Legal Ethics and Professional Responsibility in a Global Context

Lawyers and Jurists in the 21st Century:
American Society of Comparative Law
Professor Laurel S. Terry (LTerry@psu.edu)
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Summary of My Talk

- Introduction
- Legal ethics in a global context
  - The Distant Past
  - The Recent Past
  - The Present - a “sea change”
- Reasons for the Sea Change
- The Future
Thank You

• To our Hosts for their hospitality

• For including *Legal Ethics* on the program

Introduction

• The Conference theme is correct: the context is now global

• The field of “Legal Ethics” reflects this change in context

• This is different than when I first became involved 20 years ago
So What is PREL?

- Professional responsibility and legal ethics = \textit{PREL}"

- My definition of PREL:

\textit{PREL is what is studied by professors of PREL and covered in annual conferences we attend! (In US: AALS/CPR)}

- A primary focus is lawyer regulation

Global PREL & the Distant Past: 1904-1974

- \textbf{Theory}:

  - Before 1974, relatively little attention was paid to U.S. PREL
  
  - Most non-US academics didn’t teach PREL
  
  - Comparative PREL focused primarily on legal education and sociology
Global PREL & the Distant Past: 1904-1974

• The Practice/Global Context:
  - The first US foreign branch office opened in 1960
  - Until 1970, only 2 US firms had foreign offices
  - By 1974, only 14 US firms had them

Global PREL & the Recent Past: 1974-1998

• Theory:
  - In 1974, the ABA adds PREL as a graduation requirement (Watergate)
  - U.S. Domestic PREL blossoms
  - Most non-US academics still don’t teach PREL
  - Comparative PREL is fairly rare
Global PREL & the Recent Past: 1974-1998

- The Practice/ Global Context:
  - 1998: 72 US firms have foreign offices
  - EU Directives (77, 85 & 98) & ECJ Cases
  - 1988 CCBE Code of Conduct
  - GATS and global MDP developments

Global PREL & the Present: 1998-2004

- Theory:
  - Global & comparative PREL is now more common in the US
  - Global & comparative PREL is more common outside the US

- Why measure from 1998?
  - A “sea change” happened in Nov. 98
What was the 1998 “Sea Change?”

- In Nov. 1998, the ABA held its first hearings on lawyer-nonlawyer “MDPs”
- The ABA heard from Canada, the UK, Australia & the EU about MDPs (PREL)
- PREL discussions now acknowledge the global context and impact of PREL

What is the Global Context of PREL in 2004 re Lawyers?

- **93-03**: US legal imports increase 173% ($879 million); exports up 134% ($3.4 billion)
- UK firms are 6 of world’s 10 largest firms
  - US firms are 13 of 20 largest
- 6 of 10 largest firms have > 50% of lawyers outside firm’s home country
- All 10 have more than 1400 lawyers and foreign branch offices
What is the Global Context of PREL in 2004 re Clients?

- Why business clients increasingly use both US and foreign lawyers:
  - MO had $15.5 billion in 2002 foreign direct $
  - MO exported $7.2 billion in 2003 (27th)

- Why individual clients increasingly use both U.S. and foreign lawyers:
  - MO has 151,000 foreign born residents (26th)
  - 81% increase since 1990 census ranks 26th

Examples of Recent Global PREL Dialogue

- ABA Ethics 2000 Hearings (Spain/CCBE)
- ABA MJ P Hearings (Canada, UK, EU, UIA)
- ABA 2000 annual meeting in London
- Sarbanes-Oxley & internat’l comments
- Increased “Double Deontology” focus
- NOBC International Discipline Committee & pending webpage
Examples of Recent Global PREL Dialogue - Part 2

- Multiple Antitrust (Competition) studies
- Multinat’l conferences (ABA CPR, Exeter)
- Various GATS-inspired events
  - 1998 Paris Forum
  - 2003 IBA GATS Forum
  - 2004 Atlanta “Summit”
  - IBA & UIA Resolutions
  - Int’l Agreements Committee of the Conference of Chief Justices

So why did this sea change happen?
Some Reasons for this Sea Change in Academia

- Reality - PREL issues cross borders
- Increased summer abroad programs
- Increased foreign & LL.M. students
- Foreign invitees at conferences
- PREL becomes “law” through 1998 EC Directive and GATS

Some Reasons for this Sea Change by Practicing Lawyers

- Multi-country firms face daily PREL issues
- PREL affects competition (MDPs-ads)
- Risk management issues (Enron, Prince Jefri)
Some Reasons for this Sea Change by Regulators

- Because lawyers hold dual licenses, PREL issues have spillover effects
- PREL rules from other jurisdictions are cited in domestic policy debates
- High-profile cases illustrate potential problems (Enron)
- Regulators risk irrelevance if they don’t adapt to a changed world

Some Reasons for this Sea Change by Global Bar Associations

- WTO Members want to hear from the voice of a global bar
- Bar associations want to maintain their roles (not gov’t authorities)
- PREL issues are relevant to practice opportunities of lawyer members
Global PREL Issues for the Future

- The current regulatory systems face major pressures - major changes? (e.g. federalism, antitrust, and grey market)
- Double deontology, esp. for conflicts
- Confidentiality versus disclosure (e.g., Enron-type fraud, money laundering)
- Fitting PREL into an Internet world (e.g., admission, ads, discipline, pro bono)
- “Classifications” for statistics & GATS

Conclusion

- Legal services occur in a global context
- Theory lags significantly behind reality
- Global PREL is now a reality and comparative perspectives are useful
- This sea change affects US & non-US lawyers and academics
- It’s an exciting time for global PREL!
Resources

- Prof. Terry’s SSRN and *Global Legal Practice Resources* Webpages
  [http://www.personal.psu.edu/faculty/l/s/lst3/globalprac.htm](http://www.personal.psu.edu/faculty/l/s/lst3/globalprac.htm)

- Prof. Lonbay’s ELIXIR Webpage
  [http://elixir.bham.ac.uk/menu/country/default.htm](http://elixir.bham.ac.uk/menu/country/default.htm)

- Prof. Henssler’s Documentation Centre
  [http://www.uni-koeln.de/jur-fak/dzeuanwr/indexenglisch.html](http://www.uni-koeln.de/jur-fak/dzeuanwr/indexenglisch.html)

- ABA GATS/ Legal Services Webpage
  [http://www.abanet.org/cpr/gats/home.html](http://www.abanet.org/cpr/gats/home.html)

- Free email newsletters:
  - CCBE, Law Society of England & Wales, Bridges Weekly, NAFTA Claims

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### Global Legal Services & the US

**U.S. Legal Services Imports and Exports**
*(in Millions of Dollars)*

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