

# A Note from Volume 123's Editor-in-Chief, Nicholas Gutmann

Welcome to *In Review*, a new publication of the West Virginia Law Review! I hope this newsletter finds you well after an unprecedented year. We have all faced many challenges, and the Law Review has been no exception. I am happy to report that thanks to the incredible eff orts of our members, the Law Review remains strong heading into 2021.

The main project for Volume 123 has been the implementation of the Strategic Plan developed by Volume 122. This plan provides improvements to every aspect of the Law Review from the publication process to social events. To this point, we have reorganized the publication schedule to provide a more efficient process. The Senior Note Editor position has been reestablished to help Associate Editors with note writing. We have had initial meetings about creating an alumni board. And our membership has increased to nearly 40 members. However, even with those changes, we still have much more to accomplish.

Additionally, the Law Review has successfully published Issue 1 of the West Virginia Law Review and Issue 1 of the West Virginia Law Review Online. Moreover, as I write this letter, Issue 2 of the West Virginia Law Review has been sent to the publisher. At the same time, we have also developed safety protocols to protect our members, and the larger Law School community, from COVID-19.

With all of these tasks, our members have simply been tremendous. I am incredibly proud to work with them, and I look forward to seeing what we can accomplish in 2021.

## Issue One of Volume 123 Published

By Tyler Rittenhouse ('21)

Issue One of Volume 123 of the West Virginia Law Review is now published. This issue contains exciting legal scholarship from practitioners, professors, and historians, as well as four student-authored Notes on a wide variety of topics.

Jordan McMinn ('21), Senior Managing Editor for Volume 123, spearheaded the publication effort for Issue One, along with Executive Publications Editor Allyson Burgess ('21), and Executive Editors Lauren Cyphers ('21), Isabella Anderson ('21), and Amy Post ('21), Senior Editors, and Associate Editors.

"Issue One is a great example of the power of legal scholarship, and it highlights a variety of theoretical and practical law topics," said Jordan McMinn. "We would like to thank all of the Senior Editors and Associate Editors for their hard work on editing and completing the publication of this issue."

To purchase a hard copy, visit <u>https://wvlawreview.wvu.edu/print-editions</u>. Articles are also available on Westlaw and HeinOnline.

#### WEST VIRGINIA LAW REVIEW

Volume 123	Fall 2020	Issue
	TABLE OF CONTENTS	
	ARTICLES	
"But They're Already Paid		
Payments In-Kind, College	Athletes, and the FLSA Sam C. Ehrlich	1
The Balkanization of		
Data Privacy Regulation		61
"Alexa, Call My Lawyer!"	Determining Liability	
For Unauthorized Purchase		
Virtual Assistants	Dr. Mark Giancaspro	117
A Thing Called Character:		
Export-Import Bank of the		
and West Virginia to the W	orld Hon. Kimberly A. Reed	147
Racial Segregation in		
West Virginia Housing, 192	29–1971Nathan Tauger	17
	STUDENT NOTES	
Reform Needs to Happen P		
The Importance of Federal		
Polyfluoroalkyl Substance	Regulation Erin E. O'Brien	233
The Threat of Data Misuse		
Establishing a Uniform Fra		
Standing in the Privacy Era	Isabella Anderson	263
Uncertain Immunity: Asses		
in the Context of Post-Arre		
Arising Prior to a Judicial I		
Probable Cause	J. Tyler Barton	291
Pilot Agreements in West V		
A Tale of Turbulent Taxati	on Blake N. Humphrey	335

#### Law Review Alumni: Please Update Your Contact Information!

Please update your contact information at the link below or email it to Blake Humphrey at <u>bnhumphrey@mix.wvu.edu</u>. Include your name, personal phone number, and personal email address so we can keep you informed and up to date on what is happening with the *West Virginia Law Review*.

## https://forms.gle/WGpmpHqsX3JF2MvA9



## **O'Brien's PFAS Work Selected as Volume 122's Best Student Note** By Julia Mandat ('22)

Erin O'Brien was the proud recipient of Volume 122's Best Student Note, an award given to the Associate Editor with the highest scoring piece. When it came time write her student Note, O'Brien used her background in chemistry to research the intersection of physical science and the law with a focus on regulatory agencies such as the EPA. O'Brien was inspired by the documentary *The Devil We Know* because of the focus it placed on perand polyfluoroalkyl substances ("PFAS") found in Parkesburg, West Virginia's water supply.

PFAS are a family of around 7,000 chemicals and have been in use since the 1950s, but they have not been studied until recently. Most of these chemicals are found in many consumer products, including most commonly in Teflon non-stick pans. Most Americans have had some sort of exposure to PFAS mainly through consumption of water.

O'Brien was surprised while researching PFAS that there was no regulation related to the chemical family and saw that there was an opportunity to fill this hole in the environmental regulatory landscape. Specifically, she is calling on the EPA to take action and regulate PFAS. A limited number of state legislatures have already passed PFAS laws. Furthermore, the United States House of Representatives has passed PFAS laws, but they have yet to reach a vote in the Senate.

In all, state legislatures are working on PFAS protections, but to little avail. O'Brien's Note argues that PFAS regulation is better served by EPA oversight and offers a suggested framework under the Toxic Substance Control Act ("TSCA") and the Comprehensive Environmental Recovery, Compensation, and Liability Act ("CERCLA") as a solution to control the amount of PFAS entering the environment and to ensure polluters clean up any PFAS mess they plan to leave behind.



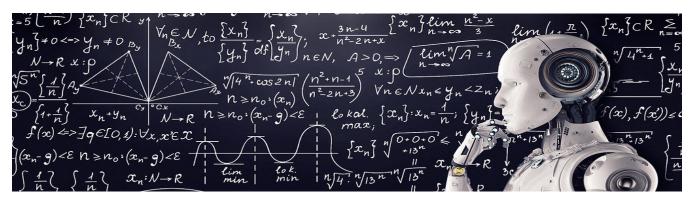
**Pictured:** O'Brien, a 3L at WVU Law, is also a student clinician in the WVU Law Land Use Clinic.

In the production of these products, and before the enactment of the Clean Water Act, many of the PFAS byproducts were dumped into public waterways. These waterways give way to ground water sources, which eventually end up being consumed as drinking water. Additionally, the Department of Defense uses PFAS to put out chemical fires through using them as a foam extinguisher.

At bottom, PFAS are carcinogenic and cause birth defects and other chronic illnesses. Research has shown that this chemical family has found its way into the population's bloodstreams through drinking water.

To learn more about PFAS, O'Brien's student Note, *Reform Needs to Happen PFAST: The Importance of Federal Per- and Polyfluoroalkyl Substance Regulation*, can be found at 123 W. VA. L. REV. 233 (2020).





#### 2021 Symposium to Explore Artificial Intelligence and the Law, Adapts Delivery and Format in Response to COVID-19 Pandemic By McKoppa Moadows (221)

By McKenna Meadows ('21)

The 2021 West Virginia Law Review Symposium will be like none before it. On February 25 and February 26, 2021, the West Virginia Law Review will host its annual symposium. This year, the topic will be Artificial Intelligence and the Law, a developing area with broad implications on the law and society.

When the pandemic first arose, the West Virginia Law Review chose to hold the symposium virtually, which ties in perfectly to the topic. This allows the Law Review to take advantage of a few things. First, there are several digital platforms that the Law Review has been able to explore and implement so that the symposium best simulates the conference-type atmosphere of the previous in-person symposia. Second, hosting a virtual symposium has expanded the scope of people who are willing to be speakers but might not otherwise be able to because of time and travel constraints. Third, a virtual symposium will allow speakers, panelists, and attendees to participate from across the Country and around the world.

Speakers will include Professor Sandra Wachter, an Associate Professor and Senior Research Fellow in Law and Ethics of AI, Big Data, and Robotics, as well as Internet Regulation at the Oxford Internet Institute at the University of Oxford; Emile Loza de Siles, an Assistant Professor at Duquesne University School of Law and founder of Technology & Cybersecurity Law Group PLLC in Washington, DC; and professors at the WVU College of Law, including Shine Tu, Amy Cyphert, Jena Martin, and Valarie Blake.

This year's symposium will have a different scope as well. While many symposia often focus on a niche area of the law, this symposium will take a broader look at how artificial intelligence impacts the law. Although many perceive artificial intelligence as something from a work of science fiction, this symposium will demonstrate its real-world applications and will have something that appeals to everyone, regardless of their level of knowledge on artificial intelligence. Symposium topics will include algorithmic discrimination, access to justice, and artificial intelligence as it relates to finance, the criminal justice system, music copyrights, and fairness in credit scores.

Executive Article Selection and Symposium Editors Ashley Faulkner and Erin O'Brien have been working diligently on this symposium since before the pandemic began. They have worked closely with faculty advisor Amy Cyphert, who taught the class Artificial Intelligence and the Law in the summer of 2020 and writes on this topic, to ensure that the symposium is informative, exciting, and relevant to our current world. In addition to a two-day symposium, Artificial Intelligence and the Law will also be the topic covered in Issue 3 of Volume 123. As in past years, attorneys will likely be able to receive CLE credit for attending and participating in the 2021 Symposium.

For more information on Symposium, contact Ashley Faulkner at <u>avfaulkner@mix.wvu.edu</u> or visit us online at <u>https://wvlawreview.wvu.edu/symposium-2021</u>.



## Alumni Spotlight: The Honorable Frank W. Volk ('92)

By Benjamin Vanston ('21)

The Honorable Frank W. Volk was nominated on April 19, 2019 to serve on the United States District Court for the Southern District of West Virginia. He was subsequently confirmed by a 92-0 vote on October 16, 2019 and received his commission on October 19, 2019. Judge Volk had previously served on the United States Bankruptcy Court for the Southern District of West Virginia from 2015 to 2019. Prior to his time on the bankruptcy court, he served as a law clerk to the Honorable Charles Haden from 1995 to 2004 and to the Honorable John Copenhaver from 2004 to 2015. Additionally, Judge Volk served as a law clerk to Judge M. Blane Michael on the United States Court of Appeals for the Fourth Circuit.



Judge Volk obtained his Juris Doctorate from the West Virginia College of Law in 1992, graduating Order of the Coif. During his third year, he served as Editor-in-Chief of the West Virginia Law Review. During his time on the West Virginia Law Review, Judge Volk wrote *HIV Positive Employees Under Federal and State Law*, which offered an analysis of how West Virginia handled HIV-positive employees under relevant state law.

Throughout his career, Judge Volk has held a steadfast commitment to the West Virginia College of Law, serving as an adjunct professor of Civil Rights and Advanced Torts. Additionally, Judge Volk has displayed a passion for giving back to the College of Law by extending opportunities to recent graduates and current students to work under him as clerks and externs.

## Member Spotlight: Daniel O'Hare ('22)

By Sam Burkhardt ('22)

Daniel O'Hare is in his second year of law school and an associate editor on Volume 123 of the *West Virginia Law Review*. Unlike most of the other associate editors, Dan is a non-traditional student. His experiences and accolades before enrolling at the College of Law are nothing short of exceptional. Dan received a Ph.D. in Christianity and Judaism in Antiquity from the University of Notre Dame in 2008. Following receipt of that degree, Dan was a professor of Religion at Wheeling University, formerly Wheeling Jesuit University, until 2019.

One of the key tenets of Jesuit education is "being a man or woman for others." In Dan's view, this value is meant to embody the spirit of Jesuit education. It calls for those who have the ability, the knowledge, and the opportunity to advocate for those less fortunate.



In so doing, individuals do not just help one person directly, but they also help society. This Jesuit value was instilled in Dan during his time as a professor, and he began to notice how the University positively impacted Wheeling. As a law student, Dan hopes to carry these Jesuit values into his future practice. After the University suffered financial struggles in 2019, Dan decided that he could make an impact in a different way-the law.

Now, as a law student, Dan is hoping to carry these Jesuit values into his future practice. While Dan doesn't know exactly what area of law he wants to pursue, he is interested in bankruptcy. With the current health crises as a result of COVID-19, Dan believes he can help small businesses in the community and advocate for individuals that normally could not afford legal representation. In this manner, Dan would be living by the Jesuit creed of being a man for others—utilizing his skills and knowledge to benefit those around him.



## Member Spotlight: Anna Filatova ('21)

By Sam Burkhardt ('22)

Anna Filatova is a 3L at WVU Law, an associate editor on Volume 123 of the West Virginia Law Review and is formerly a Russian attorney. Unlike all of the other members on Volume 123, Anna previously practiced law in Russia. However, after meeting her husband during a trek to Mount Everest Base Camp, she would enroll at WVU Law and go through the process of law school in the United States.

Anna's passion for the law runs deep. She graduated from the Academy of Law and Management of the Federal Penal Service of Russia with a major in civil law. For two years after graduation, Anna engaged in very intense litigation in the Moscow Arbitrage Court. Most of her cases involved challenging state department decisions that held her clients administratively liable. Anna explained that because the government heavily controls businesses in Russia, it often leads to corruption.

"The overall goal of my practice was to promote a healthy balance between governmental control and a freedom of commerce in energy business," Anna said. She would frequently work on the weekends and well into the evenings to keep abreast on her matters and cases. She explains that working as an attorney requires "100% commitment" because a lawyer cannot come to the court unprepared or miss hearings. Nevertheless, she enjoyed and embraced the challenges and opportunities.

Since high school, her professional development was her number one priority, but Anna realized that life is about much more than a courtroom. In April 2014, Anna went to Nepal to accomplish one more "goal:" to walk as high as 18,000 feet to see the sun rise from behind Mount Everest. "Higher in mountains, closer to God, as Russian people say," Anna recounted. On that trip she met her future husband, a mountaineer from Morgantown, West Virginia, and Anna eventually moved to the States.

For a trailblazer like Anna, she always sets new goals and seeks to achieve them. Life has an interesting ability to steer people to different paths. For Anna, moving to Morgantown reignited her strong passion and love for her legal career in Russia. Anna says that she could leave behind family, friends, and her favorite city of Moscow, but she could not leave her profession. "To be a lawyer is not just a job, it is a life choice," Anna stated. As a result, she decided to pursue a Juris Doctorate at West Virginia University College of Law. However, starting over with law school seemed very challenging. Because she is not a native-English speaker, she is particularly proud of receiving high performance reviews from her professors and for being hired by Steptoe & Johnson, one of West Virginia's leading law firms.



At WVU Law, Anna has excelled both inside and outside of the classroom. Recently, while getting back into a live courtroom, she completed a full-time externship with the United States District Court for the Northern District of West Virginia. As a third-year law school student, she works as a clinician in the United States Supreme Court Clinic and she truly enjoys it. "Representing underserved clients brings true meaning to why we become lawyers: to make this world better for those who are less fortunate than us," Anna said. Above all, Anna is a vital and well-respected member of Volume 123 of the West Virginia Law Review. Her prior real-world experience as an attorney is unique, and her careful attention to detail and dedication to her work are strong assets as an Associate Editor.



# WEST VIRGINIA LAW REVIEW

Volume 123	In Review	Fall 2020
	<b>BOARD OF EDITORS</b>	
	EDITOR-IN-CHIEF Nicholas Gutmann	
	Senior Managing Editor Jordan R. McMinn	
Executive Articles Selection & Symposium Editors Ashley V. Faulkner Erin E. O'Brien	EXECUTIVE NOTES EDITOR AUSTIN LONGNECKER EXECUTIVE PUBLICATIONS	Executive Research Editors Isabella Anderson Lauren Cyphers Amy E. Post
ERIN E. O BRIEN	EDITOR ALLYSON N. BURGESS	AMY E. POST
Senior Editors J. Tyler Barton Joshua G. Stephan Lauren Trumble	EXECUTIVE ALUMNI & Development Editor Blake N. Humphrey*	SENIOR NOTES EDITOR Brice Phillips Cameron C. Viney
Samantha L. Willis		
	Associate Editors	
KAITLYN AKERS	SAMUEL BURKHARDT*	RYAN D. COMBS
Bailey Emory Denali Hedrick	Michael English Madison Hinkle	Anna Filatova Shawn Hogbin
JAYLIN K. JOHNSON	ELIZABETH KING	JULIA MANDAT
McKenna Meadows*	DANIEL O'HARE	EMILY PAULEY
JARED PHALEN	Tyler L. Rittenhouse*	CHRISTOPHER ROBINSON
SAMANTHA SCHAAL Mary Grace Williams	ASHLEY M. STEPHENS	BENJAMIN VANSTON* ADAM WILSON
	FACULTY ADVISOR	

\*Denotes In Review Editor or Contributor