IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT OF SEDGWICK COUNTY, KANSAS
CRIMINAL DEPARTMENT

STATE OF KANSAS,

Plaintiff,

v.

KYLE D. YOUNG,

Defendant.

Case No. 2020-CR-879

EXHIBIT F to

DEFENDANT’S MOTION CHALLENGING DEATH QUALIFICATION AND CAPITAL PUNISHMENT AS APPLIED IN KANSAS AS UNCONSTITUTIONAL UNDER THE STATE AND FEDERAL CONSTITUTIONS
I. OVERVIEW

A. Qualifications

I am the Isidor and Seville Sulzbacher Professor of Law at Columbia Law School and a Professor in the Department of Epidemiology at the Mailman School of Public Health at Columbia University. My curriculum vitae is attached in Appendix B.

I am an elected Fellow of the American Society of Criminology. I am a former member and past Vice Chair of the Committee on Law and Justice of the National Research Council and a former member of the National Consortium on Violence Research at Carnegie Mellon University. I was a founding member of the MacArthur Research Network on Adolescent Development and Juvenile Justice. I served as Chair of the National Policy Committee of the American Society of Criminology and on the Executive Council (elected) to the American Society of Criminology. I have served on peer review panels for the National Institute of Justice, National Institute of Mental Health and the National Science Foundation as well as the Scientific Review Committees of the National Research Council.

I have published over 100 articles in peer reviewed journals, and numerous chapters in edited volumes. My research has been published in the leading journals in criminal law, sociology, and criminology, including the Journal of Empirical Legal Studies, the Columbia Law Review, the University of Chicago Law Review, UCLA Law Review, the Journal of Quantitative Criminology, the Fordham Urban Law Journal, Criminology, Criminology & Public Policy, the American Sociological Review, the American Journal of Public Health, the American Journal of Epidemiology, the Lancet, and PLOS One. I have published multiple articles regarding the topic of deterrence, and given expert testimony about deterrence and capital punishment.

My research has been supported by the National Institute of Justice, the National Institute of Mental Health, the National Institute on Drug Abuse, the National Science Foundation, the Office of Juvenile Justice and Delinquency Prevention, the Centers for Disease Control, the Rockefeller Foundation, the John D. and Catherine T. MacArthur Foundation, the Annie E. Casey Foundation, the Robert Wood Johnson Foundation, the Open Society Foundations, and the Russell Sage Foundation.

I currently serve on the editorial board of the Journal of Criminal Law and Criminology and have served on the editorial boards of numerous professional and academic journals in criminology including Crime & Justice, the Journal of Quantitative Criminology, and Criminology. I previously served as editor of the Journal of Research in Crime and Delinquency.
B. Summary of Issues

In this Report, I review and analyze the empirical research regarding the claim that the death penalty is a deterrent to homicide. I address the state of the scientific literature considering whether the death penalty deters. I also consider whether evidence in Kansas shows a link between the death penalty and homicides.

After this review, I offer the following conclusions and opinions:

1. The consensus in the scientific community, including the National Academy of Science, National Research Council’s 2012 report, is that there is no reliable evidence of a deterrent effect of the death penalty on homicide rates.

2. Murder rates in the United States and abroad rise and fall independently of the imposition of death sentences or the conduct of executions, and independently of the existence or abolition of the death penalty.

3. The death penalty is particularly ineffective as a deterrent in Kansas, because the penalty is rarely imposed. Moreover, since the legislature reinstated the death penalty in 1994, homicide rates in Kansas have continually fluctuated. Thus, there is no statistical correlation between the availability of the death penalty as a possible punishment in Kansas and a corresponding decline in homicide rates.

II. Research Findings and Conclusions

The core ambition of deterrence is to make threats of punishment credible: certain, swift and costly. In the case of capital punishment, retentionist states wish to signal to those persons contemplating murder, or any other offense eligible for execution, that they are at substantial risk of being sentenced to death and executed should they commit the crime.

Deterrence theory operates under the premise that a would-be offender, knowing about the threat of execution, will forego the act because the costs—in this case, death—are unacceptably high and well in excess of any presumed marginal benefits from the crime itself. It relies on the existence of a rational actor whose risk-reward calculus will lead to the avoidance of a capital crime, and one whose perceptions of risk and likelihood of execution are accurately calibrated. The theory also assumes that the risks of apprehension and punishment are substantial and observable.

This proposition leaves open several practical and empirical questions: How would we know about murders or other death-eligible crimes that are contemplated but abandoned because of the threat of death? How many averted murders are there, and what is the threshold to assume that there is a deterrent effect of capital punishment? Are executions the reason for the abandonment by an individual of a capital crime? What about other punishment threats, like death in prison through an extremely lengthy sentence or an irreversible life sentence? What ratio of executions to death-eligible crimes would present evidence of “deterrence”? How many executions

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are needed to signal a credible deterrent threat? Does the threat of a death sentence through the presence of a death statute have a deterrent effect without death sentences, or without executions, or is a deterrent effect contingent on carrying out executions? How many executions must be carried out to signal that there is a credible deterrent effect to would-be murderers?

What if the evidence of deterrence is weak, speculative, and otherwise inconclusive and uncertain? Then the logic of deterrence is turned on its head. Executions of the innocent, or of those lacking in the requisite culpability for execution, also are moral hazards of execution that offset any returns from execution. The costs to state legitimacy are potentially severe, with the risk of spillover effects of degrading respect for law. Much rides, then, on this evidence.

The Evidence: Deterrence, Executions and Murder

Five decades of research have shown that for murder and other violent crimes, the scientific evidence supporting the belief in deterrence is unreliable, and in some instances, simply wrong. This conclusion is based on the convergence and analysis of evidence from decades of empirical studies, conducted under a wide range of scientific strategies.

Experiments are the “gold standard” of scientific evidence. There are no experiments on execution, nor can there be, for obvious moral and ethical reasons. However, there are several studies that closely approximate experiments. For example, some studies have examined the effects of moratoria in jurisdictions that have suspended capital punishment. Other studies compare jurisdictions that practice capital punishment with carefully matched jurisdictions that have abolished or suspended executions. If the death penalty is a deterrent to homicide, empirical evidence should demonstrate that homicide rates in retentionist jurisdictions are lower than in jurisdictions which do not have the death penalty. In practice, those studies have found no differences in murder rates, regardless of the number of executions in the retentionist jurisdictions.

National Trends: U.S. Homicide Rates and the Death Penalty

From 1972-76, there was a moratorium on executions in the U.S., in response to the U.S. Supreme Court ruling in Furman v. Georgia. In the decade preceding Furman, there was a near cessation of executions. One of the reasons for the decline in the pre-moratorium decade moratorium was growing doubts about the deterrent effects of capital punishment on murder. Executions resumed state by state beginning in 1976 following two developments: caselaw approving new death penalty statutes that responded to the concerns of overbreadth in death sentencing, and the publication of research claiming that the death penalty did in fact deter

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4 Id.

5 Id. at 32.


10 Gregg, 428 U.S. at 198.
homicides. The claims were quite strong: each execution deterred as many as eight future homicides. But that evidence was strongly contested, and a 1978 panel of the National Academy of Sciences found no evidence that claims of a deterrent effect of the death penalty were accurate.

In the decades after the *Gregg* decision and the 1978 National Academy of Sciences report, dozens of studies were published that attempted to estimate the effect of the death penalty on homicide rates. “The studies have reached widely varying, even contradictory, conclusions.” Belief in deterrence remained politically and culturally popular, even if scientific evidence didn’t support the claim. These beliefs persisted throughout the 1980s and 1990s, despite the fact that murder rates rose dramatically just as executions were increasing.

Two factors arose that undermined those beliefs. First, new statistical evidence showed the empirical reality of declining executions and declining homicides. The murder rate began declining sharply in the second half of the 1990s, at the same time that executions rose sharply. Starting in 2000, as death sentences and executions began to decline, the murder rate continued its decline.

The second factor was the emergence of a large body of statistical evidence showing that the claims of deterrence were undermined by several empirical and logical flaws. In 2009, a meta-analysis of 700 deterrence studies, including 52 studies of the deterrent effect of the death penalty, concluded that deterrent effects can be achieved for minor crimes and disorder offenses, but there were no deterrent effects on homicides for any punishment, including executions and lengthy prison sentences. Of the 52 death penalty studies that were included in this meta-analysis, 90% were conducted in the U.S., and 34% were published after 1995.

In 2012, the National Research Council created the Committee on Deterrence and the Death Penalty to review the available research about the death penalty and deterrence, and address whether “the available evidence provide[s] a reasonable basis for drawing conclusions about the magnitude of capital punishment’s effect on homicide rates.” The committee published its findings later that year after an exhaustive review and discussions with the authors of much of the research that the report cited. The committee found that “research to date on the effect of capital punishment on homicide is not informative about whether capital punishment decreases, increases, or has no effect on homicide rates.” The committee recommended “that these studies not be used to inform deliberations requiring judgments about the effect of the death penalty on homicide.” The committee also recommended that research focus on comparisons of death sentences and

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12 National Research Council, Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates. Panel on Research on Deterrent and Incapacitative Effects (1978) (concluding “available studies provide no useful evidence on the deterrent effect of capital punishment” (9) and “that the death penalty [as practiced in the United States] can ever be subjected to the kind of statistical analysis that would validly establish the presence or absence of a deterrent effect” (62)).
16 Id. at 219.
17 National Research Council, supra note 13, at 2.
18 Id.
19 Id.
executions with the next most severe sentence: life without the possibility of parole. Absent such research, claims of deterrence from executions were unreliable and inaccurate.

Despite the absence of experimental evidence, national trends in the U.S. confirm the absence of plausible evidence of a deterrent effect of capital punishment. In the U.S., murder rates are generally lower than they were in 1993 across the U.S. in retentionist, moratorium, and abolition states.20

Figure 1. Homicides in the U.S., 1960-202021

Figures 2 and 3 show that since 1999, death sentences and executions have been declining at the same pace for nearly 15 years. Death sentences, in part a reflection of the peak in homicides in the mid-1990s, reached a peak rate in 1998, and have declined since. However, close inspection of these three figures suggests that the murder rates began a sharp decline beginning in 1993, well in advance of the decline in death sentences and execution that began nearly a decade earlier. Executions reached a peak in 1999 and have also declined since.

Figures 2 and 3. Death Sentences and Executions, U.S., 1977-202022

20 In 2020, during the height of an unprecedented pandemic, homicide rates increased by 29 percent as compared to the previous year. However, the national homicide rate “still remains about one-third below the rate in the early 1990s.” Jeff Asher, “Murder Rose by Almost 30% in 2020. It’s Rising at a Slower Rate in 2021.” NEW YORK TIMES (Sept. 22, 2021).
Equally important, homicide trends cannot be predicted by accounting solely for the use of capital punishment. Homicide rates in California, New York, and Texas all followed similar trends from 1974-2009, despite their widely different uses of the death penalty during those years. New York only had six death sentences, and no executions, in that time; California had hundreds of death sentences leading to thirteen executions; and Texas had 447 executions.\textsuperscript{23}

\begin{figure}[h]
\centering
\includegraphics[width=0.5\textwidth]{homicide_rates_california_new_york_texas.png}
\caption{Homicide Rates in California, New York, and Texas, 1974-2009.\textsuperscript{24}}
\end{figure}

Moreover, death penalty abolition in a number of U.S. states\textsuperscript{25} allows for comparison of murder rates before and after abolition. For example, five years after the abolition of capital punishment in New Jersey, Illinois, and New Mexico, there was no evidence of an increase in murders. The murder rate in states with the death penalty has historically been higher than the murder rate in non-death penalty states. Overall, the gap in murder rates between retentionist and abolition states has narrowed since 1990, suggesting that there is no marginal contribution to public safety in states where the death penalty is still available.\textsuperscript{26}

\begin{flushright}
\textsuperscript{24} National Research Council, Deterrence and the Death Penalty 40 (D. Nagin and J.V. Pepper, eds.) (2012).
\textsuperscript{25} Abolition states in the last 15 years have included: Virginia (2021); Colorado (2020); New Hampshire (2019); Washington (2018); Delaware (2016); Maryland (2013); Connecticut (2012); Illinois (2011); New Mexico (2009); New York (2007); New Jersey (2007) See Death Penalty Information Center, State-by-State, available at https://deathpenaltyinfo.org/state-and-federal-info/state-by-state.
\end{flushright}
International trends: Homicide Rates and the Death Penalty Abroad

Evidence from other countries shows similar trends. Canada abolished the death penalty for the majority of crimes in 1976, the same year that the United States Supreme Court reinstated the death penalty in *Gregg v. Georgia*. For that reason, it is interesting to compare the rate of homicides and use of the death penalty in the two countries over time, as seen in Figure 6, below. Despite the fact that Canada abolished the death penalty completely in 1998 after years of a *de facto* moratorium in executions, the homicide rate in Canada “has moved in virtual lockstep with the rate in the United States.”

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27 “After 1976, the death penalty was permitted only for members of the Armed Forces found guilty of cowardice, desertion, unlawful surrender, or spying for the enemy.” The Canadian Encyclopedia, Capital Punishment in Canada, at https://www.thecanadianencyclopedia.ca/en/article/capital-punishment.


Comparative research based on statistical evidence of changes in homicide rates before and after abolition of capital punishment across thirteen European nations found that “abolition was followed more often than not by absolute decreases in homicide rates.” Following the abolition of capital punishment in Eastern Europe in the early 1990s, homicide rates have been declining. This pattern holds in Asian nations as well. Homicide rates in Taiwan declined during a sharp reduction in executions from 2005-2009. Figure 7, from my own research, compares murder rates in Singapore, where executions for murder are common and persistent over time, with Hong Kong, where executions were banned. There was no observed difference in the murder rates between the two cities over nearly three decades since the cessation of executions in Hong Kong. Figure 7, illustrating the homicide rates in Hong Kong and Singapore from 1973 through 2016, shows that the long-term trends in the two city-states—one with frequent executions and the other with none since the 1960s—continue to have nearly identical homicide rates and nearly identical long-term trajectories of declining homicide rates.

30 Id.
In the Caribbean, a comprehensive study of Trinidad and Tobago has shown that executions had no deterrent effect on homicide rates over a 50-year period from 1960-2010. Over the 50-year period, there were periods where the death penalty was frequently imposed and executions were regularly carried out, as well as periods where the death penalty was rarely imposed and executions seldom occurred. The researchers found that neither prison sentences, death sentences, nor executions had an effect on the homicide rate. Figures 8 and 9 below, show that homicide rates were not responsive to changes either in the prison population or in the rate of death sentences.

Figures 8 and 9. Murders, Death Sentences and Prison Population, Trinidad and Tobago, 1960-2010

Source: Greenberg and Agozino, 2012

37 Id.
In fact, executions in Trinidad and Tobago may have had a perverse effect on murder. Following a spate of executions in 1999, Figure 10 shows that murders increased beginning the following year and continued rising for over a decade.\(^3^8\)

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{Murders_Trinidad_and_Tobago_1994-2021.png}
\caption{Murders, Trinidad and Tobago, 1994-2021}
\end{figure}

From these studies in the U.S., and comparative studies of abolition or execution effects in Europe, the Caribbean, and Asia, as well as conclusions of prestigious study commissions, I conclude that there is no evidence of the deterrent effects of death sentences or executions on homicides.\(^3^9\) I am not alone in reaching this conclusion. A survey of over 1,000 leading criminologists in the world agreed with this conclusion, based on their reading of the evidence and their own studies.\(^4^0\)

\textit{Deterrence and the Death Penalty in Kansas}

Though the Supreme Court reinstated the death penalty in 1976 in\(^4^1\) \textit{Gregg}, the death penalty was not reinstated in Kansas until 1994.\(^4^2\) There are nine individuals currently sentenced to death in Kansas, and Kansas has not conducted an execution since 1965.\(^4^3\) Taking into account death sentences imposed but not carried out, only fifteen death sentences have been imposed in Kansas since 1994, though 3,227 homicides have occurred from that time through 2020.\(^4^4\) It is therefore

\(^3^8\) https://www.ttcrime.com/crime-statistics/
\(^4^2\) https://www.doc.ks.gov/newsroom/capital.
highly unlikely that an individual in Kansas who commits a homicide will receive a death sentence. This reduces the actual risk, and importantly, the perceived risk for a death sentence given any murder, to less than one tenth of one percent. The risk is likely higher for death-eligible murders, which account for between 20% and 25% of all homicides, but still less than one percent. Thus, the death penalty is unlikely to deter future homicides as a would-be offender would not perceive it as a credible risk.

Figure 11 shows the estimated number of homicides in Kansas and specifically in Sedgwick County. Estimation of homicide rates in Kansas is necessary because of a reporting gap in homicide data from 1994-99. The Kansas data shows year-to-year variability, with an increase in the late 1990s followed by a slow decline starting after 2000. The decline is steeper after 2010, especially after 2015. Homicides in Sedgwick County declined after 1994, but rose again after 2010. By 2020, homicides in Sedgwick County were more frequent than in 1994, the year that the death penalty was reinstated in Kansas.

![Figure 11. Murders, Kansas and Sedgwick Counties, 1994-2020](image)


Figure 12 shows the homicide rate in Kansas and the number of death sentences imposed. The introduction of the death penalty in 1994 made no observable impact on the small rate. The homicide rate remained at about 6 per 100,000 persons in the five years before and after the

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u.s/1999/99sec7.pdf. These estimates are generally consistent with the CDC reported data from that period. See Frank Baumgartner, Memo to Jeffrey Fagan, Jan. 26, 2022 (on file with author). The list of death sentences was provided by BIDS and is attached to this report as Appendix A.


45 See FBI UCR data, supra n. 43. See, Frank Baumgartner, Memo to Jeffrey Fagan, Jan. 26, 2022 (on file with author), supra n. 44, Statewide and Sedgwick County estimates are based on a reconciliation of three data sources: the Center for Disease Control (Vital Statistics, https://www.cdc.gov/nchs/nvss/index.htm), the FBI Supplementary Homicide Reports, and the FBI Uniform Crime Reports. See, Baumgartner Memo, id at 1-2.
The Judicial Council Death Penalty Advisory Committee published a 2004 report on certain issues related to the death penalty, as requested by the Senate Vice President and Judiciary Committee Chair John Vratil. Deterrence was one of the issues considered. Consistent with the National Research Council committee on deterrence and the death penalty, the Advisory Committee reported that “[t]he social science community generally agrees that the death penalty does not have a general deterrent effect on would-be murders.”

The Advisory Committee found that the rate at which murder cases are prosecuted as capital murder “varies from county to county based upon the dynamics of each case and the individual methodology that prosecution and defense attorneys bring to the case,” for example, the reinstatement of capital punishment in 1994. After 2000, the homicide rate rose slightly and remained stable through 2019. Death sentences in this time were sporadic. There were only two years when more than one death sentence was imposed, and nine years when no death sentences were imposed. Overall, Figure 12 shows little sensitivity of homicide rates to changes in death sentencing.

Figure 12. Homicide Rates and Death Sentences, Kansas, 1990-2019


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47 Supra n. 1

willingness of prosecutors to plea bargain.\textsuperscript{49} The Advisory Committee noted that “there is geographic disparity in whether these capital charges are brought to trial.”\textsuperscript{50}

The Advisory Committee further explained the “inconsistency in the way capital crimes are handled throughout the state” by pointing to factors such as (1) the “interpretation” of the strength of the evidence being “subject to the discretion of the prosecutor(s) assigned to the case”; (2) “a county’s ability to bear the cost of capital murder litigation”; (3) the “desires of the victim’s family” in pursuing the death penalty; (4) “[t]he inherent aggressiveness of the prosecutor and his or her subjective belief regarding the morality of the death penalty”; (5) “the demographics and philosophical bent of the local population”; and (6) the “[l]ocal political climate and presence or absence of public outrage at the offense.”\textsuperscript{51} The Judicial Council found that from 1994-2004, of the 86 death-eligible cases, only 7 ended in a death sentence.\textsuperscript{52}

The low death sentencing rate since 1994, coupled with the fact that there have been no executions since 1965, shows that the death penalty in Kansas is neither swift nor certain, regardless of the homicide rate. Of the fifteen death sentences imposed since 1994, nine individuals are remain under a death sentence. All nine are still challenging their death sentence in appellate or state post-conviction proceedings; three have been pending execution or relief from sentence for between 19 and 20 years, and five between 10 and 16 years.\textsuperscript{53} Four of the fifteen individuals had their convictions reversed on appeals and were given less-than-death sentences or had their death sentences vacated pursuant to reduced plea agreements. Two individuals died in custody years after receiving his death sentence.

In conclusion, there is no credible evidence that the death penalty has a deterrent effect on homicide rates in Kansas or elsewhere in the United States. States that impose the death penalty in the face of uncertainty about the death penalty’s deterrent effects risk taking lives without a measurable return beyond vengeance or retribution. Executions of the innocent, or of those lacking in the requisite culpability for execution, are additional moral hazards, as is the diversion of public resources to pursue death sentences.

Respectfully Submitted,

Jeffrey Fagan

\textsuperscript{49} Id. at 8.
\textsuperscript{50} Id. at 11.
\textsuperscript{51} Id. at 8-9.
\textsuperscript{52} Id. at 27.
\textsuperscript{53} Kansas Department of Corrections, \textit{Capital Punishment Information}, https://www.doc.ks.gov/newsroom/capital#:~:text=The\%20State\%20of\%20Kansas\%20has,become\%20law\%20without\%20her\%20signature.
## Appendix A. Death Sentences in Kansas, 1994 to Present

<table>
<thead>
<tr>
<th>Surname</th>
<th>First Name</th>
<th>County</th>
<th>Offense Date</th>
<th>Sentence Date</th>
<th>Current Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scott</td>
<td>Gavin</td>
<td>Sedgwick</td>
<td>9/13/1996</td>
<td>8/12/1999</td>
<td>Resentenced Life Sentence</td>
</tr>
<tr>
<td>Robinson</td>
<td>John Edward</td>
<td>Johnson</td>
<td>Various</td>
<td>1/21/2003</td>
<td>Death Row</td>
</tr>
<tr>
<td>Cheatham</td>
<td>Phillip</td>
<td>Shawnee</td>
<td>12/13/03</td>
<td>2005</td>
<td>Resentenced Life Sentence</td>
</tr>
<tr>
<td>Cheever</td>
<td>Scott Denver</td>
<td>Greenwood</td>
<td>1/19/2005</td>
<td>1/23/2008</td>
<td>Death Row</td>
</tr>
<tr>
<td>Cross</td>
<td>Frazier Glenn</td>
<td>Johnson</td>
<td>4/13/2014</td>
<td>11/10/2015</td>
<td>Died natural causes</td>
</tr>
<tr>
<td>Flack</td>
<td>Kyle Trevor</td>
<td>Franklin</td>
<td>4/28/2013</td>
<td>5/18/2016</td>
<td>Death Row</td>
</tr>
</tbody>
</table>
APPENDIX B: CURRICULUM VITAE

Jeffrey A. Fagan

Email: Jeffrey.Fagan@law.columbia.edu
Webpage

PROFESSIONAL EXPERIENCE:

2011 – present: Isidor and Seville Sulzbacher Professor of Law, Columbia Law School
2021 – present: Faculty Associate, Columbia Data Science Institute
2018 (Fall): Florence Rogatz Visiting Professor of Law, Yale Law School
2013 (Spring): Florence Rogatz Visiting Professor of Law, Yale Law School
2001-2011: Professor, Columbia Law School
2010-11: Fellow, Straus Institute for the Advanced Study of Law and Justice, New York University School of Law
2010-present: Senior Research Scholar, Yale Law School
2009-10 Florence Rogatz Visiting Professor of Law, Yale Law School
2004-2015: Director, Center for Crime, Community and Law, Columbia Law School
2001-2006 Director, Doctor of Juridical Science in Law (JSD) Program, Columbia Law School
2008 – present: Faculty Fellow, Columbia Population Research Center
1999-present Faculty Fellow, Institute for Social and Economic Research and Policy, Columbia University
1998-2001: Visiting Professor, Columbia Law School
1996-present: Professor, Department of Epidemiology, Mailman School of Public Health, Columbia University
1995-2002: Founding Director, Center for Violence Research and Prevention, Mailman School of Public Health, Columbia University
1989-1996: Associate Professor to Professor, School of Criminal Justice, Rutgers-The State University of New Jersey
1988-1989: Associate Professor, Doctoral Program in Criminal Justice, City University of New York Graduate Center; Associate Director for Research, Criminal Justice Center, John Jay College of Criminal Justice, City University of New York
1977-1986: Director, Center for Law and Social Policy, URSA Institute, San Francisco.
1975-1976: Research Director, Northern California Service League, San Francisco, California.
1969-1971: Teaching Assistant and Research Associate, Department of Psychology, State University of New York at Buffalo

EDUCATION:

PhD, 1975, Policy Science, Department of Civil Engineering, State University of New York at Buffalo.
   Dissertation: “A Predictive Model of Success in Criminal Justice Employment Programs.”
MS, 1971, Human Factors Engineering, Department of Industrial Engineering, State University of New York at Buffalo.

AWARDS AND HONORS:

Advisory Board, Presidential Scholars in Society and Neuroscience, Columbia University, 2021-present
Power of One Racial Justice Award, Center for Race, Crime and Justice, John Jay College, May 2016
Lillie and Nathan Ackerman Lecture in Equality and Justice, Baruch College, November 2013
Fellow, American Society of Criminology, elected April 2002
Fellow, Davenport College, Yale University
Lecturer, Hoffinger Colloquium, *Profiling and Consent: The Trouble with Police Consent Decrees*, New York University School of Law, April 2011
National Associate, National Research Council and Institute of Medicine, 2011 – present
Member, Committee on Law & Justice, National Research Council, 2002-2008
Senior Justice Fellow, Open Society Institute, 2005-6
Health Policy Scholar, Robert Wood Johnson Foundation, 2002-2004
Public Interest Achievement Award, Public Interest Law Foundation of Columbia University, Spring 2001
Bruce Smith Senior Award, Academy for Criminal Justice Sciences, March 2000.
Lecturer, Fortunoff Colloquium, *Social Contagion of Violence*. New York University School of Law, April 1999
Fellow, Earl Warren Legal Institute, School of Law, University of California-Berkeley, 1999-present
University Faculty Merit Award, Rutgers University, 1990-94
Lecturer in Colloquium on Race, Ethnicity and Poverty Workshop, Center for the Study of Urban Inequality, University of Chicago, June 1992
University Research Council Grantee, Rutgers University, 1989-90
Lecturer, Fortunoff Colloquium, *Preventive Detention and the Validity of Judicial Predictions of Dangerousness*. New York University School of Law, October, 1988
Delegate, Criminal Justice and Criminology Delegation to the People's Republic of China, Eisenhower Foundation, 1985
NDEA Title IV Fellowship, Department of Industrial Engineering, State University of New York at Buffalo, June 1968-June 1971

PUBLICATIONS:

Books:


Journal Articles and Chapters (by Topic):

1. Policing

Harris, Angela, Elliott Ash, & Jeffrey Fagan, “Fiscal Pressures and Discriminatory Policing: Evidence

https://doi.org/10.1177/1097008519894389


https://doi:10.31235/osf.io/rdchf


2. Capital Punishment


### 8. Juvenile Justice


Fagan, J.A. “Treatment and reintegration of violent delinquents: Experimental results.” *Justice Quarterly*


4. **Deterrence and Development**


5. Social Area Studies


6. Legitimacy Studies


7. Intimate Partner Violence


8. Substance Use


9. *Psychiatric Epidemiology*


**Works in Progress:**


Book Reviews:


**PAPERS PRESENTED (SELECTED)**


“Are Police Officers Bayesians” Presented at the Annual Conference on Empirical Legal Studies, Claremont McKenna College, November 2019

“Aggressive policing and the educational performance of minority youth,” (with Joscha Legewie), Presented at the Quantlaw Conference, Rogers College of Law, University of Arizona, March 2018.

“Multiple Personalities of Proactive Policing,” Presented at Symposium on Misdemeanors, Boston University Law School, November 2017

“Conjuring Crime,” Presented at the Quantlaw Conference, Rogers School of Law, University of Arizona, February 2017.

“Reforming the New Policing,” Bridging the Gap on Criminal Justice Scholarship and Reform, Arizona State University, February 2017.


“Risky Predictions,” Presented at the Symposium on Race and Policing, University of California at Irvine School of Law, October 7, 2016

“Terry’s Original Sin,” Presented at the Faculty of Law, University of New South Wales, March 7, 2016.


“No Runs, Few Hits and Many Errors: Street Stops, Bias and Proactive Policing” (with G. Conyers and I. Ayres), Presented at the Ninth Conference on Empirical Legal Studies, University of California at Berkeley, November 2014


“Social Context and Proportionality in Capital Punishment in Georgia” (with R. Paternoster), Presented at the Annual Meeting of the American Society of Criminology, San Francisco, November 2010

“Profiling and Consent: Stops and Searches in New Jersey after Soto” (with A. Geller), Presented at the Sixth Annual Conference on Empirical Legal Studies, New Haven CT, November 2010

“Doubling Down on Pot: Marijuana, Race and the New Disorder in New York City Street Policing” (with A. Geller), Presented at the Fifth Conference on Empirical Legal Studies, Los Angeles CA, November 2009

“Crime, Conflict and the Racialization of Criminal Law,” Presented at the Annual Meeting of the European Society of Criminology, Ljubljana, Slovenia, September 2009


“Science, Ideology and the Death Penalty: The Illusion of Deterrence.” The Walter Reckless Lecture, delivered at the Moritz School of Law and the Criminal Justice Research Center, The Ohio State University, Columbus, OH, April 2005.


“Police, Order Maintenance and Legitimacy,” Presented at the Conference on Dilemmas of Contemporary Criminal Justice: Policing in Central and Eastern Europe, University of Maribor, Ljubljana, Slovenia, September 2004 (with Tom R. Tyler).


“Specific Deterrent Effects of Jurisdictional Transfer of Adolescent Felony Offenders,” American Society of Criminology, Atlanta, November 2001 (with A. Kupchik).


“Consequences of Waiver: Recidivism and Adolescent Development.” Presented at the Symposium on The Juvenile Justice Counter-Reformation: Children and Adolescents as Adult Criminals, Quinnipiac College School of Law, Hamden CT, September 17-18, 1998.


“Situational Contexts of Gun Use among Young Males.” Presented at the Annual Meeting of the American Association for the Advancement of Science, Atlanta, February 1995, and at the Annual Meeting of the American Society of Criminology, Miami, November 1994.


“Deindustrialization and the Emergence of Youth Gangs in American Cities.” Colloquium at the Institute of Politics, University of Pittsburgh, April 1993.


“Indigenous Justice: The San Francisco Community Board Program” (J. Fagan). Presented at the
Annual Meeting of the American Society of Criminology, November 1977, Atlanta, Georgia.


EXPERT TESTIMONY:

- Joel Stallworth, et. al., v. Nike Retail Services, Inc. et. al., 2:20-cv-05985-VAP (GJSx), U.S. District Court, Central District of California
- Jermon Cox and Kevin Marinnelli v. Commonwealth of Pennsylvania, 102/103 RM 2018, Supreme Court of Pennsylvania (Consultant)
- People v. Miguel Contreras-Perez, Pueblo County (Colo.) Dist Ct. No. 18CR1538.
- In re Ferguson Police Department, Special Litigation Section, Civil Rights Division, U.S. Department of Justice, DJ 207-42-6
- State v. Raheem Moore, Circuit Court # 08CF05160, State of Wisconsin, Criminal Division, Milwaukee County
- Connecticut v Arnold Bell, Docket # CR02-0005839, District Court of Connecticut, New Haven
- United States v. Khalid Barnes, U.S. District Court, Southern District of New York, 04 Cr. 186 (SCR)
- Truman-Smith v. Bryco Firearms et al. (02-30239 (JBW)), and Johnson v. Bryco Firearms et al. (03-2582 (JBW)), Eastern District of New York
- U.S. v. Alan Quinones, S3 00 Cr. 761 (JSR), Southern District of New York
- National Association for the Advancement of Colored People (NAACP) and National Spinal Cord Injury Association (NSCIA) v. American Arms Corporation, Accu-sport Corporation, et. al., Eastern District of New York, 99 CV 3999 (JBW), 99 CV7037 (JBW)
- U.S. v. Durrell Caldwell, J-2045-00; J-2250-00, Family Division, Juvenile Branch, Superior Court of the District of Columbia
- State of Wisconsin v. Rolando Zuvala, 97-CF-547, Circuit Branch 3 (Hon. Bruce E. Shroeder)

OTHER PRESENTATIONS:

“Guns, Social Contagion, and Youth Violence.” Presented at the Annual Conference of the Cuyahoga County Mental Health Institute, Case Western Reserve University, Cleveland, May 1998.


Keynote Speaker, Philadelphia Coalition for Children and Youth, Juvenile Justice Conference, June, 1988

Ohio Governor's Task Force on Juvenile Violence, Statewide Conference on Gangs, May, 1988

OJJDP State Advisory Groups, Regional Workshops, 1982, 1987

Michigan Commission on Juvenile Justice, Symposium on Contemporary Programs in Rehabilitation of Serious Juvenile Offenders, 1986

Interagency Panel on Research and Development on Children and Adolescents, National Institute of Education, 1985, 1987

Symposium on Addressing the Mental Health Needs of the Juvenile Justice Population, National Institute of Mental Health, 1985

OJJDP/ADAMHA Joint Task Force on Serious Juvenile Offenders with Drug and Alcohol Abuse and Mental Health Problems, National Institute on Drug Abuse, 1984

National Conference on Family Violence as a Crime Problem, National Institute of Justice, 1984

Governor's Task Force on Juvenile Sex Offenders, California Youth Authority, Sacramento, CA, 1984

Los Angeles County Medical Association, Los Angeles, California: Family Violence and Public Policy, 1983

Minority Research Workshop, National Institute of Law Enforcement and Criminal Justice, LEAA, Department of Justice, 1979

TECHNICAL REPORTS (SELECTED):


Situational Contexts of Gun Use by Young Males in Inner Cities (J. Fagan and D.L. Wilkinson). Final Technical Report, Grant SBR 9513327, National Science Foundation; Grant 96-IJ-CX-0021, National Institute of Justice; Grant R49/CCR211614, Centers for Disease Control and Prevention (NIH), 1999.


- **Volume I:** Innovation and Experimentation in Juvenile Corrections: Implementing a Community Reintegration Model for Violent Juvenile Offenders (J. Fagan and E. Hartstone), 1986.
- **Volume II:** Separating the Men from the Boys: The Transfer of Violent Delinquents to Criminal Court (J. Fagan and M. Forst), 1987.

Drug and Alcohol Use, Violent Delinquency, and Social Bonding: Implications for Policy and Intervention (J. Fagan, J.G. Weis, J. Watters, M. Jang, and Y. Cheng), Grant 85-IJ-CX-0056, National Institute of


EDITORIAL:

Senior Editor, Criminology and Public Policy, 2001 - 2008
Advisory Board, Family and Child Law Abstracts, Legal Scholarship Network, 1999-present
Editorial Advisory Board, Journal of Criminal Law and Criminology, 1996-2010
Editorial Board, Criminology, 1997-2001
Editorial Board, Journal of Quantitative Criminology, 2001-2008
Editorial Board, Crime and Justice: A Review of Research, 1998-present
Editorial Board, Journal of Research in Crime and Delinquency, 1997-present
Editor, Contemporary Drug Problems, Special Issues on Crack (Winter 1989, Spring 1990)
Co-Editor, Oxford Readers in Crime and Justice (w. Michael Tonry), Oxford University Press, 1994-95

ADVISORY BOARDS AND COMMITTEES:

Faculty Affiliate, Data Science Institute, Columbia University (2020-present)
Advisory Board, 8th Amendment Project (2015-present)
Research Advisory Board, The Innocence Project (2009 – present)
Committee on Law and Justice, National Academy of Sciences (2000-2006) (Vice Chair, 2004-6)
Working Group on Law, Legitimacy and the Production of Justice, Russell Sage Foundation (2000-present)
Academic Advisory Council, National Campaign Against Youth Violence (The White House) (1999-2001)
Fellow, Aspen Roundtable on Race and Community Revitalization (1999 - 2001)
Fellow, Earl Warren Legal Institute, University of California School of Law (1998 - present)
Advisory Board, Evaluation of the Comprehensive Gang Intervention Program, University of Chicago (1997-present)
Committee on Opportunities in Drug Abuse Research, Institute of Medicine, National Academy of Sciences (Special Consultant) (1995 - 1996).
Racial Disparities in Juvenile Justice, Missouri Department of Law and Public Safety (1990-91)
Research Program on “Linking Lifetimes — Intergenerational Mentoring for Youths at Risk and Young Offenders,” Temple University (1989-91)
Research and Development Project on Sexually Exploited Children, Tufts University, New England Medical Center Hospital, Boston, MA (1980-83)

PROFESSIONAL ASSOCIATIONS:
Society for Empirical Legal Studies
American Society of Criminology
American Sociological Association
Law and Society Association
American Association for the Advancement of Science
American Public Health Association

RESEARCH GRANTS:
Principal Investigator, Racial Inequality in Police Violence: Injuries and Fatalities from Police Use of Force, Russell Sage Foundation Grant#: 2008-2769, July 2021 - June 2023
Principal Investigator, Citizens, Police and the Legitimacy of Law in New York, Grant # 20033258, Open Society Foundations, October 2011-September 2013
Co-Investigator, Street Stops and Police Legitimacy, Grant 2010-IJ-CX-0025 from the National Institute of Justice, U.S. Department of Justice, subcontract from New York University, 2011 – 2012


Co-Principal Investigator, “Post-Traumatic Stress Among Police,” October 1997 - April 2000, National Institute of Mental Health, 1 R01-MH56350-01, National Institutes of Health (subcontract from University of California at San Francisco).


Principal Investigator, “Impacts of Arrest on the Social Control of Violence Among Intimates,” October
Co-Principal Investigator, “Female Participation in Drug Selling,” September 1992 - August 1994, National Science Foundation, SES-92-07761. Also supported by the Rockefeller Foundation.
Principal Investigator, “Pipeline Study for a Field Experiment on Drug Testing in Community Corrections,” June-December, 1990, National Institute of Justice, 90-IJ-R-026

PEER REVIEW:

Scholarly Journals
Stanford Law Review
NYU Law Review
Yale Journal
Proceedings of the National Academy of Science
Social Problems
Journal of Contemporary Ethnography
Journal of Drug Issues
Crime and Justice: An Annual Review of Research
Journal of Criminal Justice
Alcohol Health and Research World

Columbia Law Review
J. Crim Law & Criminology
Social Science Quarterly
Law and Society Review
American Journal of Sociology
American Sociological Review
Sociological Methods and Research
Journal of Quantitative Criminology
Justice Quarterly
Violence and Victims
Criminal Justice Ethics
Criminology
Journal of Urban Affairs

University Presses
Rutgers University Press
State University of New York Press
Temple University Press
University of Chicago Press

Cambridge University Press
Oxford University Press
Princeton University Press
New York University Press

Other Presses
MacMillan Publishing
St. Martins Press

Greenwood Publications
Sage Publications

Research Grant Reviews
National Institute on Mental Health, Violence and Traumatic Stress Branch
Centers for Disease Control and Prevention, National Center for Injury Prevention and Control,
USPHS
Law and Social Science Program, National Science Foundation
Sociology Program, National Science Foundation
National Institute on Drug Abuse, Prevention Branch
National Institute on Drug Abuse, Epidemiology Branch
National Institute of Justice
Office of Juvenile Justice and Delinquency Prevention
The Carnegie Corporation of New York
The W.T. Grant Foundation

COURSES TAUGHT (Selected):

Seminar on Neuroscience and Criminal Law
Seminar on Mass Incarceration
Empirical Legal Studies Laboratory
Seminar on the Social and Legal Regulation of Firearms
Seminar on Policing
Criminal Law
Capital Punishment
Empirical Analysis of Law
Juvenile Justice
Seminar on Crime and Justice in New York
Pro-Seminar on Race, Crime and Law

Seminar on Criminology
Seminar on Violent Behavior
Seminar on Drugs, Law and Policy
Seminar on Communities and Crime
Research Methods in Criminal Justice and Criminology
Advanced Research Methods
Qualitative Research Methods
Criminal Justice Policy Analysis
Administration of Juvenile Corrections
Seminar on Deterrence and Crime Control Theory

CONSULTATIONS:

Robina Institute, University of Minnesota School of Law, 2012
Boston Police Department, 2012-present
New Jersey Commission on Law Enforcement Standards and Practices, 2006-7
London School of Economics, Urban Age Colloquium, 2005
Inter-American Development Bank, Urban Security and Community Development, 2002-3
Trans.Cité (Paris, France), Security in Public Transportation, 2002
Institute for Scientific Analysis, Domestic Violence and Pregnancy Project, 1995-96
Department of Psychology, University of Wisconsin (Professor Terrie Moffitt), 1995-1999
National Funding Collaborative for Violence Prevention (Consortium of foundations), 1995
Victim Services Agency, City of New York, 1994-2000
National Conference of State Legislatures, 1994-2001
U.S. Department of Labor, 1994
City of Pittsburgh, Office of the Mayor, 1994
Center for the Study and Prevention of Violence, Colorado University, 1993 - 2000
Washington (State) Department of Health and Rehabilitative Services, 1993
National Council of Juvenile and Family Court Judges, 1993
Center for Research on Crime and Delinquency, Ohio State University, 1992, 1993
New York City Criminal Justice Agency, 1992, 1993
Violence Prevention Network, Carnegie Corporation, 1992-3
Research Triangle Institute, 1993
National Institute of Corrections, 1992, 1993
Colorado Division of Criminal Justice, 1991
Juvenile Delinquency Commission, State of New Jersey, 1991
University of South Florida, Dept. of Criminology, 1991-92
Florida Mental Health Institute, 1991
Rand Corporation, 1991-92
Juvenile Corrections Leadership Forum, 1990
Texas Youth Commission, 1990
California State Advisory Group on Juvenile Justice, 1989
New York State Division of Criminal Justice Services, Family Court Study, 1989
Juvenile Law Center, Philadelphia, 1988
American Correctional Association, 1988
Institute for Court Management, National Center for State Courts, 1987-present
Correctional Association of New York, 1987
New York City Department of Juvenile Justice, 1987-1990
Juvenile Justice and Delinquency Prevention Council, Colorado Division of Criminal Justice, 1983-87
Office of Criminal Justice Services, State of Ohio, 1983
Utah Youth Corrections Division, Salt Lake City, Utah, 1982
National Center for the Prevention and Control of Rape, NIMH, 1980

SERVICE:

Columbia University
University Senate, Mailman School of Public Health, 2003-2007
Director, JSD Program, Columbia Law School, 2001-2010
Curriculum Committee, Columbia Law School, 2003-4

Professional
Chair, Sutherland Award Committee, American Society of Criminology, 2006-7
Chair, National Policy Committee, American Society of Criminology, 2002-2003
Delegate from the American Society of Criminology to the American Association for the
Advancement of Science, 1995-1999
Executive Counselor, American Society of Criminology, 1994-97
Chair, Nominations Committee, American Society of Criminology, 1995-96.
Counsel, Crime, Law and Deviance Section, American Sociological Association, 1993-94
Nominations Committee, American Society of Criminology, 1993-94, 2016-7
Site Selection Committee, American Society of Criminology, 1992
Program Committee, American Society of Criminology, 1988, 1990, 2000
Awards Committee, Western Society of Criminology, 1988

Public
Prevention Task Force, New Jersey Governor's Commission on Drug and Alcohol Abuse, 1990
Task Force on Youth Gangs, State of New York, Division for Youth, 1989-90