

Panel 2: Global Innovation and the Shifting Regulatory Environment:

Developments Beyond the GATS

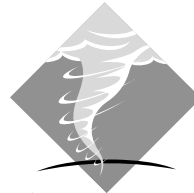
Professor Laurel S. Terry
Penn State Dickinson School of Law
Email: LTerry@psu.edu
(717) 240-5262

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Terry 1

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



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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

- See Terry, *A “How To” Guide*, 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]

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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

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International Regulatory Developments: Other Trade Agreements

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



NAFTA Secretariat
Secrétariat de l'ALÉNA
Secretariado del TLCAN



Asia-Pacific
Economic Cooperation

Office of the United States Trade Representative



Trade Agreements

Regional	Bilateral
* FTAA	Australia FTA
* ASEAN Initiative	Bahrain FTA
* NAFTA	Chile FTA
* MEFTA	Colombia FTA
* APEC	Israel FTA
* CAFTA-DR	Jordan FTA
	KORUS FTA
	* Malaysia FTA
	* Morocco FTA
	* Oman FTA
	* Panama TPA
	* Peru TPA
	* Malaysia FTA
	* Singapore FTA
	* SACU FTA
	* Bilateral Investment Treaties (BITs)
	* Trade and Investment Framework Agreements (TIFAs)

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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



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International Regulatory Developments: Global antitrust initiatives – Part 1

	Accountants	Legal	Architects	Engineers	Pharmacists
Austria	6.2	7.3	5.1	5	7.3
Belgium	6.3	4.4	3.9	1.2	5.4
Denmark	2.8	3.0	0	0	5.8
Finland	3.5	0.3	1.4	1.3	7.0
France	8.8	8.8	3.1	0	7.3
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	6.4	8.4
Luxembourg	5	6.6	5.3	5.3	7.8
Netherlands	4.5	3.5	0	1.5	3.9
Portugal	n.a.	5.7	2.8	n.a.	8
Spain	3.4	6.5	4.0	3.2	7.5
Sweden	3.3	2.4	0	0	12
UK	3.0	4.8	0	0	4.1

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



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Directorate General for Competition

UK

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International Regulatory Developments: Global antitrust initiatives – Part 2



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International Regulatory Developments: Global Regulatory Reform Initiatives

There are a number of global and international initiatives that focus on regulatory reform and principles



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International Regulatory Developments: MJP, Recognition & Lawyer Admission



Représentant les avocats d'Europe
Representing Europe's lawyers



Some ask...why can't
the US have a more
liberal recognition-
MJP scheme?



AMERICAN BAR ASSOCIATION
Defending Liberty, Pursuing Justice
ABA MJP Resolutions 8 & 9



Conference of Chief Justices
Resolutions 4 (2006) & 6 (2008)



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International Regulatory Developments: Global Legal Education Initiatives

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



bologna
process



European Law Faculties Association



Représentant les avocats d'Europe
Representing Europe's lawyers



International Association of
LAW SCHOOLS



benelux
2009



AMERICAN BAR ASSOCIATION
Defending Liberty, Pursuing Justice



北京大學法學院
Beijing University Law School

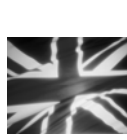


Resolutions 7 & 8 (2007)

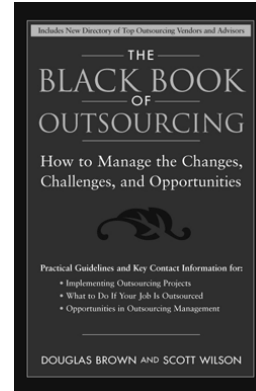
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International Regulatory Developments: ABS, Outsourcing, and Market Forces



[UK] Legal Services Act 2007



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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
- See 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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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!

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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
- World Trade Organization, <http://www.wto.org/>
- NAFTA Secretariat, http://www.nafta-sec-alena.org/DefaultSite/index_e.aspx
- Asia Pacific Economic Cooperation (APEC), <http://www.apec.org/>
- Trans-Pacific Strategic Economic Partnership (9-08), http://www.ustr.gov/assets/Document_Library/Fact_Sheets/2008/asset_upload_file660_15116.pdf
- ABA GATS-Legal Services Webpage, <http://www.abanet.org/cpr/gats/home.html>
- Terry et al, *Transnational Legal Practice*, 42 Int'l L. 833 (2008), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1265120

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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),** <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.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,**
<http://www.lawcouncil.asn.au/initiatives/aml-counter-terrorism-reforms.cfm>
- **Chronology of Canadian Money Laundering Litigation,**
http://www.abanet.org/crimjust/taskforce/canada/money_laundering.pdf

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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,*** 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/lst3/presentations.htm>

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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
- **OECD Guiding Principles for Regulatory Quality & Performance**,
<http://www.oecd.org/dataoecd/24/6/34976533.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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Global MJP, Recognition, Lawyer Admission – Part 1

- **Comprehensive Guide to Bar Admission Requirements**,
<http://www.ncbex.org/comprehensive-guide-to-bar-admissions/>
- **ABA Multijurisdictional Practice Recommendations 8 and 9**,
<http://www.abanet.org/cpr/mjp/home.html>
- **Implementation of MJP Recommendations 8 and 9**,
http://www.abanet.org/cpr/mjp/8_and_9_status_chart.pdf
- **Conference of Chief Justices MJP Resolutions**,
<http://ccj.ncsc.dni.us/MultijurisdictionalPracResols.html>
- **EU MJP Directives**, http://www.ccbe.eu/index.php?id=94&id_comite=8&L=0
- **EU Morgenbesser Case**,
http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/morgenbesser_guidanc1_11_83976940.pdf
- **UK Qualified Lawyers Transfer Test (QLTT)**,
<http://www.sra.org.uk/solicitors/qltt.page> and
<http://www.sra.org.uk/sra/consultations/1454.article> (Nov. 2008 consultation)



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To Read More About It....

Global MJP, Recognition & Lawyer Admission – Part 2

- 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 Model Laws for Foreign Lawyers, <http://www.lca-ils.net/Legal%20Practice%20Foreign%20lawyers.pdf>
- 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.ibanet.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 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.ccbe.org/index.php?id=94&id_comite=13&L=0
- European Law Faculties Association (ELFA) Tuning Project, http://www.elfa-afde.org/html/activities_projects.htm
<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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ABS, Outsourcing, Funding & Market Forces



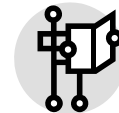
- New South Wales, Australia, Incorporated Legal Practices, http://www.lawlink.nsw.gov.au/lawlink/olsc/ll_olsc.nsf/pages/OLSC_ilp
- UK Legal Services Reform (and the Oct. 2007 UK Legal Services Act), <http://www.justice.gov.uk/whatwedo/legalservicesreform.htm> and <http://www.dca.gov.uk/legalsys/lreform.htm>
- 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>
- *International Outsourcing of the Legal Profession*, UC Berkeley (April 2008), <http://www.law.berkeley.edu/centers/gcl/outsourc/resources.html>
- *Off-Shoring Legal Services*, Association of Professional Responsibility Lawyers Conference (May 2008), http://www.aprl.net/Programs/program2008_05.htm
- ASIL Task Force on Global Professional Responsibility, <http://www.asil.org/pdfs/taskforcereport.pdf>
- Outside investment in litigation, e.g., Juridica, OmniBridgeway, CFI, <http://www.juridicainvestments.com/investmentob.html> and <http://www.omnibridgeway.com/>
- Carole Silver's Articles, <http://ssrn.com/author=288407>

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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>
- **Cited in this powerpoint:** 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
 - 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

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