Panel 2: Global Innovation and the Shifting Regulatory Environment:

*Developments Beyond the GATS*

Professor Laurel S. Terry  
Penn State Dickinson School of Law  
Email: LTerry@psu.edu  
(717) 240-5262

Overview of Remarks

- Globalization and legal services  
- The impact of the GATS on legal services  
- A whirlwind tour of non-GATS international regulatory developments

- Implications of these developments
Globalization and Legal Services

• Globalization affects clients
• Lawyers and law firms have gone global
• Globalization has changed the **manner** in which legal services regulators operate
• Globalization has changed the **content** of legal services regulations

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The GATS’ Impact on Legal Services:

• It hasn’t yet had a large impact on US lawyer regulation
• BUT… in my view, it is hard to overstate the impact of the GATS on lawyer regulation
  ➢ It provides a blueprint for bilateral and regional FTAs
  ➢ It generated discussions & contributed to new initiatives
  ➢ It created the need for additional work (*e.g.*, measuring barriers and developing methods to “count” legal services)
  ➢ It challenges the traditional U.S. view of lawyer regulation

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Non-GATS International Regulatory Developments and Initiatives

- Global trade agreements (includes recognition, “disciplines,” future negotiation obligations)
- Global money laundering & anti-terrorism laws
- Global antitrust (competition) initiatives
- Global regulatory reforms
- Global MJP, recognition & lawyer admission
- Global legal education initiatives
- ABS, outsourcing & market forces

International Regulatory Developments: Other Trade Agreements

FTAs usually have sections on: transparency, mutual recognition, MFN, market access, national treatment, domestic regulation disciplines, standstill provisions

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International Regulatory Developments:
Terrorism-Money Laundering Initiatives

The intergovernmental FATF Gatekeeper Initiative could change lawyer confidentiality rules; the FATF recently adopted a KYC-risk-based approach guidance for legal professionals.

International Regulatory Developments:
Global antitrust initiatives – Part 1

Antitrust authorities have targeted rules on: fees, advertising, entry requirements, UPL, alternative business structures, & regulatory structure.
International Regulatory Developments: Global antitrust initiatives – Part 2

There are a number of global and international initiatives that focus on regulatory reform and principles.
Some ask... why can't the US have a more liberal recognition-MJP scheme?

Global legal education initiatives address recognition, curriculum, quality assurance, etc.
Implications: The New Paradigm of Lawyers as “Service Providers”

- This paradigm influences “WHO” regulates US lawyers:
  - There are an increasing number of regulators
  - Some of these regulators are global institutions
  - Prediction: this trend will continue

- This paradigm influences “HOW” lawyers are regulated:
  - These regulators probably will want to know the regulatory objectives of any legal profession requirements
  - They may want cross-professional/cross-cultural benchmarking
  - They may be skeptical of ABA and US lawyer regulation
  - One cannot assume past practices will be given much deference

Conclusion

• International developments have the potential to significantly affect the US legal profession
• It is important to monitor, rather than ignore, these developments
• We are not alone!

To Read More About It....

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
• NAFTA Secretariat, http://www.nafta-sec-ala.org/DefaultSite/index_e.aspx
• Asia Pacific Economic Cooperation (APEC), http://www.apec.org/
• ABA GATS-Legal Services Webpage, http://www.abanet.org/cpr/gats/home.html
To Read More About It...

Global Money Laundering & Anti-Terrorism

- Financial Action Task Force (FATF),
  http://www.fatf-gafi.org
- FATF Risk-Based Approach Guidance for Legal Professionals (Oct. 28, 2008),
- Fed. Law. Soc. Canada, Model “Know Your Client” Rule,
- UK Money Laundering and “Know Your Client” Rules,
  http://www.aprl.net/2008-Amsterdam/12/12bAML.pdf
- Sample KYC Form, http://www.aprl.net/2008-Amsterdam/06/6eKYC.pdf
- 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,
- Chronology of Canadian Money Laundering Litigation,

To Read More About It...

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, DAFFE/CLP(2000)2,
- 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),
- 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/lst3/presentations.htm
To Read More About It…

Global Regulatory Reform

- **OECD Regulatory Reform Project**,  
  [http://www.oecd.org/topic/0,3373,en_2649_37421_1_1_1_1_37421,00.html](http://www.oecd.org/topic/0,3373,en_2649_37421_1_1_1_1_37421,00.html)
- **OECD Guiding Principles for Regulatory Quality & Performance**,  
- **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](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_37463,00.html](http://www.oecd.org/document/25/0,3343,en_2649_34141_2397017_1_1_1_37463,00.html)

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To Read More About It…

Global MJP, Recognition, Lawyer Admission – Part 1

- **Comprehensive Guide to Bar Admission Requirements**,  
- **ABA Multijurisdictional Practice Recommendations 8 and 9**,  
  [http://www.abanet.org/cpr/mjp/home.html](http://www.abanet.org/cpr/mjp/home.html)
- **Implementation of MJP Recommendations 8 and 9**,  
- **Conference of Chief Justices MJP Resolutions**,  
  [http://ccj.nsc.dni.us/MultijurisdictionalPracResols.html](http://ccj.nsc.dni.us/MultijurisdictionalPracResols.html)
- **EU MJP Directives**,  
- **EU Morgenbesser Case**,  
- **UK Qualified Lawyers Transfer Test (QLTT)**,  
  [http://www.sra.org.uk/solicitors/qltt.page](http://www.sra.org.uk/solicitors/qltt.page) and  

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To Read More About It....

Global MJP, Recognition & Lawyer Admission – Part 2

• Canada’s consultation on draft recognition rules (Due 12-08), http://www.flsc.ca/en/pdf/2008Consultation_paper.pdf

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To Read More About It...

Global Legal Education

• International Association of Law Schools, http://www.ialsnet.org/
• The Law School Admissions Council and the National Organization of Bar Counsel now include Canadian and Australian members, http://www.nobc.org/ and http://www.lsac.org/
• ABA Section of Legal Education and Admissions to the Bar, http://www.abanet.org/legaled/
• Peking University School of Transnational Law, http://www.law.pku.edu.cn/
• Bologna-Benelux Secretariat Webpage (with many links) http://www.ond.vlaanderen.be/hogeronderwijs/bologna/
• CCBE Training Committee Webpage, http://www.ccbceurope.org/index.php?id=94&id_comite=13&L=0
  http://www.tuning.unideusto.org/tuningeu/
• ELFA QUAACAS Committee, http://elixir.bham.ac.uk/quaacas/
• Prof. Lonbay’s EU Recognition website, http://elixir.bham.ac.uk/menu/country/default.htm

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To Read More About It...

ABS, Outsourcing, Funding & Market Forces

- International Outsourcing of the Legal Profession, UC Berkeley (April 2008), http://www.law.berkeley.edu/centers/gcl/outsource/resources.html
- Off-Shoring Legal Services, Association of Professional Responsibility Lawyers Conference (May 2008), http://www.aprlnet/Programs/program2008_05.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
- See also ABA Canons Symposium, http://www.abanet.org/cpr/pubs/symposium.html
- Presentations and publications address:
  - the GATS, the impact of globalization on legal services, ABS, MDPs, competition initiatives, the Bologna Process, & outsourcing