



## 303: Traps, Tricks, Karaoke, & Other Potential Embarrassments: A Guide to International Business Dealings

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## Faculty Biographies

### Alfredo X. Jarrin

Alfredo X. Jarrin is assistant general counsel of The DIRECTV Group, Inc. (formerly Hughes Electronics Corporation) and associate general counsel of DIRECTV International, Inc., where he handles international business and corporate matters, transactions, and litigation. He also advises on a broad range of corporate governance and compliance, business development, security and ethics issues, and directs and manages domestic and international investigations and litigation. His experience includes responsibility for matters in North and South America, Europe, China, Japan, Australia, Russia, and the Middle East.

Prior to joining DIRECTV, he was an assistant United States attorney in Los Angeles. During his years of service with the Department of Justice, he received numerous commendations and awards for his investigative, trial, and appellate work.

He is a member of the Ethics Officer Association and the Antitrust (corporate counseling committee), Criminal Justice (white collar crime committee), and International Law sections of the ABA, and a past member of the Public Contracts section (Procurement Fraud Committee). He has served as faculty and guest lecturer at numerous legal, business, academic, and law enforcement training programs.

He is a graduate of the University of Southern California Marshall School of Business and the USC Law School, and a member of its associate board of directors.

### Sally J. March

Sally J. March heads the legal department for the BBC Technology Group, wholly-owned subsidiaries of the British Broadcasting Corporation. Based in London, she is responsible for providing legal counsel to the businesses, protecting intellectual property, and sits on the North American management board.

Prior to joining BBC Technology, Ms. March was European counsel for a California media technology company. She managed the Moscow and St. Petersburg offices of Pepper, Hamilton and was also a member of the team advising the government of Kazakhstan on major privatizations. While in private practice, she led projects for the European Bank for Reconstruction and Development, one of the major lenders in the region, as well as the Securities Commission for the Russian Federation and the St. Petersburg Mayor's Office. During her time in the Russian practice, she was selected as a "lawyers' lawyer" for Russian intellectual property law by *Global Law and Business* magazine.

Ms. March is a member of the Law Society for England and Wales, as well as the California and Wisconsin bars, and is active in American Women Lawyers in London and Women in Telecommunications and Technology.

Ms. March received her BA from Lawrence University, her JD from University of California, Hastings College of Law, and her LLM from London University.

### Richard C. Mosher

Richard C. Mosher is director and legal counsel of Absolute Business, Inc. in Seattle, WA..

Prior to joining Absolute Business, he was associate general counsel and assistant secretary at Maytag and Hoover Co., assistant general counsel at Ball Corporation, Ball Aerospace, and associate at Fujiyama, Duffy & Fujiyama. He has 30 years of experience in international cross-cultural negotiations. He helped coordinate Maytag-Hoover's response to Hoover's Free Flights European marketing promotion crises, and has managed and advised companies on negotiations throughout the world.

Mr. Mosher is the incoming vice chair of ACC's Council of Committees and the immediate past chair of the International Legal Affairs Committee. He is an advisor on employment litigation, for the United States Postal Service in Salt Lake City, and director of the Tacoma, Washington Chamber of Commerce. He frequently speaks on the topics of international law and customs, business transactions and strategic alliances, litigation management, crises management, and law firm marketing.

Mr. Mosher received his BA from Augustana College in Rock Island, Illinois and his JD from Northwestern University Law School in Chicago. He is also a graduate of the Center for Creative Leadership in Colorado Springs.


### Randy S. Segal

Randy S. Segal is senior vice president and general counsel of Mobile Satellite Ventures (MSV) LP, a telecommunications company that is the "future of satellite communications."

Previously, Ms Segal was senior vice president, general counsel, and a member of the international boards of directors for Hughes Network Systems (HNS), a subsidiary The DirecTV Group, Inc., the world's largest provider of broadband satellite network solutions. Ms. Segal has also served on the board of directors of XM Satellite Radio and Mobile Satellite Ventures. Prior to working with XM, Ms. Segal was senior vice president and general counsel of Motient Corporation, a mobile internet and satellite communications company, and led Motient's spin-off of two new ventures: XM Satellite Radio and Mobile Satellite Ventures. Ms. Segal practiced with the New York corporate law firm of Debevoise & Plimpton prior to joining Motient. She also served as a federal law clerk in the U.S. District Court, the Southern District of New York, to the Hon. Edmund L. Palmieri, as well as in the Fifth Circuit U.S. Court of Appeals, to the Hon. Jerre S. Williams.

Ms. Segal teaches "Corporation Acquisitions" as an adjunct law professor at George Mason Law School. She is a frequent speaker on diverse business-legal topics, including for ACC, Georgetown Law School, and American Conference Institute, and recently coauthored "Through the Looking Glass: Ten Lessons from In-House Counsel on Trial" published in the May 2004 *ACC Docket*.

Ms. Segal is a graduate of Cornell University and Columbia Law School.




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**Some Food for Thought**

- You can observe a lot just by watchin'. Yogi Berra
- Live in such a way that you would not be ashamed to sell your parrot to the town gossip – Will Rogers
- When you travel, remember that a foreign country is not designed to make your comfortable. It is designed to make its own people feel comfortable. Clifton Fadiman

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## “David Letterman’s” Top Ten List of Differences

- Why is International so different?
  1. The product or service

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## Number 1 - The product or service Isn't it the same to sell? Not completely.

- Examples:
  - Technology differences (voltage, power plugs, certificates, frequency – how to fry your laptop.
  - Language (e.g., help desk, bilingual requirements)
  - Documentation
  - Built-in maps (US? International)
  - Applicable laws/regulatory requirements/enforcement
  - I.P./Software protection (e.g., copyright, pull down screens)
  - Product Brands/Names – do they translate?
    - Are they an insult or inappropriate?
    - Phonetic, actually meaning, secondary meaning

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## BLAST FROM THE PAST....

●The BBC reported:

“Red-faced officials at General Motors in Canada have been forced to think of a new name for their latest model

....

**GM officials said they had been unaware that LaCrosse was a term for self-gratification among teenagers in French-speaking Quebec. They are now working on a new name for the LaCrosse in Canada. The car will be on sale next year to replace the Buick Regal.**

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**The article goes on to highlight other ... car names of the past:**

**“In the 1970’s GM exported its Chevrolet Nova to Mexico and other Spanish-speaking countries, only to be told that Nova translated into “doesn’t go”. More recently, Mitsubishi had to change the name of its Pajero model in Spanish speaking countries, where the word is a slang term for “masturbator”. While Toyota’s Fiera proved controversial in Puerto Rico, where fieria translated to “ugly old woman”. And Ford didn’t have the reception it expected in Brazil when their Pinto car flopped. They then discovered that in Brazilian Portuguese slang, pinto means “small penis”.”**

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## “David Letterman’s” Top Ten List of Differences

- Why is International so different?
  1. The product or service
  2. Cultural (“When in Rome...”)

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## Number 2 – Cultural “When In Rome....”

- Latin America
  - Friendship first business second
- Language
  - Some British examples:
    - to “table” something in a meeting/negotiation means to offer it whereas in US it means to put it to one side for now
    - to “get your knickers in a twist” means to be confused/agitated
  - Japanese
    - “yes” means “I hear you what you have said”, not I understand or I agree with what you have said”

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## Number 2 – Cultural “When In Rome.....” (cont’d)

### ● Some examples

- Japan
  - Handling of business cards
    - Right hand/left hand
    - Slippers/shoes (meal and bathroom etiquettes)
  - Gifts
    - Avoid the number “4” (death) and Black wrapping paper (death)
- China
  - Do not give shoes (means “bad luck”)
  - Do not give a clock (means sending you to funeral)
  - Avoid the number “4”(death) and black/white wrapping paper (death)
- Africa
  - Want everything included
    - Otherwise it assumed to be included
    - Example is test equipment for installation
  - Wary of not getting latest technologies

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## “WHERE’S WALDO” – SPOT THE ISSUES

A special dinner is hosted in your company’s honor, at which a very “special” dinner delicacy of mouse is served. Your host ceremoniously presents you the first portion.

Can you/should you refuse?

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## “David Letterman’s” Top Ten List of Differences

- Why is International so different?
  1. The product or service
  2. Cultural (“When In Rome...”)
  3. Laws and Related Requirements

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## Number 3 – Laws and Related Requirements

- Choice of law provisions
  - Yours, mine, “neutral” or mutually inconvenient
- Dispute resolution
  - Courts v. Arbitration (home court favorite?)
  - Local disputes v. “neutral” forum and location
- Enforceability of contract provisions
  - Limitation of Liability
  - Termination for convenience
  - Consequential damages/lost profit
- Special Contract Clauses per country
  - Withholding taxes, NAFTA certificates
  - Compliance with country specific (*e.g.*, privacy law)
  - References to laws that limit exclusionary clauses provide government right to terminate at whim, etc.
- Different meanings to same clauses
  - Terminate for convenience (enforceable? Not enforceable? Blue pencil rule?)
  - Limitation of liability as written in US not enforceable (*e.g.*, UK requires express list of items not recoverable)

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### Number 3 – Laws and Related Requirements (cont'd)

- Imposition of (non-contractual) payment requirements e.g., to terminated employees or representatives
- Withholding taxes and VAT
- Human Resources/employment laws (e.g., outsourcing requirements)
- Product certification/liability issues

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### Number 3 – Laws and Related Requirements (cont'd)

- Privacy laws
- Ecommerce laws
- Differences in different antitrust, antibribery and other laws
- Export/anti-boycott differences
- Foreign Government Bidding (contract) requirements (including bid bonds, terms and conditions, government laws applied)
- Corporate structure requirements (e.g., China WFOE, Brazil and Mexican ownership requirements)
- Transaction structure requirements (e.g., China import/export agencies)
- Tax
- Monetary restrictions (e.g., removal of funds from country)
- “Doing Business” scope restrictions

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### “WHERE’S WALDO” – SPOT THE ISSUES

You want to hire a sales representative in Costa Rica. You’re not certain he’s going to be able to do a great job for you, but your standard contract you use all over the world has a “termination of convenience” clause so there’s no downside to signing him up.

If he doesn’t do a good job for you, you just terminate.

Right?

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  2. Cultural (“When in Rome...”)
  3. Laws and Related Requirements
  4. Business Risks and Costs

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## Number 4 – Business Risks and Costs

- Currency
  - Some payments can only be made in local currency in some markets/some international customers will only pay in local currency
  - Currency fluctuations
- Payment risks
- Default risks-greater difficulty in enforcing and recovery
- Contracts less certain to be interpreted and enforced according to expectations in foreign jurisdictions
- Business terms more diverse and greater uncertainties

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- Remote delivery places and more complex/costly maintenance
- Costs, maintenance, compliance and oversight of our international offices
  - Determining optimal legal/financial structure
  - Local law regulatory requirements, complexities and/or limitations (e.g., WFOE in China)
  - Own v. outsourced employee issues involve international legal/business implications
  - Checks and balances for remote offices re: financial, personnel, etc.
  - Managing diverse international employment, privacy, benefit, termination, etc. laws
- Inherently more costly
  - Travel
    - Employee time costs given distance/transit time
  - Shipping - air vs. sea
  - Risks higher – usually require guarantee of payment via letter of credit
  - Negotiation costs higher (language, translator, local law firms)
  - Costs of business offices locally (or representative fees)
  - Withholding taxes/currency hedging/performance bonds

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- Corporate Kidnap Insurance
  - Drivers, bodyguards, bullet-proof cars and control of negotiations
- Personnel Risks and Emergency Evacuation Plans
  - Heightened post 9/11
  - State department warnings
  - Policies re: customers/meetings/subcontractors in changing dangerous areas (e.g., Saudi Arabia)

When do you turn down business?

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### “WHERE’S WALDO” – SPOT THE ISSUES

Your company has just been awarded a bid that has been heavily worked for three years. The Bid is for a government agency in Saudi Arabia. Most of the other bidders were non-US companies.

Your company has been invited to negotiate the contract in Saudi Arabia in June 2004 (after much publicized beheadings of Americans), to include a team of business, technical and legal department employees from the US (you do not have a local office).

You are told it will be an insult to even suggest meeting elsewhere.

What do you do?

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### **“WHERE’S WALDO” – SPOT THE ISSUES**

As part of a sales contract, your company is providing training for a Botswanian group of technical trainees (the customer is a Botswanian government entity) in your US facility. After the third week of training which you’ve provided without any extra charge (normally training takes two weeks), on the eve prior to the trainees’ departure you receive a call that another trainee has been arrested for shoplifting and is scheduled for a bail hearing tomorrow at 1 p.m. (their flight is scheduled for 5 p.m.). It is 11 p.m. in Botswana.

What issues come to mind?

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  5. Trade Regulations

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## Number 5 – Trade Regulations

### Export

- Places you generally cannot export
  - Cuba, N. Korea, Iran
  - Re-exports
- Many places/people that require licenses
  - Foreign Military Sales
- Complexities added to how you do business
  - Who you can employ and what they can do (“deemed export”)
  - Compliance terms needed in contracts
  - Questions to ask (no “head in sand”) “know your customer”
  - Requirements for different sales channels
  - Monitoring and reacting to noncompliance
  - Where you build product or offer service (offshore v. US; compare NAFTA and US government sales “Buy American”) affects licenses and exemptions

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## BLAST FROM THE PAST....

A potential customer calls and asks for a discount applicable to an intergovernmental organization; when you ask for which signatory, the caller says “Libya” (an embargoed country), to which you convey your apologies that you cannot offer the goods for sale to them. The caller then says “never mind the discount, I’m Canadian”.

How do you think about this?

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### The Foreign Corrupt Practices Act

- Significant legal risks imposed on violations of FCPA (international business involving “anything of value” to obtain or retain business with any government agency, government official, political party or owned business)
- Affects every aspect of the sales process:
  - Who you hire to help you (3<sup>rd</sup> party vicarious liability)
  - How you structure transactions (including team agreements and Joint Ventures)
  - How you can entertain/provide customers travel/gifts
  - How you can expedite transactions
  - How you can collect (and settle) amounts owed to you

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### “WHERE’S WALDO” – SPOT THE ISSUES

You have often negotiated in Japan, where it is almost necessary to join at Karaoke in the evening after meetings, and where the hostesses attend to the comfort of the attendees (PG+ rated). Your wife even joined you once, and thought it very lovely and interesting.

You are engaged now in your first negotiations with a Chinese customer, and you want to be culturally correct. You are planning to host your potential customer for dinner one night, so you suggest Karaoke like Japan (they’re both Asian countries, right?) The customer suggests a restaurant that roughly translates, you are told, to “Karaoke Very Passionate”.

When you arrive at the restaurant, you realize this is very different than in Japan (or in the US!) and the clients also keep disappearing into back rooms with some of the “waitresses”. You just hope your wife never finds out, which is all you are worried about.

Or is it?

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## **Number 6 – An American in Paris: International perspectives on doing business with US companies**

- Observations on international clients  
perspectives on negotiations with Americans
- Issues-impacts relating to post-9/11 world
- A “dos” and “don’ts” list

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## **Number 7 – “Hot Topics” in International Law: the current land mines**

- EU Privacy laws
- International investigation risks (FSU example)
- Others

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## **Number 8 – “Trouble Spots” for corporate counsel: mergers & acquisitions and more**

- Complexities of international businesses
  - Due Diligence
  - Governmental approvals
  - Multiple law firms/experts
- FCPA: mergers and acquisitions
- Export: state department perspectives and enhanced sensitivities
- Voluntary disclosures: to disclose or not to disclose...

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  9. From a Former Prosecutor’s Perspective: what to be concerned about with international investigations

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## **Number 9 – From a Former Prosecutor’s Perspective: what to be concerned about with international investigations**

- U.S. Laws Regulating International Operations
- Whether to Conduct an Investigation
- Elements of an Investigation
- Resolution and Corrective Actions
- Role of Corporate Compliance & Ethics Program

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## Regulation of International Operations

- Foreign Corrupt Practices Act/ New Bribery Laws
- Export Administration Regulations
- Customs Laws and Regulations
- Sanctioned Countries
- Anti-Boycott
- Antitrust
- Labor and Employment

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## Whether to Conduct an Investigation

- Impetus for Potential Investigation
  - Subpoena or other Enforcement Action
  - Internal Inquiries, Allegations or Complaints
  - External Inquiries from Customer or other Third Party
  - Proactive Monitoring
    - Compliance and Ethics Program
    - Legal, Internal Audit, Security

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## Elements of an Investigation

- Establish Strategy and Procedures
  - Address Attorney-Client Privilege Issues
- Identify Persons Qualified to Manage and Conduct the Investigation
  - Internal/External Resources
  - Local Counsel, Private Investigators, Interpreters
  - Subject Matter Experts
- Documents
- Interviews

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## Resolution and Corrective Actions

- Policy/Governance Issues
  - Senior Management Considerations
- Legal
  - Voluntary Disclosure
  - Litigation
  - U.S. and Local Law Issues (e.g., Discovery, Privilege)
- Operational
  - Process, Training or Supervisory Issues
- Individual Responsibility/Accountability
  - Management, Human Resources
  - Local Law Issues

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## Role of Compliance & Ethics Program

- Effective Program Requires Ability to Investigate
- A Mishandled, Delayed or Cursory Can Create Larger Problems
- Acquiring Internal Skills, Experience and Judgment
- Ongoing Assessment of Effectiveness
  - U.S. Sentencing Guidelines
  - Identify Trends, Potential Risk Areas or Training Opportunities
  - Proactive Monitoring

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  8. “Trouble Spots” for corporate counsel: mergers & acquisitions and more
  9. From a Prosecutor’s Perspective: what to be concerned about with international investigations
  10. Negotiating styles and formats

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## Number 10 – Negotiating styles and format

- Observations from the negotiations chair
- A “dos” and “don’ts” list



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## **A Parting Thought**

In theory there is no difference  
between theory and practice. In  
practice there is. – Yogi Berra

When you come to a fork in the road,  
take it.

-- Yogi Berra

## **TRICKS, TRAPS AND KARAOKE – SUPPLEMENTAL MATERIALS**

### **A. KARAOKE TIPS**

1. Sing very loud and use a lot of emotion and gestures - volume and enthusiasm are MUCH more important than your voice (this is good news).
2. Choose songs/singers you enjoy; do not choose the U.S. National Anthem; avoid Roy Orbison or Minnie Riperton (“Loving you is Beautiful”) unless you have 3+ octave range. There are some obvious exceptions to choosing a song you enjoy: opera may be a bad idea (unless it is a Mario Lanza drinking song), anything by Wayne Newton, Barry Manilow or Bjork or .... is questionable.
3. Drink plain ice water (no ice) before singing - it helps your throat and vocal chords.
4. PLEASE hold the microphone at whatever distance (usually 1-2 inches with a normal voice and 1 foot with a loud voice) from your mouth is necessary to avoid that terrible feedback/screeching sound and don't point it at the speakers or monitors. If you want to look like a pro, don't tap the mike to see if it is on (talk to one of your associates instead). The mike may have a small on-off switch that the previous “singer” may have turned off or that you may accidentally turn off when singing – look for the switch!
5. If you REALLY can't sing, pick a Walter Brennen or Lorne Greene (“Ringo”) song where you don't have to actually sing and can just speak the words or a song that EVERYONE will be singing with you like “Take this Job and Shove it” by J. Paycheck, most Beatles songs, the Rolling Stones or Janice Joplin (you may actually sound like Mick Jagger or Janis Joplin).

6. Remember this is not a talent competition – it is a social exercise to see how “human” you are by embarrassing yourself in front of your business colleagues or friends. If you think that singing ability is important, watch Bill Murray in the movie Lost in Translation or Clint Eastwood (who is singing that “accentuate the positive” song as I am typing this) – trust me – YOU sound better.

7. If you have a quiet singing voice, ask the DJ to turn the volume up for you.

8. It is probably not a good idea to imitate Elvis and jump around the stage. First, you can't imitate Elvis no matter how much you have had to drink and people trip or hurt themselves trying (remember you have been drinking) or drop the mike or trip over the chord (or fall off the stage).

9. Some karaoke singers actually believe they have good voices; be careful to identify these singers (it's not hard - they are obviously taking things too seriously – it's a little like golfers) and do not insult them by laughing too hard in the audience.

10. Under no circumstances allow anyone to tape your performance or take photographs.

## **B. STOLEN KIDNEYS**

This is an urban myth, but makes for some great stories.

## **C. THE 3 AM KNOCK ON THE DOOR OF YOUR HOTEL ROOM**

## **D. THE “I DON'T BELIEVE THEY UNDERSTAND ENGLISH TRAP”**

## **E. MISCELLANEOUS TRICKS, TRAPS AND EMBARRASMENTS**