

ALAN K. CHEN

University of Denver Sturm College of Law

2255 E. Evans Avenue

Denver, Colorado 80208-0640

(303) 871-6283

email: achen@law.du.edu

Web site: www.law.du.edu/chen/

SSRN author page: [http://ssrn.com/author = 125088](http://ssrn.com/author=125088)

PRESENT EMPLOYMENT

ASSOCIATE DEAN FOR FACULTY SCHOLARSHIP & PROFESSOR

UNIVERSITY OF DENVER STURM COLLEGE OF LAW, Denver, Colorado

Professor, Sept. 2003-present (Research Professor, 2004-06); Associate Dean for Faculty Scholarship (June 2008 – present)

Teaching and research in the areas of Constitutional Law, Civil Rights, Federal Courts, and Social Change Lawyering

ASSOCIATE PROFESSOR (with tenure)

UNIVERSITY OF DENVER COLLEGE OF LAW, Denver, Colorado

Sept. 1998-Aug. 2003

VISITING RESEARCH FELLOW

QUEEN MARY & WESTFIELD COLLEGE, University of London, London, England (on sabbatical leave)

Sept. 1999-Dec. 1999

ASSISTANT PROFESSOR

UNIVERSITY OF DENVER COLLEGE OF LAW, Denver, Colorado

Sept. 1992-Aug. 1998

PRIOR LEGAL EXPERIENCE

STAFF COUNSEL

ROGER BALDWIN FOUNDATION OF ACLU, INC., Chicago, Illinois

Supervised and conducted civil rights and civil liberties litigation in federal and state courts at both trial and appellate level. Emphasis on Fourth Amendment, privacy, and First Amendment litigation.

Sept. 1987-June 1992

LAW CLERK

HONORABLE MARVIN E. ASPEN

United States District Court Judge for the Northern District of Illinois, Chicago, Illinois,
Sept. 1985-August 1987

EDUCATION

STANFORD LAW SCHOOL

Stanford, California, J.D., 1985

Honors:

Best Brief, 1985 Marion Rice Kirkwood Moot Court Competition; Hilmer Oehlmann, Jr. Award for Excellence in First Year Legal Research and Writing; 1983 Stanford National Moot Court Team

CASE WESTERN RESERVE UNIVERSITY

Cleveland, Ohio, B.A., Political Science, 1982, *summa cum laude*

Honors:

Graduation with Honors in Political Science; Madge McKinney Award for Excellence in Political Science; Mather Alumnae Award for Excellence in Political Science

SCHOLARLY PUBLICATIONS

LAW, LAWYERING, AND SOCIAL CHANGE (forthcoming, Aspen Publishing 2011) (with Scott L. Cummings)

Right Labels, Wrong Categories: Some Comments on Steven D. Smith's, Why is Government Speech Problematic?, (response to paper presented at the 17th Annual Ira C. Rothgerber, Jr. Conference on Constitutional Law) (forthcoming DENV. U. L. REV. ONLINE)

Rosy Pictures and Renegade Officials: The Slow Death of Monroe v. Pape, 78 UMKCL. REV. 889 (2010)

Bureaucracy and Distrust: Germaneness and the Paradoxes of Academic Freedom Doctrine, 77 U. COLO. L. REV. 955 (2006)

The Facts About Qualified Immunity, 55 EMORY L. J. 229 (2006) (also reprinted in 22 CIVIL RIGHTS LITIGATION AND ATTORNEY FEES ANNUAL HANDBOOK (Thomson West 2006))

Forced Patriot Acts, 81 DENV. U. L. REV. 703 (2004)

Foreword: Bill Beaney's Continuing Relevance, 81 DENV. U. L. REV. 217 (2003)

Teens in the UV Tanning Booth? Tax the Tan, (co-authored with Dellavalle, RP, Schilling, LM, Hester, EJ), ARCHIVES OF PEDIATRIC AND ADOLESCENT MEDICINE 2003, 157: 845-846

Statutory Speech Bubbles, First Amendment Overbreadth, and Improper Legislative Purpose, 38 HARV. C.R.-C.L. L. REV. 31 (2003)

Youth Access Laws: In the Dark at the Tanning Parlor, (co-authored with Dellavalle, Parker, Cersonsky, Hemme, Burkhardt, and Schilling), 139 ARCHIVES OF DERMATOLOGY 443 (April 2003)

Shadow Law: Reasonable Unreasonableness, Habeas Theory, and the Nature of Legal Rules, 2 BUFF. CRIM. L. REV. 535 (1999)

The Burdens of Qualified Immunity: Summary Judgment and the Role of Facts in Constitutional Tort Law, 47 AM. U. L. REV. 1 (1997)

"*Meet the New Boss*," 73 DENV. U. L. REV. 1253 (1996).

The Ultimate Standard: Qualified Immunity in the Age of Constitutional Balancing Tests, 81 IOWA L. REV. 261 (1995).

Due Process As Consumer Protection: State Remedies For Distant Forum Abuse, 20 AKRON L. REV. 9 (1986).

OTHER PUBLICATIONS

Liability of Private Firms Performing Public Functions, TRIAL, Oct. 1999, at 60.

Constitutional Law, in 1997 ANNUAL SURVEY OF COLORADO LAW (1997).

Burns v. Reed--Narrowing the Prosecutor's Protection From Liability for Unconstitutional Conduct, 3 POLICE MISCONDUCT AND CIVIL RIGHTS LAW REPORT 121 (1991).

UNIVERSITY ADMINISTRATIVE SERVICE

University Strategic Planning for Research Task Force, Scholarship, 2009-present.

Higher Learning Commission (HLC) Accreditation Steering Committee, & HLC Acquisition, Discovery, and Application of Knowledge Working Group, 2008-present.

Associate Provost for Research Search Committee, 2009-10.

University Planning and Advisory Committee (UPAC), & UPAC Environmental Planning Scanning Subcommittee (EPSS), 2006-08

Chair, Policy Committee (promotion and tenure committee), 1998-99, 2001-2002 (elected) Member, Policy Committee, 1998-2002 (elected)

Chair, Faculty Mentoring Committee, 2004-05, 2006-08

Faculty Executive Committee (elected), 2005-08

Teach Tech Committee, 2000-2003 (faculty committee dedicated to enhancing student learning experiences through technology both in and outside of the classroom)

Faculty Member, Dean Search Committee, 1997-98 (elected)

Chair, Financial Aid Committee; Member, Judicial Clerkship Advisory Committee; Member, Admissions, Financial Aid, Recruitment Committee; Faculty Advisor to APALSA, ACLU Student Chapter, ACS Student Chapter, SJAG, Moot Court Board (multiple years).

AWARDS

Outstanding Faculty Member, University of Denver Sturm College of Law, 2007-08, awarded by Student Bar Association

Denver University Law Review Faculty Appreciation Award, 2004.

Professor of the Year, University of Denver College of Law, 1998-99. Co-recipient selected by students for excellence in law teaching.

Colorado Trial Lawyers Association Award for the Outstanding Brief of 1997, *Williams v. City and County of Denver*

American Civil Liberties Union of Colorado, Edward Sherman Award for Outstanding Cooperating Attorney, 1997

PROFESSIONAL AFFILIATIONS

Association of American Law Schools

Chair, Civil Rights Section 1998-99

Executive Committee Member, Civil Rights Section (1994-2001) and Federal Courts Section, 2000-2001

Planning Committee Member, AALS Workshop on Federal Courts, 2001-2002

Chair, American Civil Liberties Union of Colorado Legal Panel, 1997-1999, Member, 2002-present

American Bar Association

MAJOR LITIGATION

United States Supreme Court and Federal Courts of Appeals

Headwaters Forest Defense v. County of Humboldt (pro bono). Civil rights action on behalf of demonstrators against police officers who sprayed pepper spray on plaintiffs' eyes while the latter were engaged in a peaceful, political demonstration. Co-counsel for plaintiffs on successful appeal after trial court entered judgment as a matter of law against plaintiffs. Counsel of record for plaintiffs and primary author of brief in opposition to defendants' two petitions for certiorari in Supreme Court. 240 F.3d 1185 (9th Cir. 2000), *cert. granted, judgment vacated and remanded for reconsideration*, 534 U.S. 801 (2001), *amended opinion reinstating judgment*, 276 F.3d 1125 (9th Cir.), *cert. denied*, 537 U.S. 1000 (2002)

Williams v. City and County of Denver (pro bono). Civil rights action claiming violations of Due Process Clause by police officer and municipality for death of innocent bystander caused by officer's reckless high speed driving during non-emergency situation. Counsel for the Colorado Trial Lawyers Association as amicus curiae before federal appeals court sitting en banc. 99 F.3d 1009 (10th Cir. 1996).

University of Colorado v. Derdeyn (pro bono). Class action Fourth Amendment challenge to state university random urine testing program for student athletes, trainers, managers, and cheerleaders. Co-counsel in United States Supreme Court. Co-authored successful brief in opposition to petition for writ of certiorari. 863 P.2d 929 (Colo. 1993), *cert. denied*, 511 U.S. 1070 (1994).

Dimeo v. Griffin. Class action Fourth Amendment challenge to Illinois Racing Board's random urine testing regulations for licensed horse racing professionals. Took substantial role in development of legal theories, factual development and discovery at trial level, co-authored trial briefs, drafted appellate briefs, and successfully argued initial appeal before original appellate court panel. 924 F.2d 664 (7th Cir. 1991), *rev'd en banc*, 943 F.2d 679 (7th Cir. 1991) (did not argue case *en banc*).

Taylor v. O'Grady. Class action suit disputing constitutionality of county Department of Corrections random urine testing rule for correctional officers. Participated in development of legal theories and co-authored appellate briefs. 888 F.2d 1189 (7th Cir. 1989).

Citizens for John W. Moore Party v. Illinois State Election Board. First Amendment case attacking Illinois Election Code provision regulating use of nominating petition circulators as unconstitutional inhibition on third-party candidacies. Assisted in preparation of appellate briefs and co-authored petition for writ of certiorari. 845 F.2d 144 (7th Cir. 1988), *cert. denied*, 488 U.S. 1029 (1989).

Tucker v. United States. Federal habeas corpus case seeking rule requiring adversary hearings in adjudicating equal protection clause claims regarding race-based peremptory jury challenges under

Batson v. Kentucky. Participated in development of legal arguments and co-authored petition for writ of certiorari. 836 F.2d 334 (7th Cir. 1988), *cert. denied*, 490 U.S. 1105 (1989).

Federal District Courts

Lane v. Owens, No. 03-B-1544 (PAC) (U.S. District Court for the District of Colorado) (pro bono). Civil rights action on behalf of public school students and teachers in Colorado successfully enjoining Colorado's mandatory law requiring the daily recitation of the Pledge of Allegiance in all public schools on the grounds that compulsion of speech is forbidden by the First Amendment. Lead counsel for the plaintiffs.

Henry v. Ryan. Case contesting county policy of suspicionless blood and saliva testing for DNA codes of citizens without probable cause, or even reasonable individualized suspicion, that the person tested has committed a crime. Developed legal theories, drafted pleadings and prepared memoranda opposing motions to dismiss. 775 F. Supp. 247 (N.D. Ill. 1991).

Nelson v. Streeter. Suit against local government officials for the physical seizure and censorship of painting depicting late Mayor Harold Washington in women's undergarments from private art school exhibition. Participated in development of legal theories, extensive discovery and successful briefing on motions to dismiss and for summary judgment. *See* 16 F.3d 145 (7th Cir. 1994) (did not participate in appeal).

Patrykus v. Gomilla. Class action damage suit against government officials for warrantless raid on gay bar and subsequent unlawful searches and intimidation of patrons. Drafted pleadings, conducted discovery.

Summeries v. Chicago Housing Authority. Class action suit on behalf of 150,000 public housing tenants and their invited guests challenging sweep inspections and searches of tenants, their guests and their personal effects, and ban on consensual overnight visitation. Participated in development of legal theories, factual development, drafting of pleadings and negotiation and drafting of consent decree.

Doe v. Belleville Public School District No. 118. Challenge to exclusion of child with AIDS from public school classroom. Drafted pleadings and preliminary injunction briefs. Had primary responsibility for brief in opposition to motion to dismiss and development of legal theory for defeating statutory exhaustion claim. 672 F. Supp. 341 (S.D. Ill. 1987).

Robertson v. Granite City Community Unit School Dist. No. 9. Equitable action seeking injunction prohibiting exclusion of child with AIDS from public school classroom. Drafted pleadings and preliminary injunction briefs, assisted in development of expert proof. 684 F. Supp. 1002 (S.D. Ill. 1988).

State Courts

Shannon v. Arlington Park Racetrack (reported *sub nom.*, *Arlington Park Racetrack v. Illinois Department of Human Rights*). Housing discrimination action under Illinois Human Rights Act. Successfully argued before Illinois Appellate Court for expansive reading of provision forbidding discrimination against families with children in the rental of housing accommodations. Successfully briefed opposition to petition for leave to appeal to Illinois Supreme Court. 199 Ill.App.3d 698, 557 N.E.2d 517 (1st Dist. 1990), *appeal denied*, 133 Ill.2d 551, 561 N.E.2d 686 (1990).

Aubin v. City of Chicago. Class action suit raising facial and as applied First Amendment challenge to Chicago flag desecration ordinance on behalf of artists who desired to use flags or images of flags in their artistic expression. Participated in drafting complaint and preliminary injunction briefs.

BAR ADMISSIONS

State Bar of California, December 1985

Illinois State Bar, February 1988

United States Supreme Court

United States Court of Appeals for the Seventh and Tenth Circuits

United States District Court for the Northern District of Illinois, United States District Court for the Northern District of California, United District Court for the District of Colorado

RECENT PRESENTATIONS

Right Labels, Wrong Categories: Some Comments on Steven D. Smith's, "Why is Government Speech Problematic?," the 17th Annual Ira C. Rothgerber, Jr. Conference on Constitutional Law, Denver, Colorado, January 22, 2010.

An Introduction to Government Speech, in conjunction with the 17th Annual Ira C. Rothgerber, Jr. Conference on Constitutional Law, co-sponsored by the DU Law Review, January 21, 2010.

Rosy Pictures and Renegade Officials: The Slow Death of Monroe v. Pape, Edward A. Smith/Bryan Cave Symposium, Enforcing Constitutional Rights in the 21st Century: Section 1983 Thirty Years After *Owen v. Independence*, UMKC School of Law, Kansas City, Missouri, October 23, 2009

Qualified Immunity: Unpacking the Issues, 27th Annual Section 1983 Civil Rights Litigation program, Georgetown University Law Center, Washington, D.C., April 16, 2009

Commentator/presenter on Work in Progress, Conference of Asian Pacific American Law Faculty, Denver, CO, April 26, 2008

Qualified Immunity: Unpacking the Issues, 26th Annual Section 1983 Civil Rights Litigation program, Georgetown University Law Center, Washington, D.C., April 17, 2008

The French Connection, or Rashomon?: The Supreme Court and the Supplanting of the Jury's Role in Civil Rights Adjudication, AALS Section on Civil Rights, New York, New York, January 5, 2008

Qualified Immunity: Unpacking the Issues, 25th Annual Section 1983 Civil Rights Litigation program, Georgetown University Law Center, Washington, D.C., April 19, 2007

Cafeteria Plan Federalism: Morrison, Castle Rock, and Domestic Violence as a Joint National-State Concern, University of Houston Law Center, Houston, TX, March 30, 2007

Review of the United States Supreme Court Term, American Constitution Society, Denver Lawyers' Chapter, Denver, CO, October 31, 2006

MEDIA APPEARANCES

Frequent commentator in print and electronic media on constitutional law, civil rights, and criminal procedure issues. Appearances on NewsHour with Jim Lehrer, MSNBC, and CNN News.