal government contract issues that have been published in American Bar Association publications, *The Procurement Lawyer*, the *Public Contract Law Journal* and *The Construction Lawyer*, as well as industry publications such as *Construction Executive*, the magazine of the Associated Builders and Contractors. Most recently, Reggie coauthored the "Data/Cybersecurity and Insurance" chapter of the American Bar Association's *Technology in Construction Law Legal Guide*. In terms of community service, Reggie chairs the University of Georgia's School of Law DC Semester Advisory Committee, which supports Georgia law students who are interested in exploring federal government, public interest, and public policy positions. Lastly, but most importantly, Reggie has served on the board of directors of two domestic and sexual assault service providers — the Loudoun Abused Women's Shelter (LAWS) in

Virginia from 2010 to 2021 where he served as the Treasurer of the Board of Directors, and the International Women's House in the Atlanta metropolitan community, where he served as the Chair of the Board of Directors in 2008 and 2009. Reggie continues to be a dedicated advocate of safety, hope and empowerment for victims of domestic abuse and sexual assault.

Bar Admissions

- District of Columbia
- Virginia
- Georgia

Court Admissions

- U.S. District Court, District of Columbia
- · U.S. Court of Federal Claims
- U.S. District Court, Eastern District of Virginia
- U.S. District Court, Western District of Virginia
- U.S. District Court, Middle District of Georgia
- U.S. District Court, Northern District of Georgia
- U.S. Court of Appeals, Sixth Circuit
- Armed Services Board of Contract Appeals
- Civilian Board of Contract Appeals
- Government Accountability Office Contract Appeals Board

Education

- University of Georgia School of Law (J.D.)
- The College of William and Mary (B.A.)

Memberships

- The Economic Club of Washington, DC
- Greater Washington Board of Trade
- Associated Builders and Contractors Metro Washington Chapter
- Associated General Contractors of America, Mississippi Valley Chapter
- American Bar Association
 - o Forum on the Construction Industry
 - o Construction Division Co-Chair (2009-2010)
 - o Operations Division Co-Chair (2002-2004)
- Washington, DC Bar Association
- Virginia Bar Association, Construction Law Section
- Georgia Bar Association
- Atlanta Bar Association, Construction Law Section (1999 to present)
- Georgia Law DC Semester Program, Chair (2023 to present)

Board of Directors

- Greater Washington Board of Trade, Board of Directors (2023 to present)
- Washington Building Congress, Board of Directors (2020-2023)
- Washington Building Congress, Board of Governors (2010-2020)
- Associated Builders and Contractors Virginia Chapter, Board of Directors (2013-2017)

Languages

German

Honors & Awards

- Recognized by *Chambers USA* for Construction in Washington, DC (2020-2024)
- Named a "Recognized Practitioner" for Construction in Washington, DC by *Chambers USA* (2018-2019)
- Construction Lawyers Society of America, Fellow (2019 to present)
- Selected to the "Best Lawyers in America" list for Construction Law in Washington, DC by *Best Lawyers* (2019-2025)
- AV Rated in Martindale-Hubbell
- Included in a list of "Super Lawyers" for Construction Litigation (2012-2024) and Government Contracts (2022-2024) in Washington, DC
- Included in a list of "Super Lawyers" by *Georgia Super Lawyers* (2010, 2011)
- Included in a list of "Rising Stars" by *Georgia Super Lawyers* (2005, 2009)
- Named as an "Up-and-Coming Individual" in construction law in Georgia by Chambers USA (2006, 2007)
- Recipient, Special Recognition Award for Outstanding Legal Services, International Women's House (a women's shelter) (2005)
- Recipient, Meritorious Service Medal, United States Army (1996)
- Omicron Delta Kappa (1990 to present)

David Keim

Chief Communications Officer

David Keim leads the Communications and Community Engagement Directorate and serves as Chief Communications Officer of Oak Ridge National Laboratory. His responsibilities include media and community relations, internal communications, creative services, protocol visits, Lab events, and the corporate giving of Lab operator UT-Battelle, LLC. His staff provides



strategic support for Lab leadership and ensures the quality of science writing, technical editing, design, photography, and videography across ORNL's diverse research portfolio.

In 2017 and 2018, Keim led a design team from across the Department of Energy's Oak Ridge Reservation to create a new home for the American Museum of Science and Energy, earning the Secretary of Energy's Achievement Award.

Before joining ORNL in 2012, Keim was director of Public and Governmental Affairs at the Y-12 National Security Complex. He previously was an editor and reporter for the Knoxville (Tennessee) News Sentinel, where he created the Greater Knoxville Business Journal (now Knox.biz), launched its annual Book of Lists, and received local, state, and national awards for his writing and reporting.

Keim is a board member of the Oak Ridge Foundation, the American Museum of Science and Energy Foundation, and Second Harvest Food Bank of East Tennessee. He previously chaired the Distinguished Professionals Education Institute, which recruited professionals to public school classrooms in Knoxville and Nashville before transitioning its mission to the Knox Education Foundation in 2023.

He is a graduate of the Leadership Knoxville class of 2006 and the University of Tennessee Chancellor's Associates class of 2010. He earned a bachelor's degree in journalism from the Honors Tutorial College at Ohio University.



Nadine Lacombe
General Counsel

Biography

With over 30 years of experience as an attorney, Nadine has a depth of experience working with government agencies across legal disciplines and representing a range of private and public sector clients.

Before joining Argonne, Nadine was the General Counsel for the Regional Transportation Authority (RTA) of northeastern Illinois for 10 years, where she was the chief legal counsel for the Board of Directors, executives, and staff. There she managed and supervised the Legal & Compliance department which included Procurement, Facilities and Audit in addition to the core legal and regulatory functions. She provided counsel on matters including defense and prosecution of litigation, transactional and corporate matters and municipal finance, and trained the Board of Directors and staff. Nadine worked with the RTA's fellow transit agencies: the CTA, Metra, and PACE systems, on a variety of system-wide legal matters, involving a combined multibillion dollar budget.

Previously, Nadine was the General Counsel for the Illinois Department of Central Management Services, providing legal support to the agencies,

departments, boards and commissions of the State of Illinois on a variety of statewide administrative, transactional and litigation issues.

As an attorney at large Chicago law firms, Nadine acted as bond counsel in municipal finance transactions, managed staff, counseled on firm personnel policy, managed budgets, and led mentoring and training for the executive committee, partners and associates on a variety of employment matters and workplace collaboration and team effectiveness. Prior to that, she was a Deputy Director at the Illinois Department of Transportation where she supervised the Civil Rights and Small Business Enterprise Bureaus.

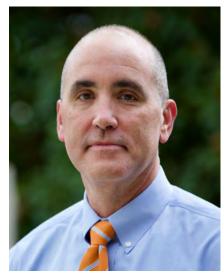
Nadine Lacombe is a member of the Bar of the State of Illinois, the American Bar Association, the Chicago Bar Association and the Haitian American Lawyers Association. Nadine earned her Bachelor of Science from the University of Illinois. She received her Juris Doctor from the University of Michigan Law School.

Alex Long

WILLIFORD GRAGG DISTINGUISHED PROFESSOR OF LAW

Alex Long is the Williford Gragg Distinguished Professor of Law. He served as Associate Dean for Academic Affairs at the College of Law from 2014 – 2018. Professor Long came to the University of Tennessee College of Law in 2007 after teaching at the Oklahoma City University School of Law and West Virginia University College of Law.

Professor Long teaches and writes in the areas of Torts, Professional Responsibility, Employment Law, and Disability Law. His scholarship in these areas has been published in numerous journals, including



the Northwestern Law Review, Minnesota Law Review, and Emory Law Journal, and has been frequently cited by courts. He is also the co-author of Professional Responsibility in the Life of the Lawyer (West Academic); Developing Professional Skills: Professional Responsibility (West Academic); Torts: A Modern Approach (Carolina Academic Press); and Advanced Torts (Carolina Academic Press). His most recent book, Professional Wrestling and the Law (McFarland), was published in 2024.

Professor Long has received the law school's Harold C. Warner Outstanding Teacher Award; the W. Allen Separk Faculty Scholarship Award; the Carden Award for Outstanding Achievement in Scholarship; and the Carden Award for Outstanding Service to the Institution. He is a contributing author to the Knoxville Bar Association's "Schooled in Ethics" column and regularly speaks on legal ethics issues to various groups.

Before entering academia, Professor Long was an associate in the labor group of the Clarksburg, West Virginia office of Steptoe & Johnson. He received his law degree from the College of William & Mary in Williamsburg, Virginia, where he was Topics & Research Editor for the William & Mary Law Review.

• Education & Experience

J.D., 1998, William and Mary School of Law

B.A., 1991, James Madison University

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John McGahren is the Princeton litigation practice leader and deputy chair of the firm's global environmental practice. John counsels clients on litigation, enforcement, and transactional matters. He prosecutes and defends citizen suits, Superfund and RCRA disputes, Clean Water and Air Act litigation, state law actions, and natural resource damage claims. He represents clients in commercial litigation, products liability, toxic tort, class actions and government contract claims. John frequently provides counsel on US federal and state regulatory matters and investigations.

John served as a federal mediator for the District of New Jersey and as a state mediator for the New Jersey Supreme Court Civil Mediation Program. As part of his volunteer work, he has been a member of the board of directors of NJ Law and Education Empowerment Project, which empowers urban youth from underserved neighborhoods to perform at high academic levels.

Before practicing law, John was a licensed professional engineer in the US Environmental Protection Agency Region II Superfund program, working on sites in New York, New Jersey, and Puerto Rico.

SELECTED REPRESENTATIONS

Litigation

- Represent a paper mill client in administrative and litigation proceedings with the US Environmental Protection Agency (EPA) and the South Carolina Department of Health and Environmental Control (SCDHEC), including issuance of one of only five emergency orders ever issued by EPA under the Section 303 of the Clean Air Act (CAA)
- Represent paper mill in follow-on litigation brought by residents and businesses surrounding the mill, including three citizen suits under the Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act (RCRA), as well as three class action odor lawsuits. The plaintiffs seek to certify a class of residents and businesses located within a 20-mile radius of the mill, which would include over a million potential class members.
- Providing for paper mill client regulatory and compliance counseling on site remediation, SCDHEC
 administrative consent orders, EPA consent decrees, closure of sludge ponds, solids management plans, air
 and wastewater treatment system upgrades, and responses to EPA and SCDHEC notices of potential
 violations

- Handling a US Court of Appeals for the Fourth Circuit appeal involving a case of first impression on intervention under Section 303 of the CAA
- Represent telecommunications company in multiple litigations in Nassau County, New York, alleging
 contamination to groundwater and soils from radionuclides and chlorinated solvents stemming from work
 performed by predecessor companies on behalf of the US Atomic Energy Commission, as well as alleged
 contamination of groundwater and municipal wells from emerging contaminants, including 1,4-dioxane and
 per- and polyfluoroalkyl substances (PFAS)
- Represented an automobile manufacturer in two related Comprehensive Environmental Response,
 Compensation, and Liability Act (CERCLA) and New Jersey Spill Act cost recovery and contribution actions in
 the US District Court for the District of New Jersey for costs associated with removal and remediation of
 polychlorinated biphenyl (PCB)-contaminated, recycled concrete used as fill by a developer on multiple
 properties in New Jersey, as well as other statutory, contractual and common law damages claims
- Provided compliance counseling to automobile manufacturer on decommissioning and cleanup of the automanufacturing facility, which exceeded \$100 million
- Represent former chrome plating manufacturing client in defense of environmental cost recovery and natural resource damages (NRD) action brought in late 2018 by the New Jersey Department of Environmental Protection (NJDEP) as part of the larger "environmental justice" initiative by New Jersey; the matter involves alleged chromium contamination at the Puchack Well Field Superfund Site in Pennsauken, New Jersey
- Represent manufacturing clients in defense of NRD lawsuit brought by the NJDEP, stemming from alleged discharge of hazardous substances, including trichloroethylene (TCE) and perchloroethylene (PCE), at a three-acre former tool and die manufacturing facility in Montvale, New Jersey, which migrated into groundwater beneath the facility and contaminated multiple municipal drinking wells
- Represent the US Department of Energy's current and former contractor operators of the Brookhaven National Laboratory on Long Island in toxic tort cases involving alleged exposure to chlorinated solvents and radionuclides, which were brought in the Eastern District of New York
- Represent a paper manufacturer in indemnity action in New York Supreme Court for recovery of environmental costs attributable to a former mill operator's bleaching process, which generated dioxin as a byproduct
- Represent a manufacturing company in an indemnity action in New York Supreme Court concerning recovery of costs for the El Monte Operable Unit of the San Gabriel Valley Superfund site in Los Angeles
- Obtained dismissal of a prior action regarding the same costs brought in Los Angeles Superior Court, based upon a New York forum selection clause in the operative agreement and obtained dismissal of a recission counterclaim asserted in the New York action
- Represented an environmental and engineering consulting firm on design and construction dispute before the American Arbitration Association involving increased costs for alleged unknown subsurface conditions encountered in construction of a slurry wall on a contaminated site in Massachusetts
- Represented a real estate development and investment company in CERCLA cost-recovery litigation against the United States for contamination stemming from WWII-era munitions production for the US military in Cranbury, New Jersey before the Third Circuit
- Represented real estate developer in New Jersey Chancery Court involving alleged breaches of loan agreements and successful defense of temporary restraining order and preliminary injunction proceedings
- Represented national water purveyor in putative class action in the Southern District of New York alleging violations of New York General Business Law § 349, breach of contract, unjust enrichment, negligence, and fraud
- Represent chemical manufacturing company against cost recovery claims by the University of Minnesota under CERCLA and the Minnesota Environmental Response and Liability Act stemming from WWII-era ordnance production on behalf of the United States on land that was acquired by the university post-war
- Represent international chemical company in class action litigation brought in Philadelphia Court of Common Pleas arising from a chemical spill in the Delaware River seeking damages for nearly one million potential class members who consume water from the Baxter Water Treatment Plant in North Philadelphia, with the case recently removed to federal court

- Assisting international chemical company on compliance counseling with multiple regulatory agencies that responded to chemical spill in Delaware River
- Represented national energy provider in over 500 cases in the Eastern District of Missouri and Missouri state
 court involving radionuclide exposure claims under the Price Anderson Act and state law for alleged personal
 injury and property damage in St. Louis County; settled the federal case for an amount less than the
 estimated defense costs for taking the cases to trial
- Represent a paint manufacturer in connection with three Superfund sites in Gibbsboro, New Jersey, which are contaminated with lead and arsenic, and provide compliance counseling and regulatory support for the cleanups with EPA and NJDEP, including dredging of major lakes and surface water bodies contaminated with lead and arsenic, as well as advise on vapor intrusion and future site redevelopment issues
- Represent a paint manufacturer in connection with the Passaic River litigation, which includes ongoing CERCLA cost recovery and contribution litigation for the upper 9 and lower 8.3 miles of the river, and advising the client on a consent decree with EPA
- Represent paint manufacturer in a suit brought by NJDEP for the Avenue P site in New Jersey, which was styled as an environmental justice action for penalties and injunctive relief by the Commissioner of NJDEP
- Represented the World Trade Captive Insurance Company, the City of New York, and over 100 response contractors against personal injury and property damage claims in the multidistrict litigation (MDL) in the Southern District of New York related to toxic dust cloud and debris removal and clean-up activities that occurred after the 9/11 terrorist attacks
- Represented property owner in litigation in New Jersey Superior Court in Bergen County stemming from breach of lease by client's tenant involving historic riverboat, which sank in the Hudson River during Superstorm Sandy and obtained a summary judgment victory requiring the tenant to reimburse the property owner for hundreds of thousands in lost rent and costs
- Represented property owner in litigation against a tenant who defaulted on their lease for a major restaurant development after the pandemic
- Represented petroleum company in Toxic Substances Control Act (TSCA) citizen suit in Puerto Rico and obtained dismissal on a motion to dismiss
- Served as common counsel and represented 17 companies in a CERCLA cost recovery and contribution litigation with the United States for a major Texas Superfund site, which was the site of a former tin smelter owned and operated by the United States and later converted for different metals smelting operations. The representation led to the assignment of a major share of responsibility to the United States for cleanup costs and natural resource damages.
- Worked with EPA and federal and state natural resource trustees on the selection of remedial investigations and actions, which were integrated with natural resource damage assessment and restoration projects
- Served as lead trial counsel in a successful declaratory judgment suit on behalf of a chemical company in the
 US District Court for the District of New Jersey. The company filed suit against the current property owner for
 contractual indemnity for all potential liability and costs, including natural resource damages associated with
 EPA and NJDEP Passaic River initiatives; argued in the Third Circuit, which affirmed the district court's
 decision.
- Served as trial counsel for a private company and an individual in a RCRA citizen suit against the commissioner of NJDEP, where the district court found the commissioner liable; NJDEP subsequently settled with the clients and released them from any further cleanup responsibility; also obtained a liability ruling under RCRA and CERCLA against the United States and argued in the Third Circuit.
- Represented an automobile manufacturer in a CERCLA contribution action in District of New Jersey against the United States for 16 former defense plant facilities located in several states and procured multimillion dollar settlements
- Obtained a ruling from the US Court of Appeals for the Federal Circuit on behalf of a major chemical manufacturer upholding indemnification from the United States for 100% reimbursement of attorney fees and environmental cleanup costs arising from the construction and operation of a WWII ordnance plant in West Virginia
- Defended a real estate investment trust in multidistrict litigation in the Southern District of New York involving claims for contamination of public water supply wells with the gasoline additive methyl tertiary

- butyl ether (MTBE)
- Defended a chemical manufacturer and dry cleaning equipment manufacturer against claims brought in New York Supreme Court by large water purveyor for contamination of wells with dry cleaning solvents. Obtained early settlements for both clients on favorable terms
- Defended a chemical manufacturer against claims brought by workers in 18 counties in West Virginia for exposure to PCE in mining float sink testing laboratories and obtained early settlement on favorable terms
- Represented a chemical manufacturing and oil company in a multisite CERCLA action against the United
 States in the District of New Jersey and before the Third Circuit three-judge and en banc panels in an appeal
 of the district court's order denying the companies' right to seek cost recovery from the United States for 14
 contaminated sites in eight states. Filed a petition for certiorari to the US Supreme Court, which was granted,
 but the Court elected to proceed with a concurrently filed petition addressing the same issues in Atlantic
 Research v. United States.
- Represented a major electronics manufacturer in a contract action against the United States in the US Court
 of Federal Claims for defense costs and indemnification for cleanup costs arising from the operations of a
 former nuclear fuel cell manufacturing facility in Massachusetts, which was utilized by the Atomic Energy
 Commission, the US Navy, and various national laboratories
- Submitted amicus briefs to the US Supreme Court in Cooper Industries Inc. v. Aviall Services Inc. and Atlantic Research v. United States on behalf of private companies
- Represented a New Jersey township in a RCRA citizens suit against the state for cleanup of a large former state hospital complex and negotiated a settlement where the state transferred ownership of the facility to the township, which required approval of the state legislature and the governor
- Prosecuted claims of a chemical company in the District of New Jersey under the New Jersey Consumer Fraud Act arising from false representations related to fire and explosion from newly installed dust collection and fire suppression systems. Representation also included defense in related state court litigation involving products liability, Consumer Fraud Act claims and common law claims.
- Represented a portfolio power company in New York Supreme Court and New York Appellate Division on indemnity claim under purchase and sale agreement for seven power plants for breach of representations and warranties on operation and maintenance practices by seller

Enforcement and Administrative Proceedings

- Represented numerous clients in TSCA audits and inspections, test orders, and enforcement proceedings
- Represent a silverware manufacturer in consent decree negotiations for soil and groundwater cleanups of chlorinated solvents at the San German Superfund Site in Puerto Rico and negotiated a consent decree with EPA for the Operable Unit 1 soil cleanup. Advised the client on vapor intrusion and other regulatory compliance issues, as well as insurance coverage options.
- Represented mining and energy companies in connection with the investigation and remediation of a multiparty Superfund site involving low-level radioactive materials originating from Manhattan Project operations, including negotiations with the EPA and the US Department of Justice
- Represented mining and energy companies in connection with a related multi-party cost-recovery claim by the United States for cleanup performed under the Formerly Utilized Sites Remedial Action Program (FUSRAP) at a nearby storage property, also involving low-level radioactive materials originating from Manhattan Project operations
- Advising a major international manufacturing company in evaluating operations at multiple US facilities for use of PFAS in products and supply chain
- Represented a major manufacturing company in connection with its entry into an administrative consent order with NJDEP to address an urban waterway contaminated with TCE, as well as Spill Fund and natural resource damages claims
- Serve as common counsel to the BROS Superfund site providing regulatory and compliance counseling for a
 massive ongoing groundwater cleanup involving numerous chemicals and emerging contaminants such as
 1.4-dioxane and PFAS

- Represented a major sports company and stadium in Massachusetts in negotiation of an administrative order with MassDEP addressing alleged solid waste and recycling violations arising from stadium operations
- Represent an electronics manufacturer in connection with a cross-border chlorinated solvent plume in Massachusetts and Rhode Island, which allegedly contaminated residential wells in the area. Conducted negotiations and counseled the client concerning installation of alternative water supply lines across state lines, which involves multiple state environmental agencies and municipalities
- Represent a retail electric and natural gas company in license revocation proceedings initiated by the Texas and Pennsylvania Public Utility Commissions. Obtained summary judgment dismissal before Pennsylvania hearing examiner, which is currently under appeal. Settled the Texas proceeding on favorable terms
- Represented a chemical manufacturer regarding a Superfund/Formerly Utilized Sites Remedial Action
 Program (FUSRAP) site in New Jersey where thorium had been produced. Retained to enforce a cooperative
 agreement between the company and the US Department of Energy. Negotiated a settlement with the United
 States for the FUSRAP radiological cleanup, with total estimated costs in excess of \$500 million. Also
 represented the company in a parallel Superfund cleanup of chemical contaminants as well as Nuclear
 Regulatory Commission licensing and decommissioning proceedings
- Represented an automobile manufacturer in civil and criminal proceedings associated with the
 decommissioning and demolition of an automotive assembly plant in New Jersey, where the state alleged the
 company violated numerous provisions of the New Jersey Solid Waste Management and Spill Acts at
 multiple sites. Negotiated an administrative consent order with NJDEP settling the company's liability to the
 state
- Represented a chemical manufacturer in parallel investigations by the US Chemical Safety Board and OSHA arising from a fire and explosion of a dust collection system, which severely burned workers at the facility
- Represented a major online retailer in multiple Occupational Safety and Health Administration (OSHA)
 investigations for worker deaths at facilities in New Jersey and Pennsylvania, including follow-on personal
 injury lawsuits
- Represented a major oil company in enforcement proceedings by EPA for a Superfund site in Los Angeles. Also represented the company on claims against the United States for contamination attributable to a former WWII synthetic rubber plant owned and operated by the United States at the site
- Defended a major oil company in Puerto Rico in numerous matters, including a \$75 million penalty assessed for underground storage tank violations. Filed a Section 1983 civil rights action against the Puerto Rico Environmental Quality Board (EQB) on grounds of actual and structural bias in the penalty proceeding and obtained a permanent injunction barring any penalty. The matter included preliminary injunction hearings, appeals to the First Circuit and the Puerto Rican Supreme Court, as well as hearings in the Puerto Rican Senate. Obtained a permanent injunction against the EQB on the penalty. We also defended the client in related toxic tort cases, which were dismissed
- Represented a chemical manufacturer in a TSCA PCB Mega Rule petition for a risk-based cleanup of one of its former facilities in New Jersey-the second PCB Mega Rule petition ever approved by EPA Region II.
 Negotiated a remedial action work plan and liability buyout proposal with NJDEP, which included a bankruptcy court-approved natural resource damages settlement
- Represented a national hazardous waste disposal company in negotiations with NJDEP concerning the siting
 of a solid and hazardous waste rail transfer facility in New Jersey and the settlement of alleged A-901
 violations
- Represented a chemical company in municipal hearings concerning a manufacturing plant in New Jersey, where a municipality was seeking to designate the property as an area in need of redevelopment along the lines addressed by the US Supreme Court decision in Kelo v. New London
- Represented a power company in obtaining a Title V and Prevention of Significant Deterioration (PSD) permit for a proposed gas turbine power plant in New Jersey
- Negotiated a carbon monoxide emissions offset trade required for air permits with a major airline
- Conducted a Foreign Corrupt Practices Act and UK Bribery Act internal investigation for a foreign company involving practices in numerous foreign countries. Advised the client on corporate compliance and ethics programs and anti-corruption policies

Pro Bono Litigation

• Lead pro bono trial counsel for public interest groups and individual plaintiffs in a New Jersey Superior Court action asserting constitutional and statutory challenges to the state's use of paperless direct recording electronic voting machines. The case involved a lengthy trial and appeals to the New Jersey Superior Court, Appellate Division, and the New Jersey Supreme Court.

Transactions

- Represent clients in due diligence investigations on environmental issues in numerous corporate and real estate transactions and financing matters
- Represent clients in Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) subregistration and data sharing agreements and pesticide and anti-microbial registration proceedings
- Represent the Port Authority of New York and New Jersey on environmental, regulatory and contracting for major infrastructure and energy projects at airports and other facilities
- Represented a chemical manufacturer in connection with Chapter 11 proceedings for a third-party liability buyout of a former facility heavily contaminated with PCBs. Identified the requirements for the buyout; assisted on contractor selection; drafted and negotiated the liability buyout contract with the contractor and a settlement agreement with the state, which included settlement of natural resource damages; and negotiated the insurance policy as financial assurance for the buyout.

Alternative Dispute Resolution

- Acted as federal mediator in a trade agreement breach and trademark infringement matter, the first joint mediation of its kind involving mediators appointed by District of New Jersey and the Third Circuit
- Served as a state court mediator in an action asserted by NJDEP
- Served on American Arbitration Association panels of arbitrators and mediators in numerous matters involving construction, commercial, and environmental disputes
- Served as court-designated mediator in numerous commercial, environmental, and other matters in the District of New Jersey's mandatory mediation program
- Served as court-designated mediator in numerous civil litigation matters in the New Jersey Supreme Court Civil Mediation Program

Results may vary depending on your particular facts and legal circumstances.

AWARDS AND AFFILIATIONS

Listed, Leaders in Environmental Law, Environmental Litigation, Lawdragon Green 500 (2023–2025)

Listed, Lawdragon 500, Leading Environmental & Energy Lawyers (2021)

Listed, The Best Lawyers in America, Lawyer of the Year, Environmental Law, Princeton (2019, 2022)

Listed, The Best Lawyers in America, Litigation - Environmental, Princeton (2024, 2025)

Listed, The Best Lawyers in America, Environmental Law, Princeton (2017–2025)

Band 1, Environment, New Jersey, Chambers USA (2021–2024)

Ranked, Environment, New Jersey, Chambers USA (2006–2020)

Leading Lawyer, Industry focus: Environment: litigation, *The Legal 500 US* (2022–2024)

Recommended, Industry focus: Energy litigation: electric power, The Legal 500 US (2023, 2024)

Recommended, Industry focus: Energy litigation: oil and gas, The Legal 500 US (2023, 2024)

Recommended, Dispute resolution: Product liability, mass tort and class action - defense: toxic tort, *The Legal* 500 US (2020)

Recommended, Industry focus: Energy litigation: conventional power, The Legal 500 US (2020–2022)

Recommended, Industry focus: Environment: litigation, The Legal 500 US (2020, 2021)

Recommended, Industry focus: Environment: regulatory, The Legal 500 US (2016–2024)

Member, Law360, Practice Group of the Year, Environmental (2017, 2019)

Listed, Super Lawyers Business Edition (2011–2013)

Listed, New Jersey Super Lawyers (2006-2013)

Past Member, Panel of Arbitrators and Mediators (1992) and Environmental Panel (1997), American Arbitration Association

Member, West Virginia Bar Association

Member, US Court of Federal Claims Bar Association

Past Member, American Society of Civil Engineers

Past Member, American Water Works Association

Licensed Professional Engineer, New York (1989)

Certified, OSHA Hazardous Materials Handling (1986)

No aspect of this advertisement has been approved by the Supreme Court of New Jersey. A description of the selection methodology for the above awards can be found here.

ADMISSIONS

- New Jersey
- New York
- West Virginia
- US Supreme Court
- US Court of Federal Claims
- US Court of Appeals for the Federal Circuit
- US Court of Appeals for the First Circuit
- US Court of Appeals for the Second Circuit
- US Court of Appeals for the Third Circuit
- US Court of Appeals for the Fourth Circuit

EDUCATION

- New York Law School, 1990, J.D.
- Manhattan College, 1986, B.S., magna cum laude
- Manhattan College, 1986, M.S., magna cum laude

SECTORS

- Energy
- Retail & Ecommerce
- Technology
- Transportation & Logistics
- Automotive & Mobility

SERVICES

- Environmental Counseling & Litigation
- Litigation, Regulation & Investigations

REGIONS

North America

TRENDING TOPICS

• Superfund, RCRA, and Contaminated Sites

EVENTS

11/19/2024 - Air and Waste Management Association's Waste Information Exchange

6/4/2024 - 2024 ASTSWMO RCRA Hazardous Waste Corrective Action Training Workshop

4/23/2024 - Environmental Regulatory Update: PFAS, Lead, and More

NEWS

2/5/2025 - Farmers Ruined by PFAS Face Key Moment in Fight Against Pentagon, Bloomberg

2/4/2025 - Lawdragon Recognizes 20 Morgan Lewis Lawyers in The Green 500 Guide

11/19/2024 - Superfund Reviews for Two PFAS Among Policies EPA Developing, Bloomberg Law

3/16/2021 - LawDragon 500 Leading Environmental & Energy Lawyers, LawDragon

11/18/2020 - Environmental Moves Biden Could Make Day 1, Law360

10/19/2020 - Companies Face Reporting Hurdles as TSCA CDR Deadline Draws Near, Chemical Watch

7/2/2020 - Biggest Environmental Law Rulings So Far In 2020, Law360

4/21/2020 - High Court Opens Can Of Worms With Superfund Ruling, Law360

PUBLICATIONS

7/9/2024 - After Chevron: Environmental Law May Face Hurdles, Law360

7/3/2024 - The End of the Chevron Doctrine: An Environmental Law Watershed?

5/30/2024 - New TSCA Risk Rule Gives EPA Broad Discretion On Science, Law360

5/13/2024 - Risk Evaluation Rule Tees Up Litigation on How EPA Considers Chemical Use in Commerce

1/26/2024 - New EPA Guidance Cuts Prior Residential Soil Lead Levels in Half

7/14/2021 - EPA Reverses Course on Using Radioactive Byproduct in Road Construction , Up & Atom

6/29/2021 - EPA Announces Review of Trump Administration Decision on Nuclear Cleanup, Up & Atom

4/30/2021 - FIFRA Antimicrobial Enforcement and Litigation in the Wake of COVID-19, ABA Journal

3/1/2021 - President Biden's 'Modernizing Regulatory Review' Memorandum

2/11/2021 (Updated 2/16/2021) - Environmental Enforcement Outlook on Climate Change, NEPA and Emerging Contaminants and Chemical Safety

- 1/14/2021 EPA Releases Final Risk Evaluation for 1,4-Dioxane
- 12/8/2020 EPA Supplemental TSCA Analysis Spurs Renewed Discussion over 1,4-Dioxane Regulation
- 11/19/2020 Environmental Regulation and Enforcement Outlook
- 11/18/2020 EPA Expected to Extend TSCA Chemical Data Reporting Deadline to 2021
- 11/4/2020 Expedited EPA Review of Certain Long-Lasting Disinfectants: What Healthcare Providers Need to Know , Health Law Scan
- 10/22/2020 EPA Issues New Interim Guidance on Expedited Review for Certain Long-Lasting Disinfectants
- 10/14/2020 What Is Required Under the 2020 TSCA Chemical Data Reporting Submission Period? *Chemical Watch*
- 8/27/2020 US Ordered to Pay \$20.3 Million to ExxonMobil for Cleanup of Wartime Environmental Pollution
- 6/12/2020 Efforts to Regulate PFOS and PFOA Move Ahead in the Wake of COVID-19
- 5/29/2020 Rollback of Obama-Era Fuel-Efficiency Standards Faces Challenges in Courts and Congress
- 4/29/2020 EPA Targets Unregistered Disinfectant Products
- 4/17/2020 EPA Takes Action to Streamline Pesticide Disinfectant Production
- 4/14/2020 COVID-19: EPA Releases Interim Guidance for Cleanup Sites
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Devon Mobley-Ritter - Counsel



Devon Mobley-Ritter mobleyritter1@llnl.gov Office: (925) 423-0874 Devon is an attorney with the OGC. She provides legal support in a variety of areas including labor and employment, intellectual property, agreements, privacy, and litigation. Prior to joining LLNL in 2024, Devon worked at the Palo Alto office of Covington & Burling LLP, where her practice focused on commercial litigation, insurance recovery matters, and mass tort litigation. Devon received a B.A. in English from Stanford University and a J.D. from Stanford Law School.



Tyler Owens

Federal Affairs Director

Tyler Owens is federal affairs director at Oak Ridge National Laboratory (ORNL). In this role, he serves as ORNL's senior representative and chief liaison to government officials, industry, think tanks, and university representatives in Washington, D.C. He provides guidance to the laboratory director to develop and execute strategies that best position ORNL in the evolving federal policy environment. He is also responsible for

presenting ORNL's priorities to Congress, the administration, and federal agencies.

Tyler has more than 20 years of experience at federal, state, and local government levels, most recently serving as a senior staff member in the United States House of Representatives and the United States Senate, including more than a decade on the Senate Committee on Appropriations. He served in 2002 as full committee staff on the House Committee on Natural Resources, handling natural resources, public lands, energy, and endangered species issues. He joined the staff of U.S. Senator Robert F. Bennett in 2006 as counsel, later becoming senior counsel over agriculture, energy, environment, natural resources, judiciary, and related appropriations. In 2009, Tyler joined the Senate Appropriations Committee's Subcommittee on Energy and Water Development as professional staff and was named Republican clerk in 2015. In November 2021, Tyler joined ORNL as the federal affairs director. Tyler graduated magna cum laude from Utah State University in 2001 with a Bachelor of Arts in political science and received a juris doctor from George Mason University School of Law in 2005. He is a member of the Virginia State Bar.





Justin E. Poore

General Law Senior Counsel, Managing Litigation, Labor, and Employment

Justin Poore is General Law Senior Counsel, Managing, for National Technology and Engineering Solutions of Sandia, LLC, a wholly owned subsidiary of Honeywell International, Inc., which manages and operates Sandia National Laboratories for the United States Department of Energy, National Nuclear Security Administration.

Justin joined Sandia in 2009, where he continues to focus primarily on employment and traditional labor law issues, advising management and Human Resources, and representing Sandia in court and before administrative agencies.

A New Mexico native, Justin graduated from the University of Colorado at Colorado Springs with a degree in Philosophy and Political Science. After law school at the University of Chicago, he returned to New Mexico to work for a small, management-side, labor-and-employment litigation firm.

Outside of work, Justin enjoys skiing, biking, camping, reading, and spending time with his wife and two children.

Justin E. Poore Sandia National Laboratories (505) 284-6336 jepoore@sandia.gov

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Meyer Seligman — Director, Government Relations

Meyer Seligman leads NREL's government relations office and is responsible for ensuring that stakeholders are informed about NREL research to help advance the laboratory's mission.

Prior to joining NREL, Seligman served in numerous capacities during her 15-year career in the United States Congress, including 7 years as a professional staff member for the U.S. Senate Committee on Appropriations, Energy and Water



Development Subcommittee, where she was responsible for congressional oversight and providing funding for a variety of Department of Energy programs, including the Office of Energy Efficiency and Renewable Energy and the Office of Science. She previously served as legislative director to U.S. Representative Alan Nunnelee and senior legislative assistant to U.S. Representative Rodney Alexander.

Seligman has a bachelor's degree in communication and information sciences from the University of Alabama. She is also a 2017 graduate of the NREL Executive Energy Leadership Program.

Ryan T. Shannon

Ryan T. Shannon is an associate at Lewis Thomason's Knoxville office. He focuses his practice in the areas of employment law, education law, insurance defense, and general civil litigation. He joined the firm as an associate attorney in 2021.

As a student at the University of Tennessee College of Law, Mr. Shannon served as president and secretary of Vols for Veterans, as well as serving on the Career Services Committee.



Mr. Shannon was born and raised in Tennessee and graduated from the University of Tennessee, *summa cum laude*, with a degree in political science. He is a member of Sevier Heights Baptist Church.

PRACTICE AREAS

- Education & Government Relations
- Employment
- Insurance

EDUCATION

- University of Tennessee, B.A., summa cum laude, 2017
- University of Tennessee College of Law, J.D., summa cum laude, 2021

PROFESSIONAL HONORS AND ACTIVITIES

- Order of the Coif
- UT Law Scholarship Recipient
- Federal Court Bench & Bar Recipient

AFFILIATIONS

- Knoxville Bar Association
- Tennessee Bar Association

Steve Ventura, Associate General Counsel, UT-Battelle



Steve has over 20 years of legal and human resources experience and has been at ORNL since 2009. His primary areas of practice and legal expertise focus on traditional labor and employment law, employee benefits law, immigration law, litigation, legal management, records destruction, lobbying, and ethics.

Steve provides proactive counseling and legal advice regarding human resources, ethics matters, and related statutory and regulatory compliance. He has extensive experience before federal and state courts, as well as before

federal, state, and local agencies. He has also provided education on legal trends and judicial developments to various national, state, and local professional organizations.

Prior to joining ORNL, Steve was an attorney with two national labor and employment law firms and worked as a Human Resources Manager in manufacturing. Steve also served in the United States Air Force, where he was awarded a Presidential Commission as a Second Lieutenant and attained the rank of Captain. Upon completion of his tour of duty, Steve was appointed as Judicial Law Clerk to the Honorable Marion A. Humphrey in Pulaski County Circuit Court.

Steve is conversational in Italian and proficient in Spanish, having translated for both the Arkansas Court System and the United States Air Force.

Steve holds a Bachelor of Arts degree from the University of Georgia in Spanish, a Master of Science degree from Troy State University in Human Resources Management, and a law degree from the University of Arkansas at Little Rock School of Law. He is admitted to practice in both Florida and Tennessee.

Quinn Windham, Associate General Counsel, UT-Battelle

Quinn has been practicing law for over 30 years in multiple jurisdictions, both in private practice and in-house for different Department of Energy facilities. Quinn began his tenure at ORNL in 2006, primarily providing legal support to the Business Services Directorate (BSD) before moving into the role of Director of the Prime Contracts Division within BSD. After leaving ORNL to practice law in the private sector, Quinn rejoined the Office of General Counsel in 2019 and practices primarily in the areas of



environmental, safety, and health law and nuclear safety and radiological protection. Quinn has served as legal counsel to various ORNL organizations and projects, and he routinely advises management regarding regulatory compliance and risk management.

Quinn holds a Bachelor of Science Degree in Geology with a minor in Chemistry and a Doctor of Jurisprudence, both from the University of Tennessee. Quinn is licensed to practice in the States of Tennessee and Florida.