

CHAD M. OLDFATHER

Professor of Law

Marquette University Law School
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CURRENT ACADEMIC APPOINTMENT

Marquette University School of Law, Milwaukee, WI

Associate Dean for Academic Affairs, 2016-19

Associate Dean for Research, 2015-16

Professor, 2011-

Associate Professor, tenured, 2008-2011

Associate Professor, untenured, 2006-2008

Visiting Associate Professor, 2005-2006

Courses: Constitutional Law, Constitutional Theory, Criminal Law, Evidence,
Judging and the Judicial Process, State Constitutional Law, The
Jurisprudence of Sport, Civil Procedure

Recipient, Ghiardi Award for Excellence in Teaching, 2016

PUBLICATIONS

Books

CHAD M. OLDFATHER, *JUDGES, JUDGING, AND JUDGMENT: THE IMPORTANCE OF JUDICIAL CHARACTER IN A POLARIZED SOCIETY* (forthcoming 2024, Cambridge University Press)

CHAD M. OLDFATHER, DANIEL D. BLINKA, & MICHAEL M. O'HEAR, *CASES AND MATERIALS ON WISCONSIN CRIMINAL LAW* (Marquette University Press, 2014, new editions annually)

Articles

Roberts, Rules, and Rucho, 53 *CONNECTICUT LAW REVIEW* 543 (2022) (with Sydney Star)

Some Observations on Separation of Powers and the Wisconsin Constitution, 105 *MARQUETTE LAW REVIEW* 845 (2021)

Aesthetic Judging and Constitutional Change (Or, Why Supreme Court Justices are Less Like Umpires and More Like Figure-Skating Judges), 72 *FLORIDA LAW REVIEW* 329 (2020)

Aesthetic Judging, 52 *UC DAVIS LAW REVIEW* 981 (2018)

Methodological Pluralism and Constitutional Interpretation, 80 *BROOKLYN LAW REVIEW* 1 (2014)

Triangulating Judicial Responsiveness: Automated Content Analysis, Judicial Opinions, and the Methodology Of Legal Scholarship, 64 *FLORIDA LAW REVIEW* 1189 (2012) (with Joseph P. Bockhorst & Brian P. Dimmer)

Judging, Expertise, and the Rule of Law, 89 *WASHINGTON UNIVERSITY LAW REVIEW* 847 (2012)

Error Correction, 85 *INDIANA LAW JOURNAL* 49 (2010)

Universal De Novo Review, 77 *GEORGE WASHINGTON LAW REVIEW* 308 (2009)

Writing, Cognition, and the Nature of the Judicial Function, 96 *GEORGETOWN LAW JOURNAL* 1283 (2008)

Remedying Judicial Inactivism: Opinions as Informational Regulation, 58 FLORIDA LAW REVIEW 743 (2006)

Defining Judicial Inactivism: Models of Adjudication and the Duty to Decide, 94 GEORGETOWN LAW JOURNAL 121 (2005)

Appellate Courts, Historical Facts, and the Civil-Criminal Distinction, 57 VANDERBILT LAW REVIEW 437 (2004) (Awarded the Howard B. Eisenberg Prize by the American Academy of Appellate Lawyers)

Other Bad Acts and the Failure of Precedent, 28 WILLIAM MITCHELL LAW REVIEW 151 (2001) (invited contribution)

The Hidden Ball: A Substantive Critique of Baseball Metaphors in Judicial Opinions, 27 CONNECTICUT LAW REVIEW 17 (1994)

Shorter Works

Rucho in the States: Districting Cases and the Nature of State Judicial Power, 1 FORDHAM L. VOTING RTS. & DEMOCRACY F. 111 (2023) (invited contribution)

The Inconspicuous DHS: The Supreme Court, Celebrity Culture, and Justice David H. Souter, 90 MISSISSIPPI LAW JOURNAL 183 (2020)

A Job for a Year, an Example for a Lifetime: Clerking for Judge Jane Roth, in OF COURTIERIS AND PRINCES: STORIES OF LOWER COURT JUDGES AND THEIR CLERKS (Todd C. Peppers, ed., 2021)

Against Docility, MARQUETTE LAWYER, Fall 2019

Umpires, Judges, and the Aesthetics of the Infield Fly, 13 FIU LAW REVIEW 957 (2019) (invited contribution)

Introduction: Conference on the Ethics of Legal Scholarship, 101 MARQUETTE LAW REVIEW 887 (2018) (with Carissa Byrne Hessick & Paul Horwitz) (symposium)

Draft Principles of Scholarly Ethics, 101 MARQUETTE LAW REVIEW 897 (2018) (with Nicola A. Boothe-Perry, Stanley Fish, Leslie Francis, et al.) (symposium)

Transcript: Conference on the Ethics of Legal Scholarship, 101 MARQUETTE LAW REVIEW 1084 (2018) (with Nicola A. Boothe-Perry, Stanley Fish, Leslie Francis, et al.) (symposium)

The Scholar's Dilemma, 101 MARQUETTE LAW REVIEW 957 (2018) (symposium)

Teaching the Craft of Law, or How to Ride a Horse, 89-3 WISCONSIN LAWYER 72 (March 2016)

Truthiness and the Marble Palace, 65 EMORY LAW JOURNAL ONLINE 2001 (2016) (with Todd C. Peppers)

Of Judges, Law, and the River: Tacit Knowledge and the Judicial Role, 2015 JOURNAL OF DISPUTE RESOLUTION 155 (2015) (invited contribution)

Of Umpires, Judges, and Metaphors: Adjudication in Aesthetic Sports and its Implications for Law, 25 MARQUETTE SPORTS LAW REVIEW 271 (2014) (invited contribution)

Judicial Assistants or Junior Judges: The Hiring, Utilization, and Influence of Law Clerks, 98 MARQUETTE LAW REVIEW 1 (2014) (with Todd C. Peppers)

Panel Discussion: Judges' Perspectives On Law Clerk Hiring, Utilization, and Influence, 98 MARQUETTE LAW REVIEW 441 (2014) (moderator of panel featuring David R. Stras, Diane S. Sykes, & James A. Wynn, Jr.)

- Against Accuracy (as a Measure of Judicial Performance)*, 48 NEW ENGLAND LAW REVIEW 493 (2014) (invited contribution)
- Elitism, Expediency, and Terry Francona*, 45 UNIVERSITY OF TOLEDO LAW REVIEW 733 (2014) (invited contribution)
- Cert. Petitions and Bombing Targets: Clerking for Justice Abe Fortas*, in IN CHAMBERS 2: MORE STORIES OF SUPREME COURT LAW CLERKS AND THEIR JUSTICES (Todd C. Peppers, ed., 2014) (with Todd C. Peppers & Bridget Tainer-Parkins)
- Methodological Stare Decisis and Constitutional Interpretation*, in PRECEDENT IN THE UNITED STATES SUPREME COURT 135 (Christopher J. Peters, ed., 2013)
- Limitations (A Response to Judge Posner)*, 51 DUQUESNE LAW REVIEW 67 (2013) (invited contribution)
- Turtles*, 16 GREEN BAG 2D 220 (2013)
- The Prospect of Open Deliberations on the Wisconsin Supreme Court*, 95 JUDICATURE 94 (2011)
- Till Death Do Us Part: Chief Justices and the United States Supreme Court*, 95 MARQUETTE LAW REVIEW 709 (2011) (with Todd C. Peppers)
- Criminal Appeals Past, Present, and Future*, 93 MARQUETTE LAW REVIEW 339 (2010) (with Michael O'Hear) (symposium)
- Oral History and the Study of the Judiciary*, 78 GEORGE WASHINGTON LAW REVIEW 846 (2010) (book review)
- Comparative Procedure on a Sunday Afternoon: Instant Replay in the NFL as a Process of Appellate Review*, 43 INDIANA LAW REVIEW 45 (2009) (with Matthew Fernholz)
- Judges as Humans: Interdisciplinary Research and the Problems of Institutional Design*, 36 HOFSTRA LAW REVIEW 125 (2007)
- Heuristics, Biases, and Criminal Defendants*, 91 MARQUETTE LAW REVIEW 249 (2007) (invited contribution)
- Anastasoff v. United States and the Debate Over Unpublished Opinions*, 36 TORT AND INSURANCE LAW JOURNAL 899 (2001) (with John P. Borger) (invited contribution)
- The Uncertain Status of Unpublished Opinions*, 57 BENCH AND BAR OF MINNESOTA 36 (Dec. 2000)
- Profile of Judge Jane R. Roth*, 46 FEDERAL LAWYER 12 (Feb. 1999)
- A Lost Opportunity: A Review of the American Law Institute's Reporters Study on Enterprise Responsibility for Personal Injury*, 30 SAN DIEGO LAW REVIEW 307 (1993) (with Jeffrey O'Connell) (invited contribution)
- Elasticity of Preference for Ethanol in Rats: An Analysis of the Reinforcing Properties of Ethanol*, 3 PSYCHOLOGICAL SCIENCE 122 (1992) (with Gene R. Heyman)

Other Materials

Course Materials for Judging and the Judicial Process, early version available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1297423; current version available on request

Non-Legal Publications

A MAN WALKS INTO A BARN: NAVIGATING FATHERHOOD IN THE FLAWED AND FASCINATING WORLD OF HORSES (Trafalgar Square Books 2022) (named one of March 2022's "most noteworthy books" by *The Wall Street Journal*)

Throw Your Fastball: A Life Lesson from Willie Banks, HARVARD MAGAZINE, September-October 2019 (awarded McCord Prize)

SELECTED PANELS AND PRESENTATIONS

October 2023, Panelist, *An Exploration of Judicial Selection Methods of State High Courts*, Albany Law Review & Government Law Center, Albany Law School, Albany, NY (virtual)

April 2022, Presenter, *Some Observations on Separation of Powers and the Wisconsin Constitution*, Civil Liberties Symposium, Menard Center for the Study of Institutions and Innovation, University of Wisconsin-Stout, Menomonie, WI

October 2020, Presenter, *Empires or Umpires? Political Questions, Separation of Powers, and Judicial Legitimacy*, Connecticut Law Review, Hartford, CT (virtual symposium)

October 2019, Panelist, *Public Understanding and Opinion of the U.S. Supreme Court*, Marquette University Law School, Milwaukee, WI

July 2019, *Bracketing, Group Dynamics, and "The Dangerous Shift:" Does Interaction and Collaboration Improve, or Damage, Decision-Making?*, National Foundation for Judicial Excellence, 2019 Symposium, Chicago, IL

June 2019, *The Inconspicuous DHS: The Supreme Court, Celebrity, and Justice David Souter*, C4: The Conference on Contemporary Celebrity Culture, Drake University, Des Moines, IA

May 2019, *Aesthetic Judging and the Constitution, Amending America's Unwritten Constitution*, Boston College, Boston, MA

May 2019, Panelist, *The Rule of Law and Judicial Independence in a Time of Political Turmoil*, Seventh Circuit Bar Association Annual Meeting, Milwaukee, WI

September 2017, *The Ethics of Legal Scholarship*, Marquette University Law School, Milwaukee, WI (conference co-organizer, with Carissa Byrne Hessick & Paul Horwitz)

June 2017, *The Second Amendment and Gun Violence, The Violence Epidemic: Justice, Public Health, and Ethics*, Center for Bioethics and Medical Humanities, Medical College of Wisconsin, Milwaukee, WI

March 2016, *Measure Twice, Cut Once: Some Thoughts on Research Design*, Tracing the development and origins of political and legal text in the EU, University of Copenhagen, Copenhagen, Denmark

May 2015, *Intuition, Deliberation, and Judicial Decision-Making*, Annual Meeting of the 7th Circuit Bar Association and Judicial Conference, Milwaukee, WI

May 2015, *Statutory Interpretation: Theory and Method*, Annual Meeting of the 7th Circuit Bar Association and Judicial Conference, Milwaukee, WI

October 2014, *Judicial Education and the Art of Judging: From Myth to Methodology*, University of Missouri School of Law, Columbia, MO

May 2014 & August 2014, *Problem Solving, Decision Making, and Opinion Writing*, National Workshop for District Judges, Federal Judicial Center, Washington, DC, and Seattle, WA

April 2014, *Judicial Assistants or Junior Judges: The Hiring, Utilization, and Influence of Law Clerks*, Marquette University Law School, Milwaukee, WI (presenter and conference co-organizer)

February 2014, *Methodological Pluralism and Constitutional Interpretation*, Mid-American Jesuit Faculty Workshop, Loyola University-New Orleans College of Law, New Orleans, LA

November 2013, Panelist, *Benchmarks: Evaluating Measurements of Judicial Productivity*, New England Law Review Symposium, Boston, MA

October 2013, *Academic Perspectives on Judicial Decisionmaking*, American Academy of Appellate Lawyers, San Diego, CA

June 2013, *Formalism, Realism, and Adversarialism: An Exploration of the Divide between Judicial Philosophy and Judicial Politics*, Law & Society Association Annual Meeting, Boston, MA

July 2012, Panelist, *Social Science and the Law*, Southeastern Association of Law Schools Annual Meeting, Amelia Island, FL

July 2012, Panelist, *Toward a Law and Rural Society Movement?*, Rural Sociological Society Annual Meeting, Chicago, IL

June 2012, Panelist, *Challenges to Judicial Independence in Today's Legal Environment*, State Bar of Wisconsin Litigation, Dispute Resolution, and Appellate Practice Institute, Wisconsin Dells, WI

March 2012, Symposium: *Precedent and the Supreme Court*, University of Baltimore School of Law

March 2012, *Methodological Stare Decisis and Constitutional Interpretation*, University of Wisconsin Law School Faculty Workshop Series

February 2012, *Roundtable: The Jurisprudence of Sport*, Law and Philosophy Institute, University of San Diego School of Law

July 2011, Panelist, *Maximum Exposure: The Art of Making a Name for Oneself*, Southeastern Association of Law Schools Annual Meeting, Hilton Head, SC

September 2010, *Judicial Inaction in Action? Towards a Measure of Judicial Responsiveness*, Workshop on Judges and Judging, American University Washington College of Law, Washington, D.C.

August 2010, *New Empirical and Theoretical Work on Judging and the Judicial Process*, Southeastern Association of Law Schools Annual Meeting, Palm Beach, FL

July 2010, *Roundtable: Judges as Umpires, Umpires as Judges: Rethinking the Metaphor*, Law & Society Association Annual Meeting, Chicago, IL

September 2009, *Generalist Judges*, Arizona State University College of Law Faculty Workshop Series

March 2009, *Generalist Judges*, Fresh Ideas from Rising Scholars and Teachers Series, Chapman University Law School

December 2008, *Generalist Judges*, Prawfsfest!, University of Miami School of Law

October 2008, *The Concept of Error in Civil Appeals*, University of St. Thomas School of Law Faculty Workshop Series

April 2007, Moderator, Marquette University Law School Conference on Plea Bargaining: Understanding and Improving Dispute Resolution in Criminal Law

February 2007, *Writing, Thinking, and Judging*, Villanova Law School Faculty Workshop Series

September 2006, *Writing, Thinking, and Judging*, Marquette University Law School Faculty Workshop Series

September 2005, *Judicial Opinions as Informational Regulation*, University of Minnesota School of Law Faculty Works in Progress

February 2005, *The Possibilities of Pre-Judicial Education*, Judicial Ethics in the Spotlight: Balancing Judicial Independence and Judicial Accountability After *Republican Party of Minnesota v. White*, American Judicature Society/Oklahoma City University School of Law

November 2004, *The Vanishing Adjudicative Duty*, Central States Law Schools Association Annual Meeting, University of Akron School of Law

EDUCATION

University of Virginia School of Law, J.D., 1993
Articles Editor, *Virginia Law Review*
Order of the Coif

Harvard College, A.B., *magna cum laude*, 1990
Concentration: Psychology

PREVIOUS ACADEMIC APPOINTMENTS

Oklahoma City University School of Law, Oklahoma City, OK
Associate Professor, 2005-2006 (on leave)
Assistant Professor, 2002-2005
Courses: Appellate Courts and the Appellate Process, Evidence, Property, Environmental Law, Legal Analysis

William Mitchell College of Law, Saint Paul, MN
Adjunct Professor, 1999-2000
Courses: Criminal Law, Criminal Appeals Clinic

OTHER LEGAL EXPERIENCE

Faegre & Benson, Minneapolis, Minnesota
Associate, General Litigation Group, 2000-2002
Associate, Real Estate Group, 1994-1999
Summer Associate, 1993

Office of the Minnesota State Public Defender - Appellate Division
Assistant State Public Defender, 1999-2000

Hon. Jane R. Roth, U.S. Court of Appeals for the Third Circuit
Law Clerk, 1993-1994

Latham & Watkins, Washington, D.C., and Chicago, Illinois
Summer Associate, 1992, 1993

OTHER PROFESSIONAL AND SERVICE ACTIVITIES

Member, Advisory Committee on Circuit Rules, United State Court of Appeals for the Seventh Circuit, 2020-23

Member, Criminal Jury Instruction Committee, United States Court of Appeals for the Seventh Circuit, 2018-

Member, Board of Advisors, National Sports Law Institute, 2017-

Member, Editorial Committee, *Judicature* magazine, 2011-14
Member, National Advisory Board, American Judicature Society, 2008-14
Reporter, State Bar of Wisconsin, Bar Membership Committee, 2008
Reporter, State Bar of Wisconsin, Bar Structure Commission, 2006-08
Reporter, National Conference on Appellate Justice, November 4-6, 2005
Sponsored by American Academy of Appellate Lawyers, Federal Judicial Center,
Institute of Judicial Administration, and National Center for State Courts
Reporter, ABA Standing Committee on Judicial Independence, Study Group on Pre-Judicial
Education, 2004-2005

University Committee Service
Committee on Research (MU) 2013-16
Committee on University Honors (MU) 2007-2011
Chair, 2009-11
Faculty Hearing Committee (MU) 2008-2011
Chair, 2009-11
General Education Committee (OCU) 2003-2004

Law School Committee and Related Service
Academic Programs Committee (MU) 2008-10, 2011-12
Chair, 2008-10, Co-Chair, 2011-12
Academic Regulations Committee (MU) 2016-20
Advisor, *Marquette Law Review* 2019-
Advisor, Muslim Law Students Association (MU) 2019-
Appointments Committee (MU) 2006-08, 2010-18, 2022-23
Chair, 2010-18, 2022-
Curriculum Committee (MU) 2013-22
Diversity Committee (MU) 2020-22
Moot Court Committee (MU) 2007-2010
Self-Study Committee (MU) 2008-10, 2015-17
Admissions Committee (OCU) 2003-2005
Law Review Advisory Committee (OCU) 2002-2005

Advisor, Chicago Bar Association Moot Court Competition Team, 2008

Advisor, Environmental Law Moot Court Team, 2007-08

Advisor, Marquette Law School Mock Trial Team, 2006-08

MEMBERSHIPS

Minnesota Bar
Wisconsin Bar
U.S. Courts of Appeals for the Third, Fifth, and Eighth Circuit Bars
American Bar Association
Phi Delta Phi (honorary)