

## **Culling the Laggards:**

### **For every action, there's a reaction. So will the rush to cherry-pick the most profitable practice groups leave poorer performers homeless?**

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1. About two years ago, McKinsey & Company white paper predicted that the current ties in cherry-picking of lateral partners would be complemented by a wave of divestitures, in which firms would drop less profitable practice groups. Is there any evidence of this so far?

Maybe a little, but the cuts are largely on the margins and usually the product of attrition. Most firms are unable to loosen the cultural yoke that binds partners, no matter how poorly a given practice fits within a firm's strategic vision or how much it drags down net income per partner. Still, a growing number of firms are eliminating their trusts and estate practices, abandoning the old saw that T&E work facilitates cross-selling by opening the door to corporate executive suites. Additionally, some firms are slowly letting go of their real estate practices (except for securitization work), and even their employment practices, which have fallen victim to high-quality, low-rate national competitors.

This march to divestiture is likely inexorable and will bode well for all involved. A practice can be unprofitable for all sorts of reasons. Sometimes the firm fails to devote the resources necessary to make it a go-to practice or the firms' business model isn't appropriate for the practice. For example, a T&E practice's flat-fee pricing seldom works well at an hourly rate firm but can be immensely profitably at a stand-alone boutique. Likewise, real estate and employment practices need sufficient critical mass to profitably service the large portfolios of work that major clients bundle and demand volume discounts for. There is nothing inherently unprofitable about these practices. Instead, it is a question of tailoring the infrastructure and pricing models correctly and devoting resources to positioning them.

Given the current pressure on net income per partner, the recognition that lawyers in these practice groups can be more prosperous elsewhere will likely dissolve the collegiality and loyalty that holds them in their firms. There is a cycle at work here. Within their firms, these less profitable practices have little clout.

With little clout they get fewer resources. That yields less work, which creates friction. In other words, competitive pressures will prevail.

2. Our firm has almost 1,000 lawyers in the United States, but aside from one rather small, modest profitable office, we have no presence in Europe. Over the last year or two, it seems as if the Magic Circle and a few major U.S. firms have gobbled up all there is to eat in Europe. Have we missed the boat?

Worry less about missing the boat and more about knowing your destination. If one subscribes to the notion that consolidation will produce 25 or 50 truly international global firms, then it is time for the rest of the Am Law 200 to take stock and start creating a sound alternative strategy. Instead, most of them have flocked into overcrowded, underprofitable, cash-sucking European markets where the only business that is making money is their lender, Citigroup.

Some argue that there are still many strong, midsize firms in Britain and on the Continent to merge with or acquire. This is likely the case. But the bigger questions are: What will be the competitive position and strength of two middle-market firms once they complete their transatlantic merger? With their profitability already challenged, how will they move on to Asia, where Shanghai is emerging as the continent's money center? Only a handful of the very strongest and most profitable U.S. firms will be able to afford to create notable positions across Europe. This group is emerging: Latham & Watkins; Morrison & Foerster; O'Melveny & Myers; Shearman & Sterling; Skadden, Arps, Slate, Meagher & Flom; and White & Case appear to be on their way, and there won't be room for many more. For the rest of the crowd, focusing on improved profitability and carving out a niche makes much more sense than following the lemmings to Europe.

Even firms that can legitimately count themselves as among the top tier—Gibson, Dunn & Crutcher; Wilson Sonsini Goodrich & Rosati; and even Shearman—have learned that growth is expensive and not something to be undertaken without a keen long-term strategy. “Let a thousand flowers bloom” is no recipe for building a global law firm infrastructure.

3. We are an Am Law 100 firm looking to improve business development. We know that some firms have created nonlawyer sales positions [“Smarter Selling,” August 2002]. What has their experience been?

A few firms are flirting with the idea of nonlawyers in sales positions, although it has not been widespread. The salespeople—who usually represent an individual office, rather than working on a firmwide basis—typically act as lead generators who build networks by participating in industry groups and events. They qualify prospects and arrange meetings for lawyers, but because of ethical and practical constraints, they don't close sales. Cooley Godward employed a lead generator of this type to augment the growth of the office in northern San Diego County, California, that it launched in the mid-nineties.

I expect that over the next few years sales vice presidencies will be established at a significant number of Am Law 200 firms. There is precedent for this at the Final Four accounting firms and their precursors. Currently some of the Am Law 200's most marketing-savvy firms are establishing sales or business development departments. Among them are Cooley, Piper Rudnick, Womble Carlyle Sandridge & Rice, and Pillsbury Winthrop. (Cooley no longer has the San Diego sales position but has a vice president of sales.) In a market in which legal services providers are consolidating and the product is rapidly segmenting, chief marketing officers (CMOs) will need to focus on branding positioning, and market research. It requires a different set of skills than sales. Besides, isn't a sales staff what law firms wanted when they began establishing marketing departments 15 years ago? Back then, they just didn't know the difference between marketing and sales.

Beyond generating prospects, true sales professionals in a law firm may actually be able to teach lawyers to sell. The single biggest frustration (and failing) of law firm marketing professionals has been their inability to deliver sustained, successful sales training programs. With only rare exceptions, even the best sales trainers in the industry promote only once-in-a-career training sessions for lawyers, instead of the rigorous career-long skills-building tracks that veteran salespeople receive. Firms have never devoted significant funding to sustained sales training, and the expectations of law firm sales trainers have been too low. At best, the one-off sessions result in increased business for 15 percent or so of the participants. These mediocre results have been explained away with excuses like "lawyers can't be taught how to sell." That should change with the backgrounds, skills, and increased focus of in-house sales professionals.

There is debate about where the sales function should be housed at law firms. At Piper Rudnick, it is part of the marketing department. At Cooley, that order is flipped, and the marketing function is contained in the sales department—an arrangement that makes CMOs nervous. At Womble, the sales department is freestanding. Firms that have put the sales function in the marketing department typically do so after elevating the chief marketing officer's position to a level even higher than was created in the last go-round of CMO upgrades two and three years ago, making the CMO position at these firms more attractive than ever. None of these organizational models have been around long enough to demonstrate which will work best. But my bet is on the sort of stand-alone structure that Womble has. The sales function needs to be joined at the hip with the lawyers in the field in a way that the marketing department—which is much more strategic in nature and therefore needs to be joined to top management—does not.