As we approach November and the Thanksgiving season, I reflect back on an amazingly busy year and express my sincere gratitude to both the OCC staff and our dedicated clients across the Center. Through our collaboration, we have enabled both the routine work of the Center, such as a large number of source evaluation boards, 40 patent applications and 40 patents issued, and disposition of some significant litigation, as well as the extraordinary events of the Centennial. I also want to thank our rising star attorney, Hannah Kohler, for turning a vision for a new LaRC Space Law capability into a reality – she worked closely to mentor VASTS students on implications of the Outer Space Treaty and she lectured on Space Law during the Center Open House – all to great acclaim. Now that the reinvigorated Space Council has directed the Agency to develop plans for a return to the moon and given NASA’s progress with our commercial partners and emerging international interest ranging from Australia to Luxembourg, Space Law is certain to take on renewed and exciting prominence. I also want to thank Shawn Gallagher for many years of extraordinary dedication, as he worked up to the very last minutes before his retirement, on NASA’s new partnership training materials – we’re eternally grateful for his commitment and that of his wife, Mary Pat. I’m also tremendously thankful to Dacia Bruns for stepping up to move back to our Business Law Team and support the Agency’s partnership training and guidance development following Shawn’s departure. And we’re all grateful that Pam Boerner, an experienced, unflappable litigator with outstanding Federal experience has joined our Human Resources, Ethics and Space Law Team – Center employees from entry level to senior leaders are already benefitting from her sage counsel and assistance. Lastly, I have to give thanks for the work of so many on the LaRC Legal Team who are supporting our NASA Legal Knowledge Management Capability Leadership Team (CLT) in close coordination with our CIO colleagues at the Agency Application Office. In particular, Pete Polen who co-leads the CLT and Andrea Wambier have contributed nearly daily to the effort to bring our NASA legal team closer together than ever before across our practice areas as a more coordinated, collaborative and communicative Agency function.

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

In this issue:

Welcome 1
Farewell to Shawn Gallagher 2
Poaching in Broad Daylight…FOIA and Contractor Documents 3-4
Congratulations to Andrea Warmbier 4
Donating Leave in a Medical Emergency: Two Ways to Help, Three Ways to Benefit 5-6
Recently Issued Patents 7
Intellectual Property Quiz 8
Humor 9
1st Place CFC Pumpkin! 9

Welcome Pam Boerner to the Human Relations and Ethics Team!

LaRC OCC is pleased to welcome Pam Boerner to our Human Relations and Ethics Team! Pam comes to LaRC from LoanCare, LLC, a Virginia Beach-based company, where she headed the contracts team. Immediately prior to her work at LoanCare, Pam worked as an attorney in the General Law Division of the Consumer Product Safety Commission (CPSC). Pam handled a variety of matters at the CPSC including EEOC litigation, MSPB litigation, ethics inquiries, travel questions, fiscal law matters, contract reviews and disputes, and Privacy Act issues. She served as a clerk for a Department of Labor Administrative Law Judge for two years where she assisted Judge Richard Stansell-Gamm in the review and preparation of opinions regarding certain federal benefit programs for disabled workers in specified industries. She began her practice at Dozier Internet Law where she assisted with copyright infringement claims, website content reviews and defamation claims.

Pam earned her J.D. from Washington and Lee School of Law. She is licensed to practice law in the Commonwealth of Virginia. Please join us in welcoming Pam!
In September, OCC bid our esteemed colleague Shawn Gallagher a fond farewell with an office dinner and open house luncheon. His wife, Mary Pat, a long-time friend of OCC, arranged for a limousine to take Shawn home on his last day, a befitting exit after a career well-served. Throughout his over 20 years of service to NASA Langley OCC, Shawn consistently provided superior legal support, enabling Langley and the Agency to excel, particularly in the areas of contracts and partnerships through Space Act Agreements (SAAs). Shawn devised the Umbrella SAA and Annex construct for the Agency, saving vast resources by avoiding drafting separate SAAs for related activities. He was key to devising and implementing the Agency’s Space Act Agreement Guide (SAAG) and upgrading the Space Act Agreement Maker, leading to large handling time reductions and increased usage of NASA’s agreements for reimbursable work. He was the leading field attorney on SAAs and was sought-after for continuous improvements, including serving on work teams to re-write insurance and liability provisions and to draft a users’ partnership guide.

In addition to advising on procurements and other Business Law Team duties, Shawn served as the primary counsel to the NASA Engineering Safety Center since the Agency level organization was established. His advice enabled critical NASA work of national impact. Shawn also provided key support to the Space Technology Mission Directorate’s Game Changing Technology Program Office, fostering close client relations spanning years, ensuring early involvement to identify and resolve challenging legal issues to enable success. Beyond his work on the Business Law Team, Shawn served as LaRC’s Deputy Chief Counsel for many years, playing a key role in hiring and mentoring many LaRC attorneys, including many now at HQ, other Centers, and in key leadership roles.

NASA is a more agile and efficient Agency due to Shawn Gallagher’s efforts and service, and he will certainly be missed. We wish Shawn the best in retirement, and hope he enjoys planned travel (local and international) and time with grandchildren, family, and friends.

A Message from Shawn:

Upon becoming eligible for an early retirement from the U.S. Army in 1996, I began looking for a second career. Through a series of coincidences that were very improbable I was blessed with the opportunity to come to work for the Office of Chief Counsel at NASA Langley Research Center.

As an attorney for the U.S. Army, I always felt I had a client I was proud to represent, that tried to carry out its responsibilities in a conscientious and ethical way, and which had a mission that was worth devoting my life to support. Coming to work for NASA in 1997, I quickly realized I had traded one worthy client for a different, but no less worthy client. NASA’s mission, at its most basic level, is to advance aeronautical and space transportation and explore the universe for the benefit of the United States and humanity. These are fundamental pursuits if human beings are to continue advancing as a species.

I was blessed in my Army career to help defend the nation. I have been blessed in my NASA career to help advance air and space transport and explore the universe for all mankind. My part in both those endeavors may have been minor, but I feel privileged and proud to have been associated with the U.S. Army and with NASA Langley Research Center. Thanks to everyone at NASA LaRC for the last 20+ years. When we get to Mars or back to the moon, or when the next science mission helps us better understand the universe, I can look at that and think I played a small part. Godspeed in all your continuing endeavors!

Shawn T. Gallagher
The Freedom of Information Act (FOIA) is one of the so-called “sunshine laws” designed to make the operation of Government more transparent by shining a light on its internal operations. Codified at 5 U.S.C. § 552, FOIA was signed by President Lyndon Johnson and enacted into law on Independence Day, July 4, 1966. In the name of transparency, FOIA provides for public disclosure of most federal Government records, without regard to the requestor’s motivations or intentions. All 50 states have enacted their own similar versions of FOIA for state government and agency records.

On the federal level, the public’s right-to-know is counterbalanced by nine specified exemptions from disclosure. These exemptions were designed to protect legitimate countervailing concerns for confidentiality. The exemptions allow the government to withhold some types of information. Whether or not an exemption applies is often a matter of interpretation of the FOIA statute by courts, by agency regulations, and by Presidential executive order. The nine exemptions are:

1) “properly classified”
2) “related solely to the internal personnel rules and practices of an agency”
3) “specifically exempted from disclosure by statute (subject to certain conditions)”
4) “trade secrets and commercial or financial information obtained from a person and privileged or confidential”
5) records that would be privileged in court, including records less than 25 years old that describe the internal “deliberative process” of the Government
6) “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy”
7) records “compiled for law enforcement purposes” (subject to certain conditions)
8) compliance records of regulated financial institutions
9) survey data regarding the location of wells.

Exemption 4 is the one we generally see the most at LaRC’s Office of Chief Counsel (trade secrets and commercial or financial information). This likely is the result of the large number of contracts and the numerous Space Act Agreements executed at our Center.

In today’s competitive business environment the FOIA process has gone well beyond its original well-intentioned goal of Government transparency. It has become a major mechanism for collecting business intelligence. We see FOIA requests from business rivals of incumbent contractors/partners. Also, professional research firms and strategy consultants file FOIA requests to collect documents and data regarding federal procurements that they then sell to market competitors. Exemption 4, applied correctly, will protect the incumbent contractor’s legitimate (con’t)
proprietary information from being unfairly poached. But, it is always a balancing act...the public has a clear right to know whether NASA is executing contracts fairly, effectively, and legally. And, as said earlier, FOIA provides for disclosure without regard to the requestor’s motives or intended use.

If, based on an analysis of the facts and law, the information is judged not a “trade secret,” or not “commercial or financial” information, or not “privileged,” or not “confidential,” then Exemption 4 does not apply and the information must be disclosed to a FOIA requestor. Sometimes Exemption 4 does not apply even if the information is commercial or financial. If commercial/financial information was voluntarily given to the government agency, generally the exemption does not apply and that information must be released (but there are exceptions to this rule per case law). In contrast, trade secrets (as well as the contractor’s commercial and financial information) will be protected if the submitter was required by the government to provide the information to the Government. This is deemed a mandatory submittal rather than a voluntary submittal. An example: cost and pricing data provided by a company in a proposal to compete for a government contract. The company has no choice but to provide that information, it is therefore considered a mandatory submission within the government record (i.e., the contract proposal), and is therefore covered by Exemption 4 and protected from release.

Regarding the release of contract proposals generally, unsuccessful proposals (as compared to successful proposals) for a government contract can never be released under FOIA. Unsuccessful proposals are expressly protected by a separate statute, 41 U.S.C. § 4702. FOIA Exemption 3 says information will not be released under FOIA when another statute specifically protects that information. Successful proposals, on the other hand, are fair game for requestors. That’s why Exemption 4 must be carefully evaluated to protect a contractor’s legitimate proprietary trade secrets or commercial/financial information residing within the proposal. Such information will be redacted (covered over so as not to be seen) from the otherwise releasable proposal before it is turned over to the requestor.

OCC works closely with the LaRC FOIA Officer, Carissa Wheeler, and numerous records custodians across LaRC to ensure the “sunshine laws” are applied correctly. Feel free to contact Eric Rissling in OCC if you have any questions about FOIA. There’s no reason to be kept in the dark.

Congratulations to Patent Attorney Andrea Z. Warmbier, who was awarded the NASA Early Career Achievement Medal at the 2017 NASA Langley Research Center Honor Awards ceremony on October 12, 2017. Andrea received the award for, “enabling a better understanding of intellectual property and developing an Agency capability for knowledge sharing in order to build a more effective legal team for NASA.” Please join us in congratulating Andrea!

Image Credit: www.nasa.gov
Photo Credit: NASA LaRC OCC
Sometimes federal employees experience personal or family medical emergencies, and do not have enough sick or annual leave to manage the situation. When this happens, they have three options: Advanced Sick Leave (ASL), the Voluntary Leave Transfer Program (VLTP), and the Voluntary Leave Bank Program (VLBP). You can help your fellow coworkers by donating to them through the VLTP or the VLBP. This article will explore each briefly and explain how you can give or receive help.

Note that, for the sake of the below requirements, “family member” includes an employee’s spouse, parents, parents’ spouses, spouse’s parents, children, children’s spouses, siblings, siblings’ spouses, grandparents and grandchildren, spouses of grandparents and grandchildren, domestic partner, parents of domestic partner, and “any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.”

1) **Advanced Sick Leave (ASL)**

Full-time employees may be advanced up to 240 hours of sick leave if they are experiencing:
- Incapacitation associated with a physical or mental illness, injury, pregnancy, or childbirth
- A serious health condition of themselves or a family member
- Exposure to a communicable disease that would jeopardize the health of others if they were to return to work
- Processes involving the adoption of a child, or
- For the care of an eligible service-member with a serious injury or illness.

Full-time employees may be advanced up to 104 hours of sick leave if they are:
- Receiving medical, dental, or optical examination or treatment
- Providing care for a family member who is incapacitated by a medical or mental condition, or to attend a family member receiving medical, dental, or optical examination or treatment
- Providing care for a family member whose exposure to a communicable disease would jeopardize the health of others, if that family member were to be present in the community
- Making arrangements concerning the death of a family member or to attend the funeral of a family member.

The maximum possible amount of advanced sick leave that an employee may have at any one time is 240 hours. The maximum amount of advanced sick leave that a part-time employee may receive is prorated according to the number of hours that employee works. Employees apply for ASL through WebTADS at [https://webtads.nasa.gov](https://webtads.nasa.gov). Requesting employees are generally required to provide medical documentation. More information about requirements and leave eligibility can be found on the NSSC’s website at [https://www.nssc.nasa.gov](https://www.nssc.nasa.gov).

2) **The Voluntary Leave Transfer Program (VLTP)** provides a way for federal employees to donate leave directly to their colleagues both within NASA and at other government agencies. VLTP assistance is available to employees who have been affected by a personal or family medical emergency and who have exhausted all of their paid leave. More information about the VLTP can be found on the NSSC’s website.

- **To Apply for VLTP Assistance:** Eligible employees apply for VLTP help through WebTADS. Employees applying for VLTP through WebTADS are generally required to provide medical documentation, when applicable. The NASA Shared Services Center (NSSC) coordinates the request with the employee’s supervisor to reach a final decision on approving or disapproving the request. Employees receiving VLTP assistance must also keep their supervisors appraised of their status and the prospect of returning to work. Employees may simultaneously request ASL and participate in the VLTP.

- **To Donate to the VLTP:** Federal employees can donate leave to eligible government colleagues through WebTADS. To donate, you must identify a specific individual and your relationship to them, as well as the Center where they work (if they are NASA employees) or the agency where they work (if they are employees of a different government agency). Employees cannot donate annual leave to their immediate supervisor, and compensatory time cannot be donated.
3) The Voluntary Leave Bank Program (VLBP) is a leave-sharing account that employees can enroll in so that they are protected in case of a personal or family medical emergency. More information can be found on the NSSC’s website.

- **Enrolling:** When you enroll in the VLBP, you must make an annual donation of one pay period’s worth of annual leave (4, 6, or 8 hours depending on your leave accrual rate). The next Open Enrollment window for the VLBP will run from November 13, 2017 – January 6, 2018. You can also enroll in the VLBP within 60 days of (1) starting work as a new employee, or (2) returning from an eligible absence. Membership requests are made in WebTADS.

- **To Apply for VLBP Assistance:** Members request VLBP donations through WebTADS. They are generally required to provide medical documentation. Before receiving leave from the VLBP, an employee must have exhausted all annual leave, sick leave, ASL, and VLTP donations. The amount of leave granted is determined by the three-member Leave Bank Board.

- **To Donate to the VLBP:** You can donate annual leave to the VLBP at any time, even if you are not a member. Donations are made through WebTADS. When you donate leave to the VLBP, do not specify a specific individual recipient (as you would if you were donating to the VLTP), because VLBP donations go into the “pool” from which all members may draw.

Additionally, in the wake of Hurricanes Harvey and Irma, NASA has been authorized by OPM to establish two Emergency Leave Transfer Programs (ELTPs) that will be used to assist affected federal employees. Donate annual leave to one or both of the ELTPs in WebTADS by specifying whether you would like to donate to victims of “Hurricane Harvey” or “Hurricane Irma.” You cannot donate to a specific emergency leave recipient. Your donations may go to NASA employees or to employees of other affected agencies. The donation period expires on October 30, 2017, so please act quickly to support your fellow employees!

The Family and Medical Leave Act of 1993 (FMLA) provides additional unpaid leave in the event of specific family health scenarios. OCC will publish an article discussing FMLA options and requirements in a future newsletter, so stay tuned!
RECENTLY ISSUED U.S. PATENTS
JULY 1, 2017—SEPTEMBER 30, 2017


- Wade C. Jackson and Gregory T. Shanks, NASA LaRC. U.S. Patent Number 9,719,901 issued August 1, 2017 for “Impact Tester Device”


- Lisa Scott Carnell, Emilie J. Siochi and Nancy M. Holloway, NASA LaRC; Kam Leong and Karina Kulangara, Duke University. U.S. Patent Number 9,758,761 issued September 12, 2017 for “Aligned and Electrospun Piezoelectric Polymer Fiber Assembly and Scaffold”


- Paul M. Danehy, NASA LaRC. U.S. Patent Number 9,759,907 issued September 12, 2017 for “Rapid Optical Shutter, Chopper, Modulator and Deflector”

- Craig A. Brice, NASA LaRC. U.S. Patent Number 9,764,386 issued September 19, 2017 for “Functionally Graded Metal-Metal Composite Structures”


- Lisa Scott Carnell, Emilie J. Siochi and Nancy M. Holloway, NASA LaRC; Kam Leong and Karina Kulangara, Duke University. U.S. Patent Number 9,758,761 issued September 12, 2017 for “Aligned and Electrospun Piezoelectric Polymer Fiber Assembly and Scaffold”


- Paul M. Danehy, NASA LaRC. U.S. Patent Number 9,759,907 issued September 12, 2017 for “Rapid Optical Shutter, Chopper, Modulator and Deflector”

- Craig A. Brice, NASA LaRC. U.S. Patent Number 9,764,386 issued September 19, 2017 for “Functionally Graded Metal-Metal Composite Structures”


Congratulations, Inventors!
How savvy are you at marking issues for data made or delivered under a Government procurement contract? Try your luck by taking the below quiz. Answers to the questions can be found on the bottom of the page.

1. The Government’s rights in data can be protected by:
   a. Thoroughly understanding the development requirements of the contract.
   b. Understanding and clearly specifying deliverables, and associated data rights, in the contract.
   c. Ensuring all marked data is authorized to be marked upon delivery.
   d. Ensuring all marked data is correctly marked upon delivery.
   e. All the above.

2. True or False - Any marking is allowable under a government contract provided such markings clearly communicate the proprietary or sensitive nature of the data.

3. When a contactor delivers data under the data rights clause, which markings are acceptable?
   a. “PROPRIETARY”
   b. “CONFIDENTIAL”
   c. “COMPETITION SENSITIVE”
   d. “LIMITED RIGHTS”
   e. “RESTRICTED RIGHTS”
   f. C and D
   g. All the above.
   h. None of the above.

4. True or False - The best time to address unauthorized or incorrect markings is during the contract closeout process.

5. True or False – The Government is liable for distributing data that should have contained a limited rights notice, but was delivered to the Government without any restrictive markings.
From the Pentagon rules:

- If you are working an action, three other unfriendly people will be working it, too.
- No staff action is done before its time…
- Work expands to fill the hype.

More Murphy’s Laws corollaries:

- Nature always sides with the hidden flaw.
- A purchased component or instrument will meet its specifications long enough, and only long enough, to pass incoming inspection.
- Parts that positively cannot be assembled in improper order will be.
- Kim’s Rule of Committees: If an hour has been spent amending a sentence, someone will move to delete the paragraph.

OCC is proud to announce that we took first place in the CFC PumpkinFest Contest! The theme this year was “Solar Eclipse Selfie.” Thanks to Andrea Warmbier and to all who voted!

Upcoming CFC events include the Chili Cook-off on Nov. 1 and Jail the Manager on November 15!