

My Niche Practice Playbook

BY MARC RANDAZZA, ESQ.

The Romans said, “a legion trained for every terrain conquers none decisively.” This playbook is for the lawyer seeking to be a legion that conquers some turf decisively. The best way to get there is to be who other lawyers talk about when they say, “I got a guy” (or gal, as it may be).

Finding Your Place

Do you want to squeeze into a niche because there’s less competition? That is smart, and it has a proven track record. But other motivations work too – maybe (like me) you don’t fit in anywhere else. Maybe you have a passion.

Entrepreneur example: My first firm started in the trunk of a partner’s car. Decades later, it cornered the market on condo law in Florida. Then, it did all business work for those communities. This is a business-exploiting niche. But mine is more the labor of love type – *when a niche chooses you*.

My First Amendment origin story begins in high school. I got sent to detention – a lot – for what I said. Once I learned what the First Amendment was, I chafed under any restriction of any of my “Five Freedoms.” I studied journalism in college, focusing on the legal aspects of that profession. I later worked as a journalist

covering Mafia trials in Sicily, learning what freedom of expression did in practice.

The allure of a bigger firm with bigger money was irresistible to a young lawyer with a lot of debt, so I worked at the condo firm writing demand letters to residents about their dogs being over a 25-pound weight limit. Yep, fat dog cases. My colleagues were happy, making a great living, and outstanding at what they did. I was mediocre at it, because I yearned for something different.

After work, I wrote law review articles about the First Amendment. I put in almost as much time writing about a practice that I didn’t actually do as I was at my job. Time to make a move.

ADVICE: Ask why should I chase a niche? Pure entrepreneurship? Listening to your heart? Figure it out and go.

Be the Source of Knowledge

I did my graduate thesis on “Online Vote Swapping,” hoping to time its publication with that issue hitting an appellate court.¹ Quite a gamble, but it worked. The Ninth Circuit cited my thesis in *Porter v. Bowen*. I got a debate on national TV on the issue. It was such a tiny slice of the First Amendment, so a newbie like me was able to become the No. 1 expert on this narrow issue.

It was a flash in the pan that lit up my practice. Getting noticed as an expert created a “halo effect” that illuminates your path to areas adjacent to it.

ADVICE: Stack the deck by being the No. 1 person, even if by default, on a narrow issue in your niche. Then expand.

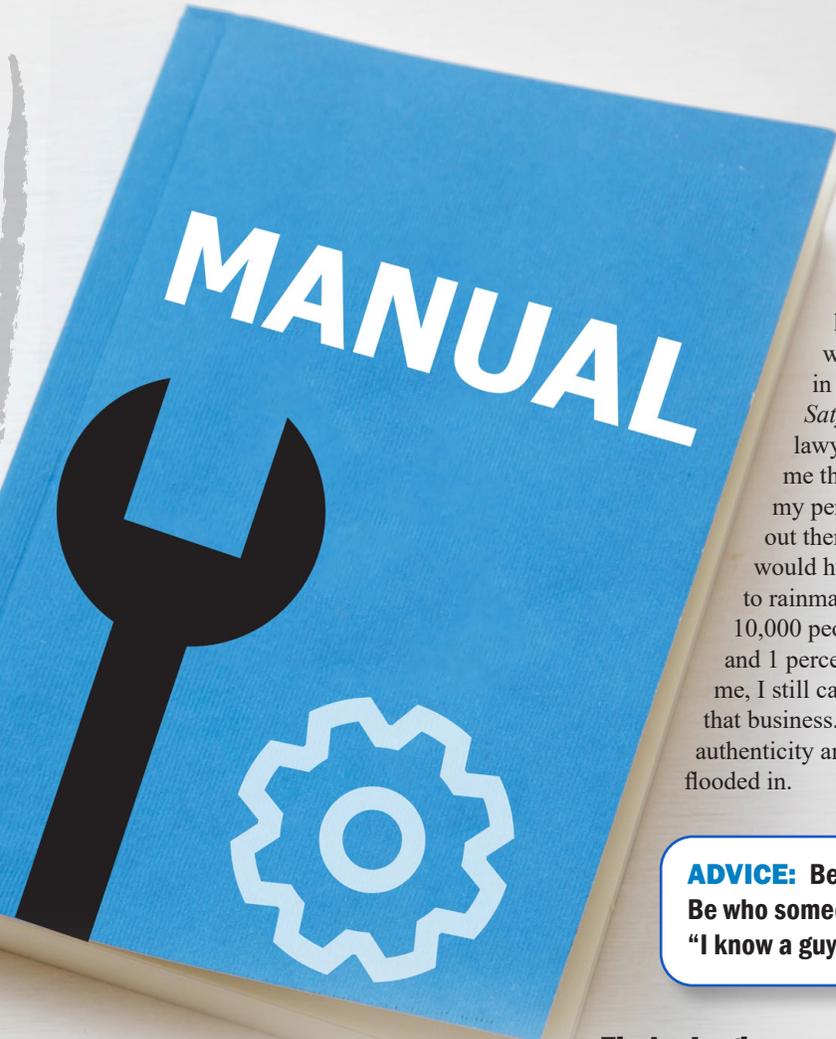
Niches are Ecosystems

As a First Amendment guy, I initially represented porn companies. I published legal articles in porn industry publications. I gave presentations at porn conferences. But I gave the study of this sub-field some serious academic spin – publishing in academic journals too.²

I remembered lessons from the condo firm – starting in a narrow niche but pushing the edges of that niche. Established First Amendment lawyers representing porn companies were waiting for obscenity cases to drop. Meanwhile, the porn companies were ignoring their intellectual property rights. I developed an expertise in intellectual property law for porn companies, a new niche, where First Amendment and IP law met.

Academically, I went to Italy and added an LLM in International IP law to my list of degrees. While there, I kept with the plan – publishing a thesis on the confluence of intellectual property law and freedom of expression.³

The business needs of porn companies were the monetary engine of my practice because I incrementally built outward from my niche but stayed close to my “home base” of freedom of expression law.



MANUAL

ADVICE: Push outward into natural zones of expansion. Publish, speak, and showcase your knowledge.

Make Noise

My offices all have a portrait of St. Jude, the patron saint of hopeless causes, and I take cases that are “sure losers.” Of course, sometimes St. Jude delivers. I take cases that make other lawyers panic. Lots of clients get referred by lawyers who said, “I can’t touch this, it’s too controversial (or it’s hopeless), but I know a guy.”

I took porn cases in socially conservative courtrooms. I took the Nazis, Satanists, Alex Jones, or anyone else whose speech was unpopular. This was the core of First Amendment law. The more flak I took, the more I knew I was over the target. There’s a reason that Joan Jett’s “Bad Reputation” is the first song on my oral argument prep playlist.

Make noise outside the courtroom too. When legal blogging was new, I dove in with *The Legal Satyricon*. Other lawyers warned me that putting my personal views out there so starkly would hurt my ability to rainmake. But if 10,000 people read me, and 1 percent want to hire me, I still can’t handle all that business. I spoke with authenticity and the work flooded in.

ADVICE: Be yourself. Be who someone says “I know a guy” about.

Find a Legion

Don’t be a loner. The First Amendment Lawyers’ Association gave me a legion of other free speech fighters. I eventually served as its president – providing leadership in my niche. I make myself available to anyone when they need help in my field. When they succeed, I promote their successes loudly. There is always enough glory to share.

My mid-career LLM in IP law was another legion-builder. I didn’t need an LLM for the credential, but I knew the class would be full of mid-career lawyers from all over the world. That group of 40 lawyers is my “I know a guy/gal” list when I need help from Argentina to Zambia. And they all say to their colleagues across the globe, “I know a guy” when they need an American lawyer. My IP practice is global, and it helps bring in freedom of expression matters internationally.

Another legion builder: attend conferences outside your niche – be an ambassador. At a family law conference, someone asked why a First Amendment lawyer was there. I said, “I’m just curious

about what you do, and won’t compete with you.” I was the only First Amendment and IP lawyer that those other attendees knew. I was their “I know a guy.”

ADVICE: Find your legion. Be an ambassador to others.

Ride Waves

I got into internet law when it scared a lot of lawyers. Online defamation, Section 230, digital privacy—I saw those issues coming and flowed my practice into them. From the online vote swapping issue to online video piracy, to online political speech, there is always “something new,” to stay ahead of the curve on, but there are a lot of dead ends.

Remember “NFT law?” I could tell that was a dead end. Other new waves might not be work deserts but still are not for you. For example, I do trademark work for cannabis companies – same as doing it for any other company. However, I avoided “cannabis law.” I can’t see my core practice from there. When you are in a niche, always be able to see home from a new expansion. I can “see home” from a copyright case, especially if there is a fair use angle. I can’t see the First Amendment through a cloud of cannabis law smoke.

ADVICE: Don’t chase every shiny object. Don’t expand too far away from your core.

Share Your Knowledge

The Dalai Lama once said, “Share your knowledge. It is a way to achieve immortality.” As you go from the new to old guard, go counterintuitive – train your competition. It keeps the blood in your practice flowing.

I never pass up an opportunity to teach others about what I do. Some say that is “educating your competition.” But I think the opposite is true, I have a 23-year head start over anyone in my CLEs. If

CONTINUED ON PAGE 15

My Niche Practice Playbook

that is not enough, then what use am I? Also, teach CLEs and publish *outside* your niche, but where you can reference it. I gave a CLE on ethics issues when lawyers accept cryptocurrency. Everyone needs ethics hours, and my “war stories” about First Amendment law planted my area of expertise in the heads of the attendees. Who do you think they call when they have a First Amendment issue? They now “know a guy.”

The best and most rewarding way to share knowledge is by being a mentor.

Build a farm team of younger colleagues. Help them build their practices. That comes back to you tenfold. When you have matters that you can’t handle from time to time, send them to your mentees. Bring them in as amicus counsel on your cases or just bring them in to ride your coattails.

I had a case where I was representing a brewery in a First Amendment fight over beer labeling. I found a young lawyer who had an interest in beer regulatory law. I asked him to co-counsel, despite

already having the case staffed with my own firm. When he asked why, I told him, “because it will be good for you.” As it turned out, he brought a lot of additional expertise, but since my motivation was to help *him*, he never forgot that. He and I have been friends since, and he has referred me business.

ADVICE: Share your knowledge as much as you can; uplift other attorneys.

The Bottom Line

Listen to the voices telling you where you belong and have good luck. That last part sounds random, but it is not. Virgil wrote: *audentes fortuna iuvat*—fortune favors the bold. Fortune also favors the prepared. Show up, stay sharp, have a plan.

If you need help, call me. Now you know a guy. (See what I did there?)

ENDNOTES:

1. Marc John Randazza, *The Other Election Controversy of Y2K: Core First Amendment Values and High-Tech Political Coalitions*, 82 Wash. U. L. Rev. 143 (2004).
2. Marc J. Randazza, *The Freedom to Film Pornography*, 17 Nev. L.J. 97 (2016).
3. Marc J. Randazza, *Freedom of Expression and Morality Based Impediments to the Enforcement of Intellectual Property Rights*, 16 Nev. L.J. 1 (2015).

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Holley Driggs is now Spencer Fane

Spencer Fane recently welcomed 14 Holley Driggs attorneys to its Las Vegas office, which is backed by a nationwide team of more than 600 attorneys from 23 practice groups in 29 offices.

This month we are proud to highlight three new additions to the Spencer Fane team, **Oliver Pancheri**, **Nicholas Santoro**, and **Anthony Torroll**.



Oliver Pancheri
Partner



Nicholas J. Santoro
Partner



Anthony Torroll
Associate



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