BY CHARLES H. BARR

Every Mistake in the Book: How *Not* to Hang Out a Shingle

Practicing solo or in a small firm is not for the faint of heart. This article distills from one lawyer's tumultuous experience four maxims. They are relevant to private practice generally and especially to lawyers who operate their own firms. Awareness of and fidelity to these maxims should produce a career, whatever it turns out to be, that follows a path straighter, higher, and less painful than the author's.

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Oh, mothers, tell your children
Not to do what I have done
Spend your life in stark naivete
In the House of the Shingle Hung

– Adapted from The Animals,
"The House of the Rising Sun" (1964)

When I finished law school in 1977, I took a job with a firm in Washington, D.C. A more prosaic start to my career, and this article, is difficult to imagine. Two years later, however, I resigned, moved to Milwaukee, hung out the proverbial shingle, and proceeded to make – well, read the title. I'm not going to say it twice.

This article won't regale you with the lurid details of my numerous – nay, innumerable – misadventures. First of all, this publication has a space limitation and I've practiced for over 47 years. Second, there's a limit to my capacity for self-flagellation, at least in public. I'm sorry if this disappoints you.

For those (if any) who continue reading, this article distills from my tumultuous experience three maxims I habitually violated for an embarrassingly long time and a fourth I should have addressed before hanging out my shingle. They are relevant to private practice generally but are especially crucial in the shingle-hanging context. While they reside closer to the common-sense than the lightning-bolt end of the spectrum, from what I've seen I'm hardly the only shingle-hanger who ever transgressed them or ever will (although I may be an extreme example). These maxims would be top of mind if I could and would do it over.

How Did I Get Here?

The mid-size firm that gave me the nod out of law school had a specialized D.C. administrative practice, which consisted mainly of representing manufacturers regulated by the Food and Drug Administration. The firm was well established and regarded. In fact, it was unquestionably at the top of its admittedly narrow field.

Looking back, I suspect it was also a gold mine, though I didn't stick around long enough to have a chance to find out. Once a month the partners would hover around a secretarial station, barely containing their excitement as the IBM mag card machine spit out the bills. This didn't have much of an impact on my nearsighted associate's perspective. I was paid a fair salary, and the cost of living was manageable at that stage of life. Money wasn't a priority then.

Remarkably, the partners loved me. Well, liked me. I was bent over a file and legal pad at my desk when they left at night and in the same position when they trooped in a little after nine the next morning. "Did you go home?" they would ask. In addition to working hard, I was a team player, and while I was hardly a wunderkind, I added sufficient value to justify their investment.

In short, this erstwhile middling law student had majorly lucked out. What on earth could have possessed me to leave and fly solo in a city 1) where I had never lived, 2) about which I knew essentially nothing, 3) where I knew not a soul other than my wife's family, and 4) which I had misidentified as Wisconsin's capital in grade school, thereby blowing my chance for a perfect score on a geography test?

In retrospect, it's easily the most bizarre decision I ever made. But there was a semblance of an underlying rationale. For one thing, I found the work at the D.C. firm substantively uninspiring. For another, I was a total bag carrier. When I wasn't writing internal memos, I flew around the country with one partner or another to visit clients, attend depositions, and the like. To its credit, the firm took reasonable pains to teach me its craft, but in two years I never had any decision-making role or was otherwise out front with any client or the FDA, much less in any court. I was an impatient newbie J.D., certainly not less so when colleagues at other firms, who had finished law school when I did, entertained social gatherings with stories about the depositions they were taking and the motions they were arguing.

If there was any one event that motivated my departure, it was a pro bono case I took at the instance of the D.C. bar association. I alone in the firm made this gesture, which the partners affably pooh-poohed and promptly forgot. My client was a small nonprofit being sued in D.C. Superior Court for default under an equipment lease. The case didn't involve an overwhelming amount of money, but the young man who handed me the complaint and sat across the desk from me was wringing his hands, mostly because he had no idea what to do. Bringing the full brunt of my legal training to bear, I noticed the applicable statute of limitation

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had run several months before commencement of suit. I served and filed a two-page motion to dismiss. Opposing counsel called to say he wouldn't oppose the motion, whereupon the complaint was dismissed with prejudice.

That wasn't too hard, I thought. What made more of an impression on me, though, was the client's palpable relief and effusive thanks. Naturally, I had never personally experienced anything like that from the firm's paying clients, whose cases dragged on for years, not a week and a half. That's the kind of lawyer I want to be, I decided. One who helps "real people" with "real problems."

Life was indeed about to get quite real.

The Humongous Problem That Never Was, Exactly, the Problem

When I shared my plan with friends and acquaintances, the question from lawyers and non-lawyers alike was always, "How are you going to get clients?" As I had no ready answer, the question became my overriding apprehension. I came to understand that someone starting a practice in a new location typically had, or at least knew how to develop quickly, "connections" in that location that would translate into business. I was starting out with *nuttin'*. So how *would* I get enough clients to get this thing off the ground?

As it turned out, getting clients, per se, was never a problem. Almost from the very beginning, clients pretty much came out of the woodwork. Out of necessity, my first office was a sublet in a suite of lawyers, and those lawyers referred a few cases. Apart from that, I don't know how to explain the fact that I always had clients. In my acute naivete, I had no marketing plan beyond a small Yellow Pages ad. I had a few early successes in cases, but nothing stunning or otherwise newsworthy that would set the phone line on fire. While I'm not a social misfit, neither am I particularly gregarious. It just seemed that everyone I ran into – at the office, the hardware store, the gym, the backyard fence – had a legal issue of which they were eager to unburden themselves as soon as they knew I was a lawyer.

Were they good clients, or at least clients with cases on which I could make decent money? Now and again, yes. By and large, no. That was hardly surprising; as a stranger in town, I wasn't going to get plum cases except by occasional dumb luck.

At bottom, the problem was never too few clients but always too many, a condition that continued for decades because, despite the evidence right in front of me that entire time, I never rid myself of that initial, icy apprehension of not knowing where the next client would come from. This apprehension, and misapprehension, spawned my blatant disregard of the first three maxims, to which, finally, we turn.

Maxim # 1: Don't Practice Alone

I didn't say "don't be a sole practitioner." There always have been and always will be sole practitioners. "Hanging out a shingle" fairly implies solo practice.

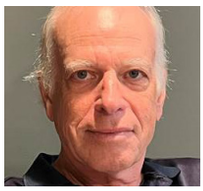
But a sole practitioner must cultivate strategic alliances with other lawyers. Any lawyer can benefit from such alliances with others outside her firm, but the smaller the firm the more important they are, and for a sole practitioner they are, with very rare exceptions, absolutely indispensable.

Two kinds of strategic alliances are necessary. Let's call one the "bounce-off" alliance, with a lawyer you can buttonhole on an ad hoc basis for brief, informal consults on cases, problems, or ideas. Of course, you must be willing to reciprocate, and the lawyers must be sufficiently acquainted to trust one another's judgment. Bounce-off alliances tend to form naturally in office suites housing lawyers not formally associated in practice, which is where sole practitioners are commonly found. I imagine these alliances are a bit more difficult to initiate and maintain in the "work from home" era, but they should nonetheless remain feasible.

The second type of alliance is the "joint venture" alliance, with a lawyer you bring into a case to work with you if the client consents. This is trickier. Not only must the other lawyer have the knowledge and experience relevant to the case to add the value you seek, but she also must be willing to work with you on an equitable basis as opposed to appropriating the case and client for herself or marginalizing you to a lesser but nonetheless significant extent. As the presumably less experienced lawyer, you are the more vulnerable party in this alliance. You must realistically assess the character and, in particular, the fairness of the lawyer you approach.

Given my abiding and increasingly irrational lack of confidence about future business, I indeed feared being pushed out of the case. It happened once that I recall, but that was my fault. In approaching the other lawyer, you must be (and I should have been) clear – and then document if agreeable – that the offer is to work together on the case, not to hand it off, which would be something different: namely, a referral. The joint venture agreement should address in detail both the type and quantity of work each lawyer will perform, the mechanics of adjusting or abandoning the association if warranted by unanticipated developments in the case, and of course the financial particulars. And no matter how carefully the agreement is drafted, the lawyers must have at the outset and throughout a relationship of good faith and mutual respect.

The client-consent aspect of a joint



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venture alliance can also be dicey. My fear was that when I proposed to bring in Lawyer X and explained why I believed she would add value, the client would think, "If Lawyer X is the right lawyer for this case, why am I talking to this guy?" While that reaction is possible, in retrospect I think the more rational and probable reaction would have been, "Hey, this guy isn't just self-aggrandizing; he's thinking ahead, looking out for my interest, and maximizing our chance of success."

At the beginning of my solo career and for too long thereafter, the underlying dread of a client wasteland just beyond the horizon inhibited me from considering, seeking, and implementing strategic alliances, especially joint venture alliances in my larger and more difficult cases. Had I done so more consistently, I would have avoided a boatload of trouble.

Maxim # 2: When Your Gut Tells You to Say No or Jump Ship, Do It

I declined and withdrew from some cases. Those were the "gimmes," in which the need to do so was so glaring that one of my grade-school children could have made the call. But there were many other instances when a clear-minded adult could have made the call, and that wasn't me because my insecure approach to practice drowned out what my gut was telling me. There must be a way to make this work, I would always think. Anything was preferable to watching a prospective or actual client walk out the door.

To be sure, in the context of hanging out a shingle right out of or soon after law school there are valid reasons to say yes when in other contexts the correct answer would be no. Shingle-hanging typically entails a general practice. As practice has become more specialized, general practice has been increasingly looked down upon as the "retail" end of the profession. But retail has its place in law as in life. Although general practice is an almost unheard-of landing spot for alums of my law school, it was exactly what I wanted when I left the D.C. firm. I didn't know what practice area would best suit me. I wanted to try a lot of different things. In fact, I found the randomness and unpredictability of a general practice alluring. For example, although I was fairly sure I would have no abiding interest in family law, I wondered what it would be like to handle a divorce case. (It was miserable.)

Assuming that competence (either alone or in collaboration with others) isn't a barrier, a general practitioner will more often say yes to cases than will a lawyer whose practice is more focused. One way to say yes less, then, is to identify and gravitate toward a practice focus as early as possible in your career. Then again, some lawyers are destined for general practice, which as discussed has its place, and at which it is possible to excel. For me, "maturing" from general to a more narrowly focused practice was exceedingly slow and ultimately incomplete.

I was okay with that, but inherent in that niche – or, rather, the lack of one – is taking more risks than would a more seasoned and narrowly focused lawyer. Such risks, if calculated, are not invariably a bad practice. Hanging out a shingle is the prototypical risk. Unwillingness to take calculated risks on cases once the shingle is out there would be paradoxical.

But there are cases – lots of them – to which any lawyer should say no, or no more. Regardless of the type of practice you develop, it won't reach its full potential if you consistently say yes when you should say no and consistently stay in when you should get out. There are a multitude of things out there you can't fix. Every lawyer must own that reality. Had I done so more often, I would have avoided a truckload of trouble.

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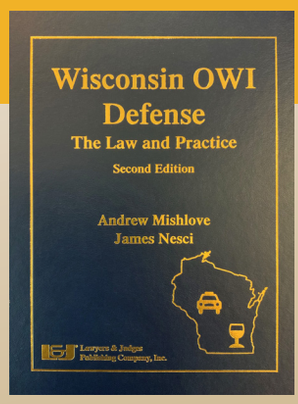

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Maxim # 3: Your Caseload Capacity Is Not Infinite

As inarguable as this proposition is, I ignored it nonetheless for most of my career. If a potential new case had promise, I always rationalized a way to take it, regardless of my existing caseload. Not once did I utter the words, "I'm currently not taking new cases." At numerous times, I should have.

How many open cases should you have at any time? It depends on the time demand of each case, which can vary wildly not only from case to case but even, and unpredictably, at different stages of the same case. So, it is difficult to come up with a definitive answer.

That difficulty, however, shouldn't serve as an excuse, as it did for me, simply to dispense with establishing a limit on the number of open cases you have. Use your bounce-off alliance to get insight on the magnitude of a feasible caseload. Set aside a half hour, list your open cases, and render the most objective and defensible assessment you can of how many more, if any, you can reasonably handle – in effect acting as referee or special master to yourself. Build into your assessment, of course, that without a life outside your practice, the latter will have diminishing and eventually disastrous returns.

Adopt *some* sensible limit and then exercise the discipline to stick to it unless you can look in the mirror and articulate a convincing justification for an upward adjustment. If a promising case comes along and you're already at your limit, create some goodwill with both the prospective client and another lawyer by referring it out. Or, if you're convinced the case is really a once-in-a-lifetime opportunity, bow out of one or more existing cases if you can do so ethically. Had I followed this path more often, I would have avoided a trainload of trouble.

Less Is More

Before proceeding to the last maxim, a redux of the first three is in order. They are interrelated and have a common cause: the irrational fear of never getting another client. For 18½ years late in my career I had a great law partner, who was also a great lawyer (now retired) and remains a great friend. "Less is more," he would tell me. Perhaps that should have been the title of this article. Anyone who can sum up the answer to a decades-long problem in three little words is smart. The fact that those words had to be spoken shows that at that late date I was still honoring the maxims far too often in the breach, but they finally and gradually began to sink in.

Maxim # 4: Ask Yourself Whether Hanging Out a Shingle Is for You

The last maxim is more fundamental and *a priori* in nature than the other three. Hanging out a shingle right after or soon after law school is hard. It's not for everyone. Before you do it, conduct a candid consultation with yourself, crossing over into brutality, if necessary, to decide if it's your cup of tea.

I wince at the term "street smarts," which is hackneyed and imprecise, but it gets us in the vicinity of the starting point for this self-assessment. The task has two broad aspects. First, review the total of your life experience. What have you done *besides* law school? Countless varieties of experience – vocational, avocational, cultural, political, religious, and educational (other than law school) – can be relevant to this assessment, but some are more directly relevant

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than others. In particular, do you have any experience operating a business, especially a small one? Any lawful field of endeavor qualifies; it doesn't have to be a law practice. Lots of folks work in a family business, or at least see it up close and from the inside on a day-to-day basis, before going to law school.

Second, what's your emotional quotient (EQ)? How adept are you at sensing what's going on in the head, heart, and gut of the person who is sitting across the desk? How fine-tuned are your listening skills? Your verbal communication skills?

If your talents and personhood have been honed principally on the scholastic – dare I say "nerdy" – side of the spectrum, there's no shame in that. And business acumen can certainly be acquired through formal training. The same is true, if more amorphously, of developing your EQ. Can these skills be developed *after* you hang out a shingle, which is to say via on-the-job training? Well … yes, but you'll be smack dab in the middle of the school of hard knocks. Ask yourself honestly how many knocks you want to, and can, take.

As for me, there was no family business or other business experience in my upbringing. I worked in the press office of a federal agency for a year or so between college and law school. Otherwise my life had been pretty much a nose-to-the-grindstone academic one. My EQ? Average, maybe. On a good day. In short, I was a marginal shingle-hanging candidate, but hey, it was (and, at the moment, still is) a free country.

Conclusion

A boatload, truckload, and trainload of trouble is, in the aggregate, a lot of trouble. Upon hanging out the shingle, I took plenty of hard knocks and ate plenty of crow, sprinkled lightly with occasional moments of triumph. But after uncountable lessons learned the hard way, I've somehow come out on the other side. I still practice law, and I enjoy the work. The profession turns out to be more forgiving than commonly supposed, provided your mistakes are honest ones.

If the prospect of hanging out a shingle early in your legal career is bouncing around your head, I heartily commend to you the foregoing four maxims. Awareness of and fidelity to them should produce a career, whatever it turns out to be, that follows a path straighter, higher, and less painful than mine.

I see a hand up. The question is: would I do it all over again?

Hmm …. Let me get back to you on that. **WL**

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