MICHAEL M. O'HEAR

Marquette University Law School
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Academic & Legal Positions

Professor of Law (2007-Present).
Associate Dean for Research (2008-2015).
Associate Professor of Law (2004-2007).
Assistant Professor of Law (2000-2004).
Tenure Awarded: 2004.
James Ghiardi Teacher of the Year Award (voted by students): 2023-2024.
Principal Courses Taught: Criminal Law; Criminal Procedure; Evidence; Sentencing: Theory, History & Policy.
Other Courses Taught: Administrative Law; Civil Procedure; Clemency; Constitutional Law; Crime & Punishment in American History, 1617-1932; Crime & Punishment in American History, 1933-Present; Environmental Law; Green Bay Prison Restorative Justice Program; International Environmental Law; Law and Morality in Plato and Aristotle; Law, Social Science, and the Humanities; Legislation; Natural Resources; Post-Conviction Remedies & Prisoner Rights; Publish Your Paper; Sentencing.

Associate, Sonnenschein Nath & Rosenthal, Chicago, IL (1997-2000).
Areas of Practice: Civil and Criminal Litigation; Environmental Law.

Law Clerk to the Honorable Janet Bond Arterton, United States District Judge, New Haven, CT (1996-1997).

Education

Yale Law School, J.D., 1996.
Journals: *Yale Journal of Law & the Humanities* (Editor-in-Chief); *Yale Law Journal*.

Yale College, B.A. (History), *summa cum laude*, 1991.

Books

SENTENCING LAW, POLICY, AND PRACTICE (Foundation Press, 1st ed. 2022, 2d ed. 2026, with teacher's manual and annual supplements) (with Wayne Logan).

CRIMINAL PROCEDURE: THE POST-INVESTIGATIVE PROCESS (Carolina Academic Press, 5th ed. 2019, with teacher's manual and annual supplements through 2023) (with Neil P. Cohen et al.).

PRISONS AND PUNISHMENT IN AMERICA: EXAMINING THE FACTS (ABC-CLIO, 2018).

WISCONSIN SENTENCING IN THE TOUGH-ON-CRIME ERA: HOW JUDGES RETAINED POWER AND WHY MASS INCARCERATION HAPPENED ANYWAY (University of Wisconsin Press, 2017).

THE FAILED PROMISE OF SENTENCING REFORM (Praeger, 2017).

CASES AND MATERIALS ON WISCONSIN CRIMINAL LAW (Marquette University Press, in annual editions 2014-2026) (with Chad M. Oldfather & Daniel D. Blinka).

THE LAW OF ASSET FORFEITURE (Lexis Law Publishing, 2d ed. 2004) (with Jimmy Gurulé & Sandra Guerra-Thompson).

Major Articles

Our Anemic Excessive Fines Clause: Are State Courts Following the Federal Lead?, 60 WAKE FOREST L. REV. 563 (2025).

The Excessive Fines Clause in the Federal Courts: A Quarter-Century of Narrowing, 12 TEXAS A&M L. REV. 761 (2025).

Can the Excessive Fines Clause Mitigate the LFO Crisis? An Assessment of the Caselaw, 108 MINN. L. REV. 1171 (2024).

Life "With" or "Without"?: An Empirical Study of Homicide Sentencing, 18 J. EMPIRICAL LEG. STUD. 377 (2021) (with Darren Wheelock).

Early Release for Prisoners Convicted of Violent Crimes: Can Anyone Escape the Incapacitation-Retribution Catch-22?, 52 CONN. L. REV. 653 (2020).

Managing the Risk of Violent Recidivism: Lessons From Legal Responses to Sexual Offenses, 100 B.U. L. REV. 133 (2020).

Third-Class Citizenship: The Escalating Legal Consequences of Committing a "Violent" Crime, 109 J. CRIM. L. & CRIMINOLOGY 165 (2019).

Imprisonment Inertia and Public Support for "Truth in Sentencing," 2015 BYU L. REV. 257 (with Darren Wheelock).

Not Just Kid Stuff? Extending Graham *and* Miller *to Adults*, 78 MO. L. REV. 1087 (2013).

Solving the Good-Time Puzzle: Why Following the Rules Should Get You Out of Prison Early, 2012 WIS. L. REV. 195.

Beyond Rehabilitation: A New Theory of Indeterminate Sentencing, 47 AM. CRIM. L. REV. 1247 (2011).

Appellate Review of Sentences: Reconsidering Deference, 51 WM. & MARY L. REV. 2123 (2010).

Explaining Sentences, 36 FLA. ST. U. L. REV. 459 (2009).

Rethinking Drug Courts: Restorative Justice as a Response to Racial Injustice, 20 STAN. L. & POL'Y REV. 463 (2009).

Plea Bargaining and Procedural Justice, 42 GA. L. REV. 407 (2008).

The End of Bordenkircher*: Extending the Logic of* Apprendi *to Plea Bargaining*, 84 WASH. U. L. REV. 835 (2006).

The Original Intent of Uniformity in Federal Sentencing, 74 U. CIN. L. REV. 749 (2006).

Sentencing the Green-Collar Offender, 95 J. CRIM. L. & CRIMINOLOGY 133 (2004).

Federalism and Drug Control, 57 VAND. L. REV. 783 (2004).

Statutory Interpretation and Direct Democracy: Lessons From the Drug Treatment Initiatives, 40 HARV. J. LEGIS. 281 (2003).

National Uniformity / Local Uniformity: Reconsidering the Use of Departures to Reduce Federal-State Sentencing Disparities, 87 IOWA L. REV. 721 (2002).

Remorse, Cooperation, and "Acceptance of Responsibility": The Structure, Implementation, and Reform of Section 3E1.1 of the Federal Sentencing Guidelines, 91 NW. U. L. REV. 1507 (1997).

The "Original Intent" of U.S. International Taxation, 46 DUKE L.J. 1021 (1997) (with Michael J. Graetz).

Selected Additional Publications

What Determines the Length of Post-Prison Supervision—And What Should, 34 S. CAL. INTERDISCIPLINARY L. J. __ (forthcoming).

The Sentencing Advantage of Female Defendants in Homicide Cases, 72 DRAKE L. REV. 37 (2025) (with Darren Wheelock).

Plea Bargaining in Homicide Cases, 25 CARDOZO J. CONFLICT RESOLUTION 333 (2024) (with Darren Wheelock).

Actuarial Risk Assessment at Sentencing: Potential Consequences for Mass Incarceration and Legitimacy, 38 BEHAVIORAL SCIENCES & L. 193 (2020).

Symposium Introduction—Legal Responses to Volent Crime: Does Research Support Alternatives to Long-Term Incarceration?, 103 MARQ. L. REV. 735 (2020).

Violent Crime and Punitiveness: An Empirical Study of Public Opinion, 103 MARQ. L. REV. 1035 (2020) (with Darren Wheelock).

Violent Crime and Media Coverage in One City: A Statistical Snapshot, 103 MARQ. L. REV. 1007 (2020).

Disentangling the Relationship Between Race and Attitudes Toward the Police: Police Contact, Perceptions of Safety, and Procedural Justice, 65 CRIME & DELINQUENCY 941 (2019) (with Darren Wheelock & Meghan Stroshine).

Mass Incarceration: Fiscal & Social Costs, WIS. LAWYER, June 2018, at 20.

Mass Incarceration in the Heartland: Midwestern States Struggle to Tame Historically High Prison Populations, 30 FED. SENT. REP. 91 (2017).

Wisconsin Sentencing in the Walker Era: Mass Incarceration as the New Normal, 30 FED. SENT. REP. 125 (2017).

Justice Reinvestment and the State of State Sentencing Reform, 29 FED. SENT. REP. 1 (2016).

Public Attitudes Toward Punishment, Rehabilitation, and Reform: Lessons from the Marquette Law School Poll, 29 FED. SENT. REP. 47 (2016) (with Darren Wheelock).

Sentencing Policies and Practices in Wisconsin, *in* OXFORD HANDBOOKS ONLINE IN CRIMINOLOGY AND CRIMINAL JUSTICE (Michael Tonry ed., 2016).

Looking Beyond the Streetlamp's Glow, MARQ. LAWYER, Fall 2016, at 34.

Let the Good Time Roll: Early Release for Good Behavior in Prison, WIS. LAWYER, March 2015, at 16.

Good Conduct Time for Prisoners: Why (and How) Wisconsin Should Provide Credits Toward Early Release, 98 MARQ. L. REV. 487 (2014).

Two Cheers for the New Paradigm, 26 FED. SENT. REP. 86 (2014).

Mass Incarceration in Three Midwestern States: Origins and Trends, 46 VAL. U. L. REV. 709 (2013).

Restitution as a Penal Aim, in ENCYCLOPEDIA OF CRIMINOLOGY AND CRIMINAL JUSTICE 4410 (Gerben Bruinsma & David Weisburd eds., 2013).

Sentencing Commissions, in ENCYCLOPEDIA OF CRIMINOLOGY AND CRIMINAL JUSTICE 4733 (Gerben Bruinsma & David Weisburd eds., 2013).

(The History of) Criminal Justice as Morality Play, 161 U. PENN. L. REV. PENNUMBRA 132 (2013).

Bypassing Habeas: The Right to Effective Assistance Requires Earlier Supreme Court Intervention in Cases of Attorney Incompetence, 25 FED. SENT. REP. 110 (2012).

Not So Sweet: Questions Raised by Sixteen Years of the PLRA and AEDPA, 24 FED. SENT. REP. 223 (2012).

Drug Courts as Communicative Punishment, in RETRIBUTIVISM HAS A PAST: HAS IT A FUTURE? 234 (Michael Tonry ed. 2011).

Mandatory Minimums: Don't Give Up on the Court, 2011 CARDOZO L. REV. DE NOVO 67.

Appellate Review of Sentences: Learning From the Wisconsin and Federal Experiences, 93 MARQ. L. REV. 751 (2010).

The Beginning of the End for Life Without Parole? 23 FED. SENT. REP. 1 (2010).

Bark and Bite: The Environmental Sentencing Guidelines After Booker, 2009 UTAH L. REV. 1151.

Chance's Domain, in CRIMINAL LAW CONVERSATIONS 175 (Paul Robinson et al. eds. 2009).

Dangers of the Big Tent, in CRIMINAL LAW CONVERSATIONS 602 (Paul Robinson et al. eds. 2009).

Perpetual Panic, 21 FED. SENT. REP. 69 (2008).

Yes to Nondiscrimination, No to New Forms of Criminal Liability: A Reply to Professors Collins, Leib, and Markel, 88 B.U. L. REV. 1437 (2008).

Guidelines Simplification Still an Urgent Priority, 20 FED. SENT. REP. 347 (2008).

Victims and Plea Bargaining: From Consultation to Guidelines, 91 MARQ. L. REV. 323 (2007).

What's Good About Trials: A Response to Trial Distortion and the End of Innocence in Federal Criminal Procedure, 156 U. PENN. L. REV. PENNUMBRA 209 (2007).

Dispute Resolution in Criminal Law, 91 MARQ. L. REV. 1 (2007) (with Andrea Kupfer Schneider).

The Second Chance Act and the Future of Reentry Reform, 20 FED. SENT. REP. 75 (2006).

Victims and Criminal Justice: What's Next?, 19 FED. SENT. REP. 83 (2006).

Punishment, Democracy, and Victims, 19 FED. SENT. REP. 1 (2006).

Criminal Violations of Environmental Laws: Model Sentencing Guidelines §2E1, 18 FED. SENT. REP. 341 (2006).

Faith, Justice, and the Teaching of Criminal Procedure, 90 MARQ. L. REV. 87 (2006).

Cunningham: *Why Federal Practitioners and Policy-Makers Should Pay Attention*, 18 FED. SENT. REP. 260 (2006).

The Duty to Avoid Disparity: Implementing 18 U.S.C. § 3553(a)(6) After Booker, 37 MCGEORGE L. REV. 627 (2006).

Is Restorative Justice Compatible With Sentencing Uniformity?, 89 MARQ. L. REV. 305 (2005).

The Myth of Uniformity, 17 FED. SENT. REP. 249 (2005).

Localization and Transparency in Sentencing: Reflections on the New Early Disposition Departure, 27 HAMLINE L. REV. 358 (2004).

Cooperation and Accountability After the Feeney Amendment, 16 FED. SENT. REP. 102 (2003).

Does the Importance of Nationally Uniform Sentences Diminish for Some Types of Crimes?, 15 FED. SENT. REP. 173 (2003).

The New Politics of Sentencing, 15 FED. SENT. REP. 3 (2002).

When Voters Choose the Sentence: The Drug Policy Initiatives in Arizona, California, Ohio, and Michigan, 14 FED. SENT. REP. 337 (2002).

Blue-Collar Crimes / White-Collar Criminals: Sentencing Elite Athletes Who Commit Violent Crimes, 12 MARQ. SPORTS L. REV. 427 (2001).

A Review of Federal Sentencing Treatises and Periodicals, 11 FED. SENT. REP. 69 (1998).

Rethinking Acceptance of Responsibility, 9 FED. SENT. REP. 101 (1996).

Note, *"Some of the Most Embarrassing Questions": Extraterritorial Divorces and the Problem of Jurisdiction Before* Pennoyer, 104 YALE L.J. 1507 (1995).

Journal Editing

Editor, *The Federal Sentencing Reporter* (2004-2020).

Grants

Grant from Charles Koch Foundation to support research on violent crime, sentencing, and mass incarceration (2017-2019).

Conference Organizing

Marquette Law School Conference on Violent Recidivism (June 2019): papers presented at conference were published in Volume 103, Issue 3 of the *Marquette Law Review*.

Marquette Law School Conference on the Legacy of the Wickersham Commission (October 2012): papers presented at the conference were published in Volume 96, Issue 4 of the *Marquette Law Review*.

Marquette Law School Conference on Criminal Appeals (June 2009): papers presented at conference were published in Volume 93, Issue 2 of the *Marquette Law Review*.

Marquette Law School Conference on Plea Bargaining (April 2007): papers presented at conference were published in Volume 91, Issue 1 of the *Marquette Law Review*.

Academic Presentations

Invited conference, workshop, and panel presentations at Villanova University School of Law (2023, 2024), Marquette Law School (2001, 2009, 2017, 2018, 2019, 2022, 2024), Cardozo Law School (2023), University of Wisconsin Law School (2017, 2022), Michigan State University College of Law (2019), Beloit College (2018), Loyola-Chicago Law School (2017), Vanderbilt Law School (2015), Law & Society Annual Conference (2013, 2014), Valparaiso Law School (2012), Lewis & Clark Law School (2010), Punishment Futures Conference in Leiden, Netherlands (2009), Stanford Law School (2009), Utah Law School (2009), Florida State University College of Law (2008), Hofstra Law School (2008), St. John's Law School (2008), Chapman Law School (2007), St. Thomas Law School (2006), Baylor Law School (2005), McGeorge Law School (2005), Cornell Law School (2005), Hamline Law School (2004), Yale Law School (2002), and University of Iowa (2001).

Service

Recognition

Elected to American Law Institute (2016).

Judge Robert W. Warren Public Service Award from the Eastern District of Wisconsin Bar Association (2009).

Pro Bono Legal Service

Marquette Volunteer Legal Clinic: served as volunteer lawyer in free, walk-in clinic providing limited legal representation to individuals with family law problems; also assisted individuals with pardon applications (2022-2025). Recognized as Attorney Volunteer of the Year in 2023.

Clemency Project 2014: served as volunteer lawyer representing federal prisoners seeking executive clemency (2014-2017).

Jackson v. Cullver: represented defendant during federal and state post-conviction proceedings in Alabama capital case (1997-2011).

Kimbrough v. United States: Co-authored Supreme Court amicus brief on behalf of National Association of Federal Defenders and the Federal Public and Community Defenders (2007).

Commissions and Law Reform Organizations

Chair, Wisconsin State Bar Criminal Law Section (2020-2022); Board Member (2017-2024).

Co-Chair, Disparate and Mass Incarceration Committee of Wisconsin State Bar (2017-2018).

Vice-Chair, Milwaukee Fire and Police Commission (2015-2016); Board Member (2010-2016).

Chair, Federal Nominating Commission for Appointment of United States Attorney for Eastern District of Wisconsin (2009).

Member, Programs & Interventions and Community Engagement Committees, Milwaukee County Community Justice Council (2009-2016).

Member, Ad Hoc Committee on CJA Panel Development, Federal Defender Services of Wisconsin (2016).

Member, Seventh Circuit Advisory Committee on Circuit Rules (2008-2014).

Member, Wisconsin Criminal Justice Study Commission (2007-2009).

Testimony

Testified before United States Sentencing Commission regarding retroactivity for amendments to crack sentencing guidelines; sole academic to testify (June 2011).

Continuing Legal Education and Other Presentations

Presented for the following organizations and events: Montreal-Westmount Rotary Club (2022); MOSES (2021); Milwaukee Turners (2021); Toward One Wisconsin (2020); League of Women Voters of Milwaukee County (2020); Wisconsin State Bar Annual Meeting and Conference (2019, 2021); Seventh Circuit Bar Association Annual Meeting (2007, 2015, 2019); Wisconsin Criminal Justice Coalition (2019); Constitution Day program at the University of Wisconsin-Milwaukee (2018); St. Johns on the Lake (2018, 2020); Milwaukee Downtown Rotary Club (2017); Milwaukee County Circuit Court Annual Conference on Race in the Criminal Justice System (2017); Wisconsin State Bar program for reporters on current legal issues (2017); Milwaukee Downtown Kiwanis Club (2017); Wisconsin Association of Treatment Court Professionals (2017); Madison Institute (2017); Milwaukee County Community Justice Council (2017); Wisconsin State Bar symposium on disparate incarceration (2017); Marquette University Mission Week (2017); Marquette Law School "On the Issues" Series (2013, 2017); Eastern District of Wisconsin Bar Association, Criminal Law Section (2014, 2015); Marquette University Alumni Association National Board (2015); The Crisis of Black Male Incarceration in Milwaukee (2014); Marquette Law School CLE Series (2013, 2014); Project RETURN Annual Dinner (2013); American Constitution Society, Milwaukee Chapter (2013); WISDOM 11x15 Campaign (2013); ABA Section on Dispute Resolution Annual Spring Meeting (2012); United States Attorney's Office for the Eastern District of Wisconsin (2010, 2012); Annual Conference of Wisconsin State Public Defender (2010, 2011); Eastern District of Wisconsin Bar Association Annual Meetings (2005-2007, 2009); Federal Defender Services of Wisconsin (2006, 2008, 2009); and National Sentencing Workshop for Federal Public Defenders (2006, 2007).

Selected Law School Committee and Other Service

Marquette University Police Department Advisory Board, Chair (2019-Present).
Academic Programs Committee, Chair (2007-2008, 2011-2013, 2015-2016).
Blog Committee, Chair (2008-2013).
Ad Hoc Committee to Assess Law School Promotion and Tenure Standards and Procedures, Chair (2010-2011).
Public Service Committee, Chair (2005-2006).
Technology Committee, Chair (2003-2004).

Promotion & Tenure Committee (2004-Present).
Marquette University Board of Graduate Studies (2016-Present).
Admissions Committee (2001-2003, 2017-2019, 2022-Present).
Marquette University President's Task Force on Community Safety (2022).
Appointments Committee (2003-2007, 2010, 2016-2017, 2019, 2021).
Faculty Advisor to *Marquette Law Review* (2008-2013, 2016-2020).

Bar Admissions

Illinois (1998, inactive status).
Wisconsin (2014).