

## 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

2

## 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) <sup>3</sup>

## 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> <sup>4</sup>

## 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]

5