

## Transnational Legal Practice

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### I. Introduction

At its core, transnational legal practice (TLP) is concerned with crossing borders. This may involve an individual lawyer or client moving into a space occupied by existing economic and regulatory activity, or it may involve actors from several jurisdictions coming together to create a new framework for their joint enterprise. We can think about border-crossing as involving the work of individual lawyers in providing advice, the structure of the organizations with and within which these lawyers practice, the clients they serve, and even the advice itself. Regulators and policy-makers also increasingly have the opportunity to cross borders by participating in networks that bring together actors with different jurisdictional, regulatory, or experiential frameworks. Meeting points and connective relationships are where the action is in TLP.

Growth in TLP is demonstrated by the annual statistics on international trade in legal services. In 2013, the United States exported more than nine trillion dollars in legal services, with an increase of almost \$800 billion over 2012.<sup>1</sup> The United States imported almost two trillion dollars in legal services in 2013.<sup>2</sup> The continued growth in international legal services provides an explanation for some recent market developments. For example, in a recent report, Georgetown Law's Center for the Study of the Legal Profession reported that 96 global cross-border law firm mergers were announced in 2012 and 56 U.S. law firms opened a new foreign office in 2012.<sup>3</sup> The American Lawyer's 2014

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1. See U.S. Bur. Econ. Affairs, Table 2.1. U.S. Trade in Services, by Type of Service [Millions of dollars], Oct. 24, 2014, <http://www.bea.gov/iTable/iTable.cfm?ReqID=62&step=1#reqid=62&step=6&isuri=1&6210=4&6200=160>. With the exception of declines in 2009 and 2010, U.S. legal services exports have gone up every year since 2006. *Id.* (showing exports, in millions, of \$5,256 (2006); \$6,400 (2007); \$7,317 (2008); \$7,256 (2009); \$7,247 (2010); \$7,704 (2011); \$8,379 (2012); and \$9,177 (2013)).

2. *Id.* (showing imports, in millions, of \$1,223 (2006); \$1,536 (2007); \$1,918 (2008); \$1,639 (2009); \$1,537 (2010); 1,943 (2011); \$2,050 (2012); and \$1,995 (2013)).

3. Georgetown Law, Center for the Study of the Legal Profession, *2013 Report of the State of the Legal Market* at 8, available at <http://www.law.georgetown.edu/continuing-legal-education/executive-education/upload/2013-report.pdf>. (The 2014 Report did not contain similar information about globalization. See generally Georgetown Law, Center for the Study of the Legal Profession, *2014 Report of the State of the Legal*

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Global 100 issue reported that more than 25,000 lawyers from the AmLaw 200 practiced in seventy countries.<sup>4</sup>

Despite the rise in exports of U.S. legal services and expansion of U.S. market participants, however, it is clear that U.S. law firms face increasing pressure from multiple sources. For example, the American Lawyer's 2014 Global 100 issue shows that when measured by head count, U.S. firms no longer dominate this list.<sup>5</sup>

Moreover, U.S. lawyers and firms face competition not only from law firms outside the United States, but from other types of competitors. Although the U.S. International Trade Commission's 2014 annual report, "Recent Trends in U.S. Services Trade," did not include a chapter specifically devoted to legal services, its discussion of electronic services noted the profound impact that technology has had on legal services and the increased competition that legal services face.<sup>6</sup> Georgetown's 2014 Report on the State of the Legal Market confirms this competition, noting, for example, as "clients continued to push back on rate increases, keeping pressure on the realization rates that firms were able to achieve."<sup>7</sup> In 2013, the U.S. International Trade Commission concluded that "[i]n the legal services industry, price competition and pressure from nontraditional providers will likely require consolidation in the U.S. industry, motivating firms to follow their clients into high-growth markets abroad."<sup>8</sup> The American Bar Association indicated its serious consideration of this movement by creating in August 2014 a new Commission on the Delivery of Legal Services, which will address, among other things, alternative models for delivery of legal services.<sup>9</sup> Moreover, according to the ABA, nearly a half billion dollars has been invested in legal startups as of 2013 with even more investment expected in 2014. Many of these start-ups seek to develop alternative models of delivering legal services.<sup>10</sup> Innovation in the legal services industry also was the focus of a conference organized by Harvard's Center on the Legal Profession in the spring of 2014. The Center since has announced an ongoing project to examine forces of disruption in the legal services market.<sup>11</sup>

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*Market*, available at [https://peermonitor.thomsonreuters.com/wp-content/uploads/2014/01/2014\\_PM\\_GT\\_Report.pdf](https://peermonitor.thomsonreuters.com/wp-content/uploads/2014/01/2014_PM_GT_Report.pdf).)

4. See *Outward Bound*, AMERICAN LAWYER 67 (Oct. 2014, the Global 100 issue).

5. See *id.*

6. See U.S. International Trade Commission, *Recent Trends in U.S. Services Trade: 2014 Annual Report*, Inv. No. 332-345, USITC Pub. 4463 (May 2014) (Final) at 11, 34, <http://www.usitc.gov/publications/332/pub4463.pdf> ("For example, consumers no longer need to visit law offices to obtain many generic legal services; they can now access legal software programs electronically and create personalized legal documents such as contracts and wills at much lower prices.")

7. See 2014 Georgetown Report, *supra* note 3.

8. See U.S. International Trade Commission, *Recent Trends in U.S. Services Trade: 2013 Annual Report*, Inv. No. 332-345, USITC Pub. 4412 (July 2013) (Final), at xv, available at <http://www.usitc.gov/publications/332/pub4412.pdf>. See also *id.* at 5-1 (Legal Services chapter).

9. See ABA Commission on the Future of Legal Services, [http://www.americanbar.org/groups/centers\\_commissions/commission-on-the-future-of-legal-services.html](http://www.americanbar.org/groups/centers_commissions/commission-on-the-future-of-legal-services.html).

10. See, e.g., Susanna Ray, *They're After Legal Gold*, ABA J. 44 (May 2014); Martha Neil, *Investors Spent \$458M on Legal Startups in 2013; Will 2014 Be Another Big Year?* ABA e-Journal (Feb. 14, 2014), [http://www.abajournal.com/news/article/will\\_2014\\_investment\\_in\\_legal\\_startups\\_hit\\_500m](http://www.abajournal.com/news/article/will_2014_investment_in_legal_startups_hit_500m).

11. See Harvard Law School Center on the Legal Profession, *Disruptive Innovation*, <https://clp.law.harvard.edu/clp-research/legal-markets/> (includes a link to the March 2014 conference and materials).

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This brief description of certain aspects of competition in the market for legal services indicates that when analyzing recent TLP developments, one must increasingly look not only to the traditional providers, but also at other types of providers that seek to fill the legal services space—including those operating in a distant jurisdiction. Clients have driven part of this change, especially in-house corporate counsel, who seek to provide increasingly greater value for their legal spend.<sup>12</sup> Consequently, lawyers and law firms are interested in avenues for growth, including markets that have been inaccessible because of regulatory barriers, which increases attention to TLP issues.

In this YIR, we take a new approach by framing our discussion to highlight the meeting points and relationships that facilitate border-crossing for a variety of actors involved in TLP policy-making and practice. We call these “TLP-Nets,” using the term “Nets” to suggest the notion of a network. Networks are “boundary-spanning and boundary-creating structures that affect the roles of organizational actors, including business corporations, voluntary associations, advocacy groups, foundations, think tanks, and state entities.”<sup>13</sup> As we describe them here, TLP-Nets represent our preliminary assessment based on their activities in TLP-related matters.<sup>14</sup> We use the term “TLP-Nets” to focus attention on the actors and facilitators as well as the activities that comprise what is significant about TLP.

Section II offers two categories of TLP-Nets: one nationally-based, and the other inherently international. Within each category we suggest examples of TLP-Nets and describe their recent activities. Our description is only an overview, a mechanism for cataloguing the activities relevant to TLP during 2014 in a way that provides some insight into the structure and interaction of activities and actors. Section III offers concluding observations. As to both scope and depth, we hope that future work will build on what we begin here and explore the networks of relationships that comprise TLP-Nets.<sup>15</sup>

## II. TLP-Nets

TLP-Nets embody a diverse set of relationships and initiatives that further coordination, communication and policy-making on matters related to TLP, and they serve as meeting points for various governmental, regulatory, organizational and individual actors. Participants include formal and informal associations—including some that require jurisdictional authority as a condition for entry—and their activities may be ongoing or one-off meetings. What is common is that TLP-Nets offer paths for those involved to move

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12. Association of Corporate Counsel, “Controlling Law Firm Spending With Business-Oriented Solutions is Top Priority For Corporate Clients,” (Oct. 25, 2010), avail. at <http://www.acc.com/aboutacc/newsroom/pressreleases/2010-ACC-Serengeti-Survey-Key-Findings.cfm>.

13. John P. Heinz, Anthony Paik, and Ann Southworth, *Lawyers of the Right: Networks and Organization*, 32 *Law & Social Inquiry* 883, 885 (2007).

14. See Anthony Paik, John P. Heinz, and Ann Southworth, *Political Lawyers: The Structure of a National Network*, UC Irvine School of Law Legal Studies Research Paper Series No. 2010-26, available at file:///C:/Users/Administrator/Downloads/SSRN-id1694627.pdf (describing network analysis research methodology); Tom Ginsburg and Gregory Shaffer, *How Does International Law Work?: What Empirical Research Shows* in Peter Cane & Herbert Kritzer, eds., *OXFORD HANDBOOK OF EMPIRICAL LEGAL STUDIES* (2010)(describing the production of international law).

15. For more on the study of the impact of individuals and professional capital, see Yves Dezalay and Bryant G. Garth, *DEALING IN VIRTUE* (1998).

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outside of their own experiences, responses, and perspectives and expose themselves to alternative and relevant interests and approaches. These TLP-Nets facilitate the conversation about TLP on a variety of matters, including the scope and approach to regulation.<sup>16</sup> In this section, we describe two general categories of TLP-Nets, each with several examples. This bifurcated classification serves our purposes of simplifying the discussion, but we do not mean to suggest that the activities or members of these Nets are constrained by a particular jurisdictional scope. Rather, each of the Nets operates across borders, including by interacting with one another.

A. NATIONALLY-BASED TLP-NETS

Nationally-based TLP-Nets take as their focus the TLP agenda of a particular jurisdiction, and necessarily are comprised principally—although not exclusively—of actors based in that jurisdiction. Here, we highlight two of these, one based in the United States and the other in Europe. Our discussion delves more deeply into the U.S.-based TLP-Net than in other directions, because it is the focus of this Year-in-Review and because this is the world we know well and, in certain instances, also occupy to some extent. Note, however, that this difference in detail does not indicate that there is more development in the U.S. than in Europe or elsewhere. We look forward to more complete examinations of other nationally-based TLP-Nets in the future.

1. *U.S.-based TLP-Net*

The U.S.-based TLP-Net is a complex web of relationships among various kinds of organizations and individuals. We might begin by focusing on the formal associations of state-based lawyer regulators in the US, which have been active for many years. These include the National Conference of Bar Examiners (NCBE), which brings together state governmental officials and others involved with lawyer admission issues;<sup>17</sup> the National Organization of Bar Counsel (NOBC), which is a means of collaboration for state governmental officials involved in lawyer discipline issues;<sup>18</sup> and the Conference of Chief Justices (CCJ), which includes the Chief Justice from each state's highest court.<sup>19</sup> These regulator associations have advanced the coordination and, in certain instances, regulatory changes with respect to domestic legal practice. What is noteworthy, however, is the degree to which they now interact with international regulatory actors,<sup>20</sup> resulting in cross-fertilization of TLP-related terminology, ideas, and initiatives.

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16. L. Terry has been advised of consultations engaged in by former Australian regulators Steve Mark and Tahlia Gordon with several U.S. regulators.

17. See NCBE, About Us, <http://www.ncbex.org/contacts/> ("About Us-Mission").

18. See NOBC, About Us, <http://nobc.org/index.php/about-us> ("The National Organization of Bar Counsel (NOBC) is a non-profit organization of legal professionals whose members enforce ethics rules that regulate the professional conduct of lawyers who practice law in the United States, Canada and Australia.").

19. See Conference of Chief Justices, <http://ccj.ncsc.org/> ("The Conference of Chief Justices (CCJ) was founded in 1949 to provide an opportunity for the highest judicial officers of the states to meet and discuss matters of importance in improving the administration of justice, rules and methods of procedure, and the organization and operation of state courts and judicial systems, and to make recommendations and bring about improvements on such matters.").

20. See *infra* note 29 for a discussion of the International Conference of Legal Regulators.

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The CCJ, for example, included a session on “Regulating the Practice of Law in the Global Arena”<sup>21</sup> at its 2014 Midyear Meeting. Among the participants was Thomas Fine, Director of Services and Investment at the Office of the U.S. Trade Representative. Fine’s interaction with the CCJ was not limited to that single appearance; he has subsequently participated in several meetings of the CCJ Task Force on Foreign Lawyers.<sup>22</sup> The Task Force, under the leadership of New York Chief Judge Jonathan Lippman, reflected an open and inclusive mindset through inclusion of non-CCJ members in its meetings. Representatives from the Council of Bars and Law Societies of Europe, from the Law Council of Australia, from the Office of the U.S. Trade Representative, and from the ABA Task Force on International Trade in Legal Services (ITILS) participated in Task Force meetings during 2014.<sup>23</sup>

The NCBE, comprised of state bar examiners and others interested in admissions issues, also played a role in 2014 in fostering greater awareness of TLP issues. The NCBE’s annual conference is a significant forum that addresses broad and diverse issues that move well beyond the everyday work of its core bar examiner audience.<sup>24</sup> TLP matters fall within this expansive scope, and NCBE’s conference has included speakers from outside the United States and sessions on topics related to admission of inbound foreign lawyers. Its publications also reflect an interest in TLP and have included articles about transnational legal practice and regulatory methods used outside the United States.<sup>25</sup> NCBE’s inclusion of TLP issues was mirrored by the inclusion of the NCBE in the dialogue convened in recent years by the World Trade Organization: in 2011, NCBE president Erica Moeser spoke about US regulation of legal services at the WTO, and she co-authored a chapter about US legal services in a 2014 publication of the WTO and Cambridge Press.<sup>26</sup>

The NOBC was also involved in issues related to transnational practice in 2014. For example, several key NOBC members have been involved in the International Conference of Legal Regulators, which is one of the international TLP-Nets described later in this YIR.<sup>27</sup> When the International Conference of Legal Regulators held its 2013 meeting in

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21. See Conference of Chief Justices, *2014 Midyear Meeting Education Program: Regulation of the Practice of Law* (Jan. 25-29, 2014) at 5 (on file with authors).

22. L. Terry, has personal knowledge of his telephonic participation.

23. L. Terry has personal knowledge of these facts.

24. For information on the program and speakers at the 2013 Annual Bar Admission Conference, see Erica Moeser, President’s Page, *THE BAR EXAMINER* (2013) at 4, available at [http://www.ncbex.org/assets/media\\_files/Bar-Examiner/articles/2013/820213abridged.pdf](http://www.ncbex.org/assets/media_files/Bar-Examiner/articles/2013/820213abridged.pdf).

25. See, e.g., Alan Treleaven, *Moving Towards National Bar Admission Standards in Canada*, 83(3) *THE BAR EXAMINER* 17 (2014); Diane F. Bosse, *Testing Foreign-Trained Applicants in a New York State of Mind*, 83(4) *THE BAR EXAMINER* (December 2014); Laurel S. Terry, *Admitting Foreign-Trained Lawyers in States Other than New York: Why It Matters*, 83(4) *THE BAR EXAMINER* (December 2014).

26. See Erica Moeser and Laurel Terry, *Legal Services in the United States* in Aik Hoe Lim and Bart De Meester (editors), *DOMESTIC REGULATION AND SERVICES TRADE: PUTTING PRINCIPLES INTO PRACTICE* 129-141 (Cambridge University Press 2014).

27. Current or former NOBC members who spoke at the 2014 London meeting of the International Conference of Legal Regulators included John Berry, Director of Legal Services Division, Florida Bar, Robert Hawley, Deputy Executive Director, State Bar of California, Jerry Larkin, Attorneys Disciplinary Commission, Illinois, and Gene Shipp, Office of Bar Counsel, Washington DC. Greg Mize participated on behalf of the Conference of Chief Justices. See Agenda, *Rethinking Regulation, Third International Conference Of Legal Regulators*, 8-9 July 2014, London, <http://www.international-conference-of-legal-regulators.org/app/download/5795414089/agenda+for+international+conference+for+legal+regulators.pdf>.

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San Francisco, all NOBC members were invited to the last session of the international conference and all international conference attendees were invited to attend the NOBC's annual meeting reception (and were encouraged to register for the full NOBC meeting), leading the groups' members to engage.<sup>28</sup> Internationally-active NOBC members have continued to share with the general NOBC membership their thoughts on the importance of including an international mindset in their work. For example, during the 2014 NOBC Annual Meeting, Robert Hawley, Deputy Executive Director of the State Bar of California, called attention to the global implications of regulating lawyers outside of their home jurisdiction, stating: "The idea that you're going to have to deal with a foreign national on cross-border practice is very real." Noting the CCJ's shared concern with this issue, Hawley commented that limiting to U.S. jurisdictions how out-of-state lawyers may practice under transitory presence rules such as Model Rule 5.5 "is going to get us all in trouble." Responding to Hawley's remarks was Wallace E. (Gene) Shipp Jr., bar counsel for the District of Columbia Bar, who commented from the audience: "As long as we are exporting more legal services than we are bringing in, firms are going to want to exploit this internationally. It is game on."

In other contexts, Shipp has explained the evolution that has taken place within the NOBC and its interest in confronting international issues. For example, in August 2014, the ABA Center for Professional Responsibility's Policy Implementation Committee devoted part of its meeting to the issue of the ABA Guidelines for an International Lawyer Regulatory Information Exchange, which were adopted in 2013 and encourage, *inter alia*, U.S. regulators to identify their regulatory counterparts in other countries.<sup>29</sup> Shipp is a member of the ABA Policy Implementation Committee and was the committee member responsible for this agenda item.<sup>30</sup> Shipp reported on the globalization discussions at the 2014 NOBC Annual Meeting and offered his view that NOBC members had undergone a sea change and were ready to address TLP and globalization issues.<sup>31</sup>

The CCJ, NCBE and NOBC are umbrella organizations comprised of state-based regulators who themselves, of course, affect TLP-related matters either by action or inaction, whether or not based on studied consideration. And while state regulators traditionally have not been at the forefront of TLP developments, they have become more engaged

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28. See Program: Regulation in Practice 2nd International Legal Regulators Conference, 5-7 Aug. 2013, San Francisco (on file with authors). The last session was entitled "NOBC session: The changing purpose and goals of attorney regulation—experience from outside the USA." The conference program previously was available online at <http://www.international-conference-of-legal-regulators.org/past-conferences/san-francisco-2013/>. The overlap between the activities of the NOBC and the International Conference of Legal Regulators in San Francisco was facilitated by Bob Hawley, who is Deputy Executive Director of the State Bar of California and active in both organizations.

29. See ABA Res. 104 (Regarding Guidelines for an International Regulatory Information Exchange) (adopted Aug. 12-13, 2013), [http://www.americanbar.org/content/dam/aba/directories/policy/2013\\_hod\\_annual\\_meeting\\_104.authcheckdam.docx](http://www.americanbar.org/content/dam/aba/directories/policy/2013_hod_annual_meeting_104.authcheckdam.docx).

30. See ABA Center For Professional Responsibility Policy Implementation Committee, Agenda (Aug. 8, 2014)(on file with author). The Committee Chair was North Dakota Supreme Court Justice Dan Crothers, indicating further interaction among state regulators and others. See also Laurel S. Terry, *Agenda Item II(C)(1): Guidelines for International Regulatory Information Exchange Memo and Supporting Materials* (Aug. 2, 2014), available at <http://tinyurl.com/ABA-intl-guidelines-dropbox>.

31. L. Terry has personal knowledge of Mr. Shipp's remarks. See also Helen W. Gunnarsson, *Discipline Systems Still Playing Catchup In Policing Increasingly Mobile Attorneys*, 30 Law. Man. Prof. Conduct 539 (Aug. 13, 2014).

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and are thinking more seriously about what their roles are and should be. The TLP-Nets undoubtedly have contributed to the increased state attention to these issues. For example, in 2014, following the approval of the work of the ABA Commission on Ethics 20/20 by the ABA House of Delegates, a number of states adopted the changes recommended by the 20/20 Commission to the “choice of law” provision found in ABA Model Rule of Professional Conduct 8.5.<sup>32</sup> The new comment to Rule 8.5 makes it easier, for example, to determine which conflict of interest rule to follow in the case of lawyers with offices in the United States and in England.<sup>33</sup> The Ethics 20/20 recommendations are undoubtedly why in 2014 a number of states adopted rules that recognize or liberalize the conditions under which inbound foreign lawyers may practice in the United States.<sup>34</sup>

Certain states have taken a leadership role in pursuing an agenda of change. One example of this is the Georgia, which is one of only four states that has adopted rules addressing all five methods by which foreign lawyers might actively practice in the United States.<sup>35</sup> Georgia’s efforts to explain and discuss a liberalized regulatory agenda provided the basis for the January 2014 “Toolkit” developed by the ABA Task Force on International Trade in Legal Services (ITILS).<sup>36</sup> Moreover, Georgia not only provided the model for the Toolkit, but has taken a leading role in publicizing it. For example, in May 2014, the State Bar of Georgia, which is a regulatory entity, hosted a conference for regulators in Southeastern states in order to expose them to the Toolkit and to the issues raised by US-EU T-TIP trade negotiations.<sup>37</sup> The Toolkit was one focus of the previously-mentioned 2014

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32. See ABA Center for Professional Responsibility Policy Implementation Committee, State by State Adoption of Selected Ethics 20/20 Commission Policies and Guidelines for an International Regulatory Information Exchange (Nov. 14, 2014), available at [http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/state\\_implementation\\_selected\\_e20\\_20\\_rules.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/state_implementation_selected_e20_20_rules.authcheckdam.pdf) [hereinafter Ethics 20/20 Implementation].

33. Comment [5] explains that with respect to Rule 8.5(b)(2) and conflicts of interest, when the predominant effect is uncertain, a lawyer and client can agree that the lawyer’s work on a matter will be governed by the conflict of interest rules of a particular jurisdiction, provided certain conditions are met. See ABA COMMISSION ON ETHICS 20/20, 107D 2-3 (2013), available at [http://www.americanbar.org/content/dam/aba/administrative/ethics\\_2020/2013\\_hod\\_midyear\\_meeting\\_107d.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/2013_hod_midyear_meeting_107d.authcheckdam.pdf).

34. As noted *infra*, in February 2013, upon the recommendation of the ABA Commission on Ethics 20/20, the ABA House of Delegates adopted three “inbound foreign lawyer” proposals to supplement the foreign lawyer MJP proposals that it had adopted in 2002. The ABA maintains charts that show the current adoption status of these inbound foreign lawyer rules. See Am. Bar Ass’n, State Implementation of MJP Policies (Oct. 7, 2014), [http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/recommendations.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/recommendations.authcheckdam.pdf); Ethics 20/20 Implementation, *supra* note 32. One of the authors maintains a map and chart that consolidates this information. See Laurel S. Terry, Summary of State Foreign Lawyer Practice Rules (11/14/14), available at [http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/mjp\\_8\\_9\\_status\\_chart.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mjp_8_9_status_chart.authcheckdam.pdf) and on my personal website at [http://www.personal.psu.edu/faculty/l/s/lst3/Laurel\\_Terry\\_map\\_foreign\\_Lawyer\\_policies.pdf](http://www.personal.psu.edu/faculty/l/s/lst3/Laurel_Terry_map_foreign_Lawyer_policies.pdf). But see Laurel S. Terry, *Globalization and the ABA Commission on Ethics 20/20: Reflections on Missed Opportunities and the Road Not Taken*, 43(2) Hofstra L. Rev. \_\_ (2014)(forthcoming)(arguing that the ABA Commission on Ethics 20/20 was less successful with its globalization mission than with its technology mission).

35. *Id.*

36. The full title of the “Toolkit” is American Bar Association Task Force on International Trade in Legal Services, *International Trade in Legal Services and Professional Regulation: A Framework for State Bars Based on the Georgia Experience* (Updated Jan. 8, 2014). It is available at this website: <http://www.americanbar.org/content/dam/aba/uncategorized/GAO/ITILS%20Toolkit.pdf>. The impetus for the Toolkit came from Bill Smith, who is General Counsel Emeritus of the State Bar of Georgia and a member of the ABA ITILS.

37. See State Bar of Georgia, Southeastern Workshop on the EU/US Free Trade Agreement Agenda (Atlanta, May 16, 2014)(on file with law review). See also Laurel S. Terry, Presentation Slides: *Regulating Lawyers*

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CCJ globalization program; at the conclusion of this meeting, the CCJ adopted a resolution recommending that state courts consult the Toolkit, illustrating the interaction and cross-fertilization that occurs within the U.S.-based TLP-Net.<sup>38</sup>

Potential competition between state legislatures and state courts may also have an impact on TLP regulation. An example is illuminating: during the 2014 Southeastern States Workshop, someone referred to 2011 proposed legislation in North Carolina that would have allowed UK-like alternative business structures.<sup>39</sup> The regulators were advised that if they did not respond to the needs of the public and clients, other branches of government might step in.<sup>40</sup>

While lawyer regulation in the United States occurs at the state level, federal actors participate in TLP matters through national trade policy, among other things.<sup>41</sup> During 2014, officials in the Office of the U.S. Trade Representative<sup>42</sup> (USTR) handled four different sets of trade negotiations that included legal services within their ambit: (1) the ongoing World Trade Organization negotiations about the General Agreement on Trade in Services (GATS); (2) the Trade in Services Agreement (TISA) negotiations, which involve a subset of WTO Members who are interested in making faster progress with respect to services; (3) the Trans-Pacific Partnership (TPP) negotiations among twelve countries located on or near the Pacific Ocean; and (4) the Transatlantic Trade and Investment Partnership (T-TIP) negotiation between the United States and the European Union.<sup>43</sup>

Governmental trade negotiations influence TLP in several different ways. The negotiators themselves shape conversations by engaging with others involved in the TLP agenda, including the CCJ<sup>44</sup> and the ABA Task Force on International Trade in Legal Services (ITILS), which serves as an umbrella group that brings together the many ABA constituencies that have an interest in legal services trade negotiations.<sup>45</sup> Governmental

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in a *Global Arena* (Atlanta, May 16, 2014), available at [http://www.personal.psu.edu/faculty/l/s/lst3/Terry\\_GA\\_ITILS\\_May\\_2014.pdf](http://www.personal.psu.edu/faculty/l/s/lst3/Terry_GA_ITILS_May_2014.pdf).

38. Conference of Chief Justices, Resolution 11: In Support of the Framework Created by the State Bar of Georgia and the Georgia Supreme Court to Address Issues Arising from Legal Market Globalization and Cross-Border Legal Practice (Jan. 29, 2014), available at <http://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/01292014-Support-Framework-Created-State-Bar-Georgia.ashx>. The NCBE has also helped publicize the Toolkit by including an article about it in the December 2014 issue of the *Bar Examiner* magazine. See Terry, *supra* note 25.

39. See generally Daniel Fisher, *North Carolina Bill Would Let Non-Lawyers Invest In Law Firms*, *Forbes* (March 11, 2011), <http://www.forbes.com/sites/danielfisher/2011/03/11/north-carolina-bill-would-let-non-lawyers-invest-in-law-firms/>.

40. Terry heard these developments mentioned at the Southeastern Workshop cited *supra* note 37.

41. See, e.g., Laurel S. Terry, *Transnational Legal Practice (United States) [2010-2012]*, 47 *Int'l Law* 499, 510 (2013); Laurel S. Terry, Carole Silver, Elyn Rosen, *Transnational Legal Practice: 2009 Year-in-Review*, 44 *Int'l Law* 563, 572-576 (2010).

42. For information on the Office of the US Trade Representative, see <http://www.ustr.gov/about-us/mission>.

43. See generally Office of the U.S. Trade Representative, *Free Trade Agreements*, <http://www.ustr.gov/trade-agreements/free-trade-agreements> (linking to T-TIP and TPP); Office of the U.S. Trade Representative, *WTO & Multilateral Affairs*, <http://www.ustr.gov/trade-agreements/wto-multilateral-affairs>.

44. See *supra* note 21 (CCJ 2014 Midyear Meeting Education Program): *Regula*

45. See ABA Task Force on international Trade in Legal Services, *About the Task Force*, [http://www.americanbar.org/advocacy/governmental\\_legislative\\_work/priorities\\_policy/promoting\\_international\\_rule\\_law/internationaltradetf/taskforceabout.htm](http://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/promoting_international_rule_law/internationaltradetf/taskforceabout.htm). See also note 61 *infra* (discussing EU-US LEGAL SERVICES



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trade negotiations also affect the work of various other actors. The Summits convened by the American Bar Association and the 2014 IBA Report, both of which are described in greater detail below, respond to, and reflect, the trade agenda.

But other federal offices also influence the TLP dialogue. For example, employment data produced by the U.S. Department of Bureau of Labor Statistics regularly is the basis of discussions about U.S. legal education and legal practice.<sup>46</sup> Legal education, in turn, increasingly is part of the TLP conversation because of the inclusion of international students in US law schools, and the related outreach of the schools to international students, employers, and peer academic institutions.<sup>47</sup>

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ROUNDTABLE, AGENDA AND SUPPORTING MATERIALS (Boston, Aug. 9, 2014)(on file with author); TRANS-PACIFIC BAR LEADERS SUMMIT Agenda (San Francisco, Aug. 10, 2013)(on file with authors).

46. See, e.g., Ben Barros, Bureau of Labor Statistics Legal Jobs 2004-2014, Faculty Lounge Blog Post Sept. 8, 2014 <http://www.thefacultyounge.org/2014/09/bureau-of-labor-statistics-legal-jobs-2004-2014.html>. See generally, Carole Silver, "Getting real about globalization and legal education: potential and perspectives for the U.S.," 24 *Stanford Law & Policy Review* 457 (2013); Carole Silver, *Coping with the consequences of 'too many lawyers': securing the place of international graduate law students*, 19 *International Journal of the Legal Profession* 227 (2012).

47. Carole Silver, *Globalization and the Monopoly of ABA-Approved Law Schools: Missed Opportunities or Dodged Bullets?* 82 *Fordham L. Rev.* 101 (2014). One influence on the robustness of TLP is the production of lawyers who are trained to participate in TLP, which implicates law schools. Academics and law schools have continued to play a role in fostering discussion about TLP in general and also regulatory issues. For example, the numbers of U.S. LL.M. programs, many of which enroll large numbers of foreign students, continue to be large. See generally ABA Section of Legal Education and Admissions to the Bar, Programs by Category: Post J.D. Programs by Category, [http://www.americanbar.org/groups/legal\\_education/resources/llm-degrees\\_post\\_j\\_d\\_non\\_j\\_d/programs\\_by\\_category.html](http://www.americanbar.org/groups/legal_education/resources/llm-degrees_post_j_d_non_j_d/programs_by_category.html). The ABA does not regularly publicize figures on the number of foreign students or lawyers attending U.S. law schools. See Silver, *Coping*, *supra* n. 46; Carole Silver, *What We Don't Know Can Hurt Us: The Need for Empirical Research in Regulating Lawyers and Legal Services in the Global Economy*, 43 *Akron L. Rev.* 1009 (2010); Carole Silver, *Internationalizing U.S. Legal Education: A Report on the Education of Transnational Lawyers*, 14 *Cardozo J. Int'l & Comp. L.* 143 (2006). There continue to be record numbers of foreign educated applicants who sit for U.S. bar exams. See Bosse, *supra* note 25, ("In 1997, the year before the new rules were enacted, New York tested 1,701 foreign-educated candidates, 15% of our candidate pool of 11,218. In 2013, the 4,602 foreign-educated candidates we tested comprised 29% of our candidate pool of 15,846. Between 1997 and 2013, the number of graduates of ABA-approved law schools we tested increased by 18%; the number of our foreign-educated candidates grew in that period by 270%."); see Terry, Summary, *supra* note 34 ((noting that the number of states in which a foreign-educated applicant sat for a bar exam has grown by approximately 50% since 1992, growing from 19 in 1992 to 28 in 2013 and that since 2002, the number of foreign-educated applicants has approximately tripled in states other than New York and California, going from 140 in 2002 to 415 in 2013). Several U.S. law schools now teach international law as part of required first year courses, or as an upper-level required course. See, e.g., U.C. Irvine School of Law, International and Comparative Law, <http://www.law.uci.edu/faculty/faculty-scholarship/international-law.html> ("UCI Law is one of the few law schools in the United States that have incorporated a dedicated international law course into the first-year curriculum. The course—International Legal Analysis—helps students learn to solve international and transnational legal problems that they are increasingly likely to face in today's globalized practice of law."); University of Nebraska College of Law ("The only law school in the Big Ten to require an international Law class in the first year"), <http://law.unl.edu/prospective/whynenebraska/>; but see Penn State's Dickinson Law, Practicing Law in a Global World: Contexts & Competencies, (required IL course begins in 2015 and will introduce students to international law and TLP). See also The University of Michigan Law School ("As the first top law school to require Transnational Law, Michigan ensures that its students explore the foundations of public and private international law and the fluidity of the traditional boundaries between these areas."), <http://www.law.umich.edu/prospectivestudents/internationalism/Pages/default.aspx>.

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In 2014, as in other years, other federal actors also were involved in issues related to TLP. For example, the U.S. Department of Commerce focuses directly on expanding overseas opportunities for U.S. lawyers and their clients.<sup>48</sup> The Department of the Treasury is responsible for the U.S. government's interface with the Financial Action Task Force or FATF, which is an intergovernmental organization whose recommendations address, inter alia, lawyer conduct.<sup>49</sup> Treasury officials regularly consult with legal profession representatives regarding FATF developments,<sup>50</sup> which in turn have led to lawyer-education efforts by the ABA and others regarding money laundering and terrorism financing.<sup>51</sup> One of the practice areas that has been targeted for education is lawyers involved in transnational practice.<sup>52</sup>

Federal courts also have the potential to shape TLP-related matters by hearing challenges to existing regulatory barriers. For example, the Jacoby & Myers lawsuits challenged as unconstitutional state ethics rules that prohibited partnerships between lawyers and non-lawyers and that prohibited outside investment in law firms are one example of such a challenge.<sup>53</sup> These types of lawsuits, if successful, would change the U.S. TLP landscape.

In addition to the regulatory- and trade-based activities and associations described above, the U.S.-based TLP-Net also includes groups based within the American Bar Association. The Transnational Legal Practice Committee of the ABA Section of International Law (TLP Committee) is one of the ABA groups that has TLP as its focus. The

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48. See, e.g., ABA Task Force on International Trade in Legal Services, Agenda for the April 25, 2014 Committee Conference Call (one agenda item was the postponed Department of Commerce Legal Services Trade, Mission to China)(on file with law review).

49. See generally New York Law School, *Combating Threats to the International Financial System: The Financial Action Task Force Program*, <http://www.nylslawreview.com/?p=6927>.

50. The ABA Task Force on Gatekeeper Regulation and the Profession tries to meet quarterly with representatives from the U.S. Department of the Treasury on FATF issues. In addition, U.S. governmental officials and legal profession representatives participate in some of the same education events. See, e.g., Terry, *infra* note 51.

51. See A Lawyer's Guide To Detecting And Preventing Money Laundering And Countering Terrorist Financing: A Collaborative Publication of the International Bar Association, the American Bar Association, and the Council of Bars and Law Societies of Europe (Oct. 2014)(hereinafter Lawyer's Guide), [http://www.americanbar.org/content/dam/aba/uncategorized/GAO/2014oct\\_abaguide\\_preventingmoneylaundering.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/uncategorized/GAO/2014oct_abaguide_preventingmoneylaundering.authcheckdam.pdf); IBA, Money laundering prevention guide a global first for lawyers (Nov. 5, 2014), <http://www.ibanet.org/Article/Detail.aspx?ArticleUId=f272a49e-7941-42ee-aa02-eba0bde1f144>. See also Laurel S. Terry, *Legal Profession Efforts to Combat Money Laundering & Terrorist Financing*, 59 N. Y. L. Rev. \_\_\_ (2015)(forthcoming); John A. Terrill, III, FATF and the Role of Lawyers in Money Laundering and Terrorist Financing: Lessons from the English Approach, 59 N.Y.L.R. \_\_\_ (2015)(contrasting the U.S. and U.K. approaches to implementing the FATF Recommendations, the latter of which has a low threshold for requiring lawyers to disclose confidential client communications).

52. See, e.g., ABA Sec. Int'l L. International Anti-Money Laundering Committee, The New FATF Recommendations & the AML/CFT Methodology (May 6, 2014)( A non-CLE teleconference and in-person program).

53. See, e.g., Jacoby & Meyers, LLP v. Schneiderman, CIV 11-03387 (S.D.N.Y.); Jacoby & Meyers Law Offices, LLP v. Judges of the Connecticut Superior Court, CIV 11-00817 (D. Conn.); Jacoby & Meyers Law Offices, LLP v. Justices Of The Supreme Court Of New Jersey, CIV 11-02866 (D.N.J.)(case voluntarily dismissed July 29, 2014). See also Jacoby & Meyers, LLP v. Presiding Justices Of The First, Second, Third And Fourth Departments, Appellate Division Of The Supreme Court Of The State Of New York, No. 12-1377, (2nd Cir 2013) (amended summary order granted on Jan. 09, 2013 remanded the New York case to the district court with instructions to vacate the judgment and grant plaintiffs leave to amend their complaint; according to the Southern District of New York docket, this lawsuit is still active ).

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Committee Co-Chairs during the first part of 2014 were Stephen Denyer, Wayne Carroll, and Hermann Knott.<sup>54</sup> In August 2014, German lawyer Herman Knott assumed leadership of this committee. Whereas the ABA ITILS focuses primarily on developing the ABA's response to trade negotiations, the TLP Committee focuses on broader issues, including what is happening "on the ground." For example, the TLP Committee offered a four-part webinar series in 2014, called "South of the Border," which built upon the TLP Committee's award winning 2013 webinar series, "BRICS in the Wall."<sup>55</sup> These programs (which continue to be available through the Committee's website) explored the markets for transnational legal services in several key emerging markets. Panels represented a combination of vantage points, including local lawyers and regulators as well as expatriate lawyers with expertise related to the particular jurisdiction,<sup>56</sup> and addressed three questions:

- (1) What rules apply to the practice of law in each country, particularly for foreign lawyers?
- (2) What practical steps should a foreign lawyer take to avoid breaching any professional rules?
- (3) What has the experience been of foreign lawyers attempting to provide legal services in these countries?

The TLP Committee organized a number of other programs during the year, as well, including a dinner-debate on international practice strategies at the 2014 ABA Annual Meeting,<sup>57</sup> and co-sponsored programs at the Spring 2014 and Fall 2014 International Section meetings.<sup>58</sup> At the same time, despite the TLP Committee's substantial activity,

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54. The TLP Committee leadership reflects the importance of both national and international TLP-Nets. Wayne Carroll is a U.S. lawyer who practices for PwC in Germany. Hermann Knott is a German lawyer, who has a U.S. LL.M. degree and is licensed in New York, who practices with Luther Rechtsanwalts-gesellschaft mbH. Stephen Denyer was, until May of 2014, a partner in the Allen & Overy law firm. A&O, as it is known, is one of the Magic Circle law firms based in London, and a serious competitor to U.S.-based law firms for the representation of elite business clients around the world. Denyer had been the "Global Markets Partner" at A&O, meaning that he took charge of leading and coordinating A&O's approach to markets in which it did not yet have an established presence. In addition to serving as co-Chair of the ABA TLP Committee, he has been active in the CCBE and the IBA. In May, Denyer became head of City and International at the Law Society of England and Wales, where his platform will be both internal and external.

55. See, e.g., ABA Section of Int'l L., Transnational Legal Practice Committee, (includes links to the 2014 webinars focused on transnational legal practice in Argentina, Chile, Colombia and Peru and the 2013 webinars focused on transnational practice in Brazil, Russia, India and China). The BRICS in the Wall series won the 2013 International Section award for Outstanding Non-CLE Committee Program Series. See ABA Sec. Int'l L., August 2013 E-Update, [http://www.americanbar.org/content/newsletter/groups/international\\_law/e\\_update\\_2013\\_aug.html](http://www.americanbar.org/content/newsletter/groups/international_law/e_update_2013_aug.html). The BRICS in the Wall series was developed by Committee Co-Chairs Wayne Carroll and Steven Denyer. The South of the Border series continued under the leadership of Committee Chair Hermann Knott.

56. *Id.*

57. See *id.*

58. See *Views from Mt. Olympus: Senior Lawyers Speak on 'The Future of the Changing Legal Profession—U.S. and Beyond'*, (Spring 2014)(organized and moderated by Bob Lutz, the panelists included the Hon. Judith Kaye, ret., Bernard Nussbaum, NYU Dean Trevor Morrison, and Fred Ury. This program received the award for "best program" of the conference); *The Changing Landscape of the Latin American Legal Profession*" (Oct. 2014)(program moderated by Bob Lutz). The Committee also sponsored programs at the October 2013 and Spring 2015 meetings related to different aspects of the "Changing Legal Profession." See *The Times They Are A-Changin': The New Lyrics of International Law and Practice*' (Spring 2015 TLP Committee program).

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it is not the only group within the Section of International Law to address these issues; other groups that include related matters within their scope are the U.S. Lawyers Abroad Committee and the Foreign Legal Consultant Committee.<sup>59</sup> These three groups frequently collaborate and share common members.

The ABA ITILS also has been a key factor in generating information, facilitating discussions and negotiations, and drafting model regulatory proposals related to TLP. It convened three summit meetings in the last two years, the Trans-Pacific Partnership Summit, held in August 2013, and the Transatlantic Trade and Investment Partnership Summits held in August 2013 and 2014, all of which were designed to bring together legal profession stakeholders from the countries involved in these trade negotiations in order to facilitate communication among these groups.<sup>60</sup> ITILS also worked with state bars and the National Organization of Bar Presidents to develop and then promote ABA policy related to TLP, including the 2013 resolutions on inbound foreign lawyers who practice pro hac vice or as in-house counsel, the resolution on International Legal Regulatory Information Exchange, and Formal Ethics Opinion 464 regarding the propriety of a U.S. lawyer dividing a legal fees with other lawyers who may lawfully share fees with non-lawyers.<sup>61</sup>

The ABA's Center for Professional Responsibility contributes to the U.S. TLP-Net in important ways, too. It plays a central role in generating TLP-related information, facilitating discussions and negotiations, and drafting model regulatory proposals. In addition to its involvement in many of the activities previously referenced, it sponsored a plenary session on regulatory innovation at the 2014 National Conference on Professional Responsibility. The idea for this session emerged from the recognition of Center leadership of the influence of developments occurring outside of the United States on TLP-related matters in the United States.<sup>62</sup> The session was designed to encourage states to experiment with regulatory changes that had not been endorsed by the ABA.

In addition to the formal organizational efforts within the ABA, there are numerous linkages between among these entities, including overlaps in membership or staff among the TLP Committee, the ABA Center for Professional Responsibility, ITILS, the ABA Commission on Ethics 20/20, and the new ABA Commission on the Future of the Deliv-

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59. See generally ABA Section of International Law, Committees, [http://www.americanbar.org/groups/international\\_law/committees.html](http://www.americanbar.org/groups/international_law/committees.html). On the Section's webpage, these three committees, along with four other committees, are listed under the heading "Legal Practice."

60. See, e.g., EU-US Legal Services Roundtable Agenda, *supra* note 45; Trans-Pacific Bar Leaders Summit Agenda, *supra* note 45.

61. See, e.g., ABA Task Force on International Trade in Legal Services, *ABA Policy on International Trade*, [http://www.americanbar.org/advocacy/governmental\\_legislative\\_work/priorities\\_policy/promoting\\_international\\_rule\\_law/internationaltradetf/policy.html](http://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/promoting_international_rule_law/internationaltradetf/policy.html) (includes links to these resolutions and ethics opinion). Additional education efforts include a National Conference of Bar Presidents webinar on these topics and education materials provided to the ABA Center for Professional Responsibility Policy Implementation Committee. See Nat'l Conf. Bar Pres. 21st Century Lawyer Webinar Series, *Another Copernican Revolution? Addressing the Challenges of Global Lawyering* (Nov. 12, 2014), <http://www.ncbp.21stcenturylawyer.org/#/watch-previous/ckra>; materials available at <https://www.dropbox.com/sh/8ndkdqwnwyps0gdl/AADxAD99Te34cOZBcq0m75RVa>.

62. See ABA, *Lawyer Regulatory Innovation in England, Wales, Australia and Canada: What's In it for Us?*, 40th National Conference on Professional Responsibility (May 29, 2014-Long Beach, CA), <http://www.americanbar.org/calendar/2014/05/40th-aba-national-conference-on-professional-responsibility/conferencematerials/session1.html>.

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ery of Legal Services.<sup>63</sup> Although a detailed analysis of these connections is beyond the scope of this YIR, it would provide an important dimension to a more nuanced study of the U.S.-based TLP-Net.

2. *The European-based TLP-Net*

A second area of TLP-related activity that might be considered “national” relates to the European Union. An important actor in an EU-based TLP-Net is the Council of Bars and Law Societies of Europe (CCBE), which is an association of EU Member State bar associations that primarily comprise the regulators for each of the EU Members and certain European observer states, as well.<sup>64</sup> The CCBE’s influence extends within and beyond Europe, and its policies and activities also exert pressure on U.S. TLP policy. For example, in the context of the T-TIP negotiations cited earlier, the CCBE has submitted its negotiation “requests” to the ABA and CCJ.<sup>65</sup> These requests seek similar treatment from all U.S. states, thus putting pressure on U.S. regulators and others to develop a national approach to lawyer regulation, or, at a minimum, one that is more streamlined than the current patchwork structure. These requests ask that all U.S. states have in place a foreign legal consultant rule authorizing advice on home country law, international law, and third country law; it also has requested the implementation of rules authorizing (i) temporary transactional practice; (ii) service as a representative or neutral in international mediation and arbitration permitting; and (iii) “association” rights, in which a properly licensed U.S. lawyer could be employed by a foreign lawyer or firm, and a properly licensed U.S. lawyer could be a partner of a foreign lawyer who properly works in a foreign jurisdiction.<sup>66</sup> These “requests” by the CCBE already have prompted discussions within the CCJ, ABA, and elsewhere.

Although this section has highlighted TLP-Nets in the United States and Europe, there are other significant national TLP-Nets. The Law Council of Australia and the Federation of Law Societies of Canada, for example, might both be considered to be TLP-Nets since they provide a forum for national regulators to discuss TLP issues.<sup>67</sup> Members of both of these organizations have had significant interactions with participants in the

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63. See ABA Commission on Ethics 20/20, About Us, [http://www.americanbar.org/groups/professional\\_responsibility/aba\\_commission\\_on\\_ethics\\_20\\_20/about\\_us.html](http://www.americanbar.org/groups/professional_responsibility/aba_commission_on_ethics_20_20/about_us.html); ABA Commission on the Future of the Delivery of Legal Services, Roster, [http://www.americanbar.org/groups/centers\\_commissions/commission-on-the-future-of-legal-services/commission-members.html](http://www.americanbar.org/groups/centers_commissions/commission-on-the-future-of-legal-services/commission-members.html); and ABA Task Force on International Trade in Legal Services. Task Force Roster, [http://www.americanbar.org/content/dam/aba/uncategorized/GAO/Roster%20-%20ABA%20ITILS%20Task%20Force%20\(2013-2014\)%20\(2\).authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/uncategorized/GAO/Roster%20-%20ABA%20ITILS%20Task%20Force%20(2013-2014)%20(2).authcheckdam.pdf).

64. The CCBE includes what might be viewed as “representational” entities, as well as regulatory bars among its members. See, e.g., The Law Society of England and Wales and the Deutscher Anwaltverein e.V.the DAV. See <http://www.ccbe.eu/index.php?id=19&L=0> (available as links by selecting Germany and the United Kingdom).

65. See Council of Bars and Law Societies of Europe, “CCBE request to the United States in the context of the Transatlantic Trade and Investment Partnership (TTIP) negotiations,” available at [http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/European\\_Legal\\_Profe1\\_1415787235.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/European_Legal_Profe1_1415787235.pdf).

66. *Id.*

67. See generally Law Council of Australia, Our Role, <http://www.lawcouncil.asn.au/lawcouncil/index.php/about-the-law-council-of-australia/our-role>; Federation of Law Societies of Canada, Our Mission, <http://www.flsc.ca/en/our-mission/>.

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United States. TLP-Net, including the CCJ, NCBE, ABA ITILS, and ABA Center for Professional Responsibility.

In this section, we have attempted to describe the notion of nationally-based TLP-Nets. The relationships embodied in these national-Nets do not stop at national borders, however. Rather, they are inherently border-crossing, internally and externally, in terms of geography as well as with regard to other organizations involved in related matters. This may stem from the TLP topic as much as from other factors, and may blur the categorization of these Nets according to a geographic or political set of interests.

**B. INTERNATIONAL TLP-NETS**

In contrast to nationally-based TLP-Nets, internationally-focused Nets are formed to bring together actors from various jurisdictions to generate dialogue and share information. We offer two examples of international TLP-Nets. Each has been active for at least several years, but their significance seems to us to be building.

*1. International Regulatory-Focused Net*

The first example is comprised of a TLP-Net focused on regulatory matters. It is the International Conference of Legal Regulators (ICLR), which began only recently with an inaugural meeting in September 2012, in London.<sup>68</sup> The ICLR has been convened each subsequent year, first in San Francisco and most recently again in London in July 2014.<sup>69</sup> The 2014 meeting included U.S.-based representatives from the CCJ, the NCBE, the NOBC, and individual U.S. state regulators. Although the conference did not include any U.S. federal governmental actors, it did include individuals from a number of the other groups identified in this article, including law firms, clients, and academics. The ICLR has been organized by Alison Hook on behalf of the U.K. Solicitors Regulation Authority for whom she serves as a consultant; previously, she served as “Director of International at the Law Society of England and Wales between 2002 and 2010.”<sup>70</sup>

Our sense is that the ICLR has had an important impact on certain conversations among U.S. lawyer regulators, and that it is encouraging them to bring TLP-related matters into their domestic agendas. It would not surprise us to find convergence reflected in discussions about approaches to regulatory matters if the ICLR continues to bring together and facilitate the interaction of national regulators.

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68. See Laurel S. Terry, *Transnational Legal Practice (International) [2010-2012]*, 47 *Int'l Law.* 485, 493-94 (2013); Laurel S. Terry, *Creating an International Network of Lawyer Regulators: The 2012 International Conference of Legal Regulators*, 82(2) *Bar Examiner* 18 (June 2013).

69. See International Conference of Legal Regulators, Conference Programme (London 2014), <http://www.international-conference-of-legal-regulators.org/london-2014-1/programme-details/>; (San Francisco 2013), <http://www.international-conference-of-legal-regulators.org/past-conferences/san-francisco-2013/>.

70. Hook currently is the principal of Hook International. Hook International, about us, <http://www.hookinternational.co.uk/about-us/>. In her former capacity, Hook's responsibilities included “developing business internationally for members of the Law Society, as well as for the Society's own international policies and relationships.” *Id.* On her relationship to the ICLR, see <http://www.international-conference-of-legal-regulators.org/contact-us/>. Although the conference organizers sent targeted invitations, the registration form for the 2014 ICLR Conference was available online. See ICLR, Register for London 2014, <http://www.international-conference-of-legal-regulators.org/london-2014-1/register-for-london-2014/>.

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Along the same lines as the organization of the ICLR are informal regional collaborations among lawyer regulators, which may be gaining traction. For example, during the course of 2014, governmental regulators in a number of Canadian provinces were involved in efforts to rethink the nature of lawyer regulation in ways that impacted TLP, and certain of these engaged in regular discussions with their US counterparts and others about these matters.<sup>71</sup> This sort of dialogue offers the opportunity for linkages between nationally-based authorities, and may lead to regulatory cooperation, if not more. For example, some U.S. state and Canadian regulators, along with lawyers and academics involved in TLP matters, are currently developing plans for a May 2015 workshop on about regulatory innovation that would build upon the plenary session held during the 2014 ABA annual ethics meeting.

2. *Additional International TLP-Nets*

The International Bar Association, which boasts a membership of more than 50,000 individual lawyers and over 200 bar organizations, provides a second example of an international TLP-Net.<sup>72</sup> The IBA provides an interesting example because it includes as members both individual lawyers and bar associations. One important factor that should be noted is the elite character of many IBA lawyers, including lawyers from the world's most elite law firms. While the IBA is by no means limited to elites, it certainly functions as a meeting place of those in powerful positions in various markets and organizations that are at the center of a transnational market in legal services.

The IBA International Trade in Legal Services Committee (IBA ITILS) is a significant actor in the world of transnational legal practice and, in our estimation, may be poised to become even more so.<sup>73</sup> For example, it was the IBA ITILS that asked the IBA to commission a new, significant international report on lawyer regulation. The Report, released in October 2014 during the Tokyo IBA Annual Meeting,<sup>74</sup> weighs in at more than 700 pages and promises to become a foundational effort for cataloguing lawyer regulation on a worldwide basis. It gathers information on "the rules governing local practice in each jurisdiction, the rules governing cross-border legal practice and the actual position in relation to cross-border legal practice,"<sup>75</sup> with regard to more than 90 countries.<sup>76</sup> The entry

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71. One of the authors has personal knowledge of the fact that representatives from the Law Society of Upper Canada and from the Nova Scotia Barristers Society have communicated with representatives from the Conference of Chief Justices and with U.S. academics, including Professor Susan Saab Fortney.

72. *About the IBA*, IBA, [http://www.ibanet.org/About\\_the\\_IBA/About\\_the\\_IBA.aspx](http://www.ibanet.org/About_the_IBA/About_the_IBA.aspx).

73. IBA ITILS is the successor to the IBA GATS Committee, which was active in TLP-related matters for some time. IBA's GATS Committee had, for example, prepared a number of resolutions and documents that have been cited in World Trade Organization reports. See, e.g., Council for Trade in Services, Note by the Secretariat: Legal Services, S/C/W/318 (June 14, 2010). See also Laurel S. Terry, *Lawyers, GATS, and the WTO Accountancy Disciplines: The History of the WTO's Consultation, the IBA GATS Forum and the September 2003 IBA Resolutions*, 22 Penn State Int'l L. Rev. 695 (2004).

74. See IBA President Launches Major Report on Legal Services, <http://www.ibanet.org/Forum/Thread/Default.aspx?ForumUid=03e2f023-6378-42ae-b3d6-051b6ddb2aea&ThreadUid=e96cc6c6-8673-4b74-876a-bed710a4f9f3>.

75. IBA Global Regulation and Trade in Legal Services Report 2014, at p. 3, avail. at <file:///C:/Users/Administrator/Downloads/IBA%20Global%20Cross%20Border%20Legal%20Services%20Report%20November%202014%20-%20FINAL%20Amends.pdf>.

76. IBA Global Regulation and Trade in Legal Services Report 2014, at p. 3, avail. at <file:///C:/Users/Administrator/Downloads/IBA%20Global%20Cross%20Border%20Legal%20Services%20Report%20November%202014%20-%20FINAL%20Amends.pdf>.

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for each jurisdiction is structured around a set of more than 35 common questions.<sup>77</sup> The Report, which is available in both a pdf format and on the IBA ITILS Committee webpage with individual jurisdiction (including sub-jurisdictions) listings available for review,<sup>78</sup> was circulated before its release to governmental trade negotiators participating in the TISA negotiations.<sup>79</sup> Upon its completion, the IBA sent the Report to all WTO governments.

The IBA Report was prepared by Alison Hook, mentioned earlier. Her involvement illustrates the overlapping membership of these TLP-Nets, and the connections that span the borders between governmental actors, nongovernmental actors, and professional associations, and through national and international organizations and activities.

The importance of the 2014 IBA Global Regulation Report—and the IBA ITILS—stems from its jurisdictional comprehensiveness and its internal organization. Assuming reliable updates to keep information current and additions to the jurisdictions included, it is likely to become a go-to site for lawyer regulatory questions.

Structurally, the IBA ITILS operates as a Committee of the IBA Bar Issues Commission (BIC),<sup>80</sup> which is the portion of the IBA devoted to its member organizations, as opposed to individual lawyers. In many countries around the world, the bar associations serve as lawyer regulators, and the BIC includes as members both “regulatory” bar associations and “representational” bar associations; interestingly, the IBA Membership list does not distinguish between these two categories.<sup>81</sup> The IBA BIC facilitates discussions about issues that affect the legal profession worldwide and, where appropriate, forwards policy proposals to the IBA Council for its consideration.<sup>82</sup> In doing so, it relies on its

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ber%202014%20-%20FINAL%20Amends.pdf (indicating that the report addresses rules in “over 90 countries, or over 160 jurisdictions”).

77. *Id.* at Table of Contents.

78. This report is available on the IBA ITILS webpage. See International Bar Association, International Trade in Legal Services, [http://www.ibanet.org/PPID/Constituent/Bar\\_Issues\\_Commission/BIC\\_ITILS\\_Map.aspx](http://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/BIC_ITILS_Map.aspx) (last visited Nov. 8, 2014). Results for U.S. jurisdictions can be accessed by selecting “Americas” under “Regions,” with the option of selecting a specific “Ease of Trade” category. Clicking on a specific jurisdiction will reveal the list of survey questions and the jurisdiction’s responses. Because this data is likely to be influential, I recommend that jurisdictions review their information on this web page for accuracy and contact the ABA Task Force on International Trade in Legal Services (or me) to report any inaccuracies so that this information can be conveyed to the IBA. It is not clear, however, whether or when the data will be updated. If jurisdictions would prefer to review the data in pdf format, they can access the entire 700+ page report at this url: <http://www.ibanet.org/Document/Default.aspx?DocumentUid=1D3D3E81-472A-40E5-9D9D-68EB5F71A702>. The U.S. data begins at page 493.

79. See Laurel S. Terry, *Putting the Legal Profession’s Monopoly on the Practice of Law in a Global Context*, 82 *Fordham L. Rev.* 2903, 2920, n. 71 (2014) (“In February 2014, the IBA distributed an “extract.” Int’l Bar Ass’n, Report for the Special Friends of Services Group—Trade in Legal Services: An Extract from the IBA Regulation and Trade in Legal Services Report 2014 (2014) (on file with *Fordham Law Review*); Email from Elaine Owen, Head of Bar Issues Comm’n, Int’l Bar Ass’n, to members of the IBA ITILS Comm. (Feb. 4, 2014, 6:44 AM) (on file with *Fordham Law Review*) (noting distribution of the extract”). As explained *supra* note 43, TISA is the acronym for ongoing services-based trade negotiations among a subset of WTO Member States.

80. See IBA, Bar Associations-Bar Issues Commission, [http://www.ibanet.org/barassociations/bar\\_associations\\_home.aspx](http://www.ibanet.org/barassociations/bar_associations_home.aspx) [hereinafter IBA BIC]

81. See, e.g., Int’l B. Ass’n, IBA Member Organisations in the Americas, [http://www.ibanet.org/barassociations/BIC\\_Americas.aspx](http://www.ibanet.org/barassociations/BIC_Americas.aspx) (members include both the New York State Bar Association and regulatory bars in South America).

82. See IBA BIC, *supra* note 81.

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committees to support its work. For example, the IBA Anti-Money Laundering Committee joined with the ABA and the CCBE to coauthor and sponsor the Lawyer's Guide to Money Laundering, which was developed in response to a FATF "Typologies Report" that was perceived as inadequate.<sup>83</sup> The IBA ITILS Committee has been responsible not only for the 2014 Report discussed above, but also for developing the IBA's trade-related policies. It continues to be active in this area and held a retreat in 2014 devoted to the topic of "association rights" among domestic and foreign lawyers and law firms.<sup>84</sup>

A third example of an international TLP-Net is the International Association of Legal Ethics, which sponsored the sixth International Legal Ethics Conference (ILEC 6), which was held in London in July 2014.<sup>85</sup> Although not all of the presentations at ILEC 6 addressed TLP directly, TLP undoubtedly is one of the reasons why there is growing interest in understanding legal profession and legal ethics issues in other countries. It is also noteworthy that the 2014 London International Legal Regulators Conference immediately preceded the ILEC 6 conference so that individuals could attend both conferences, which a number of individuals did.<sup>86</sup>

In addition to these three examples of internationally-focused TLP-Nets, other organizations, such as the World Justice Project, also might serve as a meeting point of sorts.<sup>87</sup> Its 2014 Rule of Law Index surveyed ninety-nine countries on government accountability, crime, fundamental rights, and access to justice. In the minds of many, access to justice includes TLP-related issues.<sup>88</sup>

In sum, internationally-focused TLP-Nets do not operate in isolation; an analysis of the membership of one might include substantial overlap with the other. Nor are the agendas of these Nets we highlighted entirely distinct; rather, they are all aimed at enhancing the sharing of information and understanding within the international community.

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83. See A Lawyer's Guide To Detecting And Preventing Money Laundering And Countering Terrorist Financing: A Collaborative Publication of the International Bar Association, the American Bar Association, and the Council of Bars and Law Societies of Europe (Oct. 2014)(hereinafter Lawyer's Guide), [http://www.americanbar.org/content/dam/aba/uncategorized/GAO/2014oct\\_abaguide\\_preventingmoneylaundering.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/uncategorized/GAO/2014oct_abaguide_preventingmoneylaundering.authcheckdam.pdf); IBA, Money laundering prevention guide a global first for lawyers (Nov. 5, 2014), <http://www.ibanet.org/Article/Detail.aspx?ArticleUId=f272a49e-7941-42ee-aa02-eba0bde1f144>. This guide is an example of a one-off collaboration among the ABA, IBA, and CCBE in order to respond to perceived deficiencies in the Legal Profession Typologies report issued by the FATF. See Terry, *supra* note 52.

84. See Minutes of the IBA ITILS Committee Meeting (May 19, 2014).

85. See International Legal Ethics Conference VI: Legal Ethics at a time of Regulatory Change (London, July 10-12, 2014), <http://www.city.ac.uk/international-legal-ethics-conference>.

86. The coordination of these two conferences stands in contrast to what happens with the ABA's annual legal ethics conference and the annual Law & Society conference, which has a coordinated "legal services" track. For a number of years, these two conferences have been scheduled at the same time but in different cities, even though there might be a number of individuals who would be interested in attending both of these conferences.

87. See World Justice Project, Who We Are, <http://worldjusticeproject.org/who-we-are>. The WJP is an independent, multidisciplinary organization working to advance the rule of law around the world.

88. Its 2014 *Rule of Law Index* surveyed ninety-nine countries on government accountability, crime, fundamental rights, and access to justice. World Justice Project, WJP Rule of Law Index 2014, [http://worldjusticeproject.org/sites/default/files/files/wjp\\_rule\\_of\\_law\\_index\\_2014\\_report.pdf](http://worldjusticeproject.org/sites/default/files/files/wjp_rule_of_law_index_2014_report.pdf). See also Rule of Law Index webpage, <http://worldjusticeproject.org/rule-of-law-index>.

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**III. Conclusion**

As in prior years, 2014 was another active year for transnational legal practice developments. The discussion above offers one way of thinking about TLP-related matters by focusing on the meeting points—or Nets—that bring interested actors together and provide them with opportunities to gain insight, participate in policy making and even attempt to shape the regulatory agenda. More can be learned by delving more deeply into the participants and relationships; in this YIR, space limitations prevent us from going further. Future research, however, might explore certain key actors whose overlapping relationships illustrate the interconnectedness of these international and national TLP-Nets. As more TLP-related activity is undertaken, additional meeting points and interactions will occur, providing a rich avenue for future work.<sup>89</sup>

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<sup>89</sup>. While this list is not exhaustive, some of the key actors whose relationships and connections have proven important include: Bill Smith, Gene Shipp, Bob Hawley, and John Berry, Erica Moeser, Chief Justices Jerry VandeWalle and Shirley Abrahamson, Chief Judge Jonathan Lippman, Hon. Greg Mize, Ellyn Rosen, Kristi Gaines, Bob Lutz, Steven Younger, Ben Greer, Rew Goodenow, Stephen Denyer, Wayne Carroll, Hermann Knott, Jonathan Goldsmith, Alison Hook, Russell Miller, Zeynep Onen, Margaret Drent, Darrell Pink, Victoria Rees, Alan Treleaven, Jonathan Herman, Alison Hook, David Wilkins, Susan Fortmey, Margery Nicoll, Gordon Hughes, Michael Colbran and many others.