

# Speaking the Queen's English: How One Young Lawyer is Trying to Make It in a Specialized Practice

Peter J. Rosene

I think every young attorney wonders to themselves at least once (in private of course), if not a hundred times, "Do I know what I'm doing?"

It's an honest question and one that has, indeed, crossed my mind in the upper level of that range in my two years out of law school. I had dinner with a seasoned Louisville trial attorney during my first week of finals fall semester of 1L at UK, and I remember as if it were last night, him saying that every young attorney knows just enough to be dangerous when they get out of law school. In other words, you know a great deal about how to be a student of the law, but you know very little about being a lawyer. A bit frightening, right? Especially right before a contracts exam, but it turned out to be the most important piece of perspective so far in my early career.

At no place has this advice come into greater relief than where I am today. Almost a year ago, I had the privilege of totally falling backwards into an intellectual property practice at the McBrayer firm with my now-mentor, Jack Wheat. IP is an innately fascinating, highly specialized, frequently technical, sophisticated area of the law, and the thought of going into this field right out of, or nearly right out of, law school is enough to make me wonder, out loud this time, how does a young attorney get into and succeed in a specialized practice area?

Recently I was sitting in Jack's office, and we were pondering this very question, like you do. What makes a legal practice area "specialized," and how does one "make it" in that field? I will briefly try to describe my experience such that maybe at least one person might benefit from a young attorney's limited wisdom in attempting to answer these questions.

As with any good brief or discovery request, we need to define our terms and state our rules. What do I mean when I say a practice area is "specialized?" Well, it could mean from a superficial understanding of the word that not a lot of attorneys practice in that given area. A few months ago, I was fortunate enough to attend the annual International Trademark Association (INTA) convention in Boston, which was attended by some 12,000-13,000 IP attorneys from around the world. It was an almost overwhelming amount of people for a new kid like me, but really, that number would be just a fraction of the total number of attorneys just practicing in the U.S. in areas other than intellectual property.

So maybe that definition is a good place to start, but, as you can probably imagine, there is a great deal more to it than that. As an initial matter, when I am talking about specialized practice areas, I am primarily referring to, of course, IP which includes trademarks, patents, copyrights and trade secrets, but my thoughts might be applicable to other specialty areas such as securities regulation, bankruptcy, tax, maritime law, labor law, health care and international law. What follows are a few attributes I believe are common to each of these fields.

First, they are governed by labyrinthine statutory frameworks. Any unwitting law student or attorney attempting a leisurely reading of the Securities Exchange Act of 1934, as I did far too often in preparation for class in law school, will find it reads something like subsections of nonsensical jargon written by, go figure, other attorneys in that specialized practice area.

Second, these practice areas require an understanding of complex administrative and quasi-judicial legal structures with their own courts and rules of procedure, for instance the Trademark Trial and Appeal Board of the U.S. Patent and Trademark Office, where we regularly litigate. And woe to the attorney who fails to join the Copyright Office in their infringement complaint for a work that happened to also be rejected for registration by the Copyright Office.

Third, there is, of course, a glut of case law interpreting these various statutes and procedures. For instance, there are the voluminous specialized case law reporters, such as the United States Patents Quarterly (and U.S.P.Q.2d), containing some 106 years of intellectual property case law.

Finally, there are your opposing and co-counsels, who are also specialists well-familiar with every detail of every statute, administrative procedure, and current case law interpretation by heart. See Jack. In other words, there's no bluffing your way through it.

After listing these attributes (and freaking myself out all over again), this leads to the second question: how do you succeed in a specialized practice area? As far as Jack and me, our respective experiences in entering our specialized field were very different.

For those in the IP field in Louisville (and probably in the region), Jack likely needs little introduction. Jack is one of those enviable attorneys who can pretty much do, and has done, it all. He's both an expert trial and appellate advocate who can write a *Steele*-defeating summary judgment brief in Kentucky state court as well as present a masterful oral argument at the United States Supreme Court. He is also a pragmatic transactional attorney, in addition to one who can easily navigate the winding administrative processes of the U.S. Patent and Trademark Office. Last, but not least for my purposes, Jack teaches IP at the University of Louisville Brandeis College of Law and in CLE settings.

However, he somehow got where he is without his own Jack Wheat. Instead, he got his start, of all places, with an IP infringement case that fell into his lap during his final semester at Brandeis as part of his clinical internship at Legal Aid. It involved one of the most popular kid icons of the last 40 years—Cabbage Patch Kids, which were very closely based upon dolls actually produced by a Louisville-area artist, while the defendants took credit for the design and concept. He continued with and, mid-trial, settled that case a few years later, soon thereafter hanging his own shingle and starting one of the first IP boutique practices in the state. This is a long-winded way of saying, Jack started on his own as a self-taught IP attorney.

On the other hand, I'm just your average second-year lawyer trying to keep up with this guy. The one (and possibly only) edge I do have on Jack is that I've been blessed with a series of brilliant and ethical mentors, the current one included, who taught me the fundamentals and gave me the confidence needed to become a specialized practitioner. My uncle, John Bush—the seasoned Louisville trial attorney mentioned *supra*—has

and continues to impart advice upon request, sometimes daily, about what it means to be not just a good attorney, but a GOOD attorney, meaning not only being a proficient practitioner, but an ethical and right-minded one who realizes and learns from the boundaries of his knowledge.

I also had the privilege of clerking for the Honorable Judge Ernesto Scorsone in Lexington my first year out of law school. He taught me the virtues of fairness, collegiality, and that there is no greater substitute or benefit than following the letter of the law. This early mentoring, leading to the current guidance I now have every day, has gone a long way in instilling the foundation necessary to wade into the murky, and sometimes treacherous, waters of specialized practice.

Jack and I both stumbled into our field in different ways, Jack being self-taught and me being mentored in the field, but during that conversation in his office we came to the same conclusion that mine was the preferred method—get a mentor.

Maybe I lucked out. I have the benefit of a great IP mentor, but, regardless, what I've found is that you need those people to fill a multitude of roles. They're there to tell you not only what you can do, but also what you must do. They're there to teach you the nuts and bolts of this administrative procedure or that statutory provision or which point of law might serve you best in your argument. They're there to point out that while you may "speak the Queen's English," you need to learn how to *advocate* with the Queen's English. And they're there to assure you that you're doing fine, that you will learn from what you're doing and that one day you will be great.

Luck is a start, but it truly begins with you understanding your limits and your potential in your special area of practice. You may have graduated Order of the Coif nine months ago, but I must tell you: you don't know everything. Do not pretend to know the answer because the more experienced practitioners in that specialized field, whatever it is, will know, and you, and more importantly your client, will pay for it if you try and bluff your way through. Instead, ask a million questions. Study the content. If you're a young securities regulation attorney, or a young bankruptcy attorney, or a young IP attorney, or whatever, live it, breathe it, and learn. Do not take any piece of guidance for granted. Then maybe one day we'll be decent enough to tell someone else how it's done.

Peter J. Rosene received his J.D. from the University of Kentucky College of Law in 2017, after which he served as staff attorney for Judge Ernesto Scorsone in Fayette Circuit Court. He now practices as an intellectual property attorney at McBrayer PLLC. ■



**“If you're a young securities regulation attorney, or a young bankruptcy attorney, or a young IP attorney, or whatever, live it, breathe it, and learn.”**

## Missing Something?

Need more clients? Have office space to fill?  
Advertise in Bar Briefs!



Visit [www.loubar.org](http://www.loubar.org) or contact  
Kim Kasey at [kkasey@loubar.org](mailto:kkasey@loubar.org) or 583-5314