REFLECTION

Reflections on Leadership in Government and Private Practice

Benjamin B. Wagner*

Most lawyers in the United States practice in law firms or serve in government, and quite a few, like myself, have crossed between those spheres at least once. Many have been successful leaders in both government and private practice by demonstrating qualities associated with leadership generally—substantive expertise, high ethical standards, a commitment to hard work and the advancement of the larger organization, and respect for colleagues and their opinions. The meaning and means of leadership in each environment are different, however, and success as a leader in one role does not necessarily guarantee success in the other. The qualities that characterize effective leadership in public and private law offices tend to reflect different institutional structures and orientations. What follows are some thoughts about distinctions and commonalities between leadership in government and leadership in large law firms.

I have had the opportunity to observe leadership in large legal organizations from several vantage points. For nearly six years I served as an associate in a large New York firm, where I had a worm’s-eye view of leadership. At the time I was there, it was a firm of about seventy partners and over two hundred associates, almost all of them at a single location in lower Manhattan. My next legal job was in the U.S. Department of Justice (DOJ)—sometimes described as the world’s largest law firm, with about 10,000 lawyers1—although my career there was at one of its many components, the U.S. Attorney’s Office for the Eastern District of California. I started as a line prosecutor, later served for nearly nine years as a supervisor of a unit of Assistant U.S. Attorneys (AUSAs), and was then appointed by President Obama to serve as the U.S. Attorney for that district. In six and a half years as U.S. Attorney, I both managed an office of

---

* Benjamin B. Wagner is a partner at the law firm of Gibson, Dunn & Crutcher. He formerly served as the United States Attorney for the Eastern District of California.

nearly one hundred lawyers and participated in the leadership of the DOJ nationally through my role on the Attorney General’s Advisory Committee, a sort of board of directors for the U.S. Attorney community. Recently returned to private practice, I am now a partner at a 1200-lawyer global law firm with offices in twenty cities around the world.

Leadership in large legal organizations is challenging. It might be compared to John Boehner’s description of his role as Speaker of the House—keeping a couple hundred frogs in the wheelbarrow long enough to get something done. Lawyers are not easily led, and they may be more committed to their own clients or cases than to the organization. They may have their own views on the appropriate mission or values of the organization. But leadership makes all the difference between a successful organization that attracts and retains motivated and committed people and one in which people merely show up to earn a paycheck.

Defining Leadership

One thing I have learned from my own journey and from observing the journeys of others is that leaders are not born; they emerge. Leadership is not a title, personality type, or skill that can be mastered through repetition like a good backhand. It is a process of navigating group dynamics in a way that fosters a sense of commitment to a shared endeavor. Those who appreciate and respond to the needs of individuals in the organization and subordinate their own egos and objectives to further the common interest can succeed as leaders. Leadership includes elements of personality and strategy, but it is largely shaped by how individuals respond to the purpose of the group and the relevant constituencies.

For law firms, the primary objective of leadership is essentially the same as that of any profit-seeking corporation—to guide the firm through a changing competitive landscape to ensure a profitable future for the partners. A secondary objective is to nurture a cohesive and committed firm—including both partners and associates because without either the primary objective is much more difficult to achieve. For government agencies such as U.S. Attorneys’ Offices, the primary objective of leadership is to efficiently discharge the government’s duties with limited resources. A secondary
objective, much as in law firms, is to promote a cohesive culture that attracts and retains talented attorneys who will accomplish the first objective. While the orientations of government agencies and private law firms are different, the objectives of their leaders are, or should be, surprisingly similar: fostering a shared identity that encourages people with different backgrounds, experiences, and political outlooks to commit to the common effort and defining a vision for the organization that motivates them to implement it. In both environments, effective stewardship of the organization involves articulating the values of the organization; focusing on longer-term trends; upholding high standards; cultivating, retaining, and promoting skilled attorneys; nurturing relationships with external stakeholders; and looking for ways to enhance the reputation or brand of the office.

For every organization, there are some objective measures that can be used to assess the leadership of the organization. (Although in the government context, where progress cannot be measured by growth or revenues, there is often disagreement over what measures are most relevant.) Both public and private law offices are measured primarily by the skills and productivity of the people in them. Whether someone is an effective leader in those offices is largely in the eye of the beholder. A key question in defining leadership, therefore, is: Leader of whom? The relevant constituencies include people both inside and outside the organization.

In large law firms, just like in other large shareholder-owned enterprises, the key constituency is the shareholder-partnership. But another important constituency is the associates who are vital to the success of the partners and who interact with the partners on a daily basis. Being recognized as a leader is also important to relations with clients, who increasingly value not only substantive legal expertise but also leadership in promoting diversity, inclusion, and service to the community. Finally, there is real value in the views of the larger legal community, including legal journalists. The “American Lawyer effect,” in which law firms are ranked and judged not only on profitability but also on associate satisfaction, pro bono commitment, and other factors, has created a dynamic in which leadership and the perception of leadership in nonmonetary metrics can directly impact the success of the firm.5

In a U.S. Attorney’s Office, the AUSAs who carry out the mission of the office are the primary constituency. Almost as important, however, is the support staff—secretaries, paralegals, and administrators. They have limited advancement opportunities, and many of them could earn more by working elsewhere. Keeping a motivated and experienced staff is vital to the success of

the office. Beyond the office, an important constituency is the federal and local agencies that partner with federal prosecutors in the investigation and prosecution of cases or that serve as clients in civil cases. A relationship of mutual trust and confidence with these agencies is an important component of success for a U.S. Attorney’s Office. The larger DOJ is also a constituency; the reputation of the office within the Department can impact resources, recruitment, venue decisions in important cases, and the level of support from other DOJ components. As public figures, and usually the highest executive branch officials in their districts, U.S. Attorneys also have a leadership role outside the office because engaging with community groups and civic leaders is often important to advancing the goals of the office, the DOJ, and the presidential administration.

**Tools of Leadership**

Leaders in government service and in large law firms have different tools that can be deployed to exercise leadership. The differences among those tools can shape the contrasting leadership styles of private and government attorneys.

Those who lead law firms and those who lead U.S. Attorneys’ Offices stand on very different platforms. A U.S. Attorney, by virtue of being a presidential appointee confirmed by the U.S. Senate, commands a certain level of respect, particularly among external constituencies. The press, other agencies, and the public take notice of statements from the U.S. Attorney, and if used with caution, the public megaphone can be a useful messaging tool for external and internal audiences. Within the office, which is staffed by career employees who have seen U.S. Attorneys come and go, the title counts for a bit less. Many career prosecutors view U.S. Attorneys, particularly those who are appointed from outside the office, as temporary guests. The leaders of law firms, by contrast, derive their authority from the consent of the partnership. While law firms have a variety of structures, in most cases the members of the executive committee can be deposed if a sufficient number of partners lose confidence in their leadership, so those leadership positions reflect some level of constituent support. Law firm leaders can thus rely on a degree of legitimacy with their primary constituency that U.S. Attorneys and other government supervisors lack.

Personal engagement with colleagues is an important aspect of leadership in all types of settings—trial teams, practice groups, branch offices, committees. Because U.S. Attorneys’ Offices generally have fewer lawyers than large law firms and practice in a more limited range of areas, the nature of interactions between U.S. Attorneys and AUSAs tends to be fairly intimate, which elevates the importance of interpersonal dynamics. This can be a positive or negative factor for the leaders of the organization.
In terms of incentives, government leaders have very few carrots and sticks to wield in motivating federal employees. On the carrot side, there are no equivalents to the monetary awards law firm leaders can offer—an AUSA or support staff member has no prospect of a promotion to partnership, an award of more shares, or a large year-end bonus. Leaders in U.S. Attorneys’ Offices must use more intangible incentives, such as public recognition and other psychic rewards, to motivate outstanding performance. On the stick side, it is extremely difficult to discipline or remove unproductive employees and finding ways of extracting value from less productive employees is one of the great challenges of management in government offices. In this respect, law firms have a tremendous advantage in tools to incentivize excellence. Large law firms can attract and reward outstanding lawyers. Over time, they tend to shed less productive or motivated attorneys, creating an environment of excellence that is self-sustaining.

U.S. Attorneys do have one advantage. Leaders seek to inspire their troops to embrace the mission of the organization, and no law firm can match the moral clarity of the mission of a U.S. Attorney’s Office. As U.S. Attorney, I met with every new hire to talk about the values of the office, my expectations for them, and their mission as AUSAs. Their job, I told them, was not to secure convictions or to get the longest sentence possible but rather in each case to find out the truth and do the right thing. Incoming AUSAs, who had already made the decision to prioritize public service over remuneration, proved to be a receptive audience for that message.

While the mission of a law firm may not be as lofty, most lawyers in firms are just as faithful to ideals of integrity, ethics, and morality, and law firm leaders can also articulate these shared values to inspire commitment and motivation. At the recent retreat for new partners at my law firm, I found myself on the other side of that incoming discussion about institutional values, as leaders of the firm spoke with conviction about how the firm had built its identity—and its compensation system—around a culture of collaboration and mutual respect. Of course, law firm leaders must include associates in this shared vision and avoid creating the impression that associates are toiling away to benefit a remote and disinterested partnership.

One feature of leadership that is equally important in U.S. Attorneys’ Offices and large law firms is a genuine commitment to professional development. Less-experienced attorneys in all types of organizations need training, mentorship, and practice opportunities, and leaders of strong law offices attract and retain talented attorneys by prioritizing the development of future leaders.
Tests of Leadership

In both government and private practice, there is wisdom in the old adage that nothing succeeds like success. Leadership is far easier when a U.S. Attorney's Office is bringing major cases and getting good results or when a law firm is winning business and prospering. The true test of leadership is in making difficult, sometimes unpopular, decisions and in guiding an organization through uncertain times.

As U.S. Attorney, I had to make some difficult decisions, such as dismissing a high-profile case that I had concluded no longer had a realistic prospect of leading to an appropriate result. Due to the federal budget “sequester,” employees went for three years without the meager salary increases they had received in prior years. During the sixteen-day government shutdown in 2013, when many employees were furloughed and did not know whether they would receive a paycheck, I regularly called employees at home to provide support and keep them apprised of developments. On these and many other occasions, I worried about employee morale and productivity, the reputation of the office, and whether resources were sufficient to meet the demands I placed on my office. Ineffective or inattentive leadership can have a negative effect on the morale and culture of any U.S. Attorney’s Office. But ultimately all U.S. Attorneys are replaced, and the poor leadership of any one U.S. Attorney will not result in lasting institutional damage.

By contrast, poor leadership can have existential consequences for law firms. Their assets are their partners, and a loss of confidence can lead to departures of key personnel, sometimes triggering a self-reinforcing “run” that can rapidly deplete the firm. In challenging market conditions, or in the face of the loss of an important partner group or client, even good law firm leadership may not prevent lasting harm to the partnership. Thus, while government leaders can afford to focus largely on the near term, law firm leaders must be forward-looking, anticipating future conditions, building reserves or contingency plans, and positioning the firm to weather storms on the horizon.

Conclusion

The different purposes of law firms and U.S. Attorneys’ Offices, and the nature of the stakeholders and the tools available to leaders in each, lead to

different types of leadership. In U.S. Attorneys’ Offices leaders tend to lead by inspiration, leaning heavily on the psychic benefits of public service, on messaging through the public platform, and on interpersonal communications to prod and motivate individuals. In large law firms, leaders tend to lead by defining firm values, setting and maintaining high standards for themselves and their colleagues, taking a strategic approach to the firm and its business, and deploying financial incentives to promote long-term commitment and outstanding work.

But there are more commonalities than differences, which is perhaps why so many lawyers have been successful leaders in both government and private practice. Leadership that reflects a genuine commitment to act ethically and morally, articulates common values, motivates people with a sense of common purpose, and instills pride in association with the organization will always be the hallmark of thriving legal organizations.