

## Profound “Nonchanges” in Small and Midsize Firms

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## PROFOUND “NONCHANGES” IN SMALL AND MIDSIZE FIRMS

WARD B. COE III\*

### I. INTRODUCTION

Over the past few years, the media has reported a steady fare of bad news for the legal profession.<sup>1</sup> Large and prestigious law firms have dissolved.<sup>2</sup> They have laid off employees at all levels, including partners.<sup>3</sup> Annual hiring programs have been reduced.<sup>4</sup> Entry-level associates have been deferred, sometimes for a year-and-a-half.<sup>5</sup> This bad news, however, has created an erroneous, deceptive public view of the profession as a whole. Small and midsize firms, in fact, have withstood the recent financial crisis and are poised to remain strong moving forward.

It was with great pleasure that I participated in the Symposium on the Profession and the Academy: Addressing Major Changes in Law Practice to present an often overlooked perspective—that of small and midsize firms. I addressed the recent economic downturn’s impact on these sectors of the legal profession. Small and midsize firms can offer law students salaries at or near the top of the market, a better work-life balance, and a richer legal experience as a recent law

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1. See, e.g., Debra Cassens Weiss, *2009’s Toll: More Than 10,000 Law Firm Layoffs and Lower Pay Trend*, A.B.A. J. (May 28, 2009, 9:43 AM), [http://www.abajournal.com/news/article/2009s\\_toll\\_more\\_than\\_10000\\_law\\_firm\\_layoffs/](http://www.abajournal.com/news/article/2009s_toll_more_than_10000_law_firm_layoffs/) (cataloging May 2009 layoffs in several large firms).

2. See, e.g., Lindsay Fortado, *Thacher Proffitt, 160-Year-Old Law Firm, to Close (Update2)*, BLOOMBERG (Dec. 23, 2008, 1:25 PM), <http://noir.bloomberg.com/apps/news?pid=newsarchive&sid=aTGRIZHkMawU> (attributing the closure of a 160-year-old firm to the subprime mortgage crisis, decreased demand, and a subsequent departure of more than half of the firm’s attorneys).

3. Zack Needles, *Law Firms Predict More Layoffs Among Non-Equity Partners, Support Staff*, LAW.COM (June 23, 2010), <http://www.law.com/jsp/article.jsp?id=1202462916505>; see also Debra Cassens Weiss, *Largest Law Firms Still Shrinking, Shedding 1,400 Lawyers This Year*, A.B.A. J. (Nov. 8, 2010, 7:30 AM), [http://www.abajournal.com/news/article/largest\\_law\\_firms\\_still\\_shrinking\\_shedding\\_1400\\_lawyers\\_this\\_year](http://www.abajournal.com/news/article/largest_law_firms_still_shrinking_shedding_1400_lawyers_this_year).

4. Neil J. Dilloff, *The Changing Cultures and Economics of Large Law Firm Practice and Their Impact on Legal Education*, 70 MD. L. REV. 341 (2011) (discussing the cancellation or reduction of summer associate programs).

5. E.g., Ella Christoph, *Firms Put Jobs on Hold for Law School Graduates*, CHICAGO MAROON (May 5, 2009), <http://www.chicagomaroon.com/2009/5/5/firms-put-jobs-on-hold-for-law-school-graduates> (noting that University of Chicago Law School graduates have been deferred up to eighteen months).

school graduate.<sup>6</sup> The ability to withstand—or even thrive—in tough economic times ensures job stability for employees and potentially promises job opportunities for recent law school graduates.<sup>7</sup>

In Part II, I explore how small and midsize firms, in general, have used certain unique traits in their favor to survive the onslaught of large law firms and the recent economic recession. In Part III, I report on an informal survey of Maryland small and midsize firms that I conducted in preparation for my remarks at the Symposium. Part IV discusses the results of my informal survey—namely, that these Maryland small and midsize firms have maintained their practices and even thrived despite the economic recession because of the distinct characteristics identified in Part II. Part V concludes with suggestions of how law schools—career development offices, in particular—should adapt their practices in light of the “nonchange” that small and midsize firms have experienced during the economic recession.

## II. WITHSTANDING DEMISE

Small and midsize firms have withstood the expansion of large law firms because they are able to concentrate on specific practice areas, are able to offer their services at a generally lesser cost, and are able to maintain flexibility in client relationships.<sup>8</sup> These same traits have allowed small and midsize firms to withstand the recent economic recession.<sup>9</sup>

### A. *Competing with Large Firms*

The boom years of the late 1980s evidenced an expansion in the quantity and the size of large law firms.<sup>10</sup> Many legal market observers

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6. David Lat,  *Casting a Wider Net: Small to Mid-Sized Law Firms*, ABOVE THE LAW (June 17, 2009, 11:50 PM), <http://abovethelaw.com/2009/06/casting-a-wider-net-small-to-mid-sized-law-firms/> (explaining the benefits of small and midsize law firms).

7. *See id.* (explaining that some of these types of firms are expanding despite the economic downturn).

8. *See infra* Part II.A.

9. *See infra* Part II.B.

10. For a discussion of BigLaw’s “inherent dynamic of growth” and its organizational basis, see Marc Galanter & Thomas M. Palay, *Why the Big Get Bigger: The Promotion-to-Partner Tournament and the Growth of Large Law Firms*, 76 VA. L. REV. 747, 747–56 (1990). The authors show the dramatic increase in quantity and size from 1950 to 1986:

In the late 1950s, only thirty-eight law firms in the United States had more than fifty lawyers—and more than half of these were in New York City. By 1985, over 500 firms had fifty-one or more lawyers, and firms with more than a hundred lawyers grew from less than a dozen in 1960 to 251 in 1986. In 1968 the largest firm in the United States had 169 lawyers, and the twentieth largest had 106 lawyers. In 1988, the largest firm had 962 lawyers, and 149 firms had more lawyers than the largest firm of 1968.

in 1987 predicted that small and midsize firms would vanish due to an inability to compete with new national firms.<sup>11</sup> The legal market observers anticipated that these large firms' broad client bases, capacities to generate "a steady flow of cash and work" from clients, and abilities to recruit the best law school graduates with enticingly high salaries would displace small and midsize firms.<sup>12</sup>

Yet, the trend of the past twenty years has proven these predictions wrong: small and midsize firms remain stable and successful players in the legal market.<sup>13</sup> Some of these firms have concentrated on specific areas of practice, such as estate planning and administration, divorce and family law, elder law, and immigration law.<sup>14</sup> Some are considered "boutiques" that offer "sophisticated legal expertise" as "cost-effective alternatives" to large, expensive firms.<sup>15</sup> In addition, criminal and real estate matters remain steady and continued areas of practice, especially for small firms and solo practitioners.<sup>16</sup>

Small and midsize firms have also been able to survive despite their predicted demise because they are often able to offer "equally-good service at much lower rates."<sup>17</sup> Recently, they have attracted more corporate clients because small and midsize firms are less expensive and more flexible than their larger counterparts in how they work with clients.<sup>18</sup>

### B. *Enduring the Economic Recession*

The same traits that have enabled small and midsize firms to withstand the expansion of large law firms have allowed them to sustain—

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*Id.* at 749 (footnotes omitted).

11. See, e.g., Tamar Lewin, *Business and the Law: Smaller Firms Are Vanishing*, N.Y. TIMES, Mar. 9, 1987, at D2 (giving reasons for the recent demise of many small and midsize firms in New York City).

12. *Id.*

13. See, e.g., Martha Neil, *Ex-BigLaw Attorneys Profit at Smaller Firm via Flexible Fees and Eat-What-You-Kill Comp*, A.B.A. J. (June 7, 2010, 12:12 PM), [http://www.abajournal.com/news/article/ex-biglaw\\_attorneys\\_profit\\_at\\_smaller\\_firm\\_via\\_flexible\\_fees\\_eat-what-you-ki/](http://www.abajournal.com/news/article/ex-biglaw_attorneys_profit_at_smaller_firm_via_flexible_fees_eat-what-you-ki/) (reporting on two BigLaw partners who left their firm for a smaller one and are earning a profit).

14. See Robert W. Denney, *From Specialization to Succession Plans: What's Cooking for Solos and Small Firms*, LAW PRAC., Oct.–Nov. 2006, at 10, 10–11 (noting specialization in these areas as a trend in solo and small firm practice).

15. Nate Raymond, *Boutiques Slicing into Big Firms' Pie*, LAW.COM (Jan. 4, 2010), <http://www.law.com/jsp/article.jsp?id=1202437343394>.

16. Denney, *supra* note 14, at 11.

17. Larry Bodine, *Pendulum Swings in Favor of Mid-Size Law Firms*, LARRY BODINE: LAWMARKETING BLOG (Feb. 27, 2009), <http://blog.larrybodine.com/2009/02/articles/current-affairs/pendulum-swings-in-favor-of-midsize-law-firms/>.

18. Denney, *supra* note 14, at 11.

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and in some cases to capitalize on—the pressures of the current economic recession.<sup>19</sup> To cut costs during the recession, U.S. businesses increasingly turned to less expensive small and midsize firms.<sup>20</sup> One survey, for instance, reported that thirty-eight percent of law firms hired by 550 large companies in 2008 came from below the nation's top 200 revenue-generating law firms—a jump from twenty-five percent in 2007.<sup>21</sup> DuPont—considered a “bellwether on legal cost-cutting”—recently retained a greater number of smaller law firms that can accommodate alternative billing arrangements to handle outside legal work.<sup>22</sup> Turning to less expensive small and midsize firms allows large companies to obtain legal services from experienced partners rather than young associates, while saving up to \$250 per hour in legal fees.<sup>23</sup>

As a result of the recession, investors affected by the subprime mortgage crisis have turned to small and midsize firms that specialize in banking and finance to handle their litigation matters.<sup>24</sup> This is largely because so many large firms either have conflicts of interest that preclude representation or are unwilling to alienate influential clients.<sup>25</sup>

### III. MARYLAND SMALL AND MIDSIZE FIRMS SURVIVE THE ECONOMIC RECESSION

As aforementioned, fundamental differences in the operations of large firms as compared to small and midsize firms have generally allowed small and midsize firms to survive and thrive despite the eco-

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19. See *Center for Career Strategy & Advancement: Market Trends*, Nw. L., <http://www.law.northwestern.edu/career/marketrends/> (last updated Dec. 2010) (explaining that “smaller and boutique firms may be positioned better than large firms . . . for adapting to changes in the legal market”).

20. See Chris Herring, *Midsize Law Firms Pick Up Clients As Companies Turn from Pricey Giants*, WALL ST. J., July 6, 2009, at B1 (reporting a switch from large to small firms among U.S. business clients).

21. *Id.* (citing a survey by BTI Consulting Group).

22. See, e.g., Martha Neil, *DuPont Shifts from BigLaw Model, Hires More Smaller Firms*, A.B.A. J. (Apr. 6, 2009, 6:51 PM), [http://www.abajournal.com/news/article/whats\\_old\\_is\\_new\\_again\\_remodeled\\_dupont\\_model\\_focuses\\_on\\_smaller\\_firms/](http://www.abajournal.com/news/article/whats_old_is_new_again_remodeled_dupont_model_focuses_on_smaller_firms/) (noting DuPont's preference for “fixed fees” and “discounted rates”).

23. Julie Kay, *The Switch to Smaller*, A.B.A. J., Sept. 2009, at 31, 32 (noting that such savings can total millions of dollars a year).

24. Debra Cassens Weiss, *Smaller Law Firms Benefit from Subprime Litigation*, A.B.A. J. (Apr. 18, 2008, 4:59 AM), [http://www.abajournal.com/news/article/smaller\\_law\\_firms\\_benefit\\_from\\_subprime\\_litigation/](http://www.abajournal.com/news/article/smaller_law_firms_benefit_from_subprime_litigation/).

25. Martha Neil, *Bank Conflicts Are a Major Factor in Lawyers' Leaps to Smaller Firms*, A.B.A. J. (Apr. 6, 2010, 2:29 PM), [http://www.abajournal.com/news/article/bank\\_conflicts\\_are\\_a\\_major\\_factor\\_in\\_lawyers\\_leaps\\_to\\_smaller\\_firms/](http://www.abajournal.com/news/article/bank_conflicts_are_a_major_factor_in_lawyers_leaps_to_smaller_firms/).

conomic recession. To prepare for my remarks at the Symposium, I performed an informal survey of the managing partners of nine Maryland firms that range from about thirty to sixty attorneys. The practice areas of these firms vary from exclusively litigation to a blend of two-thirds corporate, transactional, or real estate work and one-third litigation work.

I asked the managing partners at these firms questions that were aimed at discovering whether these firms have experienced changes during the recent economic downturn and how these changes have affected their legal practices. In particular, I asked about changes in practice areas, billing arrangements, financing operations, marketing techniques, technology, client bases, client expectations, partner compensation, internal decision making, and ethical behavior. In the following sections, I briefly summarize the most significant responses.<sup>26</sup>

#### A. *Technology*

According to the respondents, the biggest change in the practice of law at their firms has been the use of technology in client service, firm management, and to a lesser extent marketing. Despite the economic recession, all of the respondents reported that technology has been the most significant change in the last ten years. They have significantly invested in technology and training, and they believe this investment has enhanced their ability to compete with larger firms for clients.

Moreover, technology has generally increased the lawyer-to-staff ratio, resulting in the performance of some paralegal work by secretaries and enhanced speed and volume of communication. It has also boosted client expectations for responsiveness and specific services, such as electronic billing. These changes have allowed small and mid-size firms to improve client communications and to maintain client relationships. Small and midsize firms have been able to incorporate

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26. I asked: (1) What have been the most significant changes in the last ten years? The last three years?; (2) Has your firm changed practice areas within that period of time? If so, how?; (3) Has your firm changed billing arrangements within that period of time? If so, how?; (4) Has your firm changed its method of financing operations during that period of time?; (5) Has your firm changed its marketing techniques during that period of time?; (6) Has your firm increased the use of technology? If so, how, and how has it impacted the practice?; (7) Has your client base changed? In particular, in the last three years have you experienced client fallout from larger firms?; (8) Have client expectations changed? If so, how?; (9) Have partner compensation expectations changed? If so, how has this affected the practice?; (10) Has your firm changed its internal decision making processes?; (11) Has your firm weathered the storm of the last three years, and to what do you attribute your success?; and (12) Have you seen changes in ethical behavior?

these position changes into their marketing formats, thus broadening their ability to attract new business.

### *B. Clients*

Generally, the respondents reported that they have not experienced significant changes in their client bases in the past three years. Most firms reported stable relations with clients despite increased competition resulting from the economic downturn. The respondents' clients range from Fortune 500 companies to significant regional, privately held, for-profit companies and from hospitals, universities, religious orders, and other large nonprofits to small businesses and individuals.

Several firms disclosed that they obtained new clients who left larger firms in search of more reasonable fees.<sup>27</sup> Some respondents with transactional practices reported a contraction in work as existing clients were engaging in fewer transactions, but they noted that, to some extent, they have been able to replace the lost work with work from new clients. Few respondents indicated that they have experienced pressure from clients to decrease billing rates or to enter into alternative billing arrangements despite economic hard times.<sup>28</sup> This client stability has been a major reason that these firms have been able to survive the economic downturn.

### *C. Firm Management*

The firms reported that they have not changed internal decision making processes. Structurally, the respondents operate as partnerships with a single managing partner or with a small group running the firm on a day-to-day basis;<sup>29</sup> some of the other firms rotate the responsibility through the partnership. In all firms, however, there is significant input from partners on major issues, and there is transparency in management.

Despite this stability in firm management, the respondents indicated some impact from the economic recession. Some firms, for in-

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27. See generally David T. Brown, *View from the Midsized Firm*, CHI. DAILY L. BULL., May 13, 2010, at 5 (noting that as a result of the economic downturn, "large public companies began to reexamine their habitual reliance on megafirms, and started turning to smaller alternatives to help cut outside-counsel costs").

28. See generally *id.* (noting that midsize firms have taken "a highly efficient approach to staffing matters in order to keep billings reasonable and clients happy").

29. See Douglas R. Richmond, *The Partnership Paradigm and Law Firm Non-Equity Partners*, 58 U. KAN. L. REV. 507, 528 (2010) ("In typical large and mid-sized firms, most managerial decisions are entrusted to a managing partner, or executive or management committee.").

stance, responded that they eliminated “frills”<sup>30</sup> and did not replace departing employees. But, none of the firms reported that they needed to lay off employees, which markedly distinguishes these firms from large firms.

#### *D. Finances*

All respondents reported that they manage their finances conservatively, which has helped them avoid negative consequences in a treacherous economic period. They did not need to significantly alter how they finance their operations during the recession. The firms indicated that they borrow sparingly, mostly for capital improvements and technology. Most firms do not use a line of credit to fund operations, while those firms that do use a line of credit rarely use it.

Moreover, several of the firms indicated that significant partner capital accounts or retained earnings could be used to fund operations if necessary. None of the firms compensate partners with borrowed money. As a result of their fiscally conservative approach, most firms reported that their income has been steady for the last three years; two firms, in fact, reached their best financial results ever in 2008. These findings are particularly notable in comparison to large law firms.

#### *E. Associates*

The respondents’ hiring practices do not appear to have changed significantly during the economic recession. In general, most respondents have significantly fewer associates than partners. They hire with the expectation that associates will eventually become partners. And, associates are expected to handle a high level of responsibility early in their careers. The firms reported, however, that they have experienced unplanned attrition of associates during this time period.

### IV. ANALYSIS OF MARYLAND SMALL AND MIDSIZE FIRMS

This survey was far from scientific, but it reveals some common themes that are worth noting and from which we can draw some conclusions about why small and midsize firms have survived the eco-

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30. Frills at midsize firms generally include modest, occasional lunches or dinners, sporting events, hot coffee, and cold beer. See Lynnley Browning, *For Lawyers, Perks to Fit a Lifestyle*, N.Y. TIMES, Nov. 22, 2007, at C1 (claiming that, among other things, “laptops and BlackBerrys, late-night rides home, Friday beer-and-pretzel fests and sports tickets . . . are standard fare at many large and midsize law firms”). Some large firms, however, provided valet and concierge services, mortgage guarantees, partial reimbursement for automobile purchases, and milkshakes delivered to employees at their desks before the recession. *Id.*

conomic downturn. This informal survey confirms the conclusions drawn above by some about why small and midsize firms have been able to withstand the onslaught of large law firms and the economic recession. Maryland small and midsize firms appear to be no different.

The “profound changes”—the premise of this Symposium and much recent scholarship—have not affected small and midsize firms as much as they have affected large firms. These often overlooked small and midsize firms have managed to do relatively well despite the recession and without making the same drastic changes as large firms—those that were extensively covered by the media and legal blogs. As the respondents indicated, the most significant changes were decreased discretionary spending and the decision not to replace departing employees. That is a far cry from the upheaval experienced by BigLaw.

As reported, small and midsize firms are less exposed to financial crises because of their minimal borrowing and leaner staffing. Their smaller size and democratic management make them more nimble in reaching a consensus to respond to change.<sup>31</sup> Although partners at these firms are well compensated, several surveyed managing partners suggested that partners are not driven by increased compensation. Several firms even reported that senior partners were willing to defer or reduce their compensation to avoid firm layoffs. In sum, the profound changes explored at the Symposium have missed Maryland small and midsize firms that are continuing to practice law in much the same way that they have for years.

## V. CONCLUSION: WHAT SHOULD LAW SCHOOLS DO?

The Symposium asked how law schools should respond to profound changes in the legal profession. Law schools keep apprised of developments in large law firms because of their annual recruiting programs and through large law firms’ appearances in the news and legal blogs, especially when there is a financial crisis.<sup>32</sup> Law schools, in my opinion, appear much less informed about the status of and op-

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31. Cf. Steven Andersen, *Feeling the Pinch*, INSIDECOUNS. (Mar. 1, 2009), <http://www.insidecounsel.com/Issues/2009/March-2009/Pages/Feeling-the-Pinch.aspx> (commenting that midsize firms are doing well because they are “well situated to service clients that find themselves unwilling or unable to pay extraordinary rates” and “can move a little bit faster” than larger firms (internal quotation marks omitted)).

32. See, e.g., Aric Press, *The Coming Law Firm Hiring Crisis*, LAW.COM (Feb. 17, 2009), <http://www.law.com/jsp/article.jsp?id=1202428296289> (“Law firms are actively considering the prospect of pay cuts, delayed starting dates, sharply reduced offers and more layoffs.”).

portunities in small and midsize firms because they do not appear in the media and do not have a large presence on law school campuses.

Law schools should not change their core curricula or even attempt to teach students what law firms are really like. It will be difficult for law schools to obtain accurate information about how firms operate in practice. To entice the best students, moreover, firms are likely to respond to requests for information about their culture, their practice, or their day-to-day operations in a self-promotional way. Further, firms are infinitely variable, even within a size category;<sup>33</sup> they have unique cultures and transform over time with management changes, acquisitions, and financial crises that belie any productive attempt at generalization. Thus, it would be difficult to provide students with generally applicable, useful, and practical information. Instead of attempting to do so, law schools should continue to focus on legal analysis and writing and to encourage application of these skills through clinical courses.

Law school career development offices, however, should learn more about small and midsize firms and the opportunities such firms can provide to students.<sup>34</sup> Small and midsize firms have practices that are as challenging, interesting, and sophisticated as those of large firms—they just do not cover the entire waterfront of the practice of law. They include lawyers whom are at the very top of their practice areas. They hire new lawyers as needed to perform substantive legal work, and they provide associates with substantial responsibility early in their careers. Therefore, in their efforts to secure postgraduate employment for their students, career development offices should make sure students are aware of these firms and the opportunities they can provide in this tough economic time, specifically, and during thriving times, in general.

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33. For instance, the news has focused on large firms that have disbanded, laid off employees, and suspended hiring programs. *See id.* (predicting that “[i]f present trends continue in the big firm market, we are heading toward—you pick the cliché—a paradigm-shifting, blood-in-the-suites, terror-on-the-campus hiring and retention crisis”). Many large firms have not generated that kind of news; presumably, the recession has not impacted them as much, or they are responding to it in less drastic ways. *See, e.g.,* Amanda Becker, *Law Firms Have Struggled, but Recession Proved to be Bullish for Lobbying Shops*, WASH. POST, Sept. 20, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/17/AR2010091706247.html> (reporting that the recession created work and increased revenue for Washington, D.C. firms with strong lobbying and regulatory practices).

34. *See, e.g.,* Christopher Edley, Jr., *News and Announcements: Boalt's Response to the Economic Crisis*, BERKELEYL. (May 8, 2009), <http://www.law.berkeley.edu/6167.htm> (announcing that the career development office “is expanding and updating its small and medium-sized firm contact and profile information” and has “engaged in deeper outreach to small and medium-sized firms”).