Rene, El Tigre & Me

Lessons Learned In
A Professional Journey Into Spanish Television in America

Preface

(Patience)

This book is not about the cases I have handled or the clients I have represented over the last five decades. Rather, it is a story of the development of Spanish language television in the United States – its modest beginnings, the sacrifices made by its pioneers, its growth over the last two decades, and what it took – in financial, business, artistic and legal talent – to achieve this new found success. It is, more importantly, also a story of the lessons that I learned, or should have learned, in my role as counsel to the major players in this achievement. It recounts the highpoints of that effort, as well as the failure in temperament and character that played a part in the mistakes and missteps in judgment that I made in the course of that labor. This book is more a "how not to" than a simple historical rendition of events that became significant to an ever growing proportion of the U.S. population.

As anyone already familiar with Hispanic television will likely know, the main principals in the story are Emilio Azcarraga Vidauretta, and his son Emilio Azcaraga Milmo ("El Tigre"), and his son Emilio Azcarraga Jean – all Mexican nationals – and the person who shared and implemented their goals, Reynold V. Anselmo ("Rene"), an American citizen of Italian descent. As you will see, countless others aided in this venture, but none supplants these four as the visionaries of thie unique American industry which became Spanish-language television..

From a modest start in San Antonio, Texas in the late 1950s, the history of American Spanish television spans five decades. At that time, there were less

than six million Hispanic-American residents of the United States and only a handful, if that, of television stations broadcasting in their native language. Today, there are 55 million Hispanic-Americans in this country,[1] and while some are undocumented, all remain vitally interested in, and committed to, protecting and watching the one visual media that reflects their culture and interests.

I was Federal Communications Commission counsel to the people and companies that formed, developed and grew Spanish television in the U.S. during most of these five decades. This is their story as I came to know it so intimately. As part of this professional journey, however, I have leaned many lessons -- some virtuous, some callous, but all worthwhile – that I want to share with you.

And, why am I telling you all of this? So, you can learn a little something from my experiences and not make the same mistakes that I did; and, at the same time, perhaps, follow the examples of personal sacrifice that led to success. But, in significant part, this book is about two men and their respective companies which were largely responsible for whatever success I had as an attorney. It doesn't begin to touch on my entire career which included representation of such major companies as ABC, CBS, NBC, GE, TRW/Northrup Grumman, MCI, …. This aspect of my almost 50 year career – that I am going to tell you about – is far more interesting and, for me, personally enjoyable and gratifying.

I. Introduction

Almost 50 Years ago, I began the practice of law, joining a small seven man firm in Washington, D.C., known as McKenna, Wilkinson & Kittner.[2] This is the

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[1] http://www.pewhispanic.org/2015/05/12/statistical-portrait-of-hispanics-in-the-united-states-2013-key-charts/

[2] After working as associates with pioneer broadcast attorney Andy Haley, Jim McKenna and Vern Wilkinson set up their own firm in 1952, taking with them one very worthwhile client: the American Broadcasting Company. Vern Wilkinson passed away many years ago and Jim Mckenna died in July of 2008 in Hightstown, NJ at the age of 90. Their firm – one of the most prestigious of its time – disbanded in 1986 when ABC (after being acquired by Capital Cities Broadcasting) took its business to Wilmer, Cutler and Pickering. During its 34 year run, MW&K represented just about all of the preeminent

story of my professional journey over the next five decades and how it became so inextricably intertwined with the Spanish language television industry. While this long-standing connection engendered many hard lessons and some difficulties, it was an opportunity few ever have and all should seek.

But, first I digress for a few paragraphs to tell you how I got to this unheralded starting point in my career. After graduating from the University of Maryland in 1965 with a degree in Economics, I found myself in the hallowed halls of Yale Law School. I initially thought – based on the ease in which I passed through undergraduate school with a 3.85 in my major – that I was going to be "head of the class" in no time, nothwithstanding that I had never been exposed to Princeton, Harvard and Yale graduates who all had the additional benefit of years of private schooling.[3]

Well, let me tell you, that first week in class was an eye opener. As smart as I thought I was, I was at least smart enough to see at the outset that there were guys (and a few gals, 5 out of 172 to be exact) that were so far above my intelligence level that there was no way I was going to beat them out for class rank. So, instead of trying to compete head-on, I decided to retreat to a law school life of mediocrity. Of course I would study, but I wouldn't spend every night at the library – after all, New Haven had other attractions: a golf course, some decent bars, and women (although many of these were a few hours away at what we then called "girls" schools).

Well, I was a great success at mediocrity. I got my share of Bs and Cs, an occasional A and one D (more about that later). Anyway, long story short, I completed my three years just above the middle of the class; not bad for a

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clients of the day: ABC, General Electric, Westinghouse, Gulf + Western, CBEMA, Ralph C. Wilson Industries, Roy Disney/Shamrock Broadcasting, Infinity Broadcasting and PBS leader WNET, New York, and numerous others (including CBS and NBC in a joint representation with ABC).

[3] I, on the other hand, attended public elementary, junior high and high schools in Northwest DC, Mt. Rainier and Silver Spring, MD.

dedicated underachiever. Then, of course, I found out why this was a mistake when I started interviewing for summer associate positions in the fall of 1966. The list included Covington & Burling (Jonathan Blake), Hogan & Hartson (Paul Connolly), Morgan Lewis & Bockius (I can't recall who) and Arent, Fox (Harry Plotkin). Let me start with the last first.

I entered the interview room at the law school where Harry Plotkin – a founder and senior partner at Arent, Fox, Kintner, Plotkin & Kahn, a preeminent DC law firm at the time – was seated at the end of the table. We exchanged pleasantries, I sat down and, before I could adjust my jacket, he said: "Well, Mr. Leventhal, I see you are not on law review and your grades are only average, but we'll talk to you anyway since you are here." I was astounded by his arrogance. I was not top of my class for sure, but I wasn't a dunce either. My response: "Mr. Plotkin, sir, thank you but I am no longer interested in your firm." I left the room.

The second interview went better. This was with Jonathan Blake at Covington (later to become head of the communications law practice at this prestigious Washington firm). He was very polite, interested in my views of law school and what I was looking for in a career. After 40 minutes, he very nicely said that, given my grades at the time, he didn't think Covington was for me. I got the message but it was delivered in such a reassuring and mature way, I felt he was a friend telling me what was best for me. I was satisfied that I really had a future in the law, just not *bright* enough to join the ranks of C&B (at least as he saw it).

The Morgan, Lewis interview was non-eventful but positive; they said they needed someone with a background in economics to spend the entire summer working on one case – a natural gas regulatory pricing proceeding before the Federal Power Commission. Who wanted to spend their entire summer on one case and, particularly one as unglamorous as natural gas ratemaking? Ugh! So, I told them I wasn't interested.

Then, the best of the four interviews. Paul Connolly was a senior partner at Hogan & Hartson. We really hit it off – grades and law review non-status notwithstanding. At the end of 45 minutes, he said he would like to see me again in Washington whenever my next trip home was. Needless to say, excitement was not my only emotion. Unfortunately, Paul left Hogan shortly thereafter to form a new firm with Edward Bennett Williams: Williams & Connolly. As any lawyer can tell you, this firm has become a Washington powerhouse. But, as fate would have it, Paul no longer had the task of looking for summer associates at Hogan and his new firm needed lawyers, not students. So, I got lost in the shuffle.

I came home over Thanksgiving weekend having already planned more interviews at several D.C. based firms – all in the field of communications. The prior summer I had worked at an economic consulting firm on a major research project for Covington & Burling regarding the FCC's jurisdiction over cable television. I was only crunching numbers but the field interested me. (That case, by the way, became a landmark judicial holding: *Southwestern Cable v. FCC,* U.S. Supreme Court, 1968.) At the small firm of McKenna, Wilkinson & Kittner, located in a not so elegant suite of offices in a small office building on DeSales Street, across from the Mayflower Hotel, I met with Bob Coll, Dave Stevens – both partners – and an associate named Aaron Fleishman. All seemed to go well. I returned to law school with great hopes that I had found a summer job somewhere in an area of the law in which I was interested.

A month later, I was back home for the Christmas holidays. I had not heard from anyone definitely about a position. After a few more interviews with other firms, I finally decided to call Bob Coll at McKenna, Wilkinson[4] and ask if they had made a decision or wanted me to meet others in the firm, or if they had just decided I wasn't for them.

[4] Sadly, Bob passed away in 2015.

From the way he responded to my call, it was obvious to me that he did not remember who I was, when I interviewed with him – if, in fact, I actually did – or what my background was. Boy, was that disconcerting. Anyway, I tried to refresh his recollection when he said: "Norm, hold on a minute, will you." I then heard rustling of papers in the background and whispers with others in the firm. About three or four minutes later, Bob picked up the phone and said: "Well, I guess if you still need a job we can use you." My career was launched.

When I started work the next May, I was given a few extraneous assignments – none of which I can remember. But, in short order, I was asked to prepare a position paper on the state of "privacy" laws in the United States for a major FCC proceeding looking into the relationship between computers and communications. Yes, this was known in our field as *Computer I*. Anyway, the firm was representing a trade association called the Computer and Business Equipment Manufacturers Association (CBEMA) which was then in the midst of preparing a detailed response to the FCC's Notice of Proposed Rulemaking on this matter; a subsection of which asked about privacy concerns.

So, my task for the remainder of the summer was to prepare a Memorandum on the state of the law of privacy which the firm could use in its response to this particular subsection of the FCC's rulemaking inquiry. I tore into the task with a vengeance, swearing to myself that I would produce the definitive treatise on privacy in the United States. I won't bore you with the details, but by the end of the summer, I had amassed a 75-page "book" on the subject covering all 50 states, as well as all of the credit bureaus and the federal government. It was a masterpiece of legal and policy trivia – but there was no doubt that it covered the waterfront. Joe Kittner, the partner in charge of the project, was impressed. Carl Ramey, the associate doing all the work (who later joined Wiley Rein & Fielding) said this would really be helpful to their comments. But, alas, the client decided that they didn't want to respond to this subsection; it was just too

political. I am still looking for a copy of my treatise on privacy. If anyone finds it, please let me know.

At the end of the summer, the McKenna firm made me an offer to come back the following year as an associate. I gladly accepted. Thank goodness, the trials of interviews, false pleasantries and discarded hopes was over.

In May of 1968, I moved back to Washington to study for the bar (leaving Ilene in New Haven to finish the elementary school term). I never went back for the graduation ceremony; in the overall scheme of things, it just didn't seem important. I am sorry for this decision. I deprived my parents of seeing their son graduate from the Yale Law School. They had sacrificed enough financially that I owed them this much. I regret that decision to this day.

I started working as a full-time associate on July 8, 1968 – just four days after the 4th of July holiday, and a quick but fun-filled sojourn in Atlantic City with my wife, Ilene, and close friends Bobby and Lorraine Cohen. Bobby and I had studied for the bar together, mostly at the NIH Medical Library in Bethesda after taking the bar review course downtown. No European trip for me; no sun-filled holiday in Mexico or South America, or South Asia, or wherever today's law school graduates feel it is a right of passage to enjoy. My initial starting salary was a whopping $7,800 – below that of starting government attorneys which my friends now working for the federal government never hesitated to tell me. I was, however, promised an increase to the entry government level when I passed the Bar

II. Patience Is its Own Reward (Sometimes)

Anyway, let me get to the lesson of the Preface. Shortly before I began working, the large Wall Street firms announced that they were going to raise starting salaries for law graduates to $15,000 a year. WOW! My eyes glazed over and my left rear pants pocket suddenly seemed far too small to hold all the

cash I was now going to get. Of course, I didn't expect the full 15k boat, but certainly the McKenna firm would take me up a few thou; after all, we were supposed to be a first class law firm (albeit small and bearing that terrible but ever present designation, "boutique.")

In early September, after waiting what I thought was a sufficient period of time for all the salary increase gossip to reach even the deep recesses of the great minds at McKenna Wilkinson, I approached Bob Coll – the hiring partner – and asked if the firm was going to adjust my salary and when. I can't remember whether he thought about it for a while or answered me right then and there, but the essence of what he said was not what I was expecting. "Just stay with the plan, Norm. If you want, I will approach the other partners about increasing your pay, but my advice is to stay quiet, do your work and, ultimately, you'll be making more money than any of the guys you want to match today."

Well, what could I do? Insist that he push my request, possibly embarrassing him if Jim McKenna said no, or just leave things as they were and hope he would see the light and get it done anyway? Well, the decision was simply to thank him for thinking about it and just agree to keep things the way they were; after all, we had all agreed on a starting salary and there was no adjustment clause in the event those 24/7 guys on Wall Street decided more money was the answer.

As it turned out, Bob's advice was right on. First, he must have told the partners about my request and the fact that I had accepted the status quo without argument; I can't tell you how, but in some slight way, they all started treating me differently – but in a good way. Second, when I passed the bar, instead of raising my salary to the $9,000 level we had agreed upon, my income shot up 40% to $11,000 per year. I wasn't at Wall Street highs yet, but I was creeping up and I was happy with the way things turned out. Later, Bob's advice proved even more prescient; within four years, my salary had doubled and, later, in the

late 1970s I was making far more money than most of my counterparts at Covington, Hogan or even the large firms in the Big Apple. On the other hand, I was billing 240 hours a month on a regular basis and sacrificed my vacation time for most of the first six years in order to serve out my basic training and summer camp requirements for the U.S. Army Reserve[5]; but, in those days, who knew there were alternatives. Lawyers didn't just move around from firm to firm like they do today. The general feeling among all of us young sweatshop lawyers at McKenna was that we were lucky to have such a good job. One thing I know for sure, whatever the technique, Jim McKenna knew how to get the most out of his associates.[6]

The lesson: patience pays; maybe not right away, but it definitely has its upsides.

III. My First Case

Ironically, my first two years at McKenna were spent entirely on one case: a huge inquiry into the rate setting practices of mammoth AT&T. This case, in hearing before an Administrative Law Judge on a daily basis, was a follow on to an equally large FCC investigation a few years earlier into the so-called Telpak offering; basically, AT&T was providing businesses with rates far reduced over what were thought of as functionally equivalent services being provided to ordinary citizens, and the Government wanted to know why. Well, the answer was pretty obvious. They could! Remember, there were no other telephone

[5] I was on Active Duty with the Army Reserve from April 29 to September 6, 1969, the first two months at Fort Bragg, North Carolina and the last three at Fort Belvoir, Virginia. During the Fort Belvoir tour – where I received advanced training in cartography – I worked part-time for the firm just to bring in a few extra dollars. At that time, the Army was paying me $90 a month as a private; the rent on the apartment that Ilene and I signed up for just before my notice to report for active duty arrived, was $203 a month. You do the math!

[6] And, our not so spacious offices were no attraction either; as the youngest associate of the firm I was given a windowless office of about 200 square feet with four notable items of furnishings: a desk and chair, two metal file cabinets, and a cheap watercolor of the NY skyline (like you find in many motels) to make up for the absence of a real view.

companies to speak of during this time frame and AT&T was a true monopoly in every sense of the word.

Anyway, having rejected an offer from Morgan, Lewis and Bockius because I didn't want to spend my career on one gas pricing regulation case, I found myself spending a good part of the next six years on one telephone pricing regulation case. Go figure! Actually, it was a learning experience few attorneys could ever hope to get. I was exposed at the very beginning of my career to senior lawyers representing the largest organizations in the country; all were parties to the case.[7] Hundreds of millions of dollars in communications charges were at stake and each wanted to keep the charges to their particular clients as low as possible. The FCC, on the other hand, only wanted to keep the citizenry happy.

Thus, the first six months of my career were spent in a hearing room, listening to each lawyer make his case, argue his motions, cross-examine witnesses, handle the ALJ, joke around during recesses and serve their respective clients as best they could. Since I had not yet been admitted to the bar, I could not speak EVER; all I was allowed to do was sit there day after day taking copius notes for my senior partner, Joe Kittner. But, as boring as this sounds, it wasn't. The whole case turned on what the appropriate economic theory was on which to base prices for communications services in a more competitive environment; after almost 100 years as a monopoly provider, AT&T was now facing increasing competition from Western Union, a new fledgling operation calling itself MCI (for "Microwave Communications Inc")[8] and a host of

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[7] There were 40 parties to the case. Among them, Bill Miller and Herb Forrest (Steptoe & Johnson, for the Air Transport Industry), Bob Conn (Western Union), Larry DeVore, Roger Wollenberg and Sally Katzen (Comsat), Carl Cangelosi (RCA) and Randy McPherson (DOD) and numerous others. Representing AT&T were Hugh Roff, Long Lines and Howard Trienens and Jules Perlberg of Sidley & Austin's Chicago office.

[8] Actually, the firm was hired by MCI in 1970 to represent one of its newly formed companies (MCI Indiana-Ohio and another state which I cannot remember) and I first met Bill McGowan, the President and Chairman of the company in their offices on August 4, 1970, when my senior partner Joe Kittner could not attend due to a scheduling conflict. As most of you probably know, McGowan went on to build a

new companies providing limited service over select high capacity routes around the country (or, in the words of AT&T's lawyers, "cream skimmers"). Not only did I understand what was going on because of my degree in economics, I learned an immense amount about administrative litigation; an experience which later became enormously useful in the most important case of my career.[9]

A short time later, when I did pass the bar and get admitted to the United States Court of Appeals for the District of Columbia Circuit in January 1969, I finally entered my appearance in the AT&T case as counsel for: the American Broadcasting Companies, the National Broadcasting Company, and CBS. Yup; at the tender age of 26, I was representing the three largest broadcasting companies in the country (actually, the world). They were then collectively paying about $100,000,000 each year to AT&T to transmit their programs around the country to their respective affiliates and, one thing they did not want to do, was to pay more. Who does? Our job, which we ultimately succeeded in beyond our clients' wildest dreams, was to make sure the economic theory adopted by the FCC favored keeping rates to the broadcasters at current levels. No increases for our guys! Of course, each of the 39 other parties had the same objective; if the FCC needed to increase rates on business so AT&T could lower rates on ordinary people, let the other guy suffer.

I sat through each day of the hearings on economic theory in the late summer and fall of 1968 and early months of 1969 without being able to say a single word but taking careful notes on witness positions, lawyer's arguments, and the ALJ's rulings. In fact, over the course of the first nine months, and except

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powerhouse communications company that ultimately beat AT&T big time in one of the largest antitrust lawsuits to date.

[9] Begun in October 1967, the hearing lasted 100 days and filled 12,000 pages of transcript culminating in a Statement of Ratemaking Principles which the FCC recognized on May 28, 1969 but, true to form, chose not to "adopt." Instead, the Statement – which would satisfy any economist, no matter what their view on such issues – was thereupon (August 7, 1969) incorporated into the record of yet another new proceeding in FCC Docket No. 18128 – AT&T Private Line Services – which was later (June 15, 1970) consolidated with yet another new proceeding in FCC Docket No. 18684 (AT&T Program Transmission Services). It was this latter proceeding that was of primary concern to our network broadcast clients.

for the ALJ and the AT&T lawyers who had to be there, I was the only other representative of the other 39 parties to actually attend the hearing every day.

As a consequence of this seemingly boring task, with the AT&T lawyers being the sole exception, I wound up knowing as much about the case and the various economic theories as anyone else, including the Administrative Law Judge (ALJ). And, my reward for this diligence and constant attentiveness was Joe Kittner's belief that I could – under his supervision – organize our case, prepare our witnesses for their testimony, layout cross-examination of the opposing parties' witnesses, and participate in every meeting, every policy discussion, and every day of hearing, as second chair. This was no small thing.

The witnesses for the major parties was a Who's Who of the world's leading economists: Dr. James Bonbright, Dean of Public Utility Economists at Princeton University; Dr. William Baumol, Professor of Economics, Princeton, and Vice President of the American Economics Association; and our own expert witness, Dr. William Vickrey, Professor of Economics and Dean of the Graduate School of Economics, Columbia University – the world's leading expert on marginal cost pricing. It was a career aggrandizing opportunity; the experience gained was far beyond what a 2nd year associate could ever expect and, more satisfying to me, the other counsel began to realize that while Joe was the senior lawyer with expertise in the field responsible for determining our clients' litigation strategy, I was the one responsible for our whole day-to-day effort .

This case went on for years, finally ending in the very early 1980s.[10] At the end of its first phase (1974)[11], rates for broadcast transmission services were

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[10] Of course, not every day or even every month was devoted to the AT&T case; in between hearings, briefing dates, court appeals, etc., were opportunities to practice other aspects of communication law, including my entry in 1970 into the world of Spanish language television.

[11] The hearings in the consolidated FCC Dockets 18128/18684 lasted 158 days and produced 15,000 pages of transcript. ALJ Herbert Sharfman certified the case to the Commission on December 11, 1972. The Joint Networks' own Proposed Findings of Fact and Conclusions, filed on March 12, 1973, was 230 printed pages and the accompanying Brief another 91 printed pages. These documents, although reviewed

kept at 1968 levels and we had rolled back earlier planned AT&T increases to the point where we saved our clients $100,000,000 – each and every year until the late 1980s when satellites became ubiquitous and network engineers were convinced that they wouldn't fall out of the sky just when the season finale of *Dallas* was going on the air.

Needless to say, this case made my bones as a communications lawyer and was enormously helpful in preparing me for what came later – Spanish television and its many interesting characters, twists and turns, hardships, difficulties, pioneering exploits, success and the largest television license renewal hearing proceeding in the history of the FCC (or at least it seemed to be at the time; see Chapter 4). As you will see from the next chapter, I did not even know that there was such a thing as Spanish Television until 1970. This recounting of the story of Spanish language television in the United States is a synthesis of the historical record that has been obtained from (i) the hearing record in the license renewal hearing that I handled – reflecting the personal sworn testimony of the individuals who were at the forefront of Spanish television; (ii) articles from a variety of publications that seemed to accompany each development in the nascent industry but which always seemed to get some basic fact wrong;[12] and (iii) facts which I came to know personally or were directly imparted to me by persons who would know and little reason to distort the truth.

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by Joe Kittner and the other network attorneys were produced by one person – *me*; no law clerks, no paralegals, no other help of any kind.

[12] All of the facts recited here, however, are true (either because they are the result of un-contradicted sworn testimony or confirmed by at least two independent and reliable sources).