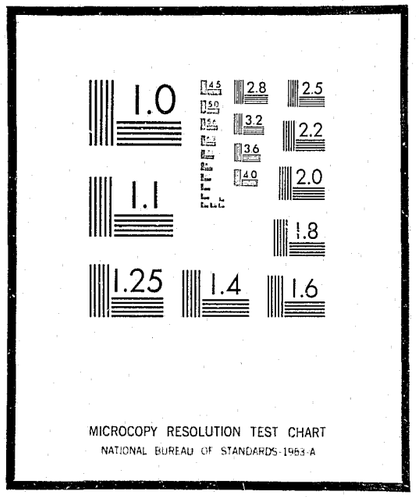




Testimony of Assemblyman Stanley Fink,

Chairman, New York State Assembly
Committee on Codes

House
Subcommittee on Domestic and International
Scientific Planning and Analysis, July 17, 1975



July 17, 1975
Washington, D.C.
Committee on Science and
Technology

## BIOGRAPHICAL STATEMENT

STANLEY FINK, Member of the New York State Assembly from the 39th Assembly District (Kings County, Brooklyn, New York).

Assemblyman Stanley Fink was born in Brooklyn on February 6th, 1936. He attended New Utrecht High School and was graduated from Brooklyn College in 1956 and New York University School of Law in 1959.

Upon graduation from college, Mr. Fink was commissioned as a Second Lieutenant in the United States Air Force. He was activated in 1959 and served in the Judge Advocate General's Office and was stationed in England. He was discharged in 1962 with the rank of Captain.

Assemblyman Fink served as Chief Counsel to the Assembly Committee on Mental Hygiene during the 1968 session and was first elected to the Assembly in the 1968 general election. He has been re-elected in 1970, 1972 and 1974.

A member of the New York County Lawyers' Association, Brooklyn Bar Association, New York State Association of Trial Lawyers and the Kings County Criminal Bar Association, Mr. Fink is also a practicing attorney with offices at 16 Court Street, Brooklyn, New York. He is a Director and a member of numerous social, fraternal and philanthropic organizations. A life-long Democrat, Mr. Fink is a member of the Thomas Jefferson Democratic Club of the 39th Assembly District.

In the Assembly, Mr. Fink is completing his first year as Chairman of the Committee on Codes. He also served on the Banks and Rules Committees of the Assembly.

Mr. Fink is married to the former Judith Mandel. They have two sons, Marc and Keith and reside in the Bergen Beach section of Brooklyn.

## Summary of Testimony

### Assemblyman Stanley Fink

I strongly urge the Subcommittee to endorse the concept of applied research. The criminal justice system, if it is to be improved, needs assistance from the researcher. And the researcher must address the needs of the policy-maker.

It seems that there is at least one very basic research need, access of the practitioner to simple information, which could be presented to us in forms that could be retrieved and reproduced without difficulty. The researcher should indicate in his grant application how the study will be useful, and how it can be linked to the work of policy-makers in the legislative, judicial or court administration system.

Another important research need involves some mechanism for converting what has been done to useful work. Our committee staff was able to bring research findings to a second stage--where they could be made useful. This should be an area for funding.

I also indicate some serious areas where criminal justice research would be helpful. These include the penalty structure, sentencing disparities, the operations of the detention system, plea bargaining, and the efficiency of criminal prosecution.

Statement by Assemblyman Stanley Fink, Chairman, The Committee on Codes, The New York State Assembly.

July 17th, 1975 - Washington, D.C.

Chairman Thornton and Members of the Subcommittee on Domestic and International Scientific Planning and Analysis of the Committee on Science and Technology of the United States House of Representatives. Permit me to thank you for giving me the opportunity to testify about a matter close to my work: research needs for revision of criminal justice systems.

I will be speaking from the vantage point of a Legislative Committee Chairman who deals annually with more than a thousand legislative proposals offering some revision of the way in which New York State deals with crime. My perspective is not that of a college professor or of a researcher, but rather that of a practitioner of the art of legislation who seeks from research some important clues about the way in which public policy ought to be shaped. Thus, I seek very tangible and useful products and I present a bias toward applied research. I think that this is a bias which ought to be served in some way by whatever research your committee encourages.

Please permit me as well to apologize for the lack of research effort that accompanies this presentation. The legislature in New York State has just concluded its third longest session in history, adjourning only last week. The timeliness of your kind invitation and the move toward adjournment made any hope of making this presentation a research one just that--a hope.

The Committee on Codes of the New York State Assembly has several major functions that are directly served by research. These functions include:

(1) determining what a criminal act is;

(2) determining the penalties for criminal acts; and

(3) determining the procedures to be used in the swift and just prosecution of criminal wrongs.

In each of these areas of my legislative responsibility there are important research needs that emerge and I will address myself to them individually.

1. Determining What a Criminal Act Is.

Our statute books are filled with laws which impose penalties for acts which were thought of as criminal many years ago and which have remained as law through inertia. Attempts at revision are met with resistance for it seems that there is nothing to be feared as much as change. The legislative debate that occasions the move toward change is based very often on quite limited information. This information gap includes data on the fre-

quency of the crimes, data on the approaches taken toward prosecution and data on the citizen attitudes toward the seriousness of the various types of crime. In a recent debate on the floor of the New York State Assembly on the question of legalizing consentual sodomy, both sides argued the matter on the basis of different understandings of the purpose of the law and different understandings of the ways in which the crime had been prosecuted over time. There was, of course, disagreement over the moral issues involved, but more than that is at issue. Even legislators who held to a limited application of the force of moral law did not have information at hand about the number of indictments and trials that had taken place involving this crime. We had not yet converted our criminal justice reporting system to the task of presenting factual data for legislators.

In another instance, when I presented a proposal affecting the sentences of a certain class of convicted murder felons, we were unable to ascertain the precise number of prisoners who would be covered by the proposed legislation. There is nothing high-powered or exotic about the kind of research product that would have filled our needs in these cases. We needed, in both instances,



information--information that should have been machine retrievable from data that should have been machine recorded. This then presents us, it seems to me, with at least one very basic research need--access of the practitioner to simple information--which could be presented to us in forms that could be retrieved and reproduced without difficulty.

This information would permit us to have a more enlightened debate over just what criminal acts are, not only in terms of the statutes, but also in terms of the practice of the criminal justice system. It would also permit us to find out how much prosecution of "victimless crimes" is actually taking place. I think we could proceed more quickly to take many laws out of the penal code if we could factually determine what the impact would be--in terms of indictments and convictions--if we could cleanse the law of the atrophied morality of a previous era.

If funding of research is to take place in ways that will assist the law-making process, as I believe it should, then you should make the researcher provide us with information about how it is that his information will be useful and how it will be linked to the work of policy makers in the legislative, judicial or court administration system. Do not simply give us research that is restricted

to scholarly journals and that cannot be converted to practical use. We need the information that is useful.

2. Determining the Penalties for Criminal Acts.

This second function of the Committee on Codes brings us to another type of research need. My experience here indicates that our legislative work in this area has not been as efficient or productive as it might be. We continue to develop a penalty structure for the criminal justice system on an ad-hoc basis, with general inattention given to the matter of whether we have a balanced or harmonious system of criminal penalties. Thus the penalty structure does not reflect a whole view. It does not consider in many instances what other states are doing and it does not reflect what the prosecutors and courts are doing with the penalties we have provided by legislation.

Having a penalty structure that is not balanced, and that is honored in the breach by prosecutors and trial judges does more to undermine the criminal justice system than almost any other public act of which I can think. Research to be effective must confront this matter of our penalty structure.

In the State of New York, with one stroke of Governor



Rockefeller's pen, we went from a fairly liberal drug law state into the most harsh drug law state of all the United States. The debate surrounding the passage of the 1973 Drug Law did not draw at all on research findings which have given us some clues about drugs and their effects on society. In part this was due to the influence of the Governor, but in part it was also due to the habit of legislative discourse. Research efforts alone cannot cure the bad habits of legislators, but research products should be developed with a view toward how they can assist legislators.

Even the efforts toward revision of the 1973 Drug Law, which I am pleased to say were somewhat successful in this last legislative session, were marked by a paucity of research findings. There were some preliminary data available from the academic community--a dissertation in its final stages at the City University about certain aspects of the Drug Law. But the bulk of the data were "soft" data--horror stories about tremendous disparity in indictment practices in New York State, and even more severe disparities in punishment. We had the beginnings of useful data from the Office of Court Administration which gave many of us the most convincing argument. The 1973 Drug Law was causing us to try too many cases, and most

of these were the wrong cases to boot. But the Court Administrator's office which provided us with some of this information is a new one, supported in part by federal funding. It is just now beginning to have an important impact on improving the criminal justice system.

Our own committee staff was able to act as a converter--taking raw data and making them useful to the Committee members. Even this was done with very limited research data available on how successful we have been with the 1973 Drug Law. I think you could assist our efforts--and I am sure the efforts of the legislatures around the nation--if you would undertake to foster research which is based in and around the court room, and which is based in and around the legislative chamber. Just this year, again with a minimum of staff, we utilized a research unit. The effort was modest, with the support of Speaker Stanley Steingut, but the contribution has been important to us. Such a unit is not a frill, but I am certain that when we become hard-pressed for funding, research--as always--will become the first casualty.

The one thing we have found lacking in the research produced by scholars is that it was not undertaken with a view toward problem solving. Our staff was able to convert some research to our needs and perhaps you ought



to consider funding similar kinds of research efforts. In terms of the useful, I should like to compliment the National Science Foundation for its RANN Project. Hopefully this type of applied research will make an important contribution. This is the type of research we need--and we need a funding policy that will consider how the output of research can be exchanged with policy makers who use the data that is produced.

I have introduced a bill in the legislature in New York to provide for a Judicial Institute. This bill is born out of the need which I have just noted. It would provide for an institute that would have two simple goals in mind. The institute would get the trial judge into the classroom and the professor into the court room. This is what criminal justice research should be about. As Justice Cardozo demonstrated in his work, The Nature of the Judicial Process, when people explain how and what they do, they become better at the doing.

3. Determining the Procedure to be Used for the Swift and Just Prosecution of Criminal Wrongs.

New York State--and New York City in particular--is now facing one of the most significant threats to the well-being of the judicial system--court congestion. The delay in felony trials in New York City gives us a backlog of more than one year of cases. Indeed, if there

were no more indictments in New York State until next July, the courts could continue to process and try those cases already in the pipeline for more than a full year.

We have a trial going rate of almost 10%, about double the trial going rate of the nation. And in one category of drug cases, the rate has been almost 40%--a rate caused by a unique combination of excessive penalties and severe and unrealistic limitations on plea bargaining. I am pleased that the legislature acted to alter this situation in the last session and that my committee deserves the credit. In the area of trials our research needs are real. We have no agreed upon definition of "cases pending" and we have no accurate statistics on the number of persons awaiting trial. And we know that New York suffers from administrative plea bargaining because of the failure of the system to accomodate the needs of those awaiting their constitutional right to trial.

I could go on in many substantive areas -- I have not yet touched on the detention system and what that has done to foster crime. Research scholars should be in our prisons as well. And they should have a goal in mind: to tell us what needs to be done.

In short, Mr. Chairman and members of the Subcommittee, I have but a simple plea: to make research work for those of us who have a sworn obligation to make the Constitution of the United States work for all of our citizens.

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