

**HOROWITZ, CHURCHILL, COLUMBIA—
WHAT NEXT FOR ACADEMIC FREEDOM?**

Thirteenth Ira C. Rothgerber, Jr. Conference



February 3-4, 2006

8 CLE Credits

**PRESENTED BY THE
BYRON R. WHITE CENTER
FOR THE STUDY OF
AMERICAN CONSTITUTIONAL LAW
AND
THE KELLER FIRST AMENDMENT CENTER
AND
THE UNIVERSITY OF COLORADO
LAW REVIEW**

Schedule

Friday, February 3

9:15-9:30 am	Dean David H. Getches Raphael J. Moses Professor of Natural Resources Law University of Colorado School of Law	Welcome and Introduction
9:30-10:10 am Commentators	J. Peter Byrne Professor Georgetown University Law Center Robert F. Nagel Ira C. Rothgerber Professor of Constitutional Law University of Colorado School of Law	Constitutional Academic Freedom After Grutter: Getting Real About the 'Four Freedoms' of a University Frederick Schauer Frank Stanton Professor of the First Amendment Harvard University Kennedy School of Govt.
10:10-10:30 am	Break	
10:30-12:00 pm Commentators	Lawrence Alan Alexander Warren Distinguished Professor University of San Diego School of Law Paul F. Campos Professor University of Colorado School of Law	Academic Freedom Sienho Yee Associate Professor University of Colorado School of Law
12:00-1:30 pm	Lunch	By reservation: Moorhead-Rutledge Lounge
1:30-2:40 pm Commentators	Alan K. Chen Professor University of Denver Sturm College of Law Harold H. Bruff Charles Inglis Thomson Professor University of Colorado School of Law	Bureaucracy and Distrust: Germaneness and the Paradoxes of Academic Freedom Doctrine
2:40-3:00 pm	Break	
3:00-4:15 pm Commentators	Frederick Schauer Frank Stanton Professor of the First Amendment Harvard University Kennedy School of Govt. Melissa Hart Associate Professor University of Colorado School of Law	On the Supposed Right to Academic Freedom Alan K. Chen Professor University of Denver Sturm College of Law

Schedule

Saturday, February 4

9:30-10:40 pm Commentators	Emily M. Calhoun Professor University of Colorado School of Law Laura M. Spitz Associate Professor University of Colorado School of Law	Lessons from Hogwarts Richard B. Collins Professor University of Colorado School of Law
10:40-11:00 pm	Break	
11:00-12:10 pm Commentators	Robert M. O'Neil Professor University of Virginia School of Law Ahmed A. White Associate Professor University of Colorado School of Law	"Balance" and Academic Freedom J. Peter Byrne Professor Georgetown University Law Center
12:10 pm	Conference Ends	

Byron R. White Center for the Study of American Constitutional Law

The **Byron R. White Center for the Study of American Constitutional Law** was founded in 1990 through the generous bequest of one of the Law School's most outstanding graduates and patrons, Ira. C. Rothgerber, Jr. Named in honor of the late Supreme Court Justice and University of Colorado alumnus, the Byron White Center is an important educational resource for the Law School, for the University, and for the citizens of Colorado.

Between 1990 and 1994, Dean Gene R. Nichol, Jr. directed the Ira C. Rothgerber, Jr., Conferences on Constitutional Law. In 1995, Professor Paul F. Campos was appointed as Center Director, and the Center began to organize other educational programs. Professor Robert F. Nagel became director in 1999 and served until 2002. The current director is Professor Richard B. Collins.

Speakers



Professor Lawrence Alexander is the Warren Distinguished Professor of Law. Professor Alexander teaches and writes in the areas of constitutional law, criminal law and jurisprudence. The author of numerous scholarly articles, he is also co-author (with Professor Paul Horton) of *Whom Does the Constitution Command?* (Greenwood Press) and (with Professor Emily Sherwin) *Rules and the Rule of Law* (Duke University Press). He is editor of *Constitutionalism: Philosophical Foundations* (Cambridge University Press). Among his articles are "What Makes Wrongful Discrimination Wrong?" *University of Pennsylvania Law Review*; "Self-defense, Justification and Excuse," *Philosophy & Public Affairs*; "With Me It's All 'Er Nuthin: Formalism in Law and Morality," *University of Chicago Law Review*; and (with Frederick Schauer) "On Extrajudicial Constitutional Interpretation," *Harvard Law Review*. Professor Alexander serves on the editorial boards of the journals *Ethics* and *Law & Philosophy*, and is co-editor of the international quarterly, *Legal Theory*. Professor Lawrence received his B.A. from Williams College in 1965 and his LL.B. from Yale University in 1968.



J. Peter Byrne is Professor of Law at the Georgetown University Law Center. He teaches Property, Land Use, Historic Preservation, and Constitutional Law. Professor Byrne graduated from

Northwestern University and from the University of Virginia School of Law. He was a law clerk to Chief Judge Frank Coffin of the U.S. Court of Appeals for the First Circuit and for Associate Justice Lewis F. Powell, Jr. of the U.S. Supreme Court. He subsequently was associated with the firm of Covington and Burling. Professor Byrne has taught at Georgetown since 1985. In 1996-97, he was John Carroll Research Professor. He served as Associate Dean for the JD Program from 1997 until 2000. He currently is Faculty Director of the Georgetown Environmental Law and Policy Institute. He has published numerous law journal articles, many of which analyze the application of the constitution to the land use regulation process. He also has written several articles advancing a distinctive theory of constitutional academic freedom, and has served for many years on Georgetown's Free Speech and Expression Committee. He received a District of Columbia 2004 Mayor's Award for Excellence in Historic Preservation for his role in creating a website for study of historic preservation law, www.ll.georgetown.edu/histpres. Recently, he co-authored an *amicus* brief for the National League of Cities in *Kelo v. New London*.

Speakers



Emily Calhoun is a Professor of Law at the University of Colorado School of Law. She received her J.D. from the University of Texas School of Law. Professor Calhoun teaches and writes about civil rights, civil liberties litigation, and federal courts. Her recent publications include An Essay on the Pro-

fessional Responsibility of Affirmative Action in Higher Education, *Temple Political & Civil Rights Law Review*; and *Workplace Mediation: The First-Phase, Private Caucus in Individual Discrimination Disputes*, *Harvard Negotiation Law Review*. Professor Calhoun has worked in many capacities within the university, including as Chairperson of the four-campus CU Faculty Council and as an associate vice president responsible for faculty affairs. She is currently one of two Privilege and Tenure Committee mediators who attempt to resolve faculty-administrator disputes outside formal grievance processes. From 1971 to 1974 she was a staff attorney with the Southern Regional Office of the ACLU, which handled significant voting rights, jury discrimination, and other constitutional cases.



Alan Chen is a Professor at the University of Denver Sturm College of Law, where he teaches Constitutional Law, Civil Rights, Federal Jurisdiction, and Criminal Procedure. His scholarship is devoted to constitutional law and the federal courts, with an emphasis on remedies for constitutional rights violations and on the First Amendment. Professor Chen was appointed to the DU law faculty in 1992. For five years prior to entering teaching, Professor Chen was a staff attorney with the ACLU in Chicago, where he was a civil liberties litigator focusing primarily on cases concerning free speech, police misconduct, and privacy rights. Prior to that, he served as a law clerk to the Honorable Marvin E. Aspen, United States District Court Judge for the Northern District of Illinois. Professor Chen received his J.D. from Stanford Law School in 1985 and his B.A. with High Honors in Political Science, *summa cum laude*, from Case Western Reserve University in 1982.

Speakers



Robert O'Neil, director of the Thomas Jefferson Center for the Protection of Free Expression and an authority on the First Amendment, teaches constitutional and commercial law. He came to Virginia in 1985 to become the University of Virginia's sixth president, a position he held until 1990. After his law school graduation, O'Neil

clerked for U.S. Supreme Court Justice William J. Brennan, Jr. In 1963 he began his law faculty career, first as a teacher at the University of California-Berkeley and then as a teacher-administrator. His posts included provost of the University of Cincinnati, vice-president of Indiana University, and president of the statewide University of Wisconsin system. O'Neil is the president of the Virginia Council for Open Government, chairman of the Council for America's First Freedom, director of the Commonwealth Fund and the James River Corporation, and chair of the American Association of University Professors Committee on Academic Freedom and Tenure. He serves as a trustee for the Teachers Insurance & Annuity Association (TIAA), WVPT Public Television, and the Piedmont Council for the Arts. From 1979-95 O'Neil served as a trustee for the Carnegie Foundation for the Advancement of Teaching. He has also chaired the National Association of State Universities and Land-Grant Colleges, a commission on the future of Virginia's judicial system, and a commission of the Markle Foundation on media coverage of presidential elections. A native of Boston, O'Neil holds three degrees from Harvard and honorary degrees from Beloit College and Indiana University. His wife, the former Karen Elson, is a secondary school English teacher and director of college counseling at St. Anne's Belfield School in Charlottesville. Their children are Elizabeth, a graduate of Duke and Stanford; Peter a graduate of Berkeley; David a graduate of Princeton and Harvard Law School; and Benjamin a graduate of the University of Virginia and Georgetown Law Center.



Fred Schauer is the Frank Stanton Professor of the First Amendment at the Kennedy School, where he has served as Academic Dean and Acting Dean, and he teaches courses in the First Amendment and Evidence at the Harvard Law School. Formerly Professor of Law at the University of Michigan, his books include The Law of Obscenity (BNA,

1976), Free Speech: A Philosophical Enquiry (Cambridge, 1982), Playing By the Rules: A Philosophical Examination of Rule-Based Decision-Making in Law and in Life (Clarendon/Oxford, 1991), and Profiles, Probabilities, and Stereotypes (Belknap/Harvard, 2003). Recipient of a Guggenheim Fellowship and a Fellow of the American Academy of Arts and Sciences, Schauer has been chair of the Section on Constitutional Law of the Association of American Law Schools, Vice President of the American Society for Political and Legal Philosophy, and founding co-editor of Legal Theory, and is the Chair-Elect of the Committee on Philosophy and Law of the American Philosophical Association. He has been Fischel-Neil Visiting Professor of Law at the University of Chicago Law School, Ewald Distinguished Visiting Professor of Law at the University of Virginia, Distinguished Visiting Professor of Law at the University of Toronto, Distinguished Visitor at the New York University School of Law, William Morton Distinguished Visiting Professor of the Humanities at Dartmouth College, and in 2007-2008 will be the George Eastman Visiting Professor at Oxford University. Schauer's books have been translated into Spanish, Italian, and Turkish, and his work on freedom of speech, constitutional law, and the philosophy of law has been the subject of a book (L. Meyer, ed., Rules and Reasoning: Essays in Honour of Fred Schauer (2000)), and symposia in Politeia, the Harvard Journal on Law and Public Policy, and the Notre Dame, Connecticut, and Quinnipiac Law Reviews.

Keller First Amendment Center



The Keller Center for the Study of First Amendment is part of the Political Science Department of the University of Colorado, Boulder. The Center was endowed in 1993 by Mr. Leroy Keller, Vice President and general manger of UPI's International Service and a CU graduate. The Center supports and encourages teaching, research and public service on topics and issues relating to the nature, meaning, and contemporary standing of First Amendment rights and liberties. The Center seeks to sponsor activities that educate and inform the public about the historical meaning and philosophical justification of First Amendment rights and about contemporary threats to those rights. Professor David R. Mapel is Keller Center Director.

University of Colorado Law Review



The University of Colorado Law Review will publish the conference papers in Volume 77. The Law Review has published the proceedings of many Byron White Center conferences, including Constitutional Conflicts on Public Lands, Conservative Judicial Activism, Constitutional Law and the Experience of Judging, Law and Character, and Colorado's Amendment 2.

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