

By Anthony Doniger

A Different Measure of Success



Some 35 years ago the former King of Bhutan, on his coronation, suggested a new way to define prosperity: Instead of measuring a country's status according to its gross national product, he suggested the use of "gross national happiness" (an index on which his undeveloped Buddhist country would score well) to measure actual well-being instead of consumption. We have much to learn from the Bhutanese king.

A good deal has been written about contentment, stress, dissatisfaction and disillusion in the legal profession. For better or for worse, many lawyers and most large and mid-size law firms often measure their success not on a happiness or contentment index but against a monetary standard. The gross national product of the legal professional, earnings or profit per partner, is the currency with which firms compete for rankings on the all important *The American Lawyer* charts. To improve these monetary rankings firms do things that in the end are harmful to the profession and bad for lawyers. The business model dominates at the expense of the professional model.

On a business scale, it is a zero-sum game: increase revenue, decrease or control expenses, like any other business. One way to increase profit per partner is to limit the number of partners who count in the equation. There are many ways to achieve that, none of them salutary. Lower the age at which partners stop being partners (whether by changing their partnership status, or just retiring), which results in lawyers in transition sooner than expected, at a time when their productivity and desire may still be high. Or make fewer people partner (most surveys of large law firms suggest that today the percentage of each entering class of associates who either expect to make partner or who will is as low as it ever was). With fewer people making partner, it is of course harder for diversity milestones to be achieved as there are fewer openings in the partnership ranks for anyone. The perception of an increasingly impenetrable ceiling leads many minorities and women to look elsewhere (corporations, government) where a more flexible, satisfying and less all-consuming professional life can be enjoyed.

On the revenue side, the pursuit of ever increasing revenues by definition imposes greater pressures on associates (and all lawyers). Again, a zero-sum game. Associates are expected to bill more hours than ever before; one rarely hears of firms lowering the hour expectations of associates, and often we hear of firms reminding associates of the price to be paid for their high and ever increasing salaries. The result, of

course, is that associates have less time for professional and other non-billable activities. We hear again and again that associates work too hard to participate in bar association or pro bono activities.

In addition, mergers and acquisitions have increased markedly over the last decade. By and large, these occur not to make the practice of law more fun or more relaxed but to make it more profitable. The cost of these transitional events is not insignificant, however. Indeed, at this year's Boston Bar Association Leadership Retreat, a large percentage of the attorneys present had personally experienced such a transitional event, which was stressful and resulted in a solution that was less optimal from the perspective of contentment, though perhaps more profitable.

The profession has begun to take steps in the right direction. Flexible work schedules have been instituted in many firms to make the firms more family friendly. A recent report in *The New York Times* highlights a creative two-tier pay schedule at a Chicago law firm: associates can choose to meet the general 2,000 hour per year expectation, or bill "only" 1,850 per year and receive less pay and be on a longer partnership track (but on a track nonetheless). As long as those who choose one of these options are not treated as "less serious" or hindered in the pursuit of partnership, these are very positive developments. *The American Lawyer* itself has an "A-List" measure of the "most successful" firms in the country, which consists of the AM-Law 200 financial statistics, plus pro bono surveys, diversity score card results, and associate surveys. And law students are beginning to send the message: for example, chapters of a group called Law Students Building a Better Legal Profession are being established at some law schools. The group ranks firms based on how they treat employees, not according to how much you can make there.

In the end, we need to ask when enough is enough. Should we be willing to trade some profit or growth in profit for greater satisfaction? It is not about what *The American Lawyer* says – we lawyers must control our own destiny. Surely it is okay to make a little less next year (or not make more) and take on some new professional or pro bono activities, or yes, even personal activities (there's nothing wrong with hiking the Appalachian Trail). The measure of our success has to come from our values and not monetary rankings. This reality forces us to confront our attitudes to contentment and to money. There is much we can do to improve our professional and personal lives, our pro bono and bar work, our efforts to improve access to justice, if only we would emphasize alternative measures of success. ■