

# Penn State International Law Review

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Volume 22  
Number 4 *Penn State International Law Review*

Article 2

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5-1-2004

## Foreword

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### Recommended Citation

Laurel S. Terry, *Foreword*, 22 *Penn St. Int'l L. Rev.* 527 (2004).

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# Symposium

## Foreword

Laurel S. Terry\*

It is my *very* great pleasure to write the *Foreword* to the *Global Legal Practice Symposium Issue* of the Penn State International Law Review. This *Global Legal Practice Symposium* is based on the *Global Forum on International Legal Ethics and Risk Management Legal Practice* that was jointly sponsored by the Association of Professional Responsibility Lawyers (APRL) and the University of Oxford. The APRL/Oxford *Global Forum* was held in Florence, Italy in October 2002. The conference focused on both practical and theoretical problems facing lawyers engaged in international law practice and brought together some of the leading policy makers and opinion-leaders in the world on issues related to international legal practice.

There can be little doubt that lawyers around the world *are* engaged in international law practice. The *Symposium* article by Mr. Harrison and Ms. Davidson provides statistics that illustrate, from a U.S.-perspective, the dramatic increase in global legal practice. They cite, for example, a 2003 survey that shows that 105 of the 250 largest law firms in the U.S. now have foreign offices.<sup>1</sup> They also observe that the U.S.

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1. Mark Harrison and Mary Gray Davidson, *The Ethical Implications of Partnerships and Other Associations Involving American and Foreign Lawyers*, 22 PENN STATE INT'L L. REV. 642, at n.15 (2004).

exports of legal services are two and one half times what they were a decade ago and that imports have doubled in the past decade.<sup>2</sup>

This growth in global legal practice is not limited to U.S. lawyers and legal services. For example, in a recent analysis of legal services, the OECD reported that:

The UK exported legal services worth GBP 1.838 billion in 2002, roughly equivalent to the UK exports of communications services, an almost 100% rise in legal services exports since 1997. Trade in legal services has also been significantly growing in other countries. Hong Kong, China's exports of legal services, for example, amounted to HKD 817 million (USD 105 million) in 2001, a sharp increase of 87% from 2000. Similarly, Australian exports of legal services have grown from AUD 74 million in 1987/88 to about AUD 250 million in 2000/01.<sup>3</sup>

The ten largest law firms in the world each have foreign branch offices and more than 1500 lawyers; in six of these ten firms, more than fifty percent of their lawyers work in a country other than the home country of the law firm.<sup>4</sup> Five of the ten largest law firms are U.K. firms and five are U.S. firms.<sup>5</sup>

What is the explanation for this dramatic increase in international legal work? Part of the explanation must lie in the significant amount of international trade in goods and services. Using the U.S. as an example, in 2003, U.S. jurisdictions exported \$724 billion in merchandise.<sup>6</sup> Although it is difficult to obtain a precise measure of imports to the U.S., it is useful to look at the U.S. Bureau of Economic Affairs' statistics about the dollar value of the gross property, plant, and equipment of U.S. affiliates (i.e. subsidiaries) of companies that are either majority owned by foreign companies or individuals. In 2002, this was \$1.18 trillion.<sup>7</sup> In

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2. *Id.* at nn.3-4.

3. WTO Council for Specific Commitments, Paper By The Organization For Economic Co-operation and Development (OECD), Managing Request-Offer Negotiations under the GATS: The Case of Legal Services, Job 04/77 (June 2004) at ¶ 11, available at [http://www.oelis.oecd.org/olis/2003doc.nsf/43bb6130e5e86e5fc12569fa005d004c/39cd178d21ec94eec1256eb3003931c7/\\$FILE/JT00166062.DOC](http://www.oelis.oecd.org/olis/2003doc.nsf/43bb6130e5e86e5fc12569fa005d004c/39cd178d21ec94eec1256eb3003931c7/$FILE/JT00166062.DOC) (last visited Nov. 1, 2004).

4. See *The Global 100—Most Lawyers*, AMERICAN LAWYER, at p.121 (Nov. 2004).

5. *Id.*

6. U.S. Dept. of Commerce, International Trade Administration, Office of Trade and Economic Analysis, *Table: State Merchandise Export Totals to the World, 1999-2003 (Millions of Dollars) Ranked by 2003 Dollar Value*, available at [http://ita.doc.gov/td/industry/otea/state/state\\_dollar\\_value\\_03.html](http://ita.doc.gov/td/industry/otea/state/state_dollar_value_03.html) (last visited Nov. 1, 2004).

7. U.S. Bureau of Economic Affairs, *Gross Property, Plant, and Equipment of Nonbank U.S. Affiliates, by State, 1999-2002*, available at [http://www.bea.doc.gov/bea/di/fdiop/all\\_gross\\_ppe.xls](http://www.bea.doc.gov/bea/di/fdiop/all_gross_ppe.xls) (last visited Nov. 1, 2004).

short, there are a number of clients importing or exporting goods and services around the world; many of these clients undoubtedly need international lawyers.

Historically, however, the theory and regulation of global legal practice has lagged behind the reality of this international trade in legal services. Many countries, including the U.S., provide relatively little guidance to lawyers about how to resolve differences in ethics rules. Many countries, including the U.S., do not have an admissions or regulatory framework that uniformly permits international lawyers to represent their clients when their clients cross borders.

Practicing lawyers and bar associations have led the efforts to develop the theory and regulation to match the reality of this legal practice. For the most part, it has been the practicing lawyers and bar officials, rather than academics, who have debated theories and pushed for practical developments. I am extremely pleased that this *Global Legal Practice Symposium* includes contributions from those practicing lawyers and bar officials who have been among the most active in developing global legal practice policies.

As an academic who studies global legal practice issues, one of my frustrations is that sometimes these debates and developments do not make it into the public arena so that academics can also contribute to the discussion and analysis.<sup>8</sup> This is one of the reasons why I am particularly pleased to have the *Penn State International Law Review* publish this *Global Legal Practice Symposium*. Many of the authors whose articles appear in this *Symposium* are actively engaged in developing and implementing policies related to global legal practice, but do not regularly contribute to academic journals. These authors' contributions to this *Global Legal Practice Symposium* are extremely important because these articles share with a larger audience the important issues that were addressed during the 2002 APRL/Oxford *Global Forum*. I thank all of these authors for their contributions of time and effort and for their willingness to prepare these articles.

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8. Several of my articles, for example, memorialize important global legal practice developments that were not documented elsewhere. See, e.g., Laurel S. Terry, *An Introduction to the Paris Forum on Transnational Practice for the Legal Profession*, 18 DICK. J. INT'L L. 1 (1999) (introducing the *Paris Forum Symposium*, which reproduced the *Forum papers*); Laurel S. Terry, *A Case Study of the Hybrid Model for Facilitating Cross-Border Legal Practice: The Agreement Between the American Bar Association and the Brussels Bars*, 21 FORDHAM INT'L L.J. 1382 (1998) (including as an appendix the ABA-Brussels Bars Agreement); Laurel S. Terry, *An Introduction to the European Community's Legal Ethics Code Part I: An Analysis of the CCBE Code of Conduct*, 7 GEO. J. LEGAL ETHICS 1 (1993) (including as appendices the CCBE Code of Conduct and Explanatory Memorandum). All of these articles are available on my webpage at <http://www.personal.psu.edu/faculty/l/s/lst3/publications%20by%20topic.htm#3> (last visited Nov. 1, 2004).

Charles W. Kettlewell, the former president of APRL and one of the organizers of the 2002 APRL/Oxford *Global Forum*, has written the *Introduction* to this *Symposium*. Mr. Kettlewell's *Introduction* explains the inspiration for the *Forum*. His *Introduction* also illustrates the timeliness of pervasiveness of ethics issues. Judged from one perspective, Mr. Kettlewell might be one of the last people one might have expected to organize the APRL/Oxford *Global Forum*. Mr. Kettlewell practices in a small law office in the middle of America—Columbus, Ohio. His practice focuses on representing U.S. lawyers in Ohio and elsewhere on ethics and disciplinary matters, including preventative advisory opinions and risk management issues, although he also assists lawyers educated in other countries with admissions-related issues. But Mr. Kettlewell has been one of the leaders in the U.S. in focusing attention on ethical issues related to international law practice. Mr. Kettlewell was the 2003 recipient of the ABA's prestigious Michael Franck award and is described as follows on the ABA's award website:

Founder and first President of the Association of Professional Responsibility Lawyers (APRL), Kettlewell was instrumental in establishing a national and international forum for lawyers concerned about professional responsibility issues. Kettlewell also served as President of the National Organization of Bar Counsel and has been a leader in American Bar Associations activities related to professional responsibility. He has served as a member of the ABA Standing Committees on Professional Discipline and Lawyer Responsibility for Client Protection; ABA Commission on the Evaluation of Disciplinary Enforcement (the "McKay Commission"); ABA Joint Committee on Professional Sanctions; and ABA/BNA Lawyers' Manual on Professional Conduct. A former Assistant Disciplinary Counsel in Ohio, Kettlewell has authored more than 1600 advisory opinions for lawyers and has served as a consultant and testifying expert on nearly 200 malpractice cases.<sup>9</sup>

Mr. Kettlewell's *Introduction* to this *Global Legal Practice Symposium Issue* explains the events and thinking that led to the organization of the 2002 APRL/Oxford *Global Forum*.

Following the *Introduction*, the articles in this *Symposium* appear in alphabetical order. The first article, which was written by Robert Anello, is entitled *Sarbanes-Oxley's Wake Up Call to Attorneys*. Mr. Anello writes from the perspective of a practitioner who is an expert in both legal ethics and white collar crime. He is the past chair of the Committee

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9. American Bar Association Center for Professional Responsibility, Michael Franck Award Recipient Biographies, available at [http://www.abanet.org/cpr/mfranck\\_winner\\_bios.html#kettlewell](http://www.abanet.org/cpr/mfranck_winner_bios.html#kettlewell) (last visited Nov. 1, 2004).

on Professional Responsibility for the Association of the Bar of the City of New York and writes the White Collar Crime Column for the *New York Law Journal*. He brings to his article the perspective of a lawyer who regularly defends both lawyers and accountants.

Mr. Anello's article provides insight into the very different treatment of lawyers and accountants in the 2002 Sarbanes-Oxley legislation. His article begins with a detailed analysis of the accounting profession's history of regulation. Mr. Anello concludes that Congress' relatively light treatment of lawyers, in comparison to its micromanagement of the accounting profession, is attributable to the lack of effective self-regulation by the accounting profession in comparison to the many successful self-monitoring and discipline systems established by and within the legal profession. Mr. Anello's article also issues a cautionary note to the legal profession, suggesting that the reforms contained in the Sarbanes-Oxley legislation provide guidance to the legal profession to ensure that it remains a robust profession, able to protect and champion clients' rights. His article should be of interest to lawyers around the world who are interested in studying how and why self-regulation might fail.

The second article in the *Symposium*, which is written by Wayne Carroll, is entitled *Liberalization of National Legal Admissions Requirements in the European Union: Lessons and Implications*. Mr. Carroll brings an important perspective to the *Global Legal Practice Symposium*. He is a U.S. citizen and lawyer, who later qualified as a solicitor in the U.K. He currently practices in the Central Risk Management department of PricewaterhouseCoopers Deutsche Revision AG in Frankfurt, Germany, dealing primarily with international securities regulation and the professional responsibility rules applicable to lawyers and accountants. Mr. Carroll is the plaintiff in a lawsuit in which he seeks admission to the bar in Germany based on various bilateral U.S.-German treaties.<sup>10</sup>

Mr. Carroll's article discusses the traditional path to legal professions in the European Union, including the European Union directives that served as legislative milestones, and the internal impact and challenges of European liberalization. He then analyzes the lessons and implications of European liberalization for those outside of Europe. He concludes that the opening of alternative paths to admission has implications for the legal professions worldwide. Mr. Carroll's article is important in several respects. First, it provides useful new data about the EU's experience with, and implementation of, its directives affecting

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10. See Wayne J. Carroll, *Innocents Abroad: Opportunities and Challenges for the International Legal Adviser*, 34 VAND. J. TRANSNAT'L L. 1097, 1124-25 (2001).

lawyers. In this respect, his article builds on the ground-breaking work by authors such as Fordham Professor Roger Goebel.<sup>11</sup> Although Mr. Carroll has a personal interest in the issues about which he writes, his article provides a framework for analysis by referring to the historical developments in the EU (as a prime example of what is possible despite substantial obstacles), pointing out inconsistent approaches despite common legal principles, and addressing the “wildcard” issue of the effect of bilateral treaties on the analysis. In sum, his article demonstrates the challenges and opportunities with respect to global legal practice regulation.

The third article, which is written by Jonathan Goldsmith, is entitled *Global Legal Practice and GATS: A Bar Viewpoint*. Jonathan Goldsmith is the Secretary General of the Council of Bars and Law Societies of the European Union (the CCBE), which represents more than 700,000 European lawyers. Mr. Goldsmith has extensive experience involving global legal practice issues; in addition to serving as Secretary-General of the CCBE, he was the Director, International, of the Law Society of England and Wales from 1995-2001. This division was responsible for promoting the interests of U.K. solicitors abroad.

Because of the number of lawyers it represents, the CCBE currently is one of the most important entities in the world with respect to issues related to the legal profession. Since Mr. Goldsmith became Secretary-General of the CCBE in January 2002, the CCBE has taken a more active and public role in advocating policies related to the legal profession.<sup>12</sup> His article provides an inside look at how global legal practice policies are developed. It begins with a useful description of the different types of bar associations in the world and their differing functions. The article continues by explaining how and why all of these different kinds of bar associations have an interest in the ongoing negotiations regarding the General Agreement on Trade in Services or GATS.<sup>13</sup> The GATS has

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11. See, e.g., Roger J. Goebel, *Liberalization of Interstate Legal Practice in the EU: Lessons for the US?* 34 INT'L. LAWYER 307 (2000); Roger J. Goebel, *Lawyers in the European Community: Progress Towards Community-Wide Rights of Practice*, 15 FORDHAM INT'L L.J. 556 (1991-92).

12. See, e.g., CCBE Documents, available at [http://www.ccbe.org/en/documents/positions\\_en.htm](http://www.ccbe.org/en/documents/positions_en.htm) (last visited Nov. 1, 2004). In my experience, in the past, it was much more difficult to locate CCBE documents.

13. The GATS is Annex 1b to the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations: General Agreement on Trade in Services, 33 I.L.M. 1125, 1168 (1994), also available at *World Trade Organization Legal Texts*, [http://www.wto.org/english/docs\\_e/legal\\_e/final\\_e.htm](http://www.wto.org/english/docs_e/legal_e/final_e.htm) (last visited Oct. 21, 2004). The GATS was the first world trade agreement to include services within its scope. For a discussion of the GATS' relation to legal services, see Sydney M. Cone, III, *Legal Services in the Doha Round*, 37 J. OF WORLD TRADE 29 (2003) [hereinafter Cone]; *GATS: A Handbook for International Bar Association Member Bars* [hereinafter IBA GATS

been signed by over 160 countries which are World Trade Organization members and was the first world trade agreement to apply not to goods, but to services. Mr. Goldsmith's article identifies issues of interests to bars in each of the four "modes of supply" covered by the GATS. His article thus helps lawyers and bars correlate their concerns to the GATS framework. His article also provides very useful suggestions about how bars can implement their policies through the GATS process. He identifies the concrete steps that the CCBE has taken in this regard. Many bar associations—including the American Bar Association—would do well to consider his suggestions.

The fourth article in this Symposium is entitled *The Ethical Implications of Partnerships and Other Associations Involving American and Foreign Lawyers*. This article addresses the impact of globalization on legal services and the ethical issues raised by the phenomenon in which U.S. and non-U.S. lawyers form partnerships and other associations. As the statistics in this article reveal, these partnerships and associations are on the rise. This article analyzes ABA Formal Opinion 2001-423 and its implications; this Formal Opinion directly addressed the issue of partnerships between U.S. and non-U.S. lawyers. This article also identifies other ethics issues that are implicated when U.S. lawyers form partnerships or practice law in foreign countries. These issues include principles of conflicts, confidentiality, attorney-client privilege, and competence—the identification provides the basis for further work on these critical global legal practice issues.

The authors of this article are Mark Harrison and Mary Gray Davidson. Mr. Harrison and Ms. Davidson practice in Phoenix, Arizona, which might not immediately strike readers as an international law center. Ms. Davidson, however, practices with the law firm of Bryan Cave, which was founded in St. Louis in 1873. Ms. Davidson's law firm is ranked among the 35 largest firms in the world, has had an international office for almost twenty-five years (which is longer than it has had a Phoenix law office), and currently has six offices outside the U.S., which are located in Europe, Asia and the Middle East. Ms. Davidson and her firm have to deal, as a very practical matter, with the ethical issues related to having foreign lawyers as partners.

Ms. Davidson's co-author, Mark Harrison, exemplifies both the deep expertise in legal ethics that practitioners bring to the table and the

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Handbook]; Laurel S. Terry, *GATS' Applicability to Transnational Lawyers and its Potential Impact on Domestic Regulation of U.S. Lawyers*, 34 VAND. J. TRANSNAT'L L. 989 (2001) as revised 35 VAND. J. TRANSNAT'L L. 1387 (2002) [hereinafter Terry]. These articles are available on the American Bar Association GATS Webpage, available at <http://www.abanet.org/cpr/gats/articles.html> (last visited Oct. 24, 2004) (containing links to Cone, GATS, and Terry, *supra*).



important role of practitioners as policy-makers. Mr. Harrison, who previously practiced with Bryan Cave, currently practices with Osborn Maledon in Phoenix. Among other things, Mr. Harrison has served as president of APRL, served on the first editorial board of the *ABA/BNA Lawyers' Manual on Professional Conduct*, was on the Members' Consultative Group for the American Law Institute *Restatement of the Law Governing Lawyers*, and currently chairs the ABA's Commission to revise the Code of Judicial Conduct. Most importantly for this article, however, Mr. Harrison served on the ABA Standing Committee on Ethics and Professional Responsibility (1999-2002) that drafted ABA Formal Opinion 01-423, which addressed the association of U.S. and foreign lawyers. Thus, it is particularly gratifying to have him co-author an article about ABA Formal Opinion 01-423 and offer his insights into the Committee's reasoning and concerns.

The fifth article in this *Symposium*, which is written by Hans-Jürgen Hellwig, is entitled *Challenges to the Legal Profession in Europe*. Dr. Hellwig has been a very important voice in policy matters related to global legal practice; he brings to this article his deep experience and expertise in matters related to the German and European legal professions. Dr. Hellwig currently serves as Chair of the CCBE GATS committee and has been active in encouraging the CCBE to develop policies to address "double deontology" issues, when lawyers are subject to multiple and sometimes conflicting ethics rules. During 2003, he served as First Vice-President and during 2004, he served as President of the CCBE. Within Germany, Dr. Hellwig serves on the Board of the German Bar Association (DAV) and served as Vice-President of the DAV from 1994-2002, with responsibility for all European and international issues. He also serves as Chair of the Committee on International Matters of the Satzungsversammlung, which issues the code of conduct for lawyers in Germany, among other things. Dr. Hellwig was one of the first Europeans to offer testimony to the American Bar Association on ethics issues that have cross-border implications: he testified before both the ABA Commission on Multidisciplinary Practice and the ABA Commission on Multijurisdictional Practice. Dr. Hellwig also is active in international organizations; he is a member of the International Bar Association's WTO Working Group and been influential in the development of the IBA's policies regarding the GATS.

Dr. Hellwig has had a front row seat from which to observe both the practical developments affecting international lawyers and the resulting regulatory responses. His article describes two very recent and important developments that will affect European lawyers and that could reflect a trend that ultimately will affect all international lawyers. The first development he describes is the interest in the legal profession that has

been shown by competition (antitrust) authorities in various European Union countries and by the European Union Commission. Dr. Hellwig describes the events and developments that led to the February 2004 EU Commission *Report on Competition in Professional Services*.<sup>14</sup> This Report called for the abolition of unjustified restrictions on competition in professional services and identified several legal services regulations that should be examined and revised by EU Member States. Because of his role in the CCBE, Dr. Hellwig contributed information that is not generally publicly available, such as the fact that competition authorities in Denmark, Finland, Ireland, the Netherlands, Spain and Norway have criticized many provisions of professional regulation, including the bans on contingency fees.

The second part of Dr. Hellwig's article contrasts the previously-described efforts underway in the EU Commission, DG Competition, with the developments that have occurred in the EU Commission, DG Internal Market. Dr. Hellwig explains the importance of the proposed *Directive on Services in the Internal Market*, which was prepared by the EU Commission, DG Internal Market.<sup>15</sup> Dr. Hellwig's comparison includes a discussion of the different responses to the European Court of Justice case *Wouters v. NOVA*.<sup>16</sup>

As Dr. Hellwig describes, the proposed *Directive on Services in the Internal Market* has the potential to significantly affect the regulation of lawyers in the EU. Among other things, it would require EU countries to develop a more harmonized code of ethics. His article identifies those areas in the proposed *Directive* from which the legal profession has been exempted and calls upon the European legal profession to carefully consider whether they want an exemption. His article also provides insight into the CCBE's response to these developments. Thus, Dr. Hellwig's contribution to the *Global Legal Practice Symposium* is important not just because of its focus on these critical new developments, which may reflect trends that will appear elsewhere, but because of his expertise and insights about the reaction of the European legal profession to these developments.

The sixth article in this *Global Legal Practice Symposium* comes

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14. European Commission Communication—Report on Competition in Professional Services, COM (2004) 83 final (Feb. 9, 2004) available at [http://europa.eu.int/comm/competition/liberal\\_professions/final\\_communication\\_en.pdf](http://europa.eu.int/comm/competition/liberal_professions/final_communication_en.pdf) (last visited Nov. 4, 2004). I hope to spend my next sabbatical studying this Report.

15. Proposal for a Directive of the European Parliament and of the Council on Services in the Internal Market, COM (2004) 2 final/3, (Jan. 13, 2004).

16. ECJ Judgment, Case C-309/99 (Feb. 19, 2002), 2002 ECJ CELEX LEXIS 186. For a discussion of the *Wouters* case, see Laurel S. Terry, MDPs, "Spinning," and *Wouters v. Nova*, 52 CASE W. RES. L. REV. 867 (2002) available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=596206](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=596206) (last visited Nov. 5, 2004).

from the other side of the globe—Australia. This article is written by Steven Mark and Georgina Cowdroy and is entitled *Incorporated Legal Practices—A New Era in the Provision of Legal Services in the State of New South Wales*. New South Wales, Australia is extremely important from a global legal practice perspective because it has been among the first jurisdictions to change various practice rules for lawyers.<sup>17</sup> Since July 1, 2001, New South Wales lawyers have been permitted to incorporate and provide legal services to clients either alone, or alongside other service providers who may, or may not be, “legal practitioners.” Moreover, New South Wales’ incorporated law practices are now permitted to sell shares in their incorporated legal practice. I am not aware of any jurisdiction, other than Australia, that has comparable legislation. This article reports that approximately 300 firms have become Incorporated Legal Practices, but to date, no Incorporated Legal Practice is publicly listed on the Australian Stock Exchange. The authors report, however, that several Incorporated Legal Practices are contemplating becoming public companies. If and when this happens, it will represent an important milestone in the global legal services market.

As the article explains, Incorporated Legal Practices can operate provided the Incorporated Legal Practice has at least one “solicitor director” and complies with various other requirements that are described in Mr. Mark and Ms. Cowdroy’s article. One of the interesting things about this article is that it provides a look at some of the behind-the-scenes thinking and policy issues related to the development of this ground-breaking legislation.

The new legislation assigns to the New South Wales Office of the Legal Services Commissioner the responsibility for auditing incorporated legal practices to insure their compliance with the relevant rules. This legislation requires the lawyer director to ensure that “appropriate management systems” are implemented and maintained; it is the Office of Legal Services Commissioner that determines what constitutes an appropriate management system.<sup>18</sup> Thus, the New South Wales Office of the Legal Services Commissioner must carve new ground in the world of global legal practice when it determines what constitutes “appropriate management systems.” This article summarizes the work performed by

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17. See Steven Mark, *Harmonization or Homogenization? The Globalization of Law and Legal Ethics—An Australian Viewpoint*, 34 VAND. J. TRANSNAT’L LAW, 1206, 1173-1207 (2001); Laurel S. Terry, *A Primer on MDPs: Should the “No” Rule Become a New Rule?*, 72 TEMPLE L. REV. 869, 883-885 (1999), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=596208](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=596208) (last visited Nov. 2, 2004).

18. Office of the Legal Commissioner, New South Wales—Incorporated Legal Practices, available at <http://www.lawlink.nsw.gov.au/olscl.nsf/pages/incorporation> (last visited Nov. 2, 2004).

the Office of the Legal Services Commission, in collaboration with the Law Society, the New South Wales College of Law, and a professional indemnity insurance company to develop such management systems. The article also explains the efforts undertaken to educate solicitor-directors about their duties and obligations.

In addition to working with the Incorporated Legal Services Act, the Office of the Legal Services Commissioner oversees and participates in a co-regulatory disciplinary system with the Law Society of New South Wales (the solicitors' professional body), the New South Wales Bar Association (the barristers' professional body) and the Department of Fair Trading (licensed conveyancers' professional body). The OLSC is a statutory body independent from the legal profession. The Legal Services Commissioner reports to Parliament through the Attorney General.<sup>19</sup>

I am very honored to have this article included in the *Global Legal Practice Symposium* because Mr. Mark serves as the first Legal Services Commissioner for New South Wales and Ms. Cowdroy is the Senior Legal & Policy Officer in the Office of the Legal Services Commissioner. Because they and their Office have been responsible for implementing and enforcing the provisions of the Incorporated Practices Act, they bring a unique and extremely valuable perspective to this article about a ground-breaking development.

I have contributed the final article to this *Global Legal Practice Symposium*; my article is entitled *Lawyers, GATS, and the WTO Accountancy Disciplines: The History of the WTO's Consultation, the IBA GATS Forum and the September 2003 IBA Resolutions*. This article, like Jonathan Goldsmith's article, addresses issues related to legal services and the General Agreement on Trade in Services or GATS. This article addresses the so-called "Track #2" of the GATS.<sup>20</sup>

GATS Track #2 concerns GATS Article VI:4, which required WTO Member States to develop "any necessary disciplines":

With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in

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19. All of the statements in this paragraph are found in Office of the Legal Services Commissioner, New South Wales, Australia, About Us, available at <http://www.lawlink.nsw.gov.au/olsc1.nsf/pages/olscwhatwedoinde> (last visited Nov. 2, 2004). This Office was established with bi-partisan support as a result of a report in February 1993 by the NSW Law Reform Commission *Scrutiny of the Legal Profession—Complaints Against Lawyers, Report 70*.

20. For a discussion of the GATS' application to legal services, and Track #1 and Track #2 of the GATS, see the IBA GATS Handbook, *supra* note 14; the "Track 2" page of the ABA GATS Webpage, available at [http://www.abanet.org/cpr/gats/track\\_two.html](http://www.abanet.org/cpr/gats/track_two.html) (last visited Oct. 24, 2004).

services, the Council for Trade in Services shall, through appropriate bodies it may establish, develop any necessary disciplines.<sup>21</sup>

In 1998, WTO Members implemented GATS Article VI:4 by adopting "Disciplines" that apply to the accountancy sector.<sup>22</sup> WTO Members currently are in the process of deciding whether to extend these "Accountancy Disciplines" to other service sectors, including legal services. In December 2002, the WTO sent the International Bar Association and other non-governmental organizations a "consultation letter" requesting their views about any changes that would be needed in the *WTO Accountancy Disciplines* if the Disciplines were to be applied to legal services. The IBA responded to this consultation with the May 2003 *IBA GATS Forum* held in Brussels. This day-long *Forum* addressed two issues, one of which was WTO's consultation about the *Accountancy Disciplines*. Following the IBA GATS Forum, the IBA Council unanimously adopted a resolution that specified the IBA's recommended changes to the *Accountancy Disciplines*. In December 2003, the IBA transmitted its resolution to the WTO; in March 2004, the IBA thereafter was invited to participate in a WTO Workshop for its member states that was devoted to these issues.<sup>23</sup>

My article describes the events before, during, and after the IBA GATS Forum. It provides a legislative history of the adoption of the *IBA Resolution Regarding the Suitability of Applying the WTO Accountancy Disciplines to the Legal Profession*. I am very pleased that the IBA has given me permission to include as appendices to documents related to the *IBA GATS Forum* and subsequent *IBA Resolution*. The inclusion of these items will allow future scholars and interested parties to better understand and comment on these events and policies.<sup>24</sup>

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21. See GATS, *supra* note 14, at Art. VI:4. For additional information about the "Disciplines" issue, see the "Track 2" page of the ABA GATS Webpage, *supra* note 21; Laurel S. Terry, *But What Will the Accountancy Disciplines Apply To? Distinguishing Among Market Access, National Treatment and Article VI:4 Measures When Applying the GATS to Legal Services*, 2003 Symposium, PROFESSIONAL LAWYER 83 (2004); and Terry, *supra* note 14, at 1042, 1047-49.

22. *Decision on Disciplines Relating to the Accountancy Sector, Adopted by the Council for Trade in Services on Dec. 14, 1998 (S/L/63)* (Dec. 15, 1998) (adopting *Disciplines on Domestic Regulation for the Accountancy Sector Adopted by the Council for Trade in Services on 14 December 1998, S/L/64* (Dec. 17 1998) [hereinafter *Accountancy Disciplines*].

23. See WTO Workshop on Domestic Regulation, March 29-30, 2004, available at [http://www.wto.org/english/tratop\\_e/serv\\_e/workshop\\_march04\\_e/workshop\\_programme\\_march04\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/workshop_march04_e/workshop_programme_march04_e.htm) (last visited Nov. 6, 2004).

24. In 1999, this journal's predecessor published the *Symposium: Paris Forum on Transnational Practice for the Legal Profession*; the *Paris Forum Symposium* issue included the bar association papers prepared for the November 1998 *Paris Forum*. Subsequent articles have discussed the *Paris Forum* papers and policies. See, e.g., Comment, *The Complex Web Of Conflicting Disciplinary Standards In International*

In conclusion, I am very pleased to have had the opportunity to write the *Foreword* for this *Global Legal Practice Symposium*. This *Symposium* includes articles about some of the most important current issues in global legal practice written by some of the most important policy-makers and commentators in the field. I am honored that they have agreed to contribute to this *Symposium* and I thank them for their efforts. I hope you will find these articles as interesting and provocative as I do.

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*Litigation*, 38 TEX. INT'L L.J. 815 (2003) (includes an entire section on the *Paris Forum*); Karel Ourednik IV, *Multidisciplinary Practice And Professional Responsibility After Enron*, 4 FLA. COASTAL L.J. 167, nn.91-94 (2003) (citing the paper of the Law Council of Australia); Catherine A. Rogers, *Fit And Function In Legal Ethics: Developing A Code Of Conduct For International Arbitration*, 23 MICH. J. INT'L L. 341, at n.17 (2002) (citing to subjects addressed at the Paris Forum); John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach To Regulating The Delivery Of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, at n.158 (2000) (citing the Paris Forum paper submitted by the ABA Section of International Law and Practice).

