

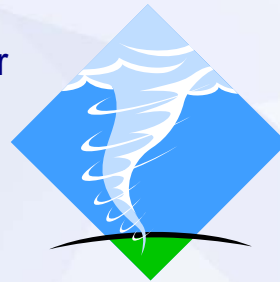
Law Without Walls: Trends in Global Lawyer Regulation

Thought Leader Presentation By
Professor Laurel S. Terry
Penn State Dickinson School of Law, USA
Jan. 19, 2011
Email: LTerry@psu.edu

Introduction

Regulation of Legal Systems and Lawyers

- The general direction of movement has been from local→ to global
- This talk focuses on trends in global lawyer regulatory initiatives
- It will be a “whirlwind” tour



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Some Observations about Regulation

- Globalization has changed the *manner* in which legal services regulators operate



- Globalization has changed the *content* of legal services regulations
- The new paradigm is “Lawyers as *Service Providers*”
 - This paradigm influences WHO regulates lawyers
 - It influences HOW they are regulated (cross-culturally and cross-professionally)

See Laurel Terry, *The Impact of Treating the Legal Profession as “Service Providers,”* 2008 J. Prof. Lawyer 189, http://www.personal.psu.edu/faculty/l/s/lst3/terry_service_providers.pdf

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Regulatory Development Trends

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)



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More on these Regulatory Developments



Laurel S. Terry, Professor of Law (l.terry@psu.edu), [Return to](#)

Penn State Dickinson School of Law

Selected Presentations

SELECTED PRESENTATIONS – BY TOPIC (Note: the Chronological Listing includes links to related articles)

- Global Developments in general (See [11-08](#))
- the WTO's GATS agreement and legal services (including presentations on skills transfer provisions, "classification" and domestic regulation disciplines) (See [5-05](#) for a GATS overview and [5-05](#), [4-05](#), [10-04](#), and [3-04](#) for presentations on specialized GATS-legal services issues)
- Foreign lawyer "recognition" issues (See [4-09](#))
- Legal outsourcing (See [4-05](#))
- Antitrust initiatives directed towards the legal profession, including the EU's Professional Services Competition Initiative (See [5-05](#), [4-05](#))
- *Alternative Business Structure (ABS)* developments (including the UK's Legal Services Act 2007, Australia's publicly traded law firms, and OECD developments) (See [5-05](#), [10-05](#), and [5-09](#))
- Using ABA Model Rule 5.1 More Proactively (with a nod towards Australia's current practice) (See [5-05](#); see also [5-09](#) at

For additional info:
See the urls at the end of this talk plus my topic-specific talks

<http://www.personal.psu.edu/faculty/l/s/lst3/presentations.htm>

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Trade Agreements



Office of the United States Trade Representative



Trade Agreements

Regional	Bilateral
<ul style="list-style-type: none"> * FTAA * ASEAN Initiative * NAFTA * MEFTA * APEC * CAFTA-DR 	<ul style="list-style-type: none"> * Australia FTA * Bahrain FTA * Chile FTA * Colombia FTA * Israel FTA * Jordan FTA * KORUS FTA * Malaysia FTA * Morocco FTA * Oman FTA * Panama TPA



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.

http://www.wto.org/english/tratop_e/serv_e/legal_e/legal_e.htm
<http://www.abanet.org/cpr/gats/home.html>

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UK Regulatory Reform Initiatives

Many are watching these initiatives with interest



Review of the Regulation of Corporate Legal Work

Nick Smedley

31 March 2009



Solicitors Regulation Authority

<http://www.legalservicesboard.org.uk/>
http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/index.htm



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Other Regulatory Reform Initiatives



Regulatory Reform



Bureau de la concurrence
Canada

Competition Bureau
Canada

http://www.oecd.org/topic/0,3373,en_2649_37421_1_1_1_1_37421,00.html
http://www.oecd.org/document/24/0,3746,en_2649_37421_35858776_1_1_1_37421,00.html
http://www.oecd.org/document/25/0,3343,en_2649_34141_2397017_1_1_1_37421,00.html
<http://www.apec.org/en/About-Us/About-APEC/Member-Economies.aspx>

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Global Antitrust Initiatives – Part 1

	Accountants	Legal	Architects	Engineers	Pharmacists
Austria	6.2	7.3	5.1	5	7.3
Belgium	6.3	4.6	3.5	1.2	4.4
Denmark	2.8	3.8	0	0	5.9
Finland	3.5	6.3	1.4	1.3	7.9
France	2.8	6.5	3.1	0	7.5
Germany	6.1	6.5	4.5	7.4	5.7
Greece	5.1	9.5	n.a.	n.a.	8.9
Ireland	3.0	4.5	0	0	2.7
Italy	5.1	6.4	6.2	6.9	8.1
Luxembourg	6	6.6	6.3	6.3	7.9
Netherlands	4.5	3.9	0	1.5	3.6
Portugal	n.a.	5.7	2.8	n.a.	8
Spain	3.4	6.5	4.6	3.2	7.5
Sweden	3.3	2.4	0	0	12
UK	3.8	4.8	0	0	4.1

Antitrust authorities have targeted rules on: fees, advertising, entry requirements, UPL, alternative business structures, & regulatory structure



Institut für Höhere Studien | *Institute for Advanced Studies*



http://europa.eu/legislation_summaries/internal_market/single_market_services/l23015_en.htm

http://ec.europa.eu/competition/sectors/professional_services/overview_en.html

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Global Antitrust Initiatives – Part 2



ORGANISATION
FOR ECONOMIC
CO-OPERATION
AND DEVELOPMENT



Bureau de la concurrence
Canada

Competition Bureau
Canada



Federal Trade Commission
Protecting America's Consumers



ASSOCIATION INTERNATIONALE DE L'ASSURANCE DE PROTECTION JURIDIQUE
INTERNATIONALE VEREINIGUNG DER RECHTSSCHUTZ-VERSICHERUNG
INTERNATIONAL ASSOCIATION OF LEGAL EXPENSES INSURANCE



International Institute of
Law Association Chief Executives

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

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Alternative Business Structures (ABS)



[UK] Legal Services Act 2007

<http://www.sra.org.uk/sra/legal-services-act.page>

http://www.lawlink.nsw.gov.au/lawlink/olsc/ll_olsc.nsf/pages/OLSC_ilp

http://www.slatergordon.com.au/files/editor_upload/File/prospectus/Prospectus.pdf



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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.



<http://www.anti-moneylaundering.org/>

http://www.anti-moneylaundering.org/2010_FATF_Symposium.aspx



includes India



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Global Legal Education Initiatives

Global legal education initiatives address recognition, curriculum, quality assurance, etc.



benelux 2009



Représentant les avocats d'Europe
Representing Europe's lawyers



European Law Faculties Association



http://www.ccbe.eu/index.php?id=94&id_comite=13&L=0
<http://www.ialsnet.org/>
<http://www.ehea.info/>
<http://stl.szpku.edu.cn/en/index/index.aspx>

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MJP, Recognition & Lawyer Admission



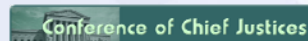
Because of globalization, countries face issues of foreign lawyer MJP, temporary and limited (FLC) admission, and recognition.



Représentant les avocats d'Europe
Representing Europe's lawyers



ABA MJP Resolutions 8 & 9



Resolutions 4 (2006) & 6 (2008)

<http://www.abanet.org/cpr/qats/misc.html>
http://www.ccbe.eu/index.php?id=94&id_comite=8&L=0



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Lawyer Accountability Initiatives

Accountability concerns are one reason for recent lawyer discipline cooperation initiatives

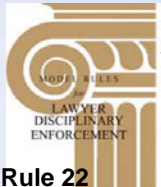
<http://ccj.ncsc.dni.us/InternationalResolutions/resol13.html>

<http://ccj.ncsc.dni.us/InternationalResolutions/ProtocolAustralia.pdf>

http://www.ccbe.eu/index.php?id=94&id_comite=24&L=0



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



Rule 22

ABA AMERICAN BAR ASSOCIATION
Defending Liberty, Pursuing Justice

See also SSRN
Abstract 1371098
(India) & 1631256
(int'l standards)



Représentant les avocats d'Europe
Representing Europe's lawyers

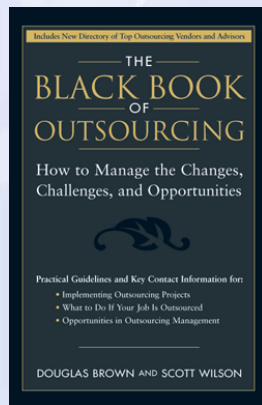
CCBE Standing Committee Resolution (February 2009)



Law Council OF AUSTRALIA

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Market Forces



OMNI BRIDGEWAY



Recent market forces include ABS, legal process outsourcing, and [international] third party litigation financing

<http://www.abanet.org/ethics2020/outsourcing.shtml>

<http://www.abanet.org/ethics2020/alfposting.pdf>

<http://www.abanet.org/cpr/regulation/conf-materials.pdf>

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Conclusion



- Lawyer regulation is very much in flux
- This regulation is subject to global influences
- These influences are likely to be significant
- THEREFORE: It is important to monitor, rather than ignore, these developments
- It is important to have [even better] cross-cultural and cross-professional understandings

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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 Legal World is Flat: Globalization and its Effect on Lawyers Practicing in Non-Global Law Firms*, 28 Northwestern J. Int'l L. & Bus. 527 (2008)

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/>



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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

World Trade Organization, <http://www.wto.org/>

NAFTA Secretariat, <http://www.nafta-sec-alena.org/>

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

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

Terry et al, *Transnational Legal Practice [2006-07]*, 42 Int'l L. 833 (2008), 2008, 43 Int'l L. 943(2009) & 2009, 44 Int'l L. 563 (2010),
allof which are available at:

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

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To Read More About ...

UK Regulatory Reform Initiatives

UK Legal Services Board, <http://www.legalservicesboard.org.uk/index.htm>

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,
<http://www.law.georgetown.edu/news/documents/CCJ-2009-WebMaterials-final.doc>

NSW Office of the Legal Commissioner, Speeches and Papers & menu links,
http://www.lawlink.nsw.gov.au/lawlink/olsc/l_olsc.nsf/pages/OLSC_speeches

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>



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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

<http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02523e.html>

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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,* DAF/CLP(2000)2,

<http://www.oecd.org/dataoecd/35/4/1920231.pdf>

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

<http://www.oecd.org/dataoecd/12/38/40080343.pdf>

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

<http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02523e.html>

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/lt3/presentations.htm>



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To Read More About...

ABS

New South Wales, Australia, Incorporated Legal Practices,

http://www.lawlink.nsw.gov.au/lawlink/olsc/ll_olsc.nsf/pages/OLSC_ilp

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/lrreform.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”



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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), <http://www.fatf-gafi.org/dataoecd/5/58/41584211.pdf>

Fed. Law. Soc. Canada, Model “Know Your Client” Rule,
http://www.flsc.ca/en/pdf/Federation_Model_Rule_080327.pdf

UK Money Laundering and “Know Your Client” Rules,
<http://www.lawsociety.org.uk/productsandservices/practicenotes/aml/453.article>

Asia-Pacific Group on Moneylaundering, <http://www.apgml.org/>

IBA Webpage (including symposium articles):

<http://www.anti-moneylaundering.org/>

<http://www.anti-moneylaundering.org/AMLResources.aspx>

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,
<http://www.lawcouncil.asn.au/initiatives/aml-counter-terrorism-reforms.cfm>



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To Read More About...

Global MJP, Recognition, Lawyer Admission: Part 2

Jayanth K. Krishnan, *Globetrotting Law Firms*, 23 Geo. J. Legal Ethics (2009),
SSRN #1371098 [U.S./UK firms in India]

Canada National Accreditation Committee,

<http://www.flsc.ca/en/foreignLawyers/foreignLawyers.asp>

Canada's MJP Rules, <http://www.flsc.ca/en/committees/mobility.asp>

Canada's consultation on draft recognition rules (Due 12-08),

http://www.flsc.ca/en/pdf/2008Consultation_paper.pdf

Australia's National Profession Project,

<http://www.lawcouncil.asn.au/initiatives/national-practice.cfm>

Australia's- Foreign Lawyers and the Practice of Foreign Law,

http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uid=314C0D0B-1C23-CAGD-2253-F19A22E78A87&siteName=lca

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,

[http://www.int-](http://www.int-bar.org/images/downloads/Standards%20and%20Criteria%20for%20Recognition%20of%20Qualifications%20of%20Lawyers%202001.pdf)

[bar.org/images/downloads/Standards%20and%20Criteria%20for%20Recognition%20of%20Qualifications%20of%20Lawyers%202001.pdf](http://www.int-bar.org/images/downloads/Standards%20and%20Criteria%20for%20Recognition%20of%20Qualifications%20of%20Lawyers%202001.pdf)

ABA CEELI, Globalization, Legal Education, GATS, and Recognition,

http://www.abanet.org/rol/publications/discussion_paper_legal_ed_globalization_2005.pdf



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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/disenf/rule22.html>

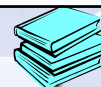
Terry et al, *Transnational Legal Practice 2008*, 43 Int'l L.
943, 954-956 (2009),

http://www.personal.psu.edu/faculty/l/s/lst3/transnational_legal_practice_2008.pdf



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To Read More About...



Market Forces Including Outsourcing and Litigation Funding

ABA 20/20 Commission's Issues Papers: <http://www.abanet.org/ethics2020/>

Mary C. Daly & Carole Silver, *Flattening the World of Legal Services? Ethical and Liability Minefields of Offshoring Legal and Law-Related Services*, 38 *Geo. J. Int'l L.* 401 (2007)

Laurel Terry, *The Legal World is Flat: Globalization and its Effect on Lawyers Practicing in Non-Global Law Firms*, 28 *Northwestern J. Int'l L. & Bus.* 527 (2008), 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/outsourcing/resources.html>

Off-Shoring Legal Services, Association of Professional Responsibility Lawyers Conference (May 2008), http://www.aprl.net/Programs/program2008_05.htm

Outside investment in litigation, e.g., Juridica, OmniBridgeway, CFI, Burford Advisors, <http://www.juridica.co.uk> and <http://www.burfordadvisors.com/index.html> and <http://www.omnibridgeway.com/>

See Prism Legal for LPO clients, law firms and providers; see also Brown and Wilson's Black Book of Outsourcing & annual lists. See Rand report, *New York Times*' articles.

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To Read More About It...

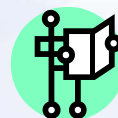
By Laurel Terry

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

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