Introduction

• State courts regulate US lawyers….BUT….  
• Federal & international lawyer regulation exists  
• Both “hard law” and “soft law” can be influential  
• This talk will be a “whirlwind” tour of global lawyer regulatory initiatives  

• To begin… some data:
## Why Clients May Want Foreign Lawyers

### U.S. Trade in Legal Services

<table>
<thead>
<tr>
<th></th>
<th>1992</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exports</td>
<td>$1.36 billion</td>
<td>$7.26 billion</td>
</tr>
<tr>
<td>Imports</td>
<td>$311 million</td>
<td>$1.7 billion</td>
</tr>
</tbody>
</table>

### U.S. International Trade in Goods and Services

<table>
<thead>
<tr>
<th></th>
<th>1992</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exports</td>
<td>$617 billion</td>
<td>$1.57 trillion</td>
</tr>
<tr>
<td>Imports</td>
<td>$656 billion</td>
<td>$1.9 trillion</td>
</tr>
</tbody>
</table>

### 2006 Foreign Direct Investment

<table>
<thead>
<tr>
<th>2006 Foreign Direct Investment IN US</th>
<th>2006 Foreign Direct Investment BY US</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1.789 trillion</td>
<td>$2.384 trillion</td>
</tr>
</tbody>
</table>

### State 2009 State Exports (NAICS)

<table>
<thead>
<tr>
<th>State</th>
<th>2009 State Exports (NAICS)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Texas</td>
<td>$163 billion (1st in U.S.)</td>
</tr>
<tr>
<td>Hawaii</td>
<td>$563 million (50th)</td>
</tr>
</tbody>
</table>

## Reasons for Foreign Lawyers: #2

### 2000 U.S. Census - Foreign Born Residents

<table>
<thead>
<tr>
<th>State and Rank</th>
<th>Number of FB Residents</th>
<th>% increase since 1990</th>
<th>State Rank in % increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>California (1st)</td>
<td>8.9 Million</td>
<td>37.2%</td>
<td>37th</td>
</tr>
<tr>
<td>Missouri (27th)</td>
<td>151,000</td>
<td>80.8%</td>
<td>26th</td>
</tr>
<tr>
<td>Wyoming (51st)</td>
<td>11,205</td>
<td>46.5%</td>
<td>35th</td>
</tr>
<tr>
<td>Entire U.S.</td>
<td>31.1 million</td>
<td>57.4%</td>
<td>---</td>
</tr>
</tbody>
</table>

2011 CCJ Midyear Meeting- Laurel Terry, p. 3
Companies with In-House General Counsels

Source: Extracted from ACC data.

August 2009, Resolution 13: In Support of Cooperation Among United States and Australian Bar Admission and Lawyer Disciplinary Bodies


January 2009, Resolution 2: In Support of Cooperation Among United States and European Disciplinary Bodies

February 2008 Resolution Regarding Adoption of Rules on Temporary Practice by Foreign Lawyers

Feb. 2007 Resolution 7 Regarding Authorization for Australian Lawyers to Sit for State Bar Examinations

Feb. 2007 Resolution 8 Regarding Accreditation of Legal Education in Common Law Countries by the ABA Section on Legal Education and Admission to the Bar

August 2006 CCJ Resolution 4 Regarding Adoption of Rules on the Licensing and Practice of Foreign Legal Consultants

August 2006 Resolution 5 Regarding the Proposed Recommendation Pending Before the House of Delegates of the American Bar Association [Re GATS “disciplines”]

July 2004 Resolution 26 Regarding Provisions in International Trade Agreements Affecting the Sovereignty of State Judicial Systems …
International Regulatory Developments

1. Global trade agreements
2. UK and Global Regulatory Reform Initiatives
3. Global antitrust (competition) initiatives
4. Alternative Business Structure (ABS) Developments
5. Global money laundering & anti-terrorism laws
6. Global legal education initiatives
7. Global MJP, recognition & lawyer admission
8. Global lawyer accountability initiatives
9. Market forces: (e.g. outsourcing, litigation financing)

More on these Regulatory Developments

For additional info: See the urls at the end of this talk plus my topic-specific talks
Trade agreements usually have sections on: transparency, mutual recognition, MFN, market access, national treatment, domestic regulation disciplines, standstill provisions. There are many bilateral agreements as well as GATS and regional agreements.

UK Regulatory Reform Initiatives

Many are watching these initiatives with interest

Legal Regulation Review
An Independent Review of the Regulation of Law Firms by the Rt Hon Lord Hunt of Wood Green
www.legalregulatiorreview.com
Other Regulatory Reform Initiatives

Global Antitrust Initiatives – Part 1

Antitrust authorities have targeted rules on: fees, advertising, entry requirements, UPL, alternative business structures, & regulatory structure
**Terrorism-Money Laundering Initiatives**

The intergovernmental FATF *Gatekeeper Initiative* is relevant to lawyer confidentiality and other rules; the FATF recently adopted a KYC-risk-based approach guidance for legal professionals. Several countries have changed their lawyer rules; expect more.

**Global Legal Education Initiatives**

Global legal education initiatives address recognition, curriculum, quality assurance, etc.
MJP, Recognition & Lawyer Admission

Because of globalization, countries face issues of foreign lawyer MJP, temporary and limited (FLC) admission, and recognition.

ABA MJP Resolutions 8 & 9


Lawyer Accountability Initiatives

Accountability concerns are one reason for recent lawyer discipline cooperation initiatives

Resolution 2 (Jan. 2009) In Support of Cooperation Among U.S. and European Disciplinary Bodies

India: See SSRN Abstract 1371098

Indian Bar Council

Rule 22

American Bar Association

Defending Liberty, Pursuing Justice

2011 CCJ Midyear Meeting- Laurel Terry, p. 19
Recent market forces include ABS, legal process outsourcing, [international] third party litigation financing, lawyer-client power shifts (e.g., regarding fees and risk).

Some Observations about Regulation

- Changes in lawyer regulation in one country may affect lawyers in other countries. They may do so
  - Directly:
    - Sarbanes-Oxley and non US lawyers;
    - the 2010 ECJ Akzo Nobel decision denied the attorney-client privilege to corporate [and by extension US] counsel
  - Indirectly:
    - The FATF’s soft-law “recommendations” have dramatically changed lawyer regulation in many countries. The US Treasury’s FATF approach is softer, but still exists.
- By suggesting You or Others Adopt a New Approach:
  - Clients, counsel, or gov’ts may cite regulations elsewhere
  - The new paradigm is “Lawyers as Service Providers”

Conclusion

• Global lawyer regulatory initiatives have the potential to be very significant
• Given the globalization of the economy, no jurisdiction is immune from these developments
• You or others may be asked to explain why US lawyer regulation differs from other regulation
  – This may be asked cross-culturally or across-professions
• Consider adopting “regulatory objectives”
• There is not [yet] an international organization of lawyer regulators. It may be important to create one.

To Read More About....

My Introductory Lawyer Regulation Comments

Terry, A “How To” Guide [for including global perspectives in the legal profession course], 51 St. Louis U. L. J. 1135 (2007) [short version]

Terry, U.S. Legal Ethics: The Coming of Age of Global and Comparative Perspectives, 4 Wash. U. Global Studies L. Rev. 463 (2005) [long version]


Terry, The Impact of Treating the Legal Profession as “Service Providers”, 2008 J. Prof. Lawyer 189

All articles (and selected powerpoints) located here: http://www.personal.psu.edu/faculty/l/s/lst3/
To Read More About ....

Global Trade Agreements

Office of the US Trade Representative (USTR), Trade Agreements Page (with many links),
http://www.ustr.gov/Trade_Agreements/Section_Index.html


Asia Pacific Economic Cooperation (APEC),
http://www.apec.org/

ABA GATS-Legal Services Webpage,
http://www.abanet.org/cpr/gats/home.html

http://www.personal.psu.edu/faculty/l/s/lst3/

To Read More About …

UK Regulatory Reform Initiatives


Solicitors Regulation Authority Consultations on the Legal Services Act,
http://www.sra.org.uk/sra/consultations.page

Law Society of England and Wales (includes links to the Hunt and Smedley reports), http://www.lawsociety.org.uk/influencinglaw/policyinresponse.law

5-09 Conference of Chief Justices Conference Webpage,

NSW Office of the Legal Commissioner, Speeches and Papers & menu links,

Georgetown Symposium, The Future of the Global Law Firm (4-08),
http://www.law.georgetown.edu/LegalProfession/GlobalLawFirm.html

Selected Articles in the ABA Canons Centennial Symposium,
http://www.abanet.org/cpr/pubs/symposium.html

Laurel Terry “Presentations” Page (includes UK, EU & 5.1 developments),
http://www.personal.psu.edu/faculty/l/s/lst3/presentations.htm
To Read More About …

Global Regulatory Reform

OECD Regulatory Reform Project,
http://www.oecd.org/topic/0,3373,en_2649_37421_1_1_1_1_37421,00.html

OECD Guiding Principles for Regulatory Quality & Performance,
http://www.oecd.org/dataoecd/19/51/37318586.pdf

OECD, Homepage: Indicators of Regulatory Conditions in Professional Services Sectors,
http://www.oecd.org/document/24/0,3343,en_2649_34833_35858776_1_1_1_37463,00.html

APEC-OECD Regulatory Reform,
http://www.oecd.org/document/25/0,3343,en_2649_34141_2397017_1_1_1_37421,00.html

Regulatory Reform section in Canada’s 2007 Self-Regulated Professions Report, pp. 39-41

To Read More About …

Global Antitrust Initiatives

EU DG Competition, Professional Services Sector,
http://ec.europa.eu/comm/competition/sectors/professional_services/overview_en.html

OECD, Competition in Professional Services, DAFEE/CLP(2000)2,

OECD, Competitive Restrictions in Legal Professions, DAF/COMP (2007)39,

Competition Bureau Canada, Self-Regulated Professions - Balancing Competition and Regulation (Dec. 2007),

CCBE Competition Committee,
http://www.ccbe.eu/index.php?id=94&id_comite=4&L=0

US Federal Trade Commission Letters regarding the Practice of Law,
http://www.ftc.gov/opp/advocacy_subject.shtm

See Laurel Terry articles and presentations:
http://www.personal.psu.edu/faculty/l/s/lst3/presentations.htm
To Read More About...

ABS
New South Wales, Australia, Incorporated Legal Practices,

UK Legal Services Reform (and the Oct. 2007 UK Legal Services Act),
http://www.justice.gov.uk/whatwedo/legalservicesreform.htm
and http://www.dca.gov.uk/legalsys/lereform.htm

EU DG Competition, Professional Services Sector,
http://ec.europa.eu/comm/competition/sectors/professional_services/overview_en.html

The Future of the Global Law Firm, Georgetown Law Center
(April 2008) http://www.law.georgetown.edu/LegalProfession/Papers.html

And the items listed on the previous slide entitled: “To Read More About UK Regulatory Reform Initiatives”

To Read More About....

Money Laundering & Anti-Terrorism Initiatives

Financial Action Task Force (FATF),
http://www.fatf-gafi.org

FATF Risk-Based Approach Guidance for Legal Professionals (Oct. 23, 2008),

Fed. Law. Soc. Canada, Model “Know Your Client” Rule,

UK Money Laundering and “Know Your Client” Rules,
http://www.lawsociety.org.uk/productsandservices/practicenotes/amli453.article


ABA Task Force on Gatekeeper Regulation and the Profession,
http://www.abanet.org/crimjust/taskforce/home.html

EU Money Laundering Directives,
http://www.ccbe.eu/index.php?id=94&id_comite=20&L=0

Law Council of Australia, Anti-Money Laundering Reforms,
To Read More About…

Global Legal Education

International Association of Law Schools, http://www.ialsnet.org/
The Law School Admissions Council and the National Organization of Bar Counsel now include Canadian and Australian members, http://www.nobc.org/ and http://www.lsac.org/


Bologna-Benelux Secretariat Webpage (with many links) http://www.ond.vlaanderen.be/hogeronderwijs/bologna/


ELFA QUACAS Committee, http://elixir.bham.ac.uk/quaacas/

Prof. Lonbay’s EU Recognition website, http://elixir.bham.ac.uk/menu/country/default.htm

Peking University School of Transnational Law, http://www.law.pku.edu.cn/

To Read More About …

Global MJP, Recognition, Lawyer Admission: Part 1


ABA Multijurisdictional Practice Recommendations 8 and 9, http://www.abanet.org/cpr/mjp/home.html


To Read More About...

Global MJP, Recognition, Lawyer Admission: Part 2
Canada National Accreditation Committee,
Canada’s consultation on draft recognition rules (Due 12-08),
Australia’s National Profession Project,
Australia’s- Foreign Lawyers and the Practice of Foreign Law,
Conference of Chief Justices’ MJP Resolutions,
http://ccj.ncsc.dni.us/LegalEducationResols.html
International Bar Association’s 2000 Resolution on “Recognition” of Foreign Lawyers’ Qualifications,
ABA CEELI, Globalization, Legal Education, GATS, and Recognition,

To Read More About….

Lawyer Accountability (Discipline) Initiatives
Conference of Chief Justices, Resolution 2, In Support of Cooperation Among U.S. and European Disciplinary Bodies (Jan. 2009),
http://ccj.ncsc.dni.us/2-ProposedCCBEResolution1-6-09.pdf
CCBE, Standing Committee Resolution (February 2009)
ABA MODEL RULES FOR LAWYER DISCIPLINE, Rule 22 (2002),
http://www.abanet.org/cpr/disinf/rule22.html
To Read More About...

**Market Forces Including Outsourcing and Litigation Funding**

ABA 20/20 Commission’s “Issues Paper:”
http://www.abanet.org/ethics2020/outsourcing.shtml and


http://www.personal.psu.edu/faculty/l/s/lst3/terry_legal_world_is_flat.pdf

International Outsourcing of the Legal Profession, UC Berkeley (April 2008),
http://www.law.berkeley.edu/centers/gcl/outsource/resources.html

Off-Shoring Legal Services, Association of Professional Responsibility Lawyers Conference (May 2008)

Outside investment in litigation, e.g., Juridica, OmniBridgeway, CFI, Burford Advisors,

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To Read More About It…

**By Laurel Terry**

**Global Legal Practice Resources Webpage:**
http://www.personal.psu.edu/faculty/l/s/lst3/globalprac.htm

**Links to Publications by Topic:**
http://www.personal.psu.edu/faculty/l/s/lst3/

**Presentations Page:**
http://www.personal.psu.edu/faculty/l/s/lst3/presentations.htm

**SSRN page:** http://ssrn.com/author=340745

**Presentations and publications address:**
the GATS, the impact of globalization on legal services, ABS, MDPs, competition initiatives, the Bologna Process, & outsourcing