

On Restrictive Covenant

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The report of the Stanford-SRI Study Committee suggests three alternative dispositions which might satisfy current objections about the existing relationship between the University and its research institute. To those who favor continuing control of the nature of research undertaken at SRI, the report offers two choices: control by the University or sale with restrictive covenant to an outside party.

Since a clear majority of the Study Committee, and a considerable segment of the University community, have stated themselves to be in favor of continuing control, it is important that we consider the implications of the two suggested forms of control. For this purpose, we shall consider the legal and practical difficulties inherent in the idea of sale with a restrictive covenant, difficulties which we think indicate that option to be unrealistic.

A covenant prohibiting specific types of research, like that suggested in the Study Committee's Majority Report, meets some obvious legal

roadblocks. First, since the law will not enforce indefinite restrictions of this kind, a time limit would have to be set after which the restriction would disappear and the research could begin again. This objection would apparently apply to any attempted control through a sale, and we think it is incompatible with a serious attempt to stop the research.

Drafting the covenant presents other serious problems. The statement of objectionable areas of research in such a way as to permit enforcement in court requires precise definition. Such precision would be likely to result in narrow, closed-ended categories and preclude control of objectionable types of research which might arise later.

Moreover, reliance on restrictive covenants fails to meet SRI's critics' objections adequately. The present organization of SRI derives 46% of its income from the Department of Defense, and the needs which it survives by filling are incompatible with the posed restrictions. Restrictions basically

attempt to control the results of this funding by imposing artificial constraints on its use. They do not alter SRI's dependence on this income.

The practical result is that SRI is crippled in its operation while the continued importance of the Department of Defense may still lead to research that is objectionable on the principles underlying the restrictions but technically acceptable under their formulations. This solution should satisfy no one, since it would cripple the Institute financially (lowering its sale value) without really satisfying the purposes of the Institute's critics.

The Majority Report, in its attempt to separate "moral" from "organizational" questions, fails to recognize this point. In order to meet the objections of the critics, the Institute would have to be either re-organized to serve different interests or crippled by legal restraints on a large amount of its present business. If the re-organization approach were chosen sale would probably be impractical, since the re-organization would be

time-consuming and the Institute would lose most of its value to potential buyers.

Beyond these difficulties in definition and the elimination of any possibility for future re-orientation, the idea of sale with restrictive covenant necessitates a commitment to cumbersome forms of enforcement. It would be necessary to write into the contract provisions for an enforcing body which would fairly represent the desires which the university community signaled in drafting the original covenant.

Even if it were assumed that the Board of Trustees need not be the enforcing body, the question still arises whether the group would continue to be responsive to the community's needs rather than becoming, as some university committees have, a merely ritual body.

If it were to carefully apply the guidelines, on the other hand, the group would then be required to institute long and costly legal proceedings over each and every potential infringement of the covenant since even a purchaser attempting to live up to the terms of the agreement may disagree over the meaning of terms. Such a problem would not exist if SRI were retained since these controversies would be settled internally without resort to the courts.

Finally, it should be noted that there is an inherent paradox in the suggestion of sale with restrictive covenant. The advocates of such sale have based their arguments to a large extent on the financial difficulties which the University might face if retained SRI under new research guidelines. They suggest the elimination of certain types of research would necessarily generate a financial deficit in SRI's yearly budget which the University would have to subsidize. But if such a deficit is in fact inevitable, why should it be supposed that an outside buyer would agree to subsidize instead?

Clearly, a buyer in sale with restrictive covenant would be motivated by one of two considerations: either a belief that the covenant would not restrain him from continuing in the prohibited research because it could not be enforced, or a belief that new and unobjectionable types of research might be developed to substitute for those eliminated. If it is the former then the advocates of a restrictive covenant could hardly be satisfied, while if it is the latter then it is quite reasonable to suppose that the University could itself develop such new outlets.

Given the negative orientation