

THE LAWWITHOUTWALLS JOURNEY THROUGH COMPLI- ANCE

Sara M. Klock

AUTHOR

Sara M. Klock is a final year law student at the University of Miami School of Law. She participated in LawWithoutWalls in the Spring of 2016 and her Project of Worth is the backdrop for this piece. Sara currently serves as the Senior Writing Editor and Articles and Comments Editor for the University of Miami Law Review.

TABLE OF CONTENTS

I.	INTRODUCTION	81
II.	BACKDROP	81
III.	MY JOURNEY AND PROJECT	82
	A. Meeting My Team and Exploring our Topic	82
	B. Narrowing the Focus	83
	C. Project Development	84
	1. Research Methodology and Results	84
	2. Research Gaps and What Went Wrong	84
IV.	WHAT I'VE LEARNED	85
V.	CONCLUSION: THE VALUE OF TEAMING TOWARDS PROBLEM SOLVING	85

I. INTRODUCTION

Supply chain management—the design, planning, coordination, and monitoring of, supplies, goods, services, and information as they move through the chain from supplier to manufacturer to wholesaler to retailer to consumer—is extremely important yet exceedingly difficult for large global corporations. One of the many intricate and complex challenges of it is ensuring that a supply chain possesses adequate ethics and compliance programs at every tier of the chain. This piece describes the journey of a student on a LawWithoutWalls (“LWOW”) team that was charged with helping a large multinational defense firm, Lockheed Martin, solve this problem. This piece is not designed to teach the reader about supply chain management; instead, it will exemplify through a real-life experience how tough it is to teach people who are not compliance experts about the field’s complexities and, further, explore the difficulty in developing creative, practicable solutions to compliance problems.

II. BACKDROP

My journey into the world of compliance began with an unconventional approach: instead of a lecture, textbook, or class, I took part in LWOW, a cross-disciplinary, cross-cultural part-virtual experiential learning program designed to change the way lawyers and business professionals collaborate to solve problems. LWOW is offered to lawyers at firms and to law and business school students at more than 30 schools around the world (including the University of Miami, where I am in my final year of JD study). LWOW places 3 students from different schools on a team with two lawyer leaders and 3 mentors (an academic, an entrepreneur, and a business professional). Each multidisciplinary, multicultural team is provided a topic and challenged to explore and source a discreet problem from that topic, and, finally, create a solution to that problem. These topics are issues facing the legal market today. My team’s topic focused on compliance. Specifically, our topic was: “Catch 22?: Assessing the Ethics Programs of M&A Targets, Partners, and Suppliers Without Reference to a Specific Country’s Laws or Regulations.” Lockheed Martin sponsored this topic and provided us with exceptional guidance through one of their employees, who served as our business mentor. LawWithoutWalls’ novel approach—combining innovation, teaming, mentorship, and expertise from a multinational facing this compliance hurdle—provided our team with great perspective and drive to discover a solution.

I thought that discovering a solution would be easy. Looking back, I couldn’t have been more wrong. Even with a team full of critical thinkers, experienced businesspeople, and compliance experts—all committed to innovating a solution—every step was harder than I imagined. Navigating the world of compliance, understanding the complexities within, and identifying a narrow problem to solve all proved difficult. The biggest difficulty was creating an implementable solution. This difficulty, however, proved to be the

biggest benefit of the entire journey. Through LWOW, I learned that not finding a solution does not equate to failure; rather, through our research, interviews, and countless rounds of going back to the drawing board, we—the students, lawyer leaders, and mentors alike—honed skills critical to twenty-first century professional success: communication, project management, cultural competency, teamwork, leadership, and business acumen. We also gained an understanding of and appreciation for the complexities of supply chain compliance.

III. MY JOURNEY AND PROJECT

A. Meeting My Team and Exploring our Topic

In January 2016, I met my team at IE University in Madrid, Spain at the LWOW Kick-Off, a two-day event designed to teach innovation, teaming, presentation, and collaboration skills and lay the foundation for the virtual teamwork that would follow. There were three students on my team: an American from MiamiLaw; an Italian at Bucerius Law School in Hamburg, Germany, a French business and law student at École HEAD in Paris; and myself, a law student from the University of Miami. We had the privilege of being led and mentored by five amazing professionals, including: Lauren Schultz, an Ethics Analyst at Lockheed Martin; Mark Snyderman, the Chief Ethics & Compliance Officer and Assistant General Counsel at Laureate Education; Anna Donovan, UCL Law Professor and LWOW alum; Camilla Elliott-Lockhard, a senior associate at Everheds; Nataia Clements, Legal Counsel at Citibank; and Vasco Bilbao-Bastida, another LWOW alum and Group Director and Digital Strategist at VaynerMedia. Both as a group and individually (given their varying expertise, experience, and interests), our mentors guided our progress, pushed us for answers, encouraged us to think critically, and offered constructive feedback as we devised our solution prototype and financial model.

Quickly, our team realized that, in spite of how cross-disciplinary and cross-cultural we were, the conversation on compliance would be a challenge for all. The differences between laws, policies, and what was considered “the norm” across countries quickly became evident. For example, in the United States, if an employer has an employee tip hotline to report a harassment incident, that report requires anonymous reporting by law. In other words, confidentiality is of the utmost importance, and is required by law. This is not the case in Europe, especially in the United Kingdom, where the thought of anonymous reporting is unheard of. It was within the first few moments and introductory conversations that I began to understand the scope and depth of the challenge ahead.

Our team spent the remainder of the KickOff weekend laying the foundation for the three and a half months to come. Together, we learned from thought leaders engaged in exercises to develop our teaming skills, created and presented an idea in a mini-hackathon, learned how to market ourselves, explored cultural competencies, networked, and more. Once we left Madrid (and returned to Miami, Paris, Hamburg,

London, etc.), the real work began: unpacking the topic, identifying a narrow problem within it, and developing an implementable solution to that problem –virtually.

B. Narrowing the Focus

It quickly became apparent that our project was no small feat, and we needed to narrow our topic down as much as possible. Lockheed Martin had provided us with a very comprehensive understanding of both its philosophy and corporate structure. Lockheed Martin, like many multinationals, is always looking to expand their suppliers, business partners, and targets outside of the United States, as well as develop effective, efficient compliance solutions to accompany a growing supply chain.

With Lockheed Martin’s support, we felt it most efficient to focus on the defense industry. We wanted to create something practical that Lockheed Martin (and its competitors) could use. However, after about six weeks of focusing on the defense industry, and a long team meeting, we came to the conclusion that targeting the defense industry was not the best option for us. The defense industry is unique as there are only a few big players; e.g., Boeing. Further, concerns over confidentiality proved significant obstacles in investigating the defense industry’s supply chain. The starting over was difficult. But, as we learned through the LWOW experience, starting over is a normal part of the innovation and design thinking process. The pathway to innovation, much like the pathway to ensuring compliance within a large, global corporation, is messy, complex, and difficult—a lesson we learned the messy, complex, and difficult way.

When starting over, we returned our focus to the overarching topic: supply chain management as it relates to legal and ethical compliance along the chain from the point of origin to eventual consumer. Our research indicated that (regardless of industry) many compliance measures related to suppliers at the point of origin were in place because of the supplier, manufacturer, or seller’s fear of financial loss—that is, these measures are generally reactive, rather than proactive. With that knowledge in mind, we then turned to the parties of the supply chain, and found that due to the global nature of supply chains across several industries, laws and regulations across the globe most commonly and heavily impacted suppliers.

In investigating supply chains, we came across several discoveries. First, chains are often complex and multi-tiered. The end seller is often unaware of who their middle- and bottom-tier suppliers are. These middle- and bottom-tier suppliers are often small- and medium-sized suppliers, such as “mom and pop shops,” or suppliers located in a single warehouse, employing 20 people, and making only one specific part. Because these suppliers are not likely known by the entity at the top of the chain, they have little to no relationship with each other, and generally do not have a mandated or standard compliance program that dictates appropriate standards. This is because the relationship between the middle and bottom tier suppliers and the ultimate end-buyer at the other end of the supply chain is attenuated and there are many barriers to developing a compliance program in these small enterprises that may not have an internal need for such a program let alone the internal resources to design, implement, monitor, and enforce it.

The complexity goes beyond supply chain structure. In addition to not having compliance programs in place, suppliers were not held to a common standard across jurisdictions. In an attempt to find some commonality, we compared six international standards, including the Defense Industry Initiative, United Nations Global Compact, Organization for Economic Co-operation and Development, International Code Council: Rules on Combating Corruption, United Kingdom Bribery Act, and the United States Sentencing Guidelines. Our analysis showed that no true global standard—let alone a general list of commonalities across standards—exists. In our discussions with Lockheed Martin, large defense players and contractors are eager to develop a uniform standard that flows across borders, governing treaties, and enterprises of all sizes.

C. Project Development

Although this discovery was daunting, it was our opportunity for innovation. As is part of our charge in LawWithoutWalls and important for any innovation journey, we found a gap – a real need –to be filled. From this moment on, we focused on this gap—the lack of a global standard—and decided to try our hand at designing how a global standard might look, and, further, how small- and medium-sized suppliers could adopt, implement, and enforce these standards when no current ethics and compliance program exists.

1. Research Methodology and Results

We began by attempting to define a global standard. As a foundation, we compared the six global standards noted above. Our comparison showed that, while no global standard existed, six common elements were present among them:

- i. Reporting Mechanism, i.e., some tool in place to allow employees to inform management or their boss(es) of any issue they come across.
- ii. Communication Plan & Awareness Training, which allows everyone within the company to know what the company's policy is and training on that policy.
- iii. Program Assessment & Evaluation, which ensures that the company's policy is current and up-to-date.
- iv. Essential Risk Covered, which includes proprietary information and a plan in place if such information is leaked.
- v. Leadership Commitment & Core Company Values, which allows company's to focus on the collective where everyone is aware of the company's positions.
- vi. Ethics Driven Code of Conduct, which demonstrates that the company is committed to combating corruption, bribery, and fraud.

2. Research Gaps and What Went Wrong

While we identified these six common elements, we thereafter recognized that discrep-

ancies and differences in interpretation of each prevented a concrete conclusion. For example, Leadership Commitment & Core Company Values to one company in one jurisdiction may simply be a statement on a website stating “X Company is Committed to a Compliant Supply Chain,” while in another jurisdiction, this statement may not be sufficient enough, and said jurisdiction may require a statement and explanation to appear in a company’s Code of Conduct.

Another limitation was manpower. Although research shows that teams that are too large can be ineffective, in this situation, a larger cohort might have been beneficial. If a bigger team were to tackle this research in great—even painstaking—detail, more commonalities and conclusions could be drawn. We were limited from being able to do this but believe that with the right research plan, support, flexibility, and communication, this could be done in the future. And given the need for it, the entire team hopes that it will come to fruition. That said, given the ever-evolving nature of laws, policies, and company goals, this may be difficult. An international standard would need to be readily adaptable to change. Additionally, changes in each country’s laws and regulations would need to be constantly monitored. A final challenge lies in measuring the veracity of the information on record: is it accurate, complete, up to date, and truthful? Hopefully, with the help of technology, many of these challenges can be overcome.

IV. WHAT I’VE LEARNED

It is impossible for a newcomer to develop expertise in compliance, let alone a fo-cused area like supply chain management or industry specialization, in four months’ time. I did, however, gain an understanding of the complexities and functionality of supply chain management, as well as the concurrent interplay of ethics and compliance. I learned about the influence of factors like financials, product quality, and supplier location. Further, I gained great insight into the disconnect between the lack of a global standard and global corporations’ expressed desire for one. In our journey, the team began to question: Was this a true desire, or was it merely a well-intended wish? I am still not completely sure but complicating the answer is the reality that: 1) large corporations often value trade secrets and are reluctant to share their information with others; 2) large corporations, for various reasons, do not want to be held to a standard not of their own design or under their own control.

V. CONCLUSION: THE VALUE OF TEAMING TOWARDS PROBLEM SOLVING

When I embarked on my journey into compliance and the LWOW process, I was armed with a blank slate and an eager desire to solve a problem. Yet, in four months, I successfully embraced a steep, rich, and nuanced learning curve. One of the biggest takeaways I’ve learned is that there is a conflict between the “should” of having a global standard, and the “could” and/or “would” of development and adoption. But the most important takeaway was the value of trying—of working to co-create a solution to one of laws’ problems in a multi-disciplinary, multi-cultural team. Although we didn’t find the

ultimate solution to the gap we identified, we still created what LWOW so rightly coins “a project of *worth*.” The LWOW journey was a training experience that most law school students and lawyers never have the opportunity to take part in and it was so worth the effort because, in the end, all of us built skills that will make us better problem solvers and team players in the future.