The Supreme Court and the Law of Lawyering: Mere Coincidence or Something More?

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Summary of Remarks
- **Introduction**: My role on this panel
- **Domestic Examples**: Milavetz and other examples of treating lawyers as “Service Providers”
- **Global Examples** of treating lawyers as “Service Providers”
- **Observations** about Milavetz and my recommendations

Some Domestic Examples
- See all branches of state & federal gov’t
- Bankruptcy and Milavetz
- Red Flags Litigation (identity theft)
- SEC rules including Sarbanes-Oxley
- Other agencies (OTS, IRS, D.of Ed., EEOC)
- State laws (e.g., consumer protection & tax)
- Client attitudes (see Rostain, Rosen, Schneyer, etc.)

For cites, see Terry, *The Impact of Treating the Legal Profession as “Service Providers”* 2008 J. Prof. Law. 189, Leubsdorf, 57 Buff. LR 959 (2009)

Some Global Examples
- Global money laundering & anti-terrorism provisions
  - See, e.g., the Financial Action Task Force recommendations & 10-08 FATF Lawyer Guidance (See AALS Prof. Resp. program, Fri., 10:30am)
- Global antitrust initiatives (includes “ABS”)
- Global regulatory reform initiatives (OECD)
- Trade agreements (EU, NAFTA, GATS, APEC)
- Global education & recognition initiatives

For cites and urls, see Terry, Harvard-Oxford-Jindal Presentation: Regulation of Legal Systems and Lawyers (Sept. 12, 2009), http://www.personal.psu.edu/faculty/l/s/lst3/presentations.htm

Observations About Milavetz and Recommendations
- **Caveats**: I am not an expert about Milavetz
- In my view, the number of SCOTUS cases is more than “mere coincidence”
  - The “services providers” paradigm affects who regulates lawyers and how lawyers are regulated
  - Increased treatment of lawyers as “service providers” means increased regulatory challenges
- I recommend for the legal profession:
  - Increased cross-professional and cross-cultural benchmarking; and
  - Articulation of regulatory objectives [cf. UK, Canada, OECD, and EU approaches]