

MAR 5 1956

Memorandum No. 4

Subject: Stanford Law Review problem.

As some of you know, I am teaching a seminar in Legislation at the Law School this year. I have been able to draw heavily on my commission experience in this endeavor and this has provided, I think, a fairly important part of the quid pro quo due to Stanford for taking the commission in.

Each student in the seminar is required to write a substantial legislation-oriented research paper as a part of his participation in the course. In the case of four students (three of them law review men) these have been on topics on the commission's current agenda which have been assigned to the staff for research and report. This was done to give the students the incentive of working on "live" problems, to permit me to work jointly for law school and commission ends in going over these papers with the students, and to give us the benefit of the students' research and analysis in preparing the staff reports on these topics. Since this is, insofar as the student is concerned, law school work we (i.e., the commission) have not paid them for it. Each student was told about the benefit the commission would derive from his work and given an opportunity to choose a different topic for this (or any other) reason.

The research papers are now in. They will be of enormous help to us in preparing our staff reports on these topics, saving us literally hundreds of hours of research work. (This will not, of course, be taken into account in grading them)

One problem has developed. The student who wrote his research paper on the testimonial ("for and against") privilege of husband and wife did such

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a thorough job that the Stanford Law Review wishes to publish it, after standard law review revision, as a student Note. The problem is whether this might affect the commission adversely and, if so, whether we should ask the student concerned and the Review not to publish it.

The only possible adverse effects which I can see are (1) that someone, noting the similarity of subjects in the commission's report and the Review, might contend that the commission's report and recommendation on this subject is really that of a "mere" law student; and (2) that the commission's ultimate recommendation might differ from the position taken in the Note and the difference could be exploited to our disadvantage. Neither of these things seems to me to be very likely to happen. Mrs. Nordby and I will doubtless rewrite the research paper substantially for our purposes (and can do so completely if this is desired). The Law Review will also undoubtedly rewrite the paper substantially before publishing it. Thus, the two end products will bear little if any literal identity to each other and may be quite different substantially as well.

I can, I think, persuade the student and the Review not to publish the Note if the commission feels that it is important that this be done. I would not like to ask this of them. In the first place, the paper is the students', not ours; we have no legal right or title whatever to it. In the second place, I think it would be a fine thing for the general relationship between the Law School and the commission for this paper (and others like it over the years) to serve three purposes: seminar paper, law review note, and preliminary research report for the use of the commission's staff.

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Whatever is decided on this question, a second question is presented: shall we, in publishing our report based on the student paper, give him some such acknowledgment as: "This report was prepared by the staff of the Law Revision Commission with the assistance of John Q. Jones"? If so, should we add "a third-year student at the Stanford Law School"?

I suggest we discuss this matter at the March meeting.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary