

# KEVIN FRANCIS O'NEILL

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## EDUCATION

- **CASE WESTERN RESERVE UNIVERSITY SCHOOL OF LAW, J.D., 1984.**  
Law Review, 1982-84; Notes Editor, 1983-84. Authored *The Ambush Interview: A False Light Invasion of Privacy*, 34 CASE W. RES. L. REV. 72 (1983). Contributed to *Arrangements and Editions of Public Domain Music: Originality in a Finite System*, 34 CASE W. RES. L. REV. 104 (1983).  
  
Recipient, *Distinguished Recent Graduate Award*, 1994.
- **SAN FRANCISCO STATE UNIVERSITY, B.A., 1977.**  
Major in Film. Minor in Art History. Produced eight films. Senior year production was selected for public exhibition in the University's Film Festival.

## LEGAL EXPERIENCE

- **CLEVELAND-MARSHALL COLLEGE OF LAW, CLEVELAND STATE UNIVERSITY,**  
Cleveland, Ohio.  
Associate Professor of Law since August 2002. Assistant Professor, 1996 to 2002. Visiting Assistant Professor, Fall 1995 to Spring 1996.
- **Teaching Areas:** Evidence, Civil Procedure, First Amendment Rights.
- **Teaching Awards:** Ten times I have won the *Professor of the Year Award*, bestowed by the Student Bar Association for "excellence in teaching." I received the award in 1997, 1999, 2000, 2002, 2004, 2006, 2007, 2009, 2010, and 2011. In 2012 the award was named after me. In May 2004, I received the *Stapleton Award*, bestowed by the Cleveland-Marshall Law Alumni Association for excellence in teaching.
- **Committee Work:** Current Law School Committees — Teaching (chair); Admissions. Past Service — Faculty Appointments (chair); Tenure Subcommittee (chair); Honor Code (chair); Faculty Affairs (chair); Curriculum Planning; Strategic Planning Steering; Adjunct Faculty. University-wide Service — Past Service — Curriculum, Faculty Senate Nominating, Academic Steering, Professional Leave Advisory Committees, and Task Force on Promotion and Tenure.
- **Faculty Advisor:** Every year since Fall 1995, I have served as the faculty advisor to multiple students regarding their authorship of scholarly articles. In January 1998, I served as the faculty advisor to our national moot court team, which, from a field of 208 teams, finished among the top eight in the nation at the National Finals in New York City. I have also served as the faculty advisor to numerous student organizations, including the Student Democrats, the Student Public Interest Law Organization, the Criminal Law Society, the Sports and Entertainment Law Association, and the Justinian Forum.

- **AMERICAN CIVIL LIBERTIES UNION**, Cleveland, Ohio.  
Ohio Legal Director, May 1991 to August 1995. Responsible for supervising all ACLU litigation in the State of Ohio; trying selected cases myself; lecturing on constitutional issues at conventions, conferences, Continuing Legal Education seminars, law schools, and college campuses; and explaining law and ACLU policy to the news media.
- **CLEVELAND-MARSHALL COLLEGE OF LAW, CLEVELAND STATE UNIVERSITY**, Cleveland, Ohio.  
Adjunct Professor, August 1993 through July 1995. Taught a course in Constitutional Law spanning the Fall 1993 and Spring 1994 semesters. In a 1994 poll of students, I was among three professors cited most often as the school's best teacher.
- **ARTER & HADDEN (now Tucker, Ellis & West)**, Cleveland, Ohio.  
Associate, December 1987 to May 1991.
- **SMITH & SCHNACKE (now Thompson, Hine & Flory)**, Dayton, Ohio.  
Associate, August 1984 to December 1987; Summer Associate, 1983.
- **UNITED STATES DISTRICT COURT**, Cleveland, Ohio.  
Intern for Hon. Alvin I. Krenzler, Northern District of Ohio, May 1982 to August 1982. Drafted routine orders; analyzed and cite-checked litigants' briefs; performed legal research; drafted legal memoranda.
- **RANGE OF LEGAL EXPERIENCE:** Since graduating from law school in 1984, my work has spanned all phases of trial and appellate practice, in both state and federal court. In my ongoing work for the ACLU, I have been exposed to a broad array of constitutional issues, from abortion to hate speech, flag burning to street sweeps, Biblical creationism to AIDS discrimination. During my big-firm practice, I handled an even broader range of issues: fraud, breach of contract, and personal injury actions; antitrust, securities, and tender offer litigation; deceptive trade practices, unfair competition, copyright, and tradename disputes; insurance defense and wrongful death; RICO; ERISA; psychiatric malpractice; construction litigation; civil and criminal investigations of government contractors; public utilities; products liability; admiralty; Uniform Commercial Code.

— **NOTEWORTHY CASES:**

- *City of Seven Hills v. Aryan Nations*, 76 Ohio St. 3d 304, 667 N.E.2d 942 (1996): victorious representation of Holocaust survivors in this First Amendment challenge to an injunction entered shortly after the return of accused Nazi war criminal John Demjanjuk to the United States; the injunction barred the simultaneous presence on Mr. Demjanjuk's street of protesters with opposing viewpoints on his readmission to this country; our appeal asserted that counter-demonstration is a unique form of expression that deserves the same degree of First Amendment protection as the right to protest generally.
- *City of Cleveland v. Nation of Islam*, 922 F. Supp. 56 (N.D. Ohio 1995): victorious representation of Minister Louis Farrakhan and the Nation of Islam in First Amendment controversy; the City of Cleveland refused to grant Minister Farrakhan access to its Convention Center for a "men only" address, but twice granted the Billy Graham Crusade single-gender access to the very same facility; obtained an injunction ordering the City to grant Minister Farrakhan the access he sought.

- ***Northeast Ohio Coalition for the Homeless v. City of Cleveland***, 105 F.3d 1107 (6th Cir. 1997): First Amendment controversy in which City of Cleveland sought to discourage the circulation of homeless and Nation of Islam newspapers by requiring each street vendor to pay a fifty-dollar peddler’s license fee as a prerequisite to distributing his/her papers. Obtained a permanent injunction barring enforcement of this licensing scheme against any street vendors of speech-related materials, 885 F. Supp. 1029 (N.D. Ohio 1995). The City appealed to the Sixth Circuit, which reversed, 105 F.3d 1107 (6th Cir. 1997), and the Supreme Court denied certiorari, 522 U.S. 931 (1997).
- ***Clements v. City of Cleveland***, No. 1-94-CV-2074 (N.D. Ohio, filed Oct. 4, 1994; settled Feb. 18, 1997): successful representation of homeless individuals who alleged that Cleveland police ordered them to stay away from certain sectors of downtown, and, when they defied those orders, transported them against their will to distant locations and abandoned them. Obtained a halt to this practice by means of settlement.
- ***McIntyre v. Ohio Elections Commission***, 514 U.S. 334 (1995): successful First Amendment challenge to an Ohio statute that banned the distribution of anonymous campaign literature (on the brief).
- ***Capitol Square Review Board v. Pinette***, 515 U.S. 753 (1995): successful First Amendment challenge to a State administrator’s decision barring the Ku Klux Klan from erecting a cross in a traditional public forum while permitting other groups to erect signs and religious symbols in the very same forum (on the brief).
- ***State v. Lessin***, 67 Ohio St. 3d 487, 620 N.E.2d 72 (1993): wrote amicus brief and, at direct counsel’s invitation, performed oral argument before the Ohio Supreme Court in successful First Amendment challenge to flag-burning prosecution aimed at local leader of Revolutionary Communist Workers Party.
- ***Junger v. Daley***, 209 F.3d 481 (6th Cir. 2000): served as third chair in successful First Amendment challenge to federal regulations that criminalized exporting any materials discussing or employing cryptography. Our client, a law school professor, was prevented by these regulations from publishing — or disseminating on the World Wide Web — a book, *COMPUTERS AND THE LAW*, that offers a discussion and example of cryptography in the context of computer privacy.
- ***Treesh v. Taft***, No. C-2-99-624 (S.D. Ohio filed July 6, 1999; settled Sept. 14, 2001): First Amendment challenge to an Ohio prison policy that barred Death Row inmates from uttering their last words in the moments before being executed. This action was successfully settled when Ohio prison officials adopted a new policy — containing language that I negotiated — granting condemned prisoners the right to deliver an uncensored speech, made audible to the assembled witnesses by means of a microphone, from inside the death chamber in their final moments of life. The policy also requires that two members of the news media must be afforded access as witnesses.
- ***Eastwood Mall, Inc. v. Slanco***, 68 Ohio St. 3d 221, 626 N.E.2d 59 (1994): invoked Ohio Constitution’s Free Speech Clause in effort to obtain right of access for speech activities in the common areas of privately-owned shopping malls.

- ***City of Akron v. Rowland***, 67 Ohio St. 3d 374, 618 N.E.2d 138 (1993): successful Due Process Clause challenge to anti-drug loitering ordinance that allowed police to detain and arrest any person who “manifest[ed]” potential involvement in drug-related activity by, *inter alia*, appearing “thin and nervous” or “hailing cars” (amicus brief).
  
- ***Preterm Cleveland v. Voinovich***, No. 92CVH01-528, 1992 Ohio Misc. LEXIS 1 (Ohio C.P. May 27, 1992), *rev’d*, 89 Ohio App. 3d 684, 627 N.E.2d 570 (1993), *dismissed*, 68 Ohio St. 3d 1420, 624 N.E.2d 194 (1993): Constitutional challenge to an Ohio statute that imposed restrictions on access to abortion; obtained landmark victory in May 1992, persuading trial court that the Ohio Constitution affords greater protection for reproductive freedom than the U.S. Constitution; reversed on appeal.
  
- ***Glass v. City of Columbus***, No. C-2-91-775 (S.D. Ohio 1992): constitutional challenge to inner-city street sweeps by the Columbus Police Department, in which African-American youths were systematically detained and frisked without any individualized suspicion; obtained a halt to this practice by means of settlement.
  
- ***Equality Foundation of Greater Cincinnati, Inc. v. City of Cincinnati***, 860 F. Supp. 417 (S.D. Ohio 1994): Worked on a team of lawyers in this initially successful challenge — on Equal Protection and First Amendment grounds — to charter amendment prohibiting any anti-discrimination protection for gay men, lesbians, or bisexuals; I wrote the First Amendment section of our injunction brief. Following remand by the U.S. Supreme Court, for reconsideration in light of *Romer v. Evans*, 517 U.S. 620 (1996), our victory was reversed in the Sixth Circuit, 128 F.3d 289 (6th Cir. 1997), *cert. denied*, 525 U.S. 943 (1998).
  
- ***State v. Wyant***, 64 Ohio St. 3d 566, 597 N.E.2d 450 (1992): successful First Amendment challenge to Ohio’s ethnic intimidation statute (amicus brief).
  
- ***Wisconsin v. Mitchell***, 508 U.S. 476 (1993): First Amendment challenge to Wisconsin’s ethnic intimidation statute (amicus brief).
  
- ***DeRolph v. State of Ohio***, 78 Ohio St. 3d 193, 677 N.E.2d 733 (1997): successful state constitutional challenge to Ohio’s system for funding public education (amicus brief).
  
- ***White v. Clinton County Board of Commissioners***, 76 Ohio St. 3d 416, 667 N.E.2d 1223 (1996): successful Sunshine Act challenge to county commissioners’ refusal to maintain full and accurate minutes of their deliberations (amicus brief).
  
- ***Hawley v. City of Cleveland***, 24 F.3d 814 (6th Cir. 1994): Establishment Clause challenge to heavy governmental subsidy for Catholic chapel at Cleveland’s municipally-owned airport.
  
- ***Meyer-Riggins v. City of Dayton***, No. C-3-91-435 (S.D. Ohio 1992): By means of Section 1983 action, obtained lucrative settlement for African-American female mistreated by police. The woman used her camcorder to photograph policemen using excessive force in performing an arrest; the officers arrested her “for jaywalking,” confiscated her camcorder, jailed her, and erased the videotape while she was in custody.
  
- ***Rice v. City of Cleveland***, 1995 U.S. Dist. LEXIS 3902 (N.D. Ohio, Mar. 22, 1995): Successful Section 1983 action on behalf of African-American couple who videotaped police choking a neighborhood youth. Police surrounded the couple’s home, threatened them with arrest, and then confiscated the tape.

- *Littleton v. Good Samaritan Hospital*, 39 Ohio St. 3d 86, 529 N.E.2d 449 (1988): successful defense of psychiatric malpractice claim; as an associate, formulated the theory and wrote the brief that prompted landmark ruling by Ohio Supreme Court limiting the liability of psychiatrists for torts committed by their patients.
- *Mead Corporation v. Tilley*, 490 U.S. 714 (1989): successful defense of paper producer in pension litigation; as an associate, formulated the theory and wrote the brief that culminated in a favorable ruling by the U.S. Supreme Court.
- *Saudi Shipping & Maritime Services Co. v. M/V Nikaia* (N.D. Ohio 1989): as an associate, wrote the briefs and handled oral argument on behalf of Saudi Arabian client in admiralty dispute with Cypriot vessel arising at a Red Sea port.
- *Hunt-Davis, Inc. v. Valley Industries, Inc.* (American Arbitration Association 1989): as an associate, worked alone in successful defense of California company in breach of contract/unfair competition litigation in Seattle, Washington.

— **PRO BONO LITIGATION:**

- **AMERICAN CIVIL LIBERTIES UNION**, Cleveland, Ohio.  
Volunteer Attorney, February 1988 to May 1991; August 1995 to present. (Served as the ACLU's Ohio Legal Director during the intervening four years, May 1991 to August 1995.) Notwithstanding my full-time commitment to law teaching, I remain active as a trial attorney and appellate advocate for the ACLU in First Amendment litigation.
- **LEGAL AID SOCIETY**, Cleveland, Ohio.  
Volunteer Attorney, 1987 to 1992. Representation of indigent defendants in various tort and landlord-tenant disputes.
- **ARTEMIS HOUSE**, Dayton, Ohio.  
Volunteer Attorney, 1984 to 1987. Prosecuted civil domestic violence actions seeking injunctive relief for victims temporarily housed at this shelter for battered women.
- **SOUTHERN UTAH WILDERNESS ALLIANCE**, Salt Lake City, Utah.  
Volunteer Attorney, 1988 to 1992. Performed legal research and drafted legal memoranda to assist this environmental organization in opposing the commercial exploitation of Utah's wilderness.

— **LEGISLATIVE TESTIMONY:** Since 1991, I have testified several times before legislative committees of the Ohio General Assembly — on topics ranging from abortion to welfare reform.

— **BAR MEMBERSHIPS:** I am currently admitted to practice before the United States Supreme Court, the United States Court of Appeals for the Sixth Circuit, the United States District Court for the Northern District of Ohio, the United States District Court for the Southern District of Ohio, and the Ohio Supreme Court.

## **PUBLICATIONS/WRITING EXPERIENCE**

### **— LAW REVIEW ARTICLES:**

- *Saving the Press Clause from Ruin: The Customary Origins of a “Free Press” as Interface to the Present and Future* (2012) (co-authored with Patrick J. Charles) (accepted for publication in UTAH LAW REVIEW).
- *Privatizing Public Forums to Eliminate Dissent*, 5 FIRST AMEND. L. REV. 201 (2007).
- *Foreword: The Ohio Constitution on the Occasion of Its Bicentennial*, 51 CLEVELAND STATE L. REV. 333 (2004).
- *Muzzling Death Row Inmates: Applying the First Amendment to Regulations that Restrict a Condemned Prisoner’s Last Words*, 33 ARIZONA ST. L.J. 1159 (2001).
- *The First Amendment’s Petition Clause as an Alternative Basis for Challenging Voter Initiatives that Burden the Enactment of Anti-Discrimination Protection for Gays, Lesbians, and Bisexuals*, 48 CLEVELAND ST. L. REV. 131 (2000).
- *A First Amendment Compass: Navigating the Speech Clause with a Five-Step Analytical Framework*, 29 SOUTHWESTERN U.L. REV. 223 (2000).
- *Disentangling the Law of Public Protest*, 45 LOYOLA L. REV. 411 (1999).
- *Counter-Demonstration as Protected Speech: Finding the Right to Confrontation in Existing First Amendment Law*, 23 HASTINGS CONST. L.Q. 77 (1995) (co-authored with Raymond Vasvari).
- *The Road Not Taken: State Constitutions as an Alternative Source of Protection for Reproductive Rights*, 11 N.Y.L. SCH. J. HUM. RTS. 1 (1993).
- *The Ambush Interview: A False Light Invasion of Privacy*, 34 CASE W. RES. L. REV. 72 (1983).
- *Arrangements and Editions of Public Domain Music: Originality in a Finite System*, 34 CASE W. RES. L. REV. 104 (1983) (contributing author, with Ronald P. Smith).

### **— BOOKS:**

- STRATEGIES AND TECHNIQUES OF LAW SCHOOL TEACHING: A PRIMER FOR NEW (AND NOT SO NEW) PROFESSORS (Aspen Publishers 2009) (co-authored with Howard E. Katz).
- ENCYCLOPEDIA OF THE FOURTH AMENDMENT (forthcoming December 2012) (published by Congressional Quarterly, Inc.): I contributed articles on *Vernonia School District v. Acton*; *Board of Education v. Earls*; *Palmer Raids*; and *Dog-sniffing Searches*.
- ENCYCLOPEDIA OF THE FIRST AMENDMENT (2009) (published by Congressional Quarterly, Inc.): I contributed articles on *Time, Place, and Manner Regulations*; *Viewpoint Discrimination*; *True Threats*; and *Prisons*.

- *The Regulation of Public Protest: Picketing, Parades, and Demonstrations*, in PROTECTING FREE SPEECH AND EXPRESSION: THE FIRST AMENDMENT AND LAND USE LAW (Daniel R. Mandelker & Rebecca L. Rubin eds., 2001) (American Bar Association) (Chapter 8 of this book).
- *A First Amendment Compass: Navigating the Speech Clause with a Five-Step Analytical Framework*, in FIRST AMENDMENT LAW HANDBOOK, 2001-2002 EDITION, at 883-968 (James L. Swanson ed., 2001) (West Group).

— **BOOK REVIEWS:**

- *Contempt of Court: The Turn-of-the-Century Lynching that Launched a Hundred Years of Federalism*, by Mark Curriden & Leroy Phillips, Jr., Cleveland PLAIN DEALER, October 24, 1999.

— **SIGNIFICANT CITATIONS TO MY SCHOLARSHIP:**

- *The Supreme Court — Leading Cases, 2002 Term, Constitutional Law*, 117 HARVARD L. REV. 359, 367 n.50 (2003) (citing my *Public Protest* article).
- *The Supreme Court — Leading Cases, 1999 Term, Constitutional Law*, 114 HARVARD L. REV. 179, 295 n.54 (2000) (citing my *Public Protest* article).
- Mary Margaret Giannini, *Equal Rights for Equal Rites?: Victim Allocution, Defendant Allocution, and the Crime Victims' Rights Act*, 26 YALE LAW & POLICY REV. 431, 458-59 nn.123, 126 (2008) (citing my *Muzzling Death Row Inmates* article).
- *Dempsey v. People*, 117 P.3d 800, 805 (Colo. 2005) (citing my *Counter-Demonstration* article).
- Robert K. Fitzpatrick, Note, *Neither Icarus Nor Ostrich: State Constitutions as an Independent Source of Individual Rights*, 79 N.Y.U. L. REV. 1833, 1838-51 nn.27, 55, 59, 106 & 109 (2004) (citing my *Road Not Taken* article).
- *Galvin v. Hay*, 374 F.3d 739, 749 (9th Cir. 2004) (citing my *Public Protest* article).
- *McCabe v. Macaulay*, 515 F. Supp. 2d 944, 963 n.16 (N.D. Iowa 2007) (citing my *Privatizing Public Forums* article).
- Nick Suplina, Note, *Crowd Control: The Troubling Mix of First Amendment Law, Political Demonstrations, and Terrorism*, 73 GEO. WASH. L. REV. 395 *passim* (2005) (citing my *Public Protest* article).
- Alan K. Chen, *Statutory Speech Bubbles, First Amendment Overbreath, and Improper Legislative Purpose*, 38 HARV. C.R.-C.L. L. REV. 31, 78 n.270 (2003) (citing my *Public Protest* article).
- Rachel Entman, Note, *Picket Fences: Analyzing the Court's Treatment of Restrictions on Polling, Abortion, and Labor Picketers*, 90 GEORGETOWN L.J. 2581, 2597 n.98 (2002) (citing my *Public Protest* article).
- Prana A. Topper, Note, *The Threatening Internet: Planned Parenthood v. ACLA and a Context-Based Approach to Internet Threats*, 33 COLUMBIA HUMAN RIGHTS L. REV. 189, 240 n.127 (2001) (citing and quoting my *First Amendment Compass* article).

- Risa E. Kaufman, *State ERAs in the New Era: Securing Poor Women’s Equality by Eliminating Reproductive-Based Discrimination*, 24 HARV. WOMEN’S L.J. 191, 197 n.34 (2001) (citing my *Road Not Taken* article).

— **ACADEMIC CONFERENCES**

- Organized a conference, *The Ohio Constitution — Then and Now: An Examination of the Law and History of the Ohio Constitution on the Occasion of Its Bicentennial*, held at Cleveland-Marshall College of Law on April 24-25, 2003. The conference featured presentations by ten scholars, along with an opening address by Hon. Shirley S. Abrahamson, Chief Justice of the Wisconsin Supreme Court. I then personally edited all of the speeches and papers presented at the conference, assembling them into a symposium issue of the *Cleveland State Law Review*, 51 CLEV. ST. L. REV. 333 (2004).

— **CLE PUBLICATIONS**

- *The First and Fourth Amendment Rights of Students in SCHOOL LAW* (Ohio State Bar Association CLE Institute 2003).
- *The First and Fourth Amendment Rights of Students in SCHOOL LAW* (Ohio State Bar Association CLE Institute 2001).
- *The First and Fourth Amendment Rights of Students in SCHOOL LAW* (Ohio State Bar Association CLE Institute 1999).
- *The First and Fourth Amendment Rights of Students in SCHOOL LAW* (Ohio State Bar Association CLE Institute 1997).
- *The First and Fourth Amendment Rights of Students in SCHOOL LAW: CLASS OF ’95* (Ohio State Bar Association CLE Institute 1995).
- *The First and Fourth Amendment Rights of Students in THE ABC’S OF SCHOOL LAW* (Ohio State Bar Association CLE Institute 1992).

— **BAR JOURNAL PUBLICATIONS:**

- *An Accelerated History of Expressive Freedom*, CLEVELAND BAR JOURNAL (January 2000).

— **EDITORIALS:**

- *Yes, City Does Dump Homeless*, Cleveland PLAIN DEALER, October 21, 1994.
- *Hate Speech Legislation is Unconstitutional*, Akron BEACON JOURNAL, July 5, 1992.
- *Can’t Police Mind Crimes*, Cleveland PLAIN DEALER, February 21, 1992.

— **PROFESSIONAL WRITING EXPERIENCE:**

- **LOS ANGELES HERALD-EXAMINER**, Los Angeles, California.  
Wrote bi-weekly column on consumer affairs. January 1980 to August 1981.



- **NORTH COUNTY LIVING**, San Diego, California.  
Staff film critic. 1979 to 1980.
- **LOS ANGELES MUSIC & ART REVIEW**, Los Angeles, California.  
Staff film critic. 1978 to 1979.

#### **PEER REVIEW OF OTHER SCHOLARS**

- October 2006: At the request of the Political Science department of Wright State University, I furnished a written evaluation of the scholarship and professional service of an assistant professor who was seeking promotion and tenure.
- In October 2005, I was approached by the editors of *LAW & SOCIAL INQUIRY*, a scholarly journal published by the American Bar Foundation, to perform a peer review of an article, *Last Words, Last Meals, and Last Stands: The Illusion of Agency in the Modern Execution Process*. One of the research fellows at the Foundation recommended me as a possible reviewer — probably because of my *Last Words* article in the *ARIZONA STATE LAW JOURNAL*. I submitted my evaluation of the article on November 7, 2005.

#### **— OTHER TEACHING EXPERIENCE:**

- Every year between 1990 and 1997, I served as the legal advisor to Shaw High School's mock trial team. During that span, the team thrice won the state championship (1990, 1992, and 1997), placing third two years (1991 and 1996) and fourth another (1995). They garnered second place honors at the *national* championship in 1990. Every year since 2008, I have served as the legal advisor to Beaumont School's mock trial team.