

Scholarly Commons @ UNLV Boyd Law

Other Documents

Society of American Law Teachers Archive

7-10-1974

Certification and Specialization of Lawyers: Preliminary Report

Ian MacNeil

Follow this and additional works at: https://scholars.law.unlv.edu/saltarchive_other



Part of the [Legal Education Commons](#)

Recommended Citation

MacNeil, Ian, "Certification and Specialization of Lawyers: Preliminary Report" (1974). *Other Documents*.
2.

https://scholars.law.unlv.edu/saltarchive_other/2

This Memorandum is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

Society of American Law Teachers

July 10, 1974

Re: Certification and Specialization of Lawyers;
preliminary report

To: Norman Dorsen

From: Ian Macneil

1. As I understand the charge of the interim Board of Governors my duties at present are to make a brief report on the subject of this memorandum and to make recommendations for future action or inaction by SALT.
2. I have had the benefit of a bibliography supplied by Nat Gozansky, copy attached, (and the detriment of having most of the items named there unavailable because of the move to the UVA law school and its library to a new building). I have also discussed the subject at some length with my colleague, Ernest Gellhorn, who recently attended a conference on the subject at SMU. (Professor James W. McElhaney was in charge of the conference. Kenneth Pye and Paul Carrington, neither of whom is a member of SALT per my lists, were two other academics attending.) I have also had an offer of help from Roy Mersky, and William Whitford has offered to keep me advised of developments in Wisconsin.
3. I am submitting this report without further delving into the situation because even on relatively sketchy information it is possible to come to what I think are desirable recommendations.
4. Specialization has, of course, long been with us; all indications are that it is increasing and will continue to increase. Certification of specialties is a much newer development, but is extant, or about to become extant, in at least three jurisdictions (New Mexico, California and Florida) and is being considered in a number of others.
5. Major thrusts toward certification seem to be coming from the trial bench and bar, including The Chief Justice of the United States.
6. Specialization appears to develop largely because of economic pressures towards efficient rendering of legal services. (That statement should not be taken as excluding a degree of market control, which there undoubtedly is through various institutional patterns.)

7. The main thrust towards certification seems not to be coming from market forces external to the legal profession, as in the case of specialization, but from the profession itself. The motivation of advocates within the profession doubtless ranges from genuine concern about the quality of services and informing the public on the one hand to the usual motivations of monopolist sellers of services on the other. One need not be a slavish follower of either Adam Smith or Milton Friedman to have real concern that certification, whether so intended or not, is likely to lead to satisfaction of the latter goals more than the former. (There may, of course, be other motivations as well, for example, the desire to reduce the workload of courts respecting particular kinds of cases, e.g. criminal cases.)
8. Specialization has and will continue to affect legal education; one need only compare a 1974 with a 1924 or 1874 law school curriculum to see this. But the response of the law schools to increasing specialization of graduates has yet to break down the fundamentally unitary curriculum dominating American law schools since their inception. (The Carrington Report thus far probably represents the major highwater mark on that kind of division.)
9. Certification presents the likelihood of much greater pressures for division of the law school curricula. To the extent that certification increases specialization beyond the degree to which market forces would push it anyway, the pressures for specialized curricula now felt in law schools would be heightened. But in addition, certification offers also the possibility of greater direct and indirect intervention in the law school curriculum by certifying agencies. (Thus the subject of this memo is closely related to the subject being dealt with by the Bamberger-Bowman committee.)
10. Given the foregoing it appears to me that SALT has two fundamental interests in certification and specialization. One is that of professional legal educators concerned with the impact on legal education. The other is that of a public interest group with a significant level of expertise.
11. As legal educators concerned with these matters the members of SALT have the usual mix of selfish and selfless motivations. But it should be noted that law school teachers ^{for the} are probably the only professional group likely to concern itself with these matters which has fairly strong interests in opposition to the carving up of the legal services market into discrete specializations. The substantial intellectual capital investment we enjoy in the status quo is very likely to bias us against the change. (While this is also true of some

elements of the practicing bar, the benefits of any monopolization are likely to come to them much sooner than to us, although undoubtedly in the long run they would come to our profession as well, albeit perhaps in dil•UO form.)

12. In view of SALT's double-barrelled interest, and the very great importance of the subject, this is a singularly appropriate area in which SALT should do some work. But the question is what?

13. Recommendations: SALT should

A. Carry out a detailed study of existing practices and trends in specialization, ideally not limiting the study to legal services rendered by members of the bar, but including legal services rendered by accountants, real estate agents, bank trust departments, H.R. Block, para-legals within firms, etc. (This might or might not involve field work; initially it need not.)

B. Carry out a detailed study (and maintain continued surveillance) of extant and proposed certification systems, along with information concerning organizational efforts to study or develop them. (The sort of study and surveillance so completely lacking as the Multistate Bar Examination was conceived and delivered upon the naively unsuspecting law teachers of America.)

C. Make a careful analysis of the functions and dysfunctions expected to be served by various systems of certification, both with respect to legal education and with respect to the quality and cost of legal services.

D. Take positions on appropriate issues relating to specialization and certification based on the foregoing studies.

14. Who and how? My own preference is for a very small committee, or perhaps one person, to undertake steps A., B. & C., supported by a grant, if at all possible. If one person is chosen, it should be someone who starts with a very questioning attitude about the whole subject of certification (since the pressures in other organizations interested in the subject are very likely to be just the opposite). On any committee certainly such an initial view should at least be represented and probably predominant. One advantage of a committee would be that it might be in a better position than an individual to hold hearings in which various viewpoints could be solicited. A large committee, however, seems unnecessary, and likely to be self-defeating.