

## **Why England Slept:**

### **Despite years of trying, most Magic Circle firms have failed to make a splash in the United States. What's the problem?**

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1. Four of the five Magic Circle firms have outdistanced the best American firms in building global practices. But they have all struggled in New York. What will it take for them to succeed in the U.S. market?

Whether out of stubbornness, provincialism or a lack of understanding of the fundamentals of a U.S. practice, the Magic Circle firms, for the most part, have stumbled badly in their efforts to penetrate the U.S. market. As a result, they have inadvertently given big American firms time to expand their domination at home and to infiltrate the British and European markets. The reasons for the Magic Circle's problems in the United States aren't exactly clear, although there are signs that when it comes to the American market, at least a couple of British firms are starting to get it.

The Brits have made two fundamental missteps. First, they apparently either did not study or chose to ignore the practice models of the American firms that they want to compete with. The underlying reason for the economic vitality of the dominant U.S. firms is no secret: They have strong complementary countercyclical practices—corporate work and litigation. Big-case, complex civil litigation is not only an economic pillar of the best U.S. firms in both boom and bust times, it locks in client relationships and provides additional access to the top executive suites. Indeed, litigation has enabled a number of leading U.S. firms to enjoy record profits during a prolonged downturn, allowing them to cherry-pick from the Brits on their home turf with increasing frequency.

The Magic Circle firms appear to be imprinted with a European view of litigation that prevents them from understanding and succeeding in the U.S. market. British lawyers come from a world with loser pays rules, few jury trials and no punitive damages or contingency fees. This has stifled the development of powerful U.S.-style litigation practices among the major British and European firms. The emergence of plaintiff-friendly “hell-hole” jurisdictions across the United States has been the golden goose for the leading U.S.

firms, providing them with a significant economic advantage over overseas competitors, who toil in defendant-friendly British and European venues.

The size of the U.S. legal market dwarfs that of Europe—most estimates are that the American legal market exceeds \$150 billion, and about 40 percent of it is litigation. There is no way that Magic Circle firms can compete on the world stage without premier U.S. litigation practices. Clifford Chance seems to have come to this conclusion: witness its combination with Rogers & Wells and its acquisition of the former Brobeck, Phleger & Harrison's securities litigation practice. (Disclosure: Clifford Chance has been a client of my firm.)

The second misstep that most Magic Circle firms have made in the U.S. is their slow-growth strategy. Again, with the exception of Clifford Chance, the British have been building their U.S. practices one lawyer at a time in an era when the leading U.S. firms have recognized that competitive pressure requires them to quickly grow to critical mass in new markets. I was amused to hear a partner at a Magic Circle firm remark the other day that the one-brick-at-a-time strategy had worked for his firm in the U.S. The firm continues to have a third-tier New York practice, at best, and has been singularly unsuccessful in expanding its client base or the type of work it handles in the United States. Linklater's recent acquisition of four litigators from Shearman & Sterling's New York office in July may be an indication that, on this point, the British giants are awakening from their slumber.

If British firms want to be among the leading global firms, they must succeed in the U.S. Their lockstep compensation systems and low associate pay already put them at a disadvantage here; they can't afford strategic blunders. Going forward, they will have to better understand how to grow in the U.S. market.

2. Our firm is beginning the strategic planning process, but we aren't sure whether to plan by substantive area of the law or by client industry. Also, we're uncertain about how best to integrate our individual lawyers' plans and those of each of our offices. How are other firms handling this?

Although some firms have developed interdisciplinary groups around such client industries as banking, most large firms still organize themselves principally around practice areas, and their planning process is based on those areas. But, no matter which framework a firm uses, it's important not to let the structure drive the plan's content. As you plan for a practice area, include a strong element of client and industry focus, and vice versa.

If your firm has client or industry teams, the leaders of those teams should help kick off the planning process, even for a traditional practice area. Along with the marketing staff, these leaders should make in-depth presentations offering competitive intelligence and insights on key opportunities, competition, conflicts and trends. Similarly, leader of individual offices should make presentations on local market trends and

opportunities. The planning group can then identify opportunities, set goals, and develop action items by matching this data with the practice area's current client base and strengths.

In firms that have dominant home offices, lawyers in smaller offices are too often left out of the planning process or given only minimal involvement. That's a mistake. These lawyers can use the practice group's strengths—both lawyers and clients—to exploit local opportunities. Excluding them results in lost opportunities to learn about business development and growth opportunities and reduced support for the plan.

There's an open question about where the planning process should begin—with individual lawyers, at the practice group level, or firmwide. My strong bias is for an iterative process in which the firm articulates an overarching vision statement and key goals relating to core practices, growth practices, profitability, industry specialization and client expansion. This skeleton is then provided to the practice groups and offices, which flesh it out by developing working versions of a plan based on it. Individuals follow. The process then works its way back to the firmwide level, with the individual plans providing the muscle to accomplish the action items in practice group and firmwide plans.

Remember that plans are never accomplished unless individual attorneys take responsibility for achieving them. This requires broad-based support. To achieve it, there should be—throughout the firm—free flowing discussion, constructive criticism and encouragement.

3. We want to make our Web site more useful for clients. Have you seen any strong innovations recently?

Except for extranets dedicated to specific matters or clients, the last big wave in law firm technology focused on back-office functions and internal lawyers' need and demands (those didn't always turn out to be the same thing). I believe that the next big wave will be directed toward making law firm Web sites more client-friendly.

One innovation that a few firms are considering involves custom resumes. When a client visits the firm's Web site to find out whether the firm has a lawyer or team with a particular expertise for a pending matter, the client answers a series of questions about the matter. A software application then creates a list of lawyers with experience appropriate for the matter and tailors custom resumes for them.

Developing this kind of capability is not easy. It requires assembling a database of "virtual sound bites"—up-to-date sentences and paragraphs about each lawyer's expertise that can be assembled into resumes that flow well and speak with a single voice. Keeping the database current requires plenty of investment in marketing staff. But the payoff could be great, since the same technology that allows firms to respond much more effectively to Web site queries can also be used to prepare finely tuned resumes to use in requests for proposals.