

MICHAEL M. O'HEAR

Marquette University Law School
P.O. Box 1881
1103 West Wisconsin Avenue
Milwaukee, WI 53233
(414) 288-3587
michael.ohear@marquette.edu

Academic & Legal Positions

Associate Dean for Research, Marquette University Law School (2008-)

Professor of Law (2007-).

Associate Professor of Law (2004-2007).

Assistant Professor of Law (2000-2004).

Tenure Awarded: 2004.

Finalist for Law School Teaching Award: 2005.

Principal Courses Taught: Criminal Law, Criminal Procedure, Sentencing, Post-Conviction Remedies & Prisoner Rights.

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.

Articles

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).

Treatise

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

Symposium Contributions

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

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

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

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

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).

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

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

Selected Additional Publications

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

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).

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

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).

When May a Judge, Instead of a Jury, Find the Facts on Which a Criminal Sentence Is Based?, 34 S. CT. PREV. 16 (2006).

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

Let the People Speak: Notice-and-Comment Rulemaking (Lessons From the Controversial New Source Review Proposal of the Clean Air Act), 34 ENV'T'L L.REP. 10115 (2004) (with Victor B. Flatt et al.).

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) (conference proceedings).

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).

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).

Selected Academic Presentations

Appellate Review of Sentences: Reconsidering Deference, faculty workshop at Lewis & Clark Law School (March 2010).

Why Public Defenders Should Be Skeptical of Drug Courts, faculty workshop at Marquette Law School (November 2009).

Morally Meaningful Dialogue in a System Dominated by Plea Bargaining, presentation at Punishment Futures Conference in Leiden, Netherlands (October 2009).

Appellate Review of Sentence Explanations: Learning from the Wisconsin and Federal Experiences, presentation at Criminal Appeals Conference at Marquette Law School (June 2009).

Rethinking Drug Courts: Restorative Justice as a Response to Racial Injustice, presentation as part of *Stanford Law & Policy Review's* Drug Law Policy Lunch Series (February 2009).

Bark and Bite: The Environmental Sentencing Guidelines After Booker, presentation to Utah Law School Conference on Environmental Crimes (January 2009).

Rethinking Drug Courts: Restorative Justice as a Response to Racial Injustice, faculty workshop at Florida State University Law School (September 2008).

Explaining Federal Sentences, “Prawsfest” conference at Hofstra Law School (July 2008).

Did Cunningham Survive Rita? Should It?, faculty workshop at St. John's University Law School (March 2008).

Plea Bargaining and Procedural Justice, faculty workshop at Chapman University Law School (March 2007).

The End of Bordenkircher: Extending the Logic of Apprendi to Plea Bargaining, faculty workshop at University of St. Thomas Law School (October 2006).

Faith, Justice, and Criminal Procedure, presentation at Religiously Affiliated Law Schools Conference (March 2005).

Are Federal Judges “Free at Last”? 18 U.S.C. § 3553(a)(6) After Booker, presentation to McGeorge Law School Symposium on Federal Sentencing (March 2005).

Drug Sentencing After Booker, presentation to Cornell Law School Symposium on New Directions in the War on Drugs (November 2005).

Localization and Transparency in Sentencing: Reflections on the New Early Disposition Departure, presentation to Hamline Law School Symposium on Federal Sentencing (April 2004).

The Role of National Uniformity in Federal Sentencing, presentation to Yale Law School Symposium on Federal Sentencing Guidelines (November 2002).

National Uniformity / Local Uniformity: Reconsidering the Use of Departures to Reduce Federal-State Sentencing Disparities, presentation to University of Iowa Symposium on the Legal Issues and Sociolegal Consequences of the Federal Sentencing Guidelines (June 2001).

Journal Editing

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

Conference Organizing

Marquette Law School Conference on Criminal Appeals (June 2009): papers presented at conference will be 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*.

Blogging

Managing Editor, *Marquette Law School Faculty Blog* (September 2008-Present).

Guest-Blogger, *PrawfsBlog* (August 2006, December 2007).

Guest-Blogger, *SCOTUSblog* (June 2007, December 2007).

Service

Recognition

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

Pro Bono Legal Service

Jackson v. Cullver: federal and state post-conviction proceedings in Alabama capital case; work since 1997 has included fact investigation, client and witness interviews, legal research, and drafting briefs for trial and appellate courts.

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

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

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

Continuing Legal Education Presentations

National Sentencing Workshop for Federal Public Defenders (2006, 2007).

Seventh Circuit Bar Association Annual Meeting (2007).

Eastern District of Wisconsin Bar Association Annual Meetings (2005-2007, 2009).

Federal Defender Services of Wisconsin CLE Programs (2006, 2008, 2009).

Selected University Committee Service

Task Force on the Nature of Research at Marquette University (2004-2006).
Committee on Faculty (2003-2004).

Selected Law School Committee and Other Service

Faculty Advisor to *Marquette Law Review* (2008-Present).
Faculty Advisor to *Marquette Intellectual Property Law Review* (2009-Present).
Academic Programs Committee, Chair (2007-2008).
Public Service Committee, Chair (2005-2006).
Technology Committee, Chair (2003-2004).
Academic Programs Committee (2000-2001, 2004-2008).
Promotion & Tenure Committee (2004).
Appointments Committee (2003-2007).
Admissions Committee (2001-2003).
Self-Study Committee (2001-2002).