

Symposium

2008 Global Legal Practice Symposium

Foreword

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This is the second opportunity the *Penn State International Law Review* has had to publish the papers from an international conference of the Association of Professional Responsibility Lawyers (APRL). The first Penn State International Law Review Global Legal Practice Symposium published papers from APRL's international conference in Florence.¹ This Global Legal Practice Symposium includes papers presented at APRL's Fifth International Conference, which was held in May 2008 in Amsterdam.² I am very pleased to have a second opportunity to write a "Foreword" for this collaboration between the *Penn State International Law Review* and APRL. As was true at the time of the 2004 Penn State International Law Review Symposium, transnational practice has progressed at a far greater pace than its

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1. The first APRL/Penn State collaboration appeared in the Global Legal Practice Symposium, 22 PENN ST. INT'L L. REV. 527 et. seq. (2004).

2. See Association of Professional Responsibility Lawyers, Conference Materials—Amsterdam (May 2008), http://www.aprl.net/Programs/program2008_05.htm (last visited Dec. 10, 2008).

regulation. Moreover, although there is much more commentary now about global legal practice issues than there was in 2004, transnational legal practice has continued to evolve at a pace that exceeds the commentary. The speakers at the May 2008 APRL conference in Amsterdam, like the speakers at the prior APRL Florence conference, were international practitioners, academics, regulators and bar leaders who are grappling with cutting-edge issues that concern global legal practice.³ I am very pleased that so many authors agreed to contribute to this Symposium so that their important observations and insights can be shared with a larger audience.

In the Foreword for the 2004 Symposium, I provided statistics about transnational legal practice in order to explain why issues arising from transnational practice were important. In this Foreword, I have chosen not to repeat or update these statistics since they are available elsewhere,⁴ but to instead point to a number of recent developments that illustrate the importance, and difficulty, of issues related to global legal practice.

During 2008, both Harvard Law School and Georgetown Law Center held important conferences that addressed issues related to globalization and legal services.⁵ In addition, Indiana University School of Law and Northwestern University School of Law, among others, have each published Symposium issues devoted to this topic.⁶ In recent years, within the U.S.,⁷ Professors Richard Abel,⁸ Carole Silver,⁹ and Bill

3. See APRL Amsterdam Meeting, Speaker Biographies, <http://www.aprl.net/2008-Amsterdam/01/SpeakerBiographies.pdf> (last visited Nov. 20, 2008).

4. See, e.g., Laurel S. Terry, *U.S. Legal Ethics: The Coming of Age of Global and Comparative Perspectives*, 4 WASH. U. GLOBAL STUD. L. REV. 463 (2005) (including a number of tables that summarize transnational legal practice statistics and factors). See also Laurel S. Terry, A "How To" Guide for Incorporating Global and Comparative Perspectives into the Required Professional Responsibility Course, 51 ST. LOUIS U. L. J. 1135 (2007) (consolidating and updating my U.S. Legal Ethics article); Laurel S. Terry, *The Legal World is Flat: Globalization and its Effect on Lawyers Practicing in Non-Global Law Firms*, 28 NW. J. INT'L L. & BUS. 527 (2008) (including statistics on legal process outsourcing, among other things); Laurel S. Terry, Carole Silver, Elyn Rosen, Carol Needham, Robert E. Lutz & Peter D. Ehrenhaft, *Transnational Legal Practice: 2006-07 Year-in-Review*, 42 INT'L LAW. 833 (2008) (including recent trade statistics).

5. See Georgetown Center for the Study of the Legal Profession, Symposium on The Future of the Global Law Firm (Apr. 17-18, 2008) available at <http://www.law.georgetown.edu/LegalProfession/>; Harvard Law School Program on the Legal Profession and the American Society of International Law, Globalization of the Legal Profession (Nov. 21, 2008) available at http://www.law.harvard.edu/programs/plp/pages/globalization_conference.php.

6. See, e.g., *Symposium on the Globalization of the Legal Profession*, 28 NW. J. INT'L L. & BUS. 399 (2008); Symposium, *Globalization of the Legal Profession*, 14 IND. J. GLOBAL LEGAL STUD. 1 et. seq. (2007).

7. There are, of course, a number of commentators outside the U.S. who also write about transnational legal practice, global law firms, or related issues. See, e.g., Christine Parker from the University of Melbourne, Australia, <http://www.law.unimelb.edu.au/index.cfm?objectid=F9D2D075-B0D0-AB80-E2BC989969E28989&username=>

Henderson,¹⁰ among others, have written about transnational legal practice and the growth of global law firms.

The most recent Year-in-Review article by the Transnational Legal Practice Committee of the ABA Section of International Law illustrates the extent of transnational practice activity in many different spheres.¹¹ Although the article was written in December 2007 (and published in May 2008), there have been a number of recent developments that confirm the ongoing impact of transnational legal practice. For example, in August 2008, the Trade and Investment Committee of the Asia-Pacific Economic Cooperation (APEC) approved a legal services initiative that would, among other things, create an inventory of APEC members' existing rules that apply to foreign lawyers.¹² APEC Members recently agreed to fund this legal services initiative which is designed to "facilitate the provision of services in foreign and international law;" in addition to the inventory of APEC members' existing requirements for the licensing of foreign lawyers to supply services in foreign law and international law, the initiative will seek to identify best practices, and to establish an APEC Legal Services Framework aimed at developing best practices for reducing impediments to the provision of services in foreign and international law between APEC economies.¹³

Christine%20Parker; John Flood from the University of Westminster School of Law, publications available at <http://www.johnflood.com/>; and Roy Suddaby from the University of Alberta, School of Business, publications available at <http://www.business.ualberta.ca/rsuddaby/>.

8. Professor Abel has been an early and prolific scholar on issues related to transnational legal practice and the legal profession. *See, e.g.*, Richard Abel Bibliography, <http://www.law.ucla.edu/home/index.asp?page=384> (last visited Dec. 10, 2008). His works include, among many others, Richard Abel, *Transnational Law Practice*, 44 CASE W. RES. L. REV. 737 (1994); Richard Abel, *Varieties of Social Discipline: Collective Action in a Law Firm*, 31 J. L. & SOC'Y 610 (2004).

9. *See, e.g.*, Carole Silver, *Local Matters: Internationalizing Strategies for U.S. Law Firms*, 14 IND. J. GLOBAL LEGAL STUD. 67 (2007); Carole Silver, *Globalization and the U.S. Market in Legal Services—Shifting Identities*, 31 LAW & POL'Y INT'L BUS. 1093 (2000) (describing the international expansion of U.S. law firms through foreign offices). Additional articles by Professor Silver are available on SSRN at http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=288407.

10. William D. Henderson, *The Globalization of the Legal Profession*, 14 IND. J. GLOBAL LEGAL STUD. 1, 2 (2007).

11. *See* Terry et al., *Transnational Legal Practice*, *supra* note 4.

12. APEC, Daily Information Update, APEC Peru 2008 (Aug. 18, 2008), available at http://www.apec.org/apec/daily_news_update/180808_pe_somiiupdates.html (last visited Dec. 10, 2008) (stating that the Group on Services (GOS) "endorsed two proposals—"Trade in Health Services Capacity Building Workshop" and the "APEC Legal Services Initiative"—which are under consideration for 2009.").

13. *See* APEC Project Proposal: Professional Service Initiative: Legal Services Facsheet, Consolidated Text Final (on file with author); Email from Todd Nissen, Director of Services Trade Negotiations, Office of the U.S. Trade Representative to author (Dec. 5, 2008) (announcing the funding decision) (on file with author).

Another example that demonstrates the impact of international developments and transnational legal practice is the recent establishment of an "International Committee" by the American Bar Association Section of Legal Education and Admissions to the Bar. This committee will meet during the coming year and thereafter make recommendations to the Council regarding what the Section should be doing in the international arena.¹⁴ Indeed, in a recent issue of the *American Lawyer*, Professor Steve Gillers called on the ABA to develop a Model Rule on Admission of Foreign Lawyers.¹⁵ Recent action by another group—the American Society of International Law (ASIL)—also shows the interesting impact of transnational legal practice. ASIL recently decided that an interest group on transnational litigation and arbitration will focus on international legal ethics issues; it currently is in the process of preparing a CLE Module on this topic.¹⁶ Recent activities of the Conference of Chief Justices (CCJ) also confirm the importance of transnational legal practice issues. In January 2008, the CCJ adopted another transnational practice-related resolution;¹⁷ this resolution follows in the wake of the two resolutions discussed in the *Transnational Legal Practice Year-in-Review* article.¹⁸ In addition, the CCJ also has agreed to jointly sponsor, with the American Bar Association, a May 2009 conference for Chief Justices and their designees that will focus on topics related to globalization and the regulation of the legal profession.¹⁹ By the time this article is published, the discussions between the CCJ and the Council of Bars and Law Societies of Europe (CCBE) regarding

14. See Memorandum to Council Members of the ABA Section of Legal Education and Admissions to the Bar from Section Chair Randy Hertz and ABA Legal Education Consultant Hulett H. Askew Announcing the Creation of a Special Committee on International Issues (Sept. 18, 2008) (on file with author).

15. See Stephen Gillers, *Bar None*, *AM. LAW.*, Oct. 1, 2008, available at <http://www.law.com/jsp/PubArticle.jsp?id=1202424951437>.

16. See, e.g., Mary C. Daly, Jan Paulsson, W. Michael Reisman, Catherine A. Rogers & Detlev Vagts, ASIL TASKFORCE REPORT (Dec. 2007), available at <http://www.asil.org/transnational-litigation-arbitration.cfm>; Email from Jason Czyz, ASIL CLE Volunteer, to author, Oct. 9, 2008 (on file with author).

17. Conference of Chief Justices, Resolution 6, Resolution Regarding Adoption of Rules on Temporary Practice by Foreign Lawyers (adopted Jan. 30, 2008), available at <http://ccj.ncsc.dni.us/resol6AdoptionRulesTemporaryPractice.html>.

18. See Terry et al., *Transnational Legal Practice*, *supra* note 4, at 848-49 (discussing the CCJ's Resolution 7 Regarding Authorization for Australian Lawyers to Sit for State Bar Examinations and Resolution 8 Regarding Accreditation of Legal Education in Common Law Countries by the ABA Section on Legal Education and Admission to the Bar, both of which are available at <http://ccj.ncsc.dni.us/LegalEducationResols.html>).

19. See Summary of Action of the Oct. 31-Nov. 1, 2008 [ABA] Board of Governors Meeting 9 (Nov. 6, 2008), available at <http://www.abanet.org/leadership/docs/October2008SummaryofAction.pdf>.

lawyer discipline cooperation may have resulted in resolutions adopted by both organizations.²⁰

Although I could go on and on, I will point to one final set of examples to illustrate the pervasive impact of issues related to global legal practice. During Spring 2007, the ABA Center for Professional Responsibility issued a call for papers on the topic of “Regulation of the Legal Profession: Past, Present & Future” to celebrate the Centennial of the ABA Canons of Legal Ethics.²¹ The ten papers selected for publication address the past, present and future of legal ethics. What is interesting, however, is how many of these papers contain references to globalization and international practice developments.²² As these papers demonstrate, the U.S. legal profession has come a long way since 1908 and globalization and its effects are now inexorably intertwined with domestic regulation.

In sum, in my view, U.S. lawyers, academics and regulators are no longer surprised to hear about globalization and are able to imagine its impact on domestic U.S. law practice and regulation. As we recently saw illustrated in Fall 2008 in a different context (the global financial and credit markets), it is clear that in many different sectors—including legal services—countries, economies and individuals are intertwined with each other and events that happen in one country are likely to affect developments in other countries. This is true in the financial world and it is also true in the legal world. Clients travel, lawyers follow those clients, and this has an impact on legal practice and legal regulation. Thus, the developments addressed in this Symposium have the potential to affect not only global legal practice, but U.S. domestic practice as well.

Accordingly, it is my great pleasure to now introduce the articles in the 2008 Global Legal Practice Symposium Issue of the *Penn State International Law Review*. Like the 2004 Symposium, I expect the articles in the 2008 Symposium to provide a cutting-edge look at important issues that are destined to become even more significant and pervasive in the future.²³ This Symposium includes articles by speakers

20. See Terry et al., *Transnational Legal Practice*, *supra* note 4, at 850.

21. The American Bar Association and the Center for Professional Responsibility, Call for Papers Regulation of the Legal Profession: Past, Present & Future, <http://www.abanet.org/cpr/call-papers.html> (last visited Dec. 10, 2008).

22. See *From Canons to Codes to Rules: 1908-2008 and Beyond: A Centennial Celebration of the ABA Legacy: Lawyer Ethics*, 2008 J. PROF. LAW. 1 (2008).

23. This Symposium includes articles by speakers from five panel sessions: 1) At the Intersection of Legal Ethics and Globalization: International Conflicts of Law in Lawyer Regulation; 2) Off-Shoring Legal Services; 3) Conflicts of Interest; 4) Regulation By The Legal Services Board: Reform In Action; 5) Attorney-Client Confidentiality in the Corporate Setting: Europe and the United States.

from six of the panels at the APRL meeting, which represents more fifty percent of the panels. These articles illustrate the range of issues that global legal practitioners face for which they lack concrete guidance. These issues range from conflicting or uncertain conflict of interest standards to uncertainty about confidentiality rules. Moreover, even when the rules are clear, practitioners are sometimes subject to multiple sets of rules and are given little or no guidance about choice of law issues and how to navigate among conflicting or inconsistent ethics rules. The articles in this Symposium also address the very topical issues of outsourcing and the recent legislative amendments in the United Kingdom that allow regulators to adopt rules that will permit multidisciplinary practices and even publicly-traded law firms. In short, there is wealth of interesting material that awaits you the reader. Let me provide a brief preview of the articles and issues you will learn more about.

The articles in this Symposium are organized in alphabetical order, by author. The first article in this symposium was written by Robert J. Anello and is entitled *Preserving The Corporate Attorney-Client Privilege: Here And Abroad*.²⁴ His article addresses an important aspect of contemporary global legal practice—namely, the representation of corporations and the issues they face as a result of not being able to reliably rely on the attorney-client privilege. His article begins by examining the dynamics of the corporate attorney-client privilege and corporate liability in the United States and abroad. He further observes various factors that have served to weaken the privilege. After describing the origin of the privilege in the Supreme Court's 1981 *Upjohn* case, he describes the recent initiatives by the Department of Justice and other U.S. regulators that have penalized the exercise of the privilege, summarizes many of the critiques of the corporate privilege by commentators, and explores the lack of protection that is available internationally to corporations. His article includes useful citations and resource material that may not be well-known, such as a study by the European law firm, Eversheds, which concluded that out of thirty-nine European countries surveyed, only thirteen, or one-third, recognized the attorney-client privilege for in-house counsel.²⁵ His article continues by documenting the different ways in which countries around the world have treated the issue of whether a corporation can be criminally liable, noting that “the tide of corporate criminal liability around the world

24. Robert J. Anello, *Preserving The Corporate Attorney-Client Privilege: Here And Abroad*, 27 PENN ST. INT'L L. REV. 291 (2008).

25. See *id.* at n.78 and accompanying text (citing Eversheds, ATTORNEY-CLIENT PRIVILEGE IN EUROPE (2007), available at <http://www.eversheds.com/documents/AttorneyClientPrivilege.pdf>).

seems to be on the rise. . . .”²⁶ The final section of his article argues why it is important to have the privilege available in international investigations and suggests concrete steps that corporate counsel can take in order to increase the chance that the corporate privilege will be recognized.

Mr. Anello’s article and advice is important now and is likely to be even more important in the future as more and more corporations are involved in international issues and have to face the question of whether they are entitled to the protection under the attorney-client privilege. Indeed, one indication of the importance of the international corporate privilege issue to U.S. lawyers is the fact that the American Bar Association recently filed a petition to intervene as an interested party in a case located outside the U.S.²⁷ The ABA asked the European Court of Justice if it could intervene in the Akzo Nobel corporate privilege case that Mr. Anello discusses in his article.²⁸

Mr. Anello is well-suited to write on this topic because it draws upon his global legal practice experiences and his expertise in corporate investigations and legal ethics. Mr. Anello has represented many lawyers and accountants and has also specialized in securities litigation and white-collar criminal defense work. He has served as chair of the Committee on Professional Responsibility for the Association of the Bar of the City of New York, as a member of the Ad Hoc Committee Task Force on the Role of Lawyers in Corporate Governance and on the Ad Hoc Committee on Multi-Disciplinary Practice. Mr. Anello is an author of the White Collar Crime column for the New York Law Journal as well as a frequent contributor to other publications and law reviews in the area of ethics, white collar criminal law, and trial tactics. In short, he brings a wealth of expertise to this topic.

The second article in this symposium was written by Floris Bannier and is entitled *Conflicts Of Interest: The Dutch Position*.²⁹ His article provides a useful addition to the existing global legal practice literature because it discusses the conflict of interest rules in the Netherlands. There are relatively few articles that discuss—in detail—conflicts of

26. *Id.* at nn.98-99 and accompanying text.

27. *See* American Bar Association, Application for Leave to Intervene in Case C-550/07 P (on file with author); Molly McDonough, *Flying Under the Radar*, A.B.A. J., Jan. 2005, available at http://www.abajournal.com/magazine/flying_under_the_radar/ (stating that “[t]he ABA took steps to allow for the filing of a ‘written statement of intervention’—the equivalent of an amicus brief—in support of extending the privilege, in the combined cases of Akzo Nobel Chemicals Ltd., No. T 125/03 R, and Akros Chemicals Ltd., No. T 253/03 R, but no brief has been submitted.”).

28. *See Anello*, *supra* note 24, at nn.73-75 and accompanying text.

29. Floris Bannier, *Conflicts Of Interest: The Dutch Position*, 27 PENN ST. INT’L L. REV. 315 (2008).

interest rules in other countries or compare U.S. and non-U.S. rules. U.S. lawyers and academics have shown themselves to be hungry for such comparative approaches—citing frequently the few articles that exist.³⁰ Professor Bannier's article is important because it adds to this small but important body of law and helps lawyers from around the world better understand each other.

Professor Bannier is extremely well-qualified to add to this literature because he has both academic and practical experience with this topic. Because Professor Bannier formerly practiced in an international law firm, he understands how the Dutch conflicts of interest rules operate in practice and he has had experience with the U.S. conflicts of interest rules.³¹ Professor Bannier also understands the academic perspective: since 2004, he has been a Professor at the University of Amsterdam, where he teaches advocacy and specializes in issues related to the legal profession and writes about issues related to the legal profession. He also understands the political processes by which conflict of interest rules are developed since he is a former President of the Amsterdam Bar.

Professor Bannier's article includes an English translation of the Dutch conflict of interest rule, along with an analysis of that rule. His analysis reveals that the Dutch conflict of interest rule, like U.S. conflict rules, is based on the concepts of loyalty and trust. His article reveals other similarities between the Dutch and U.S. rules, including imputation rules and the extension of conflict rules to former clients. One of the most interesting similarities concerns the definition of a conflict of interest. As Professor Bannier explains, under the relevant Dutch bar rule, one can avoid the conclusion that a conflict of interest is involved only if the two representations do not involve the same matter, there has not been an exchange of confidential information, and there are no other reasonable objections.³² This approach is similar to U.S. case law that looks to the similarity of the representations and the exchange of confidential information in order to determine whether a conflict exists.³³

30. See, e.g., Nancy J. Moore, *Regulating Law Firm Conflicts in the 21st Century: Implications of the Globalization of Legal Services and the Growth of the "Mega Firm,"* 18 GEO. J. LEGAL ETHICS 521 (2005) (comparing JANINE GRIFFITHS-BAKER, *SERVING TWO MASTERS: CONFLICTS OF INTEREST IN THE MODERN LAW FIRM* (2002), with SUSAN SHAPIRO, *TANGLED LOYALTIES: CONFLICT OF INTEREST IN LEGAL PRACTICE* (2002)).

31. Professor Bannier received his law degree from Utrecht University and practiced law with one of the firms that is now part of NautaDutilh. He was a partner there from 1973 to 2004 and specialized in commercial law.

32. Bannier, *supra* note 29, at nn.15-18 and accompanying text.

33. See, e.g., AMERICAN BAR ASSOCIATION, *ANNOTATED MODEL RULES OF PROFESSIONAL CONDUCT* (6th ed. 2007).

Although there are similarities between the U.S. and Dutch rules, there are also some interesting differences. For example, as Professor Bannier explains in his article, the Dutch conflict of interest rule is not part of the statutory body of law that is binding on lawyers, but is—in essence—an interpretation by the bar association that is offered as guidance to the disciplinary panels.³⁴ His article reveals other interesting differences as well. For example, he explains that until a conflict arises (or threatens to arise), a Dutch lawyer is permitted to represent both husband and wife in a divorce case. That situation would not be permitted under ABA Model Rule 1.7(b)(3).³⁵ Another difference that emerges from reading his article is the fact that the Dutch rule allows lawyers to go forward with the representation if they obtain their clients' informed consent; thus, in contrast to the U.S. rules, the Dutch rule does not explicitly include a category of "non-consentable" conflicts of interest.³⁶

One of the most useful aspects of Professor Bannier's article, however, is the fact that he applies the Dutch conflicts of interest rules to a U.S. hypothetical that was distributed at the APRL conference.³⁷

The third article in this Symposium addresses an issue that has become increasingly high profile, which is the issue of the outsourcing of legal services, sometimes referred to as legal process outsourcing.³⁸ The

34. Bannier, *supra* note 29, at nn.9-10 and accompanying text.

35. ABA MODEL RULES OF PROF'L CONDUCT R. 1.7 (2007) (enumerating how consent may not be used to "cure" a conflict of interest under paragraph 1.7(a) if the representation involves the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal).

36. Compare Bannier, *supra* note 29, at nn.19-22 and accompanying text with ABA MODEL RULES OF PROF'L CONDUCT R. 1.7(b)(3) (2008). For information on U.S. state implementation of ABA Model Rule 1.7(b), see American Bar Association Center for Professional Responsibility, *Charts Comparing Individual Professional Conduct Rules As Adopted Or Proposed By States To ABA Model Rules*, Model Rule 1.7(b), available at http://www.abanet.org/cpr/jclr/1_7.pdf.

37. James W. Paul, Partner and General Counsel of Clifford Chance US LLP, authored the hypothetical, which is reprinted herein with permission. See Bannier, *supra* note 29, at 321-22 (including the text of the hypothetical as an appendix).

38. See Martha Neil, *1st Legal Outsourcing Summit: Good Contracts Needed in Growing Industry*, A.B.A. J., Jan. 22, 2008, available at http://www.abajournal.com/news/1st_legal_outsourcing_summit_good_contracts_needed_in_growing_industry/ [hereinafter *First LPO Summit*]. During April–May 2008, for example, the topic of outsourcing was included at conferences sponsored by the University of California, Berkeley School of Law, Georgetown Law Center, and the Association of Professional Responsibility Lawyers (APRL). Outsourcing has been a topic at a number of CLE sessions since May 2008 and will be an important part of the November 21, 2008 ASIL/Harvard Law School Conference on Globalization and the Legal Profession. These conferences can be found at the following URLs:
<http://www.law.georgetown.edu/LegalProfession/Papers.html> (Georgetown);
<http://www.law.berkeley.edu/centers/gcl/outsources/resources.html> (Berkeley);
http://www.aprl.net/Programs/program2008_05.htm (APRL);

article, written by James I. Ham, is entitled *Ethical Considerations Relating to Outsourcing of Legal Services by Law Firms to Foreign Service Providers: Perspectives from the United States*.³⁹

The legal outsourcing phenomenon has developed quickly and observers predict that it is likely to continue to grow.⁴⁰ According to GlobalSourcingNow, which is a leading source of information about offshoring, the “knowledge process outsourcing” (KPO) market, which is distinct from the “business process outsourcing” or back-office services market, is approximately \$1 to \$3 billion, but will reach \$17 billion by 2010.⁴¹ They have predicted that India will employ more than 250,000 KPO professionals by 2010, a significant increase from the 25,000 it currently employs.⁴² Many of these new jobs will involve legal services. GlobalSourcingNow predicts that there will be 79,000 legal process outsourcing jobs in India by 2015.⁴³ Another research company has predicted that the revenues from legal services offshoring will grow from \$146 million in 2006 to \$640 million by the end of 2010.⁴⁴ Some of these legal offshoring intermediary companies were founded by U.S. lawyers with elite credentials.⁴⁵ In short, there are a number of companies and individuals who are working very hard to establish offshore outsourcing in the legal services field. Moreover, some of those who are involved in the offshore outsourcing phenomenon are sophisticated U.S. lawyers who understand the U.S. market and may

http://www.law.harvard.edu/programs/plp/pages/globalization_conference.php
(Harvard).

39. James I. Ham, *Ethical Considerations Relating to Outsourcing of Legal Services by Law Firms to Foreign Service Providers: Perspectives from the United States*, 27 PENN ST. INT'L L. REV. 323 (2008).

40. See Anthony Lin, *Legal Outsourcing to India Is Growing, but Still Confronts Fundamental Issues*, N.Y.L.J., Jan. 23, 2008, available at <http://www.law.com/jsp/law/LawArticleFriendly.jsp?id=1200996336809>.

41. SAVITA IYER, KPO—THE NEXT BIG THING: LEGAL SERVICES NOW RIDING THE KNOWLEDGE PROCESS OFFSHORING WAVE (2006-07), available at http://www.sddglobal.com/offshoring_legal_process_lpo_kpo_india.htm.

42. *Id.*

43. *Id.*

44. See Mark Ross, *Legal Process Outsourcing (LPO): 2007 and Beyond*, IMMIGRATION DAILY, Jan. 25, 2008, available at <http://www.ilw.com/articles/2008,0125-ross.shtm> (citing VALUE NOTES, OFFSHORING LEGAL SERVICES TO INDIA—AN UPDATE (July 2007), available at <http://www.sourcingnotes.com/content/view/71/54>). A 2005 Forrester Research study came with even higher figures, estimating that \$4 billion of legal work may head to India by 2015. See Ken Wollins, *Outsourcing Legal Services Overseas: Choosing the Solution That's Best for You*, 17 A.B.A. BUS. L. TODAY 2 (2007), available at <http://www.abanet.org/buslaw/blt/2007-11-12/wollins.shtml>.

45. See Mary C. Daly & Carole Silver, *Flattening the World of Legal Services? Ethical and Liability Minefields of Offshoring Legal and Law-Related Services*, 38 GEO. J. INT'L L. 401, 407, nn.27-29 (2007).

understand places in which Indian lawyers might be competitive with U.S. lawyers.⁴⁶

Despite these impressive statistics, as Mr. Ham's article notes, legal outsourcing is in "relative infancy in the United States, and the legal ethics community has barely begun to grapple with the host of ethical ramifications involved with the use of outsourced or offshore legal support."⁴⁷ Mr. Ham's article begins with a summary of the existing state and local ethics opinions on the topic of legal outsourcing, identifies ways in which legal outsourcing is currently being used, and analyzes the ethical rules that are implicated by legal outsourcing. His article is especially useful because it includes an appendix that collects state and local bar association ethics opinions on the topic of outsourcing.

Although Mr. Ham's article discusses many of the same issues covered by Professors Daly and Silver in their analysis of legal outsourcing,⁴⁸ the infancy of the field makes it important to have multiple voices speaking to this important topic. Moreover, because Mr. Ham is a practitioner whose law office business model relies on outsourced legal services tailored to client needs, he brings a useful perspective to the literature. Mr. Ham's perspective is also grounded in his rich legal ethics experience, which includes serving as an adjunct legal ethics professor at the University of Southern California's Gould School of Law and as an equity partner in Arnold & Porter LLP, where he was a member of the firm's ethics and loss prevention committees. His current legal ethics practice focuses on litigation, State Bar disciplinary defense, conflict and disqualification avoidance, billing and partnership disputes, and unauthorized practice of law. Mr. Ham has also served on the Los Angeles County Bar Association's Professional Responsibility and Ethics Committee, including as its chair, and on the California State Bar's Standing Committee on Professional Responsibility and Conduct. In short, Mr. Ham brings to this topic years of experience analyzing ethics rules.

The fourth article in this Symposium issue, which is by Dr. Hans-Jürgen Hellwig, is entitled *At the Intersection of Legal Ethics and Globalization: International Conflicts of Law in Lawyer Regulation*.⁴⁹ This article addresses the difficult "choice of law" issue that global lawyers face. This choice of law issue is sometimes referred to as the

46. The statistics in this paragraph were originally published in Laurel S. Terry, *The Legal World is Flat*, *supra* note 4, at 537-38.

47. Ham, *supra* note 39, at 323.

48. Daly & Silver, *supra* note 45, at 402.

49. Hans-Jürgen Hellwig, *At the Intersection of Legal Ethics and Globalization: International Conflicts of Law in Lawyer Regulation*, 27 PENN ST. INT'L L. REV. 395 (2008).

“double deontology” dilemma. The problem arises because many lawyers engaged in transnational practice are obliged to comply with their home jurisdiction’s professional rules of conduct and those of the host jurisdiction. Global lawyers are able to do so if the two sets of rules have the same or similar provisions. They can even do so if the provisions are inconsistent, but not in conflict.⁵⁰ Sometimes, however, the rules from the two jurisdictions conflict, placing the global lawyer in a difficult situation.

Dr. Hellwig has been an important and knowledgeable voice in matters related to global legal practice and has been particularly active in calling for the development of policies to address the “double deontology” dilemma. His article, which identifies concrete examples of conflicting ethics rules in the areas of confidentiality and conflicts of interest, provides an important contribution to this important but nascent area. In the area of conflicts of interest, for example, he explains the different definitions for a conflict of interest that are used in Austria and Germany and provides a concrete example of how misunderstanding and disagreements can arise in a cross-border situation. He also sets forth the differing rules on imputation of conflicts to other lawyers in a law firm. In the area of confidentiality, he points to differences within Europe about whether “secrets” are limited to information learned from the client or whether they include other information.⁵¹ He also sets forth the different approaches within Europe to the issue of whether client waiver of confidentiality is permitted. He explains that while a lawyer ordinarily may follow the stricter rule, this is not always possible, noting the strict money laundering and terrorism rules found in the United Kingdom and the Netherlands. His article describes another concrete case in which a German lawyer in London went to jail for refusing to reveal information in a child abduction case; the lawyer did so in reliance on his German secrecy/confidentiality obligations. Dr. Hellwig’s article is a useful contribution to the literature because it documents concrete

50. See, e.g., Catherine A. Rogers, *The Global Advocate: From Ethical Anarchy To Discernible Duties* (Sept. 9, 2008) (Working Draft: Bocconi Legal Stud. Research Paper No. 1265410), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1265410; Laurel S. Terry, *An Introduction to the European Community’s Legal Ethics Code Part II: Applying the CCBE Code of Conduct*, 7 GEO. J. LEGAL ETHICS 345 (1993).

51. CCBE & JOHN FISH, *UPDATE OF THE EDWARD’S REPORT ON THE PROFESSIONAL SECRET, CONFIDENTIALITY AND LEGAL PROFESSIONAL PRIVILEGE IN EUROPE* (Sept. 2003), available at http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/update_edwards_repor1_1182333982.pdf; CCBE & D.A.O. EDWARD, *REPORT ON THE PROFESSIONAL SECRET, CONFIDENTIALITY AND LEGAL PROFESSIONAL PRIVILEGE IN THE NINE MEMBER STATES OF THE EUROPEAN COMMUNITY* (1976), available at http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/edward_enpdf1_1182334460.pdf.

examples of situations in which lawyers have faced real problems caused by the double deontology dilemma.

Dr. Hellwig's article is not limited to simply describing the problem, however. He reviews several potential solutions and offers his perspectives regarding the viability and desirability of these solutions. His discussion includes the "country of origin" principle that was included in an earlier draft of the 2006 Services Directive, but later removed, a proposal from the German Bar Association that would make a cross-border lawyer subject to the Host Jurisdiction's rules, and the possibility of harmonizing ethics rules in order to eliminate the double deontology dilemma.

Although Dr. Hellwig's article is pessimistic in parts and critical of the actions taken by some European bar associations and governments, he concludes that the situation is not entirely hopeless. His article refers to the ongoing efforts by the CCBE and the IBA in this area and expresses the hope that those efforts will go beyond the first phase and will result in concrete proposals which can then be adopted by the appropriate decision-making bodies.

Although Dr. Hellwig's article is relatively short, it is an important contribution to the literature because there has been relatively little published literature that offers proposed solutions to the double deontology dilemma. Dr. Hellwig has put several solutions on the table for discussion, analysis and debate. His observations about these proposals are likely to be accorded great weight because he is a recognized expert on issues related to globalization and the legal profession. In addition to his work on the double deontology issue, he has been a leader within Europe in raising consciousness about the application of the General Agreement on Trade in Services (GATS) to the legal profession. He has done so as a past president of the Council of the Bars and Law Societies of Europe (CCBE)⁵² and as the long-time chair of the CCBE's GATS Committee. As a long-standing member of the International Bar Association's WTO/GATS Working Group, he has helped the IBA formulate and adopt a number of policies relevant to global legal practice.⁵³ He has also been active within Germany and is serving or has served as Vice-President of the German Bar Association,

52. The CCBE is the officially recognized representative organization for the legal profession in the European Union, representing over 700,000 lawyers. It members are nominated by regulatory bodies of the Bar and Law Societies in the EU Member States and from Switzerland and the three member countries of the European Economic Area; it also has representatives from several Observer States. CCBE, Introduction, <http://www.ccbe.eu/index.php?id=2&L=0> (last visited Oct. 31, 2008).

53. Within the IBA, he also serves as a member of the IBA Council and on the Policy Committee of the IBA Bar Issues Commission.

in charge of all international and European matters and as the Chair of the Committee on International Matters of the Satzungsversammlung, which issues the code of conduct for lawyers in Germany. Dr. Hellwig brings to the debate not only his familiarity with the German and European rules, but his strong interest in comparative work. He is familiar with U.S. legal practices and ethics rules and was one of the first Europeans to testify before both the ABA Commission on Multidisciplinary Practice and the ABA Commission on Multijurisdictional Practice. He is a partner at Hengeler Mueller in Germany and is an Honorary Professor in European Company Law at the University of Heidelberg in Germany. In short, his wide-ranging experience makes him well-suited to recognize this problem and offer potential solutions.

The sixth article in the Symposium is by Ellen Pansky, who was one of Professor Bannier's fellow panelists on the conflicts of interest panel at the 2008 APRL Amsterdam conference. Ms. Pansky's article is entitled *Application of California's Modified Substantial Relationship Test To International Law Firm Conflict Of Interest: Creative Solution Or Can Of Worms?*⁵⁴ Ms. Pansky's article asks whether a modified substantial relationship test, which is a test that has been used in California, should be used in certain global legal practice settings. She argues that the test should be used to evaluate whether a multinational law firm should be disqualified from accepting an engagement adverse to a client of a distant branch office, where there is no proof that any attorney in the distant office actually obtained confidential information from the firm's branch in which the client matter is situated, and where the relationship between the two branch offices of the firm is peripheral or attenuated. As the predicate to this question, Ms. Pansky's article sets forth the California case law that established the "modified substantial relationship" rule and the policy arguments on which they relied.

Although Ms. Pansky's proposal goes much further than most, if not all, U.S. screening rules since it is not limited to transient lawyers,⁵⁵ her proposal undoubtedly will have many proponents. Anecdotally, I can report that a number of lawyers who work in global law firms have complained that U.S. imputation rules hinder their law practices with

54. Ellen Pansky, *Application of California's Modified Substantial Relationship Test To International Law Firm Conflict Of Interest: Creative Solution Or Can Of Worms?*, 27 PENN ST. INT'L L. REV. 403 (2008).

55. See ATTORNEYS' LIABILITY ASSURANCE SOCIETY, INC., LATERAL LAWYER SCREENING CHART 2008, reprinted in THOMAS D. MORGAN & RONALD D. ROTUNDA, 2009 SELECTED STANDARDS ON PROFESSIONAL RESPONSIBILITY 169 (2008).

little gain.⁵⁶ Support for Ms. Pansky's proposal may grow if the number of lawyers practicing in global law firms continues to increase.⁵⁷

Although Ms. Pansky's proposal (and these critiques) might strike many as inconsistent with the firm-orientation used in U.S. ethics rules, recent developments suggest that her proposal may be particularly timely and reflect ongoing changes in how the U.S. legal profession thinks about imputation. At the August 2008 ABA Annual Meeting, the ABA House of Delegates considered a proposal to amend the imputation rules found in Rule 1.10 to order to allow screening of transient lawyers.⁵⁸ The ABA House of Delegates voted, by a margin of one vote, to postpone indefinitely consideration of the resolution.⁵⁹ At the time the *Foreword* to this Symposium was written, the ABA Standing Committee on Ethics and Professional Responsibility planned to introduce proposed amendments to the Rule 1.10 at the February 2009 ABA Annual Meeting.⁶⁰ While some were completely opposed to the concept of screening for transient lawyers, others offered the so-called middle ground approach.⁶¹ This proposal is, in many respects, similar to Ms. Pansky's modified substantial relationship test.⁶²

56. See also Nancy J. Moore, *Lawyer Ethics Code Drafting In The Twenty-First Century*, 30 HOFSTRA L. REV. 923 (2002) (describing the imputation deliberations).

57. Terry et al., *Transnational Legal Practice*, *supra* note 4, at 833-34 (citing a study by Carole Silver of approximately sixty large U.S. law firms which reported that those firms support approximately 375 offices overseas, where approximately 8,000 lawyers are working; three-quarters of these lawyers are working in offices located in Europe); Terry, *U.S. Legal Ethics*, *supra* note 4, at 494-95 (citing statistics on the growth of legal services trade).

58. See Standing Committee On Ethics And Professional Responsibility, Standing Committee On Professional Discipline, Government And Public Sector Lawyers Division, Resolution 114, Resolution Regarding Imputation of Conflicts of Interest (postponed indefinitely by a vote of 192:191), *available at* <http://abajournal.com/files/114.pdf>.

59. *Id.*

60. See, e.g., Email from Robert Mundheim, Chair, ABA Standing Committee on Ethics and Professional Responsibility, to various ABA Committees (Oct. 21, 2008) (on file with author).

61. See, e.g., Memorandum of the Middle Way Committee (Elizabeth Alston, John Berry, Diane Karpman, Ronald Minkoff, Mark Tuft) to the ABA Standing Committee on Ethics and Professional Responsibility (Oct. 18, 2008) (on file with author).

62. The October 2008 version of the Middle Ground proposal stated:

(e) notwithstanding paragraph (a), and in the absence of a waiver under paragraph (c), when a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless:

the personally disqualified lawyer was not substantially involved in the matter;

the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

Ms. Pansky's proposal may gain additional traction if either the Ethics Committee's proposed revisions to Rule 1.10 or the Middle Ground Committee's proposed revisions are adopted by the ABA in February 2009. Even if those proposals are defeated, however, I predict that the debate about imputation is one that will continue for many years into the future, on both a national and global stage. Ms. Pansky's article is an important contribution to the debate by articulating precedents that might be cited in support of the relaxation of imputation rules for global law firms.

Ms. Pansky's extensive background as a legal ethics prosecutor, practitioner and commentator give her proposal added credence. Ms. Pansky began her ethics career as a prosecutor in the Office of Trial Counsel for the State Bar of California where she handled approximately 100 formal disciplinary proceedings and thousands of investigations of California attorneys. For the past twenty years, Ms. Pansky's private practice has emphasized professional liability defense, State Bar disciplinary defense, admissions decisions, ethics consultations, and expert testimony. Ms. Pansky is a past-president of the Association of Professional Responsibility Lawyers, has served as a member of Editorial Board of the ABA/BNA Lawyers' Manual on Professional Conduct, has been an active member of the Los Angeles County Bar Association's Professional Responsibility and Ethics Committee, and has served as a liaison from APRL to the ABA Standing Committee on Ethics and Professional Responsibility. She has written extensively on legal ethics, including conflicts of interest. In short, her credentials and practical experience in the legal ethics field will ensure that her proposal is given serious consideration by a number of individuals.

The seventh article in this Symposium is written by Milton Regan, who is a Professor of Law and Co-Director of the Center for the Study of the Legal Profession at Georgetown University Law Center. His article is entitled *Lawyers, Symbols, and Money: Outside Investment in Law Firms*⁶³ and follows his influential article entitled *Law Firms, Ethics, and Equity Capital: A Conversation*, which expanded the national discussion of the issue of third party investment in law firms.⁶⁴ His current article

written notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, and a statement that review may be available before a tribunal, is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this Rule.

Middle Ground Proposal (on file with author).

63. Milton C. Regan, Jr., *Lawyers, Symbols, and Money: Outside Investment in Law Firms*, 27 PENN ST. INT'L L. REV. 407 (2008).

64. Bruce McEwen, Milton Regan, Jr. & Larry Ribstein, *Law Firms, Ethics, and Equity Capital: A Conversation*, 21 GEO. J. LEGAL ETHICS 61 (2008).

focuses on the UK's adoption of the Legal Services Act of 2007, which has dramatically reshaped the regulation of the legal profession in England and Wales and has created a framework that will England and Wales to follow in the wake of Australia and allow publicly-traded law firms.⁶⁵ Professor Regan is ideally suited to comment on legal developments in general and these developments in particular. In addition to teaching courses on law firms, corporations, and ethics in corporate practice and co-authoring a book on legal ethics and corporate practice, he is the author of the well-regarded book of *Eat What You Kill: The Fall of a Wall Street Lawyer*. He was also one of the co-organizers of an April 2008 Georgetown Symposium on *The Future of the Global Law Firm* that highlighted and analyzed these U.K. developments.⁶⁶

Professor Regan's article asks whether the U.S. should follow the lead of Australia, England and Wales and allow publicly traded law firms or whether it should draw a line in the sand and insist that only lawyers may own law firms. He argues that one should think about this issue by analyzing the costs and benefits of non-lawyer owned firms and comparing those costs and benefits to the actual law firms of today, not the firms that we imagine. He argues that the time has come to have a more sophisticated discussion about the complex interplay between financial and professional demands and increase focus on the practice entity as opposed to the individual lawyer.

Professor Regan contributes greatly to what is sure to be an ongoing and exceedingly important discussion. After identifying the recent developments in Australia and the U.K., and the relevant U.S. ethics rules, his article sets forth the characteristics of the classic law partnership and the purported rationales for its existence. After presenting this background, Professor Regan documents some of the cracks in the model and explores the forces that have prompted some law firms to move away from this model. In doing so, he explores how these changes have affected law firms' ability to balance their financial goals and professional values. In the next section of his article, Professor Regan articulates concerns that have been, or might be, raised about outside investment, including client agency concerns, lawyer agency

65. In 2007, Australian personal injury law firm Slater and Gordon became the first publicly-traded law firm in the world. See SLATER & GORDON, PROSPECTUS (Apr. 13, 2007), available at <http://www.slatergordon.com.au/docs/prospectus/Prospectus.pdf>; Alexia Garamfalvi, *In a First, Law Firm Goes Public*, LEGAL TIMES, May 22, 2007, available at <http://www.law.com/jsp/article.jsp?id=1179751700602>.

66. See Georgetown University Law Center, Center For The Study Of The Legal Profession, Symposium: The Future Of The Global Law Firm (Apr. 17-18, 2008), <http://www.law.georgetown.edu/LegalProfession/> (last visited Dec. 10, 2008).

concerns and externalities. He then comments on the gains and trade-offs that might occur with publicly-traded law firms.

The final section of Professor Regan's article argues in favor of moving towards a regulated industry model for the legal profession and away from a self-regulated model. He asserts that one can recognize that law is a business without accepting the view that this nullifies its status as a profession. According to Professor Regan, this model would not threaten traditional professional values and could provide incentives and opportunities to reinforce these values. He concludes that permitting firms to obtain outside investment could represent an important symbolic step toward rethinking how the United States legal profession should be regulated and that, at a minimum, this possibility means that U.S. lawyers should follow the developments in England, Wales, and Australia with an open mind. Although some of Professor Regan's suggestions likely will prove controversial in some quarters, his article makes a significant contribution to a debate that has only just begun and that is likely to continue for years. It undoubtedly will help foster the more sophisticated dialogue that he has called for on issues of outside investment and the interplay between financial and professional demands.

The seventh article in this Symposium is jointly authored by Taru Spronken and Jan Fermon and is entitled *Protection of Attorney-Client Privilege in Europe*.⁶⁷ This article explores the issue of how attorney-client privilege is constructed, protected, and perceived in Europe. It is written by two European lawyers who have extensive academic and practice-oriented experience. Prof. Dr. Taru Spronken is Professor of Criminal Law at the Faculty of Law of the University of Maastricht and was a founder, and currently a lawyer, at the Maastricht University legal aid clinic (Advocatenpraktijk Universiteit Maastricht). She has practical as well as theoretical experience and currently serves as Chair of the Advisory Committee on Criminal Law of the Dutch Bar Association, as a member of the board of the Dutch Association of Defence Counsel, and as a Co-Chair of the Legal Development Committee of the European Criminal Bar Association. Jan Fermon, like Professor Spronken, has academic and practical experience. He has been a member of the Brussels Bar since 1989 and specializes in international, EU and Belgian criminal law, international humanitarian law, and immigration law. Since 2006, Mr. Fermon has been a Ph.D. student at the University of Maastricht and is conducting research on the protection of lawyer-client privilege in criminal proceedings. Thus, Professor Spronken and Mr.

67. Taru Spronken & Jan Fermon, *Protection of Attorney-Client Privilege in Europe*, 27 PENN ST. INT'L L. REV. 439 (2008).

Fermon are in an excellent position to provide an overview of the attorney-client privilege in Europe.

Their article begins by explaining the relationship between national and EU law with respect to the issue of privilege and identifies some of the different approaches that are used within Europe. Although many U.S. lawyers engaged in transnational practice have heard about the *AM&S* and *Akzo Nobel* cases,⁶⁸ in my experience, most U.S. lawyers who are engaged in private international law are not familiar with the lawyer privilege cases decided by the European Court of Human Rights. Because individual European countries are signatories to the European Convention on Human Rights, this case law is exceedingly important and supplements the national law on attorney-client privilege.

Professor Spronken and Mr. Fermon's article provides a thorough analysis of the European Court of Human Rights case law and is an important contribution to the body of knowledge concerning global legal practice. As their article reveals, the European Court of Human Rights has examined the question of the attorney-client privilege and whether it flows from the right to a fair trial, which is guaranteed by Article 6 of the European Convention on Human Rights, or Article 8, which provides a right to privacy. They review the European Court of Human Rights case law that has protected the privilege, as well as the existing exceptions.

Despite the favorable case law, Professor Spronken and Mr. Fermon conclude that the trend in Europe is towards erosion of the privilege (thus providing an analogy to the U.S. erosion described by Mr. Anello). They document incursions into the privilege that have taken place in Belgium, Spain, and elsewhere. They conclude by asserting the need for a common text on attorney-client privilege that would supplement national law and provide greater grounding for the European Court of Human Rights. They point to language in the American Convention on Human Rights as an example of language that could be adopted. Thus, their article not only provides useful information for those interested in learning more about the attorney-client privilege in Europe, but also provides useful suggestions for future reforms.

The final article in the Symposium is entitled *The Paradox of Professionalism: Global Law, Markets and Business*.⁶⁹ It is written by

68. Case 155/79, *AM & S v. Comm'n*, 1982 E.C.R. 1575. *Akzo Nobel* refers to two joined cases: Joined Cases T-125/03 & T-253/03, *Akzo Nobel Chems. Ltd., Akcros Chems. Ltd. v. Comm'n*, Judgment of the Court of First Instance (First Chamber, Extended Composition) of Sept. 17, 2007, available at <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-125/03>. An appeal from the October 2007 judgment of the European Court of First Instance currently is pending before the European Court of Justice.

69. Christopher J. Whelan, *The Paradox of Professionalism: Global Law Practice Means Business*, 27 PENN ST. INT'L L. REV. 465 (2008).

is by Christopher J. Whelan, who is the Associate Director of International Law Programmes at the University of Oxford and a Visiting Professor at Washington & Lee University School of Law. Professor Whelan is a long-standing commentator on global legal practice developments. Like Professor Regan, his article focuses on the 2007 UK Legal Services Act and anticipated alternative business structures, but from a very different perspective.

Professor Whelan begins his article by observing that the growth of large law firms illustrates a shift from profession to business. He contrasts the “professional” and “business” visions of legal practice and the lawyer’s role in society, explaining that the professional vision envisages an important public interest dimension to the practice of law, even at a global level, whereas the business vision recognizes that most lawyers are private practitioners offering services in a predominantly commercial context.

After exploring the regulatory maze that existed before 2007 and explaining how it reflected the unresolved business/profession dichotomy, he sets forth key provisions of the 2007 UK Legal Services Act. He concludes that the 2007 UK reforms appear to envision a future in which the practice of law is treated predominantly as a business. In doing so, he sets forth the positions of various stakeholders, including the Lord Chancellor, the bar associations and global firms, during the legislative process and the lobbying and compromises that occurred. He concludes that the new regulatory framework suggests that there is a “third way,” or new vision, of legal practice that has been created specifically—and paradoxically—with global law practice (amongst other things) in mind.

He observes that on the one hand, the U.K. reforms appear to signal an end to professionalism, the final intrusion of the marketplace into legal services, and the victory of the business vision of legal practice. But because the U.K. reforms have sought to enshrine key elements of professionalism within a market model, he concludes that England has embraced a model in which law is viewed as both a business and a profession. Professor Whelan concludes that the UK reformers have preserved professionalism not for the reasons urged by professional associations, but because they concluded that professionalism is good for business. Professor Whelan asserts that, at the international level, the beneficiaries of the reforms are not the consumers of legal services, but the law firms themselves. He concludes that the U.K. public interest, as redefined, is macroeconomic, and the legal profession has been protected to further that public interest. Thus, in the U.K. perspective of the global legal services marketplace, profession and business have become, synonymous.

As this brief description has shown, the articles in this Symposium address some of the most important current issues in global legal practice and are written by some of the most important active policy-makers and commentators in the field. The articles in this Symposium, like the articles in the 2004 Global Legal Practice Symposium,⁷⁰ undoubtedly will not be the last words on the important topics they address. But they are critically important because they bring these issues, dilemmas, and debates to a much wider audience. This is an important public service in a field where the developments fast outpace regulation and commentary. Accordingly, I would like extend my heartfelt thanks to all of the Symposium authors, to the APRL leadership, and to the editors of the *Penn State International Law Review* for making this Symposium a reality.⁷¹ I hope you will find these articles as interesting and provocative as I do.

70. The articles in the 2004 Global Legal Practice Symposium addressed global legal practice developments that continue to be important (and understudied) today, including articles about New South Wales, Australia's regime that permitted publicly-traded law firms (even though there were no such firms yet in 2004), the EU's liberal admission and multijurisdictional practice scheme, bar association involvement in GATS-legal services negotiations, U.S. rules and ethics opinions governing partnerships between foreign and local lawyers, and EU antitrust developments directed toward the legal profession, and Sarbanes-Oxley's impact on lawyers. *See supra* note 1. I expect the subjects included in the 2008 Symposium to be equally important and prescient.

71. I would like to add my great thanks to Editor-in-Chief Christopher Belen and Symposium Editor Kathryn Mason and to Susan Brotman, who was President of APRL at the time of this conference.