Overview of Remarks

• Globalization & US clients and lawyers
  – Setting the stage for the remarks regarding the US-EU trade negotiations

• Global lawyer regulation developments

• Possible impact of global developments on domestic regulation issues
Globalization Affects All US States

#1: Texas ($264 billion)
#49: Wyoming ($1.4 billion)
#50: Hawaii ($732 million)

Source: US gov’t website
TradeStats Express

Part 1:

That means a lot of lawyers domestic & foreign
Global Legal Work isn’t likely to Decrease

Gov’ts and Lawyers Care about This

WORLD TRADE ORGANIZATION

S/C/W/318
14 June 2010

Background Note by the Secretariat

Chart 2: Global Legal Services Market Segmentation: 2008 Percentage share by value

Asia-Pacific, 9.40%
Europe, 36.50%
Americas, 54.10%

See also:
Recent Trends in U.S. Services Trade 2013 Annual Report
Chapter 5: Legal Services

2011 US Legal Services trade surplus: $5.7 billion
Globalization Affects Individuals

2010 Foreign-born US population

Darker colors = higher percents

NOTE… the states for which the 2010 data shows the largest immigration increase

Impact of Immigration & Technology

• **1960**: About two-thirds of all states had *less than 5 percent* foreign-born

• **2010**: About two-thirds of all states had *more than 5 percent* foreign-born

• **2010**: 27% of the 25+year old foreign-born have a bachelor’s degree or higher

• The median age of the foreign-born population is below the national median age

• *See* Terry, *The Legal World is Flat re* the impact
**U.S. Rules Regarding the Five Methods of Foreign Lawyer Practice**

Prepared by Prof. Laurel Terry (LTerry@psu.edu), Jan. 6, 2014 based on data from the ABA Center for Professional Responsibility and the NCBE

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**Legend**

- Yellow Shading = has a foreign legal consultant rule
- ★ = rule permits foreign Pro Hac Vice
- ⚪ = rule permits foreign in-house counsel
- ▲ = rule permits temporary practice by foreign lawyers, also known as FIFO or fly in/fly out
- ○ = has had a foreign-educated applicant sit for a bar exam in the past 3 years (2010-2012)

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**Part 2: Global Lawyer Regulation is in Flux**

*See Terry, Mark & Gordon, Trends and Challenges in Lawyer Regulation, 80 Fordham Law Review 2661 (2012) [uses this framework]*

Part 3: Ideas Travel

My Premises:

– Global developments can affect domestic conversations
– Global developments can affect domestic regulation
– There are global developments relevant to your three prior education sessions

Globalization’s Impact on Bar Exams
[See Sunday 1:30pm Education Session]

• 1992-2012: There has been a 500% increase in foreign-educated applicants [from 1080 to 5916]

• 1992-2012: There’s a 50% increase in US states with foreign-educated bar applicants [19→29]

• 2002-12: In the last ten years in states other than NY & CA, the number of foreign-educated applicants more than tripled [140→429]
Global Developments & Bar Admission

• The US has signed agreements that are relevant to bar admissions issues

• The US is currently negotiating additional agreements that address qualification & licensing of lawyers [TTIP]

• The USTR needs input when our trading partners propose specifics re admissions

Balancing Access to Justice & Regulation and Strategies to Promote Access to Justice

See the CCJ Education Sessions Sun. at 3:15pm & Tuesday am

• Other jurisdictions are also having conversations about these issues, including cyber-lawyers, outsourcing, legal education reforms, unmet legal needs, and other cost and access issues.

• For example:
More Examples re Access, Costs & Regulation

October 15, 2013

Transforming Regulation and Governance in the Public Interest

- After global conversations, agreed to develop in 2½ years:
  - Principle-based, risk-based, proactive regulation
  - Will adopt regulatory objectives
  - Will accommodate new business models & enhance access to justice & affordable legal services

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JACOBY & MEYERS, LLP and JACOBY & MEYERS USA, LLC,

v.

JACOBY & MEYERS LAW OFFICES

1 of 3 suits (& CT-NJ); 2nd Circuit reinstated

- Suit challenges Rule 5.4
- Argues for affordable and accessible legal services
- Relies inter alia on UK & Australia and 1st Amendment

Conclusion

- Globalization affects all U.S. jurisdictions
- Be prepared for domestic lawyer regulation debates that increasingly cite global developments
- Remember to consider the legal needs of your citizens as well as their need for protection
- Because legal services are infrastructure services, governments (ours & others) care about their regulation
- Be prepared to respond to USTR requests for input on trade negotiations (e.g. WTO & TTIP)
Conclusion #2: A Plug for the Toolkit

• Developed by the ABA ITILS based on GA’s model
• Recommends that each jurisdiction create a task force and develop policies on the following issues:
  – Temporary Practice by Foreign Lawyers (FIFO)
  – Foreign in-house counsel
  – Foreign Pro Hac Vice Admission
  – Foreign Legal Consultants [FLCs]
• This group will develop expertise and advise the Court how to comment to the USTR
• This group could also be a resource re Who-What-When-Where-Why-&-How global regulation issues

To Read More About It…

• See Links in the Materials Submitted by Professor Laurel S. Terry at the Conference of Chief Justices Midyear Meeting,
• ABA ITILS Webpage, http://tinyurl.com/kjox74a
• ABA Commission on Ethics 20/20,
  – http://www.americanbar.org/groups/professional_responsibility/aba_commission_on_ethics_20_20/initial_proposals.html
• IBA Global Cross-Border Legal Services Report (forthcoming; your input has been solicited)
• APEC Legal Services Inventory,
  – http://www.legalservices.apec.org/overview.htm
• Read some of the blogs to see how regulators are described: Law21, RandomAcademicThoughts, Legal Futures
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

Topics addressed include: The Impact of Global Trade Agreements on Legal Services; Trends in Global Lawyer Regulation; Regulatory Objectives for the Legal Profession; Creating the International Conference of Legal Regulators; the FATF & Gatekeeper Requirements; Antitrust scrutiny of the legal profession.

To Read More About It…

My Presentations Webpage:

- Global Developments in general (See 1:11, 2:02 and 11:05) (See also 2006 Service Providers article, “The Legal World is Flat”, and other “Global Legal Practice” sections on my webpage)
- Alternative Business Structures (ABS) developments (including the UK’s Legal Services Act 2007, Australia’s publicly traded law firms, EU, and OECD developments)
- Antitrust initiatives directed towards the legal profession, including the EU’s Professional Services Competition Initiative (See 5:08, 4:03)
- the APEC Legal Services Initiative (See 10:09)
- Australian Legal Profession Developments (See 3:08, 3:09)
- the Bologna Process (See 3:06, 1:05; see also 1:11)
- Classification Systems for Counting Legal Services (See 10:04, 4:07)

http://www.personal.psu.edu/faculty/l/s/lst3/presentations.htm
Appendix: Ongoing Global Conversations

- **WHO regulates lawyers?**
  - New global actors (*e.g.* the WTO & FATF)
  - Increase in “co-regulation” by gov’ts & nonlawyers
    - UK, Australia, Canada, Ireland (proposed) & elsewhere
- **WHAT is regulated?**
  - Technology & legal costs have led to new providers
  - Regulate services or providers? *E.g.* Canada regulates paralegals
  - Individuals and/or firms? (Entity-based reg. is “hot”)
  - Dramatic UK & Australia ABS developments

Global Conversations *Re Regulation (2)*

- **WHEN** regulation occurs
  - NSW Australia’s “effective management systems” rule has led to 2/3 decrease in client complaints
  - Regulators around the world have taken notice
    - *An Aside:* US Courts could implement this by adding two sentences to your lawyers’ bar dues statement
- **WHERE** regulation occurs
  - Geographic regulation in a virtual world?
  - Can/should regulators monitor global firm activity?
  - Increased difficulty for firms *re* choice of law issues
Global Conversations Re Regulation (3)

• **WHY regulation occurs**
  – §1 of UK Legal Services Act: *Regulatory objectives*
  – Other jurisdictions have or want these
    • Scotland, Ireland, India, Australia, Canada
  – Commentators (like me) have called for it in the US

• **HOW regulation occurs**
  – UK switch to outcomes-focused regulation (OFR) has prompted many discussions
  – Does “one size fits all” regulation still work?
  – You may hear about “how” from USTR reps

Background Info Worth Knowing

“*Creative Disruption*” *See also* Richard Susskind’s influential book: *The End of Lawyers?*

happens when:

• Customers would be willing to pay less and get less (**overserved customers**)  
• Some customers aren’t getting served at all because of cost (**underserved customers**)  

See also Richard Susskind’s influential book: [http://tinyurl.com/qe8xy5u](http://tinyurl.com/qe8xy5u)