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Whatever Happened to the Market for Partners' Desks? The Milberg Indictment as an Inquiry into Accountability

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THE "PARTNERS' DESK" ONCE WAS A POPULAR OFFICE FIXTURE. A British innovation of the late eighteenth century, this rather distinctive item of furniture featured a large desktop placed on double pedestals and was typically placed in the middle of a room rather than against a wall.[1] The placement of the desk allowed two people to work facing each other.[2] The genius of the design allowed business partners to conduct business face to face, often sharing a record book that served as a daily log of partnership affairs.[3] The partners' desk reinforced the view of partners as colleagues and facilitated the mutual monitoring that is a premise underlying much of partnership law.

The partners' desk is a relic of the past, rarely seen today and even more rarely used. The demise of the desk may loosely track changes in the way partnerships, especially law firms, operate. Larger firms with extensive branch offices and partners unaware of even the names of most of their colleagues present the antithesis of an environment in which this useful desk could be employed. Today, firms are reluctant to ask summer associates to share offices, and the idea of an experienced lawyer not having an individual workspace defined by walls is, in a word, preposterous.[4]

All of which brings us to the indictment of the Milberg Weiss law firm and two of its partners, an event that has received considerable media attention and critical commentary.[5] In particular, concern has been expressed over the pre-indictment

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* Fair Business Practices Distinguished Professor of Law, University of California, Davis. I am indebted to the observations of Jeffrey T. Kraus for his informal comment on the demise of the partners' desk that provided the theme for this article.

1. *See* CHARLES BOYCE, DICTIONARY OF FURNITURE 219 (Checkmark Books 2d ed., 2001).
2. *Id.*
3. *See* Jacob A. Stein, *Cohan and Harris and the Law of Being on the Square*, WASH. LAW., Jan. 2002, at 48.
4. *But cf.* Carter Ledyard & Millburn, LLP, http://www.clm.com/recruiting.html (last visited Apr. 4, 2007) (noting summer associates may share an office with first year associates); Stroock & Stroock & Lavan, http://www.stroock.com/join_sp_ment.htm (last visited Apr. 4, 2007) (same, and explaining that this is a unique "mentoring" opportunity).
5. *See* Press Release, U.S. Dep't of Justice, Milberg Weiss Law Firm, Two Senior Partners Indicted in Secret Kickback Scheme Involving Named Plaintiffs in Class-Action Lawsuits (May 18, 2006), *available at* http:/

tactics of the government in attempting to secure the cooperation of the firm,[6] and the effect of the indictment on the capacity and vigor of the plaintiffs' bar.[7] The merits of the prosecution and the motives of those who initiated the criminal proceeding will be debated for some time to come. The discussion is an important one and quite appropriately will engage practitioners, commentators, and scholars representing varying disciplines and holding diverse political views.

Independent of a discussion of the underlying wisdom and fairness of the prosecution of this particular firm, the case should be placed in the larger context of well-established trends in the law of partnerships, specifically the reduction of vicarious accountability for missteps within a partnership.[8] Particularly in professional services firms, the abridgement of accountability has reduced the need to monitor the activities of colleagues in a firm.[9] This development has occurred without the benefit of public debate or full consideration of the moral hazard problems that arise when individuals combine their practices in a professional services firm in an environment of reduced incentives to monitor the activities of each other.

When the Milberg prosecution is placed within the context of these recent changes in partnership law, the indictment may be seen as an unsurprising response to the diminution of partner accountability for the misconduct of colleagues in professional services firms.

I. THE LARGER CONTEXT

There has been a quiet transformation of partnership law over the last two decades. Long a hallmark feature of partnership law, the derivative liability of partners for transgressions of their colleagues[10] has been curtailed sharply through the emergence of options to limit liability through simple and unilateral declarations of nonresponsibility.[11] Most notably, the limited liability partnership (LLP) has become a near-ideal form of association for law firms desiring, as almost all do, to

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/www.usdoj.gov/usao/cac/pr2006/061.html; *see, e.g.*, Julie Creswell, *U.S. Indictment for Big Law Firm in Class Actions*, N.Y. TIMES, May 19, 2006, at A1.

6. *See, e.g.*, Pamela A. MacLean, *Defense Bar Smells Blood: They're Pushing Back Against DOJ Tactics on Legal and Political Fronts*, NAT'L L.J., Aug. 21, 2006, at S6 (stating that many critics believe that the Department of Justice indicted Milberg Weiss because the firm refused to cooperate by waiving its privileges). *See generally* Lisa Kern Griffin, *Compelled Cooperation and the New Corporate Criminal Procedure*, 82 N.Y.U. L. REV. 311, 326–27 (2007); Earl J. Silbert & Demme Doufekias Joannou, *Under Pressure to Catch the Crooks: The Impact of Corporate Privilege Waivers on the Adversarial System*, 43 AM. CRIM. L. REV. 1225 (2006).

7. *See, e.g.*, Beth Bar, *Volume of Class Action Suits Falls in First Half of 2006*, N.Y.L.J., Aug. 31, 2006, at 5.

8. *See* Robert W. Hillman, *Law, Culture, and the Lore of Partnership: Of Entrepreneurs, Accountability, and the Evolving Status of Partners*, 40 WAKE FOREST L. REV. 793, 799 (2005) [hereinafter Hillman, *Lore of Partnership*].

9. *Id.* at 801.

10. *See, e.g.*, UNIF. P'SHIP ACT § 17 (1914) (imposing joint and several liability for wrongful act or breach of trust by partner).

11. *See* Hillman, *Lore of Partnership*, *supra* note 8, at 799–802. *See generally* Jennifer J. Johnson, *Limited Liability for Lawyers: General Partners Need Not Apply*, 51 BUS. LAW. 85, 92–112 (1995).

limit potentially staggering liabilities in the post-Enron environment of increasing perils for professional service firms.[12]

The limited liability partnership and its close relative, the limited liability company (LLC), have developed in a protected environment characterized by the absence of meaningful debate on the desirability of limiting the liability of those who provide professional services. Although some courts that oversee the legal profession greeted the development of the LLP with trepidation, early concerns have diminished as opting for limited liability has become the norm within the legal profession.[13] Indeed, clients may wonder whether they would be served well by law firms displaying insensitivity to their own liability issues by retaining the liability structure of classic partnership law.[14]

Given the growth in the size of firms and the proliferation of branch offices, members of law firms properly view the prospect of derivative liability with alarm and seek ways to limit their financial exposure for the missteps of their colleagues.[15] Lateral mobility within the profession only exacerbates this concern as rapid law firm membership changes[16] make it increasingly difficult to monitor activities of others in the firm.[17] The very real concern over extended liability in the large firm context was well captured in this observation: "I'm not sure that [opposing LLPs on the lack of accountability ground] is particularly realistic in the modern business

12. *See, e.g.*, UNIF. P'SHIP ACT § 306(c) (1997) (stating tort or contract obligation of partnership is solely the obligation of the partnership, and a partner is not liable for such an obligation solely by virtue of being a partner). *See generally* ROBERT W. HILLMAN, ALLAN W. VESTAL & DONALD J. WEIDNER, THE REVISED UNIFORM PARTNERSHIP ACT 179–90 (2006).

13. Kentucky offers a revealing illustration. In 1995, the Kentucky Supreme Court refused to adopt a rule that would allow lawyers to practice through LLPs because the justices "[did] not agree that lawyers can so limit their liability." *See In re* Order Amending Rules of Civil Procedure, Rules of Criminal Procedure, Rules of the Supreme Court, Ky. 95-1 (Sept. 22, 1995). Five years later, the court shifted course and allowed law firms to organize as LLPs provided they maintained specified levels of malpractice insurance. *See* KY. SUP. CT. REP. § 3.024 (West 2000). *See generally* James C. Seiffert et al., *Kentucky Supreme Court Approves the Practice of Law in Limited Liability Entities*, 64 BENCH & BAR 53 (2000).

14. The LLP form has proven particularly popular with large firms. *See, e.g.*, Robert W. Hillman, *Organizational Choices of Professional Services Firms: An Empirical Study*, 58 BUS. LAW. 1387, 1394 (2003) [hereinafter Hillman, *Organizational Choices*]. Some prominent firms initially expressed reluctance to convert to LLP status for fear of the signal the move would send to clients. *Id.* at 1401. The lessons of Enron, however, removed whatever doubts they may have had about the wisdom of limiting liability. *See Cravaths Goes Limited as LLP Wave Gathers Force*, LEGAL WK., Apr. 3, 2003, http://www.legalweek.com/Articles/114006 (quoting Cravaths' presiding partner: "Law firms in New York have only had the LLP option available to them for nine years and it has taken time for the courts and clients to get used to the idea. In addition, there is no question that the high level of litigation following Enron and Arthur Andersen has been a factor.").

15. *Cf.* Equal Employment Opportunity Comm'n v. Sidley Austin Brown & Wood, 315 F.3d 696, 710 (7th Cir. 2002) (Easterbrook, J., concurring) ("Unlimited liability and profit-sharing give each partner an interest in monitoring . . . those other partners who are shirking or otherwise not carrying their part of the load."). *See* Hillman, *Lore of Partnership*, *supra* note 8, at 799–804.

16. *See* Paula A. Patton, *Lateral Moves Now Part of Landscape; How Paradigm Shift Impacts the Profession*, N.Y.L.J., Apr. 9, 2001, at S5.

17. *See* Milton C. Regan, Jr., *Professional Reputation: Looking for the Good Lawyer*, 39 S. TEX. L. REV. 549, 567 (1998).

environment, where people can be doing things right next door via e-mail that you have no idea what they're doing."[18]

The difficulty of monitoring conduct, however, is not in itself a sufficient excuse for the failure to monitor. The core question is this: as between "innocent" members of a firm and third parties who are harmed, who should bear the costs that arise when a few professionals within a firm transgress the limits established by law and professional ethics? Without adequately addressing the issue, state law has provided the answer by sanctioning the development of limited liability vehicles that effectively protect members of a firm from liability in law for the missteps of their colleagues. Federalism issues aside, this is the context in which the propriety of federal action in the form of the Milberg indictment should be considered.

II. BEFORE THE INDICTMENT: WHERE WERE THE PARTNERS?

Media accounts suggest that in the months immediately prior to the filing of the indictment, Milberg's partners were informed by firm management of the status of the investigation.[19] This reportedly was done through a string of partner meetings offering incremental enhancements of information that did not fully apprise the partners of the seriousness of the matter until the final stages.[20] If the accounts are true,[21] they offer an amazing story of partner passivity in the face of information that key participants in the firm together with the firm itself were likely to be charged with criminal wrongdoing:

> *A partner named Elaine Kusel asked him directly: Had the investigation reached the next "phase"? Had a draft indictment of the firm been sent to Washington? Taylor acknowledged that it had. "At that point, there was a shock wave in the room," recalls a former partner. As the crisis deepened, a few lawyers talked about rallying the partnership's rank and file to challenge Weiss themselves. But ultimately, no one had the stomach to rush the cockpit. Says one former partner: "It was Mel's world, and everyone else just lived in it."*[22]

The statement that it was "Mel's world" is extraordinary in the departure it suggests from a classic view of what it means to be a partner. A partnership, the statute informs us, is an association of two or more persons to carry on a business

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18. Interview by Cheryl Glaser with Paul Martinek, Editor-in-Chief, Lawyer's Weekly, MARKETPLACE, Mar. 21, 2002, *available at* http://marketplace.publicradio.org/shows/2002/03/21_mpp.html.

19. *See* Peter Elkind, *The Fall of America's Meanest Law Firm*, FORTUNE, Nov. 3, 2006, *available at* http://money.cnn.com/magazines/fortune/fortune_archive/2006/11/13/8393127/index.htm?postversion=2006110316.

20. *See id.*

21. It is again worth emphasizing that media accounts may or may not be accurate. The accounts are used here not as truthful renditions of facts but rather for what they may suggest more broadly about the behavior of law partners generally.

22. Elkind, *supra* note 19.

as owners,[23] which suggests an egalitarian model of the partnership as a relationship among co-equals.[24] If that were truly the case with this firm, why would any partner faced with the prospect of an investigation of the firm that may lead to a criminal indictment fail to demand answers from the partners at the center of the investigation?

That the firm may have been perceived to be "Mel's world" offers something of an answer by revealing that the partners viewed themselves more as employees than as partners. Assuming the account of partner passivity is accurate, it is doubtful that the response of Milberg's partners is significantly out of line with the evolving norms of practice in law firms. Partners may be equal in the eyes of the law, but many firms reject the egalitarian view of law in favor of tiered or hierarchical partnerships in which both management and power are highly centralized.[25] Firm practice has evolved in a way that many, and perhaps most firms now reject what their partners regard as outmoded legal structures in favor of centralization and professionalization of firm management.[26]

To a large extent, centralized management and tiered partnerships are a by-product of size. Centralization of authority avoids the chaos of governance that the egalitarian model may encourage.[27] Even small firms, however, may reject the egalitarian norms of partnership law and vest disproportionate power and economic interest in a single partner or small group of partners.[28] Such a development is particularly common when one partner acts as "rainmaker,"[29] while other partners exist solely to service the clients brought into the firm by the dominant partner.[30]

All of this suggests that we should not be shocked if anxious Milberg partners did not press for answers to questions that intruded into "Mel's world." To understand their passivity, on the other hand, is not to suggest either that their response is appropriate or that their conduct should be encouraged by partnership law.

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23. *See* UNIF. P'SHIP ACT §§ 101(6), 202 (1997); UNIF. P'SHIP ACT § 6 (1914).

24. *See* Hillman, *Organizational Choices*, *supra* note 14, at 797–99.

25. Robert W. Hillman, *The Bargain in the Firm: Partnership Law, Corporate Law, and Private Ordering within Closely-Held Business Associations*, 2005 U. ILL. L. REV. 171, 183 [hereinafter Hillman, *The Bargain in the Firm*].

26. Another manifestation of a rejection of the egalitarian premise underlying partnership is the expanded use of the "nonequity" or "salaried" designation for individual who have the status of partners in name only. *See* Hillman, *Lore of Partnership*, *supra* note 8, at 817–22.

27. *See* Hillman, *The Bargain in the Firm*, *supra* note 25, at 183–85.

28. *Cf.* Wheeler v. Hurdman, 825 F.2d 257, 273 (10th Cir. 1987) (noting that small partnerships are "frequently vulnerable to domination by a single partner or a small group of partners").

29. *See* BLACK'S LAW DICTIONARY (8th ed. 2004) (defining rainmaker as "[a] lawyer who generates a large amount of business for a law firm . . .").

30. *See* Hillman, *The Bargain in the Firm*, *supra* note 25, at 186–88.

III. THE INDICTMENT

The indictment of Milberg was accompanied by considerable fanfare and attendant publicity.[31] A message was being delivered: "The government understands that it has launched a nuclear weapon, and that there will be collateral damage to innocent third parties. The government is sending a message . . . that it views the abuses alleged in the indictment as systematic and widespread."[32]

The essence of the Milberg indictment is that the firm and two of its senior partners paid individuals, who were also indicted, in excess of $11 million to serve as named plaintiffs.[33] The net benefit to the firm is alleged to exceed $200 million in legal fees paid in 150 class action and derivative action lawsuits over a period of two decades. The charges include the usual allegations of conspiracy, obstruction of justice, mail and wire fraud, and cover-up.[34]

Of course, it is not relevant to the criminality of the conduct that the payment of "kickbacks" may have been prompted by antiquated and unrealistic limitations on compensating lead plaintiffs.[35] In theory, a lead plaintiff in a securities class action monitors the lawyers and represents class members by providing testimony in deposition and trial.[36] For these services, the lead plaintiff may claim only a reimbursement of actual expenses and may recover no more than her proportionate interest in the recovery,[37] which raises the question why anyone would have even the slightest interest in serving as a lead plaintiff.[38]

A case may be made for reforming existing approaches to class representation, and some efforts already have been made in this regard.[39] That said, circumvention

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31. *See supra* note 5.

32. Stephanie Kirchgaessner & Patti Waldmeir, *Indictment or Law Firm Fuels Debate Over Approach to White-Collar Crime*, FIN. TIMES, May 24, 2006, at 5 (quoting Timothy Coleman, a lawyer with the law firm of Dewey Ballantine LLP).

33. First Superseding Indictment, United States v. Milberg Weiss Bershad & Schulman LLP, David J. Bershad, Steven G. Schulman, Seymour M. Lazar, and Paul T. Selzer, CR 05-587(A)-DDP (C.D. Cal. Oct. 2004), *available at* http://fl1.findlaw.com/news.findlaw.com/wp/docs/clssactns/usm/brg51806bind.pdf [hereinafter Indictment].

34. *See id.*

35. *See id.* at 10–24.

36. *See* Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737 (codified as amended in scattered sections of 15 U.S.C.) (amending Securities Act of 1933, ch. 38, 48 Stat. 74 (codified as amended at 15 U.S.C. § 77z-1 (2000)); Securities Exchange Act of 1934, ch. 404, 48 Stat. 881 (codified as amended at 15 U.S.C. § 78u-4)). *See generally* Elliott J. Weiss & John S. Beckerman, *Let the Money Do the Monitoring: How Institutional Investors Can Reduce Agency Costs in Securities Class Actions*, 104 YALE L.J. 2053, 2057–58 (1995) (arguing that an institutional investor would more likely serve as "litigation monitor" if made lead plaintiff, but claiming that judicial practices discouraged such assignment).

37. *See, e.g.*, Jennifer O'Hare, *Preemption Under the Securities Litigation Uniform Standards Act: If It Looks Like a Securities Fraud Claim and Acts Like a Securities Fraud Claim, Is It a Securities Fraud Claim?*, 56 ALA. L. REV. 325, 335–36 (2004).

38. Obviously, some lead plaintiffs are motivated by a desire to secure justice and are unconcerned about the lack of an economic incentive to serve in this role.

39. *See, e.g.*, ALA. CODE § 6-5-641 (1999) (establishes procedures for certification of classes and directs the court to set up a discovery schedule and conduct a certification hearing); GA. CODE ANN. § 9-11-23 (2003) (establishes detailed procedures to govern class actions including initiation, dismissal, transfer of settlements,

is no substitute for reform. Any firm that chooses to disregard norms for compensating class representatives not only raises questions concerning the adequacy and motives of the class representatives in the cases they bring, but also secures a competitive advantage over firms that operate within the boundaries defined by law.

IV. THE FALLOUT: ARE THE EFFECTS LASTING?

A law firm under indictment is poorly positioned to compete for and retain lead counsel positions in major class action cases. Predictably, early reactions to the Milberg indictment put the firm's position as lead counsel in jeopardy in a number of cases in which it enjoyed that position.[40]

It is reasonable to assume that Milberg will have difficulty surviving the fallout from the indictment, even if the firm is not ultimately convicted. Indeed, the destruction of the firm may be the real purpose behind the indictment. In the eyes of its critics, the Milberg firm stands for all that is with wrong with class action litigation.[41] They believe, mistakenly, that eliminating a leading law firm will address the deficiencies of a mass tort system sorely in need of reform.[42] The view is shortsighted because the abuses of tort litigation are best addressed through an overhaul of law, not a weakening of the actors who seek to exploit its weaknesses.[43]

If the Milberg indictment truly is a "nuclear weapon,"[44] it is of the tactical rather than the strategic variety. Undoubtedly, the destruction of the firm would provide some short-term relief to corporate defendants who might otherwise be the subject of its attention. The respite, however, would be temporary. Other firms will move quickly to fill the void. Former Milberg lawyers will establish their practices in new firms,[45] many of which undoubtedly will be strengthened by the demise of a competitor as powerful as Milberg once was.[46]

To be sure, Milberg enjoys goodwill as a firm over and above that of its individual lawyers. Given the firm's reputation, some would say notoriety, simply identifying Milberg as lead counsel may enhance the settlement value of a case. The recent

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notice and judgments); TEX. CIV. PRAC. & REM. CODE ANN. §§ 26.001–.050 (Vernon 2007) (provides for adoption of rules to regulate the award of attorneys' fees in class actions and requires trial courts to rule on whether state agencies have jurisdiction prior to certifying a class action).

40. *See, e.g.*, Elkind, *supra* note 19 (describing the loss of cases and exodus of partners following the indictment); Leigh Jones, *Milberg Dwindles, Questions Multiply*, NAT'L L.J., July 10, 2006, at 1 (describing the departure of ten partners and decisions of some clients to replace the firm as lead counsel).

41. *See* Timothy L. O'Brien, *Behind the Breakup of the Kings of Tort*, N.Y. TIMES, July 11, 2004 § 3, at 1; *see also* Timothy L. O'Brien & Jonathan D. Glater, *Robin Hoods or Legal Hoods?*, N.Y. TIMES, July 17, 2005, at BU1.

42. *See* O'Brien & Glater, *supra* note 41.

43. *Cf.* John T. Nockelby, *Access to Justice: Can Business Co-Exist With the Civil Justice System?*, 38 LOY. L.A. L. REV. 1009, 1011–15 (2005).

44. *See* Kirchgaessner & Waldmeir, *supra* note 32.

45. *See* Editorial, *Very Rough Justice*, WALL ST. J., May 22, 2006, at A12 (noting that many of the Milberg partners may simply move their practices elsewhere and that some "could retain their yachts and private airplanes, just as many of the offending Andersen partners did").

46. Short-term dislocations associated with moving practices are normal, but in an era of lawyer mobility, lawyers and firms have learned to minimize the costs arising from lateral movement.

departures of key partners, however, may already have diminished at least some of this goodwill.[47] Especially noteworthy on this score was the loss in 2004 of William Lerach, variously described by the New York Times as the "king of torts"[48] and "the powerful class-action attorney both feared and loathed in executive suites across the country."[49]

The survival of a vigorous class action bar does not hinge on the fate of Milberg. Even if faced with an adverse outcome in the prosecution, its unindicted lawyers will adapt, either as members of a wounded and rebuilding Milberg or as lawyers practicing elsewhere.

V. THE LESSONS

Three decades of lawyer mobility have aptly demonstrated that although law firms may be fragile, law practices are resilient by reason of their portability. The imposition of the "death sentence" of an indictment is more sizzle than steak when accountability for the transgressions leading to the sanction is limited to a small minority of partners. Even great firms fail, but lawyers' practices are difficult to extinguish.

The case against Milberg raises once again questions concerning what it means to be a "partner" in a large professional services firm. That it means something less than it once did in terms of accountability is partly due to the receptiveness of legislatures to limiting vicarious liability in professional services firms through the creation of limited liability partnerships.[50] The movement towards limiting liability of professionals associated in firm practice has occurred during a period in which the Enron,[51] WorldCom,[52] and other corporate scandals[53] have raised questions whether law and accounting firms are exercising sufficient diligence in the discharge of their professional responsibilities.[54]

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47. *See generally* Jones, *supra* note 40, at 1 (stating that "[o]f Milberg Weiss' 118 full-time partners, 90 came to the firm in 1998 or later . . . . Furthermore, many of [the] partners previously with the firm before former partner William Lerach formed his own practice now work for Lerach.").

48. *See* O'Brien, *supra* note 41.

49. *See* O'Brien & Glater, *supra* note 41.

50. *See, e.g.*, Thomas E. Rutledge, *Limited Liability (Or Not): Reflections on the Grail*, 51 S.D. L. REV. 417, 422–23 (2006).

51. *See, e.g.*, Larry E. Ribstein, *Limited Liability of Professional Firms After Enron*, 29 J. CORP. L. 427, 438 (2004).

52. Douglas R. Richmond, *Professional Services Liability Trends*, 742 PLI LITIG. & ADMIN. PRACT.: LITIG. COURSE HANDBOOK SERIES 237, 241 (2006).

53. *Id.*

54. *See, e.g.*, Jill E. Fisch & Kenneth M. Rosen, *Is There a Role For Lawyers in Preventing Future Enrons?*, 48 VILL. L. REV. 1097 (2003); Jonathan Macey & Hillary A. Sale, *Observations on the Role of Commodification, Independence, and Governance in the Accounting Industry*, 48 VILL. L. REV. 1167 (2003).

Other trends support the movement away from accountability. Foremost among these is the growth in the sizes of law and accounting firms.[55] Delegation of management authority to managing partners or committees may be a necessary response to larger firm memberships, but delegation also lessens the role of partners in monitoring the actions of each other.[56] Moreover, the culture of lawyer mobility that has prompted the courts to describe the revolving door as "a modern-day law firm fixture"[57] fosters a short-term outlook in which at least some partners do not view themselves as long-term stakeholders in their firms.[58]

And why does any of this matter? When partners do not view themselves as long-term stakeholders, they have little incentive to monitor closely the acts of their colleagues, particularly when the law embraces efforts to limit vicarious liability for the misdeeds of fellow partners. Thus, rather than taking steps to insure proper conduct by firm members, the principal task of management becomes one of damage control if it is made aware of misconduct, not by its own monitoring efforts but through complaints by third parties, typically clients or government investigators.[59] All of which would suggest that perhaps there is a need for a revived market for partners' desks.

55. *See* Scott A. Fredricks, *The Irresponsible Lawyer: Why We Have an Amoral Profession*, 11 TEX. REV. L. & POL. 133, 145–46 (2006); Amy Shapiro, *Who Pays the Auditor Calls the Tune?: Auditing Regulation and Clients' Incentives*, 35 SETON HALL L. REV. 1029, 1049–50 (2005).

56. *See, e.g.*, Ethan S. Burger, *Regulating Large International Accounting Firms: Should the Scope of Liability for Outside Accountants Be Expanded to Strengthen Corporate Governance and Lessen the Risk of Securities Violations?*, 28 HAMLINE L. REV. 1, 11–12 (2005); Macey & Sale, *supra* note 54, at 1172.

57. Graubard Mollen Dannett & Horowitz v. Moskovitz, 653 N.E.2d 1179, 1180 (N.Y. 1995).

58. *See* Robert W. Hillman, *Business Partners as Fiduciaries: Reflections on the Limits of Doctrine*, 22 CARDOZO L. REV. 51, 63–64 (2000).

59. *See, e.g.*, Anthony Lin, *Ex-Greenberg Tax Chief Resigns Over Kickbacks*, N.Y.L.J., Nov. 15, 2006, at 1 (noting the firm's response to kickbacks to partner was to conduct an investigation that ultimately resulted in the resignation of the partner).