

OPPORTUNITIES IN MEXICO

*“God
made us
neighbors;
let us be
good
neighbors.”*

— Former
Arizona Gov.
Paul Fannin



ONE LAWYER'S PATH

BY ED RANGER

As a new lawyer in 1987, my professional dream was to serve as a legal bridge between the U.S. and Mexican legal systems. In the United States at that time, the New York, Washington, DC, Texas and California law firms enjoyed a lock on the representation of clients in international transactions; Arizona firms had not yet focused on north-south trade opportunities. The three premises supporting my southward dream led me to conclude that a U.S. lawyer with an understanding of Mexican law and practice could provide a valuable service to both country and client:

1. Neighboring countries should have a basic understanding of the other's laws and commercial customs.
2. Even at pre-NAFTA levels, all cross-border activity was regulated by a confusing web of national and international laws, rules and practices.
3. A U.S. lawyer could assist U.S. companies to navigate the regulatory waters and provide context and counsel within

the two legal systems.

Execution of the concept proved to be a little more difficult than first anticipated.

A Lawyer Heads South

The advice of a law school professor led me to purchase a ticket to Mexico City and, with a copy of the Martindale-Hubbell “Mexican Law Firm” section, embark upon a series of interviews with leading Mexican international lawyers.

My law school classmates and lawyer friends could not grasp the reasons for forsaking a sure thing in Arizona—either joining my father or a local firm. And Mexican lawyers questioned the validity of my premises and the value added by a U.S. lawyer with no knowledge of Mexican law.

They argued that a bilingual Mexican lawyer with an LL.M. in the United States could provide better service within the local system than their foreign counterparts.

Furthermore, under the pre-NAFTA national licensing laws, foreign lawyers

could not practice law in Mexico without (1) completing the five-year Mexican law school curriculum, (2) defending a thesis before a panel of law professors and (3) filing suit against the federal government arguing the unconstitutionality of the law prohibiting foreign lawyers—including those satisfying licensing prerequisites—from Mexican law practice. (Following NAFTA, the Mexican government eliminated that last prohibition.)

And the entire process is in Spanish.

Despite the hurdles, the value of a lawyer comfortable in both languages and systems also seemed obvious to me.

Out of more than 30 interviews with Mexican law firms, only one provided me the chance to prove the concept in their organization. Contextual differences immediately became apparent.

For example, when a U.S. company inquired about asbestos Mexican rules, the standard response related to insulation regulations, but the underlying question arose

from the Johns–Manville suit in U.S. courts. Similarly, the scope of product liability concerns for U.S. imports, governed almost exclusively by Mexican consumer protection statutes, often received perfunctory coverage by local counsel (for insight into product liability issues, see p. 36).

But local counsel excelled in drafting agreements, negotiating government authorizations and, obviously, litigating disputes before local courts. Few, if any, U.S. lawyers could provide the same quality of service in a foreign jurisdiction.

These firsthand experiences led me to conclude that, to give full service to U.S. clients, I needed to be licensed in Mexico. Thanks to the National Autonomous University of Mexico College of Law, I joined more than 15,000 students to pursue the degree of *Licenciado en Derecho*.

With License in Hand

With the skeptical encouragement of family, friends and colleagues, I became a licensed Mexican lawyer.

In the early 1990s, environment, health and safety (EHS) issues did not receive the same attention in Mexico as in the United States. Nevertheless, the promulgation of modern legislation, combined with the intense political debate over NAFTA, brought EHS to the forefront among policymakers and business managers in Mexico.

But discussions with U.S. and Mexican law firms to establish a dedicated practice area in their organizations led nowhere. Few shared the vision that EHS compliance for companies doing business in Mexico would soon become as common as in other industrialized countries.

So I started my own law firm specializing in international and national EHS compliance counseling. Shortly after opening an office, we were engaged by a variety of multinational companies to assist in educating their headquarters and local plants as to their rights and obligations contained in the rapidly evolving Mexican EHS legislative framework. We were fortunate to play a role in assuring EHS compliance quality in major private mergers and acquisitions and government privatizations during the Salinas and Zedillo administrations. And

we participated in the heated Trade and Environment NAFTA debates.

Lessons Learned

It became rapidly apparent that the majority of noncompliance instances, at least among those companies interested in engaging proactive legal support, arose from ignorance rather than intent. Personal and professional conflicts often arose from the mixture of language, culture, common versus civil law procedures, misperceptions, lack of information and, perhaps, a misplaced preconception of how things are done in Mexico.

In 1997, I was brought home by the opportunity to vie for a seat in the U.S. Senate. The similarities between

the experiences of becoming a Mexican lawyer and declaring a political candidacy were illuminating. In both cases, there is little career counseling, many skeptics and, most important, the education received greatly exceeds what one expected.

The Evolving Practice

The binational approach to the practice allowed for fluid working relations with U.S. lawyers representing their clients in Mexican activities. This model has been tested by a handful of U.S. firms with offices abroad.

The passage of NAFTA, together with the economic boom of the late 1990s, caused an explosive growth of trade in products and services between the United States and Mexico. Every cross-border transaction, regardless of size, involves some rule or regulation. Often, in the rush to do a deal, or in the absence of local counsel with Mexican law expertise,

U.S. companies signed contracts and formed relationships in Mexico without effective legal representation.

The results, unfortunately, are the commercial horror stories of unpaid invoices for delivered product, title disputes on tourism real estate and other cases that are recounted at chamber meetings or gates at international terminals.

After the Senate campaign, I revisited the practice of law in Mexico. I concluded that there was a growing need for regulatory intelligence and started the company LexRadar to reduce the cost of proactive legal information, eliminate commercial risks arising from regulatory developments and enhance our clients' international operations and profitability.

It is the only bilingual, lawyer-prepared, regulatory intelligence service tracking congressional activity in emerging markets. It currently covers Mexico, with plans to enter the Americas, Asia and Eastern Europe. Active users of our tax, energy and EHS intelligence services are governments, universities, multinationals, small- and medium-sized companies, trade organizations and law firms.

The Role of Arizona Lawyers in Hemispheric Issues

Arizona is poised to be the gateway to the Americas. We have strong air, land and technological communications connections with Latin America, and many Arizona lawyers are bilingual, with a cultural affinity with Mexico.

Despite stiff competition from our neighboring U.S. border states, Arizona lawyers can leverage the assistance of many organizations to assist in the

the practitioner's toolbox

LATIN AMERICAN LAW RESOURCES

Many governmental, professional and commercial organizations assist international relations. The following are just a few.

University of Arizona LL.M. in International Trade Law

Directed by Professor David A. Gantz, the program enrolls students from the United States and around the world for one year of study. Now in its eighth year, it provides classes on the World Trade Organization, NAFTA, the European Union, relevant U.S. laws, and many others. Most students are recent law graduates, but some have extensive legal experience. The program is offered in cooperation with the National Law Center for Inter-American Free Trade. For information, go to www.law.arizona.edu or contact David Gantz at 520-621-1801 or at gantz@law.arizona.edu.

Arizona-Mexico Commission

The AMC, based in the Arizona Governor's Office, aims to strengthen the economic and cultural relations of the region and to develop economic and cultural relations between Arizona and Sonora as well as the other states of the Republic of Mexico and throughout the United States. Its President is José Cárdenas, managing partner at Lewis and Roca. Contact: 602-542-1345 or www.azmc.org

State Bar of Arizona International Law Committee

Among other goals, the Committee aims to further the development of the fields of private and public international law. Contact: www.azbar.org

Border Trade Alliance

The group describes itself as a grassroots, nonprofit organization that serves as a forum for discussing and advocating issues pertaining to free trade, cross-border economic development and quality of life. Contact: www.thebta.org or (800) 333-5523.

National Law Center for Inter-American Free Trade

Created in 1992, it is a 501(c)(3) nonprofit research and educational institution that seeks to develop the legal infrastructure necessary to facilitate the movement of goods, services and investment capital in the Western Hemisphere. The Center conducts comparative legal and transactional studies of the laws, practices and attitudes among countries of the Western Hemisphere. Contact: 520-622-1200 or <http://www.natlaw.com>.

expansion of the practice southward (see box p. 28).

And there are a number of market opportunities for Arizona lawyers without ever leaving the office. The representation of Arizona companies doing business in Mexico, and of Mexican companies doing business in Arizona, is common in many firms today. And America West flies to 10 cities in Mexico—Arizona's largest export market.

The U.S.–Mexico border region requires legal specialists in a wide range of disciplines. And Arizona lawyers can lead policy discussions among elected officials and opinion leaders.

Next Steps

What is your role in the cross-border challenge?

- Learn Spanish.
- Talk to your clients to determine their activities in the Americas.
- Meet with professional colleagues in the Americas.
- Establish strategic alliances among U.S. groups and their counterparts in the Americas.
- Participate in state and federal public policy debates affecting the hemisphere.
- Educate your elected officials and community leaders.
- Organize events with the local consulate or other organizations.

Arizona and Northern Mexico are among the fastest-growing regions in the world, and Mexico soon will surpass Canada to become the largest U.S. trading partner. A north–south focus is imperative for our bilateral relationship and our quality of life in the next century. I believe that Arizona lawyers are uniquely positioned to serve as true counselors at the gateway for the benefit of our state, country and hemisphere. ▲

Ed Ranger is among a small number of lawyers who are admitted in Arizona and in Mexico. He is President of LexRadar, which provides clients with global regulatory intelligence and, to assist clients with special projects, he is of counsel to an international law firm with offices, among others, in Washington, DC, and Mexico City.