Globalization Comes to Main Street
U.S. Impact of Global Regulatory Trends

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Presentation Overview

1. Globalization and the Legal Profession
2. Globalization and Bar Admissions
3. Global Regulation Trends
   - In general
   - Selected U.S. bar admission developments
   - Selected global developments
4. What's a Regulator to Do?
Globalization and the Legal Profession

Source: WTO Secretariat Report on Legal Services, S/C/W/38 (June 2010), at ¶7

Globalization Affects All US States

*All states except Hawaii had 2011 exports in the billions

Source: Trade Stats Express, which is NCBE Conference Session Item #3, http://tse.export.gov/TSE/TSEHome.aspx
States in Which NLJ 250 Firms Have Offices
(U.S. “imputation” rules extend the effects of globalization)

Concentration of Fortune 1000 Companies

Source: Fortune 500, May 2009
Companies with In-House General Counsels

More about Globalization and Main Street

- In 2010, 12% of U.S. population was foreign born (more than 37 million)
  - 16 states (almost one-third) had a foreign-born population that was ≥10%
  - Examples: California (27.2%), Nevada (18.9%), New York (22.2%), Florida (19.4%), Massachusetts (15%), Washington (13.1%), Maryland (13.9%) & R.I. (12.8%)
  - Selected cities [2009]: LA (39%), San Jose (38%), NY (35%), Boston (25%), Austin (20%), Chicago (20%), Denver (15%), Charlotte (13%), & Columbus (10%)

Sources: Conference Items #5-7; U.S. Census Bureau, MPI Data Hub
BRICs: Brazil, Russia, India, China

South Africa has now joined this group which is now known as “BRICS”


This Shift will affect clients & thus lawyers

Source: See previous slide
II. Globalization and Bar Admissions

• The number of states in which foreign-educated applicants sat for a bar exam more than doubled between 1992 and 2011 [14–29]

• In the last ten years, in states other than New York and California, the number of foreign educated applicants grew by more than 500% [107→629]
  – In a 2009 survey, NCBE Members said they would welcome help with these issues.

This Data is in your Conference Materials (Item #2):

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<td>39%</td>
<td>455</td>
<td>134</td>
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<td>2009</td>
<td>5723</td>
<td>1777</td>
<td>31%</td>
<td>465</td>
<td>104</td>
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<td>2010</td>
<td>5161</td>
<td>1777</td>
<td>31%</td>
<td>441</td>
<td>118</td>
<td>27%</td>
<td>29</td>
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<td>2011</td>
<td>5620</td>
<td>1708</td>
<td>30%</td>
<td>629</td>
<td>139</td>
<td>22%</td>
<td>29</td>
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Other Jurisdictions Face these Issues

Law Council of Australia
Law Admissions Consultative Committee,
http://www.lawcouncil.asn.au/lacc/lacc_home.cfm

Solicitors Regulation Authority
Qualified Lawyers Transfer Scheme,
http://www.sra.org.uk/solicitors/qlts.page

National Committee on Accreditation (NCA),

See also 2009 Baltimore NCBE materials

II. Radical Change is Afoot

• The lawyer’s [regulatory] life cycle:
  – Admissions
  – Conduct Regulation
  – Discipline

• You may have missed some of the most radical changes....
Thematic Trends in Global Lawyer Regulation

**Who** regulates lawyer? [self-regulation, co-regulation, or no lawyer regulation? See UK, Ireland]

**What** and whom is regulated? [Lawyers or legal services? E.g. Paralegals? (Upper Canada); Legal Zoom?]

**When** are lawyers regulated? [Australia’s 33% complaint reduction after using the ILP self-assessment form]

**Where** are lawyers regulated? [Virtual Law Offices]

**How** are lawyers regulated? [Outcomes-focused reg.; differential regulation for different lawyers; Smedley report]

**Why** are lawyers regulated? [UK LSA §1]

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US & Global Admissions Developments

- **ABA “Notice & Comment” Proposals:**
  - 20-20 Commission’s “Inbound” lawyer proposals
  - Proposed criteria for an LL.M. in U.S. Practice
  - ABA accreditation rules & geography
  - *See also ABA Sec. of Legal Ed’s Internat’l C’ee*

- **Selected Global Developments:**
  - UK Legal Services Board study [John Flood]
  - APEC Proposed “Best Practices” Statement
  - GATS’ Proposed Disciplines
  - Antitrust issues: Admissions is 1 of 5 targeted issues
What’s a Regulator to Do?

In General:

– Keep an open mind & think about how best to respond to these globalization developments

– Remember to consider the legal needs of your citizens as well as their need for protection

– If globalization is going to happen anyway… should it be regulated or unregulated?

– Recognize the possible impact of these trends on your work

Specifically:

– Consider the Georgia “toolkit” idea

– Consider the ABA proposals seriously (and the alternative of having no inbound lawyer policies)

– Adopt regulatory objectives for the legal profession

– Consider supporting my idea to create a “Global Umbrella Organization for Lawyer Regulators”

– Recognize that we live in a changing world
To Read More About It...

- **ABA Commission on Ethics 20/20**
  - [http://www.americanbar.org/groups/professional_responsibility/aba_commission_on_ethics_20_20/initial_proposals.html](http://www.americanbar.org/groups/professional_responsibility/aba_commission_on_ethics_20_20/initial_proposals.html)

- **APEC Legal Services Inventory**,  
  - [http://www.legalservices.apec.org/overview.html](http://www.legalservices.apec.org/overview.html)

- **LawWithoutWalls Materials**  
  - [http://www.lawwithoutwalls.org/](http://www.lawwithoutwalls.org/)

- **Read some of the blogs to see how regulators are described: Law21, RandomAcademicThoughts, LegalFutures**

- **Fall 2011 Fordham Symposium on Globalization and the Legal Profession** (& Harvard, Stanford, Georgetown, etc.)

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To Read More About It...

### My Presentations Webpage:

- **Global Developments in general** (See 1.11, 3.02 and 11.03) (See also 2000 Service Providers article, *The Legal World is Flat*, and other “Global Legal Practice”

  - ***
    - [http://www.personal.psu.edu/faculty/l/s/lst3/presentations.htm](http://www.personal.psu.edu/faculty/l/s/lst3/presentations.htm)

- **Alternative Business Structure** (ABS) developments (including the UK’s Legal Services Act 2007, Australia’s publicly traded law firms, EU, and OECD developments)

- **Anti-trust initiatives** directed towards the legal profession, including the EU’s Professional Services Competition Initiative (See 3.08, 4.08)

- **the APEC Legal Services Initiative** (See 10.09)

- **Australian Legal Profession Developments** (See 3.05, 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](http://www.personal.psu.edu/faculty/l/s/lst3/presentations.htm)
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

Appendix: Who regulates lawyers?

- Self-regulation, co-regulation, or non-lawyer regulation?

The Troika: IMF, ECB, Eur. Commission

(independent regulatory body of the Law Society)

(independent regulatory arm of the Bar Council)
**What** (or whom) is regulated?

- **What should regulators regulate...**
  - Legal services or just the traditional providers [lawyers]?

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**When** are lawyers regulated?

- **Before problems or after problems?**

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Laurel’s Suggestion to the CCJ: Use ABA Model Rule 5.1 to do something similar
Where are lawyers regulated?

- Can geography-based regulation function in a world of virtual law practice?

**GATS Mode 1 commitments**

How are lawyers regulated?

**Outcomes-focused regulation**

The legal services market is changing. On 6 October 2011, we introduced outcomes-focused regulation (OFR). Soon, alternative business structures (ABSs) will enable lawyers and non-lawyers to share the management and control of businesses providing legal services.

Outcomes-focused regulation focuses on the high-level principles and outcomes that should drive the provision of legal services for consumers. It replaces a detailed and prescriptive rulebook with a targeted, risk-based approach concentrating on the standards of service to consumers. There is greater flexibility for firms in how they achieve outcomes (standards of service) for clients.

Our aim is for a unified approach with the same standards for both traditional law firms and ABSs.

To learn more about outcomes-focused regulation and ABS, read OFR at a glance. Your quick guide to getting started with OFR and the new Handbook. Choose from the other options on the left of this screen or see the SRA Handbook.
Why are lawyers regulated?

Terry Regulatory Objectives article discusses LSA §1, Legal Services (Scotland) Act 2010, Draft Irish bill, Draft Indian bill, & various Canadian provisions.

Legal Services Act 2007
2007 c. 29 Table of Contents

1 The regulatory objectives

(1) In this Act a reference to "the regulatory objectives" is a reference to the objectives of—

(a) protecting and promoting the public interest;
(b) supporting the constitutional principle of the rule of law;
(c) improving access to justice;
(d) protecting and promoting the interests of consumers;
(e) promoting competition in the provision of services within subsection (2);
(f) encouraging an independent, strong, diverse and effective legal profession;
(g) increasing public understanding of the citizen's legal rights and duties;
(h) promoting and maintaining adherence to the professional principles.