

Chancery Lane Chats: PODCAST TRANSCRIPTION
Michele DeStefano of University of Miami
Why communications and Law are Becoming Yin and Yang Professions.

Malcolm: I'm Malcolm Munro from Mumford and today I'm joined by Michele, who you could say defies categorization. She's a professor, author, lawyer, speaker, consultant and all around expert on innovation in law. Michele is ranked in the top 20 of the Financial Times innovative lawyers index in North America. Michele is a professor of law at the University of Miami, Guest Faculty at Harvard law school and Founder of [LawWithoutWalls](#) a multidisciplinary international thinktank. Michele joins us from the other side of the pond.

Malcolm: Michele, how important is it that communication outside the courtroom works as well as inside?

Michele: It's really important that communication outside the courtroom is managed, even more important than inside the courtroom given that so many cases never even make it to trial.

Malcolm: You wrote an article a while back called [Advocacy in the Court of Public Opinion: Broadening the Role of Corporate Lawyers](#). You say lawyers rather than being wary of communications, attorneys should be in charge of all communications not just those that are legal or media sensitive. Tell me more about that.

Michele: Well, in today's world anything can turn into news and anything can go out there. I mean there's tons of different ways of spreading information. Additionally, large corporations have changed the way they work with their customers. They want more interaction and more communication with their customers. So not only are there more channels of information out there and more ways that information can be spread, but there's also more people that are interacting with and talking about and impacting corporations today. Also, what is said out in the world can lead to litigation and can lead to, most importantly, reputation damage even if it doesn't actually turn into a lawsuit

Malcolm: OK to get a meaningful overview of the PR implications to the attorney, PR consultants often have to know the confidential details surrounding the legal issues; but the opposite is also true for lawyers and clients: sometimes they need to know or have a right to see documents drafted by communications consultants and how does privilege work in that?

Michele: The cases out there on privilege are mixed. In some cases, courts have found the attorney-client privilege to apply to communications with PR consultants, but it really depends on the court and also which standard the court uses. My view is that (and I wrote an article called [The Corporate Attorney-Client Privilege: Third Rate Doctrine for Third Party Consultants](#)) about the attorney client privilege. My view is that, in certain circumstances, in order for a lawyer to do his or her job the best way they can, they need to talk to consultants and share actual information with those consultants and that the privilege should apply in those limited circumstances. So, one could imagine in a situation where, for example, maybe something like lead paint on children's

toys. One could imagine an attorney needing some help from a PR consultant on how to manage the press and social media and announcements that the company is making about any kind of uncovering of that. And in those limited circumstances, when it helps the lawyer give better legal advice to the client, I believe the privilege should apply.

Malcolm: Your book, [Legal Upheaval](#), is all about innovation in the field. How do you see law firms evolve and innovate to meet increasing communications needs of course the method here is to make communications professionals expert lawyers as well?

Michele: Well, I would think that in the future as the world keeps getting more and more hungry for content and more and more connected, that law firms will also be helping their corporate clients—all their clients—manage their legal PR. Law firms are already doing that to some extent; but one way to innovate would be for them to take a more proactive role with their corporate clients and to think strategically how to manage public relations as a whole especially as it relates to any type of legal issue or even legal agreements. So, for example, let's say one company is going to merge with another, arguably tomorrow's lawyers should be helping the corporation make those decisions about how to position that merger in the marketplace to the corporations advantage.

Malcolm: Interesting, and do you find sometimes that the corporate side pushes back a bit on that to say: well that's not really your job, you know, I'm paying you to advise me on the law not on the wider picture?

Michele: Maybe to some degree. Although, I feel that the role of the attorney in the last 10 years really has grown and is growing to be one more of a counselor and that clients today need business advise from their lawyers as much as legal advice. Look, there's nothing going on in the business world that is only a legal problem. All problems are multidisciplinary today so lawyers are being asked, in many circumstances, to provide lots of advice in addition to legal advice and services. And the most successful lawyers of tomorrow will be counselors even what I call *innovation counselors* meaning: they will be helping their clients foresee what is the future for that company. And the reason why lawyers need to do that is because if we don't help our clients understand what their company will be in the future, we can't help make sure that they are ready and compliant with all the different rules that may come about or that already exists as it relates to data, use of data, and predictive, use of data to predict future events.

Malcolm: Yes, and to that point what are the big changes in the industry besides communications and what advice would you give to third party consultants like us on how to adapt to the needs of law firms?

Michele: I think law firms are going to be more open and already are being required to collaborate with other types of consulting companies whether it's the law companies that exist out there like United Lex or Elevate Services or whether it's a PR company or even the Big Four. So, I think that everybody needs to think about proactive, co-collaboration and that really is where the world is headed. And the smart law firms will actually unite with and partner with

consulting companies of different types so they can provide their clients with holistic advice and services because that's really what the clients want. The consultancies that figure out how to quarterback that? They will be successful.

Malcolm: Thank you. Do you have any thoughts on how the role of general counsel is evolving in the US to expand into other areas such as communications consultancy ?

Michele: Well, I think general counsels for the last 10 years have already had their hands in PR at their own companies in helping manage PR around legal issues for sure. I think general counsels rules right now are changing greatly in the sense that they are having or they're being charged with running their law departments like a business and actually figuring out how to free up their lawyers time by using technology and other means, as well free up their lawyers time so that their lawyers can focus on strategic work with the business i.e., so they can actually add to the enterprise's bottom line. And that's different than it used to be. Yes, they still have to be preventing risk. Yes, they still have to be keeping in charge of compliance. Yes, they still have to be helping manage legal PR. And in addition to that, general counsels of tomorrow are going to need to digitally transform their legal departments so that their legal departments can actually add real monetary value to the bottom line.

Malcolm: Yes. Besides communications what are the big changes for the industry that you see are going through at the moment and what advice would you give to third party consultants is like us on how to adapt to the changing needs of law firms

Michele: I think that the biggest changes that clients are asking for are . . . Yes, they are asking you for more for less but, more than that, they are asking for lawyers to change the way they approach service. One of the reasons why I wrote my book was to try to figure out what do clients mean when they ask their lawyers to innovate. You know we keep hearing it: "innovate!" What in the world do you mean by that? And although I do and have found some examples where some clients really do want true new innovation, I feel that the real call for innovation, the real call is actually a call for service transformation in disguise. And so, I think that the biggest change that we're going to see over the next five years is in how lawyers service their clients. That's true for how in-house lawyers provide service and collaborate with their business clients and that's true for how law firm lawyers provide service and collaborate with their clients. About five or ten years ago a lot of people were talking about the word collaboration and how important it is for lawyers to learn the difference between collaborating and cross selling. I think that we've moved the dial up a notch and what clients are asking for is proactive co-collaboration—that is do things together in the moment, as opposed to more like a relay race: OK I'll do my part now pass the baton to you to do your part. Then you pass the baton back to me. Maybe we do a little bit of collaborating but a relay race, although it's collaborative, it's different. And I feel like the future is one where we are running a three-legged race like the olden days where you have a rope tied around your ankles and we are running the race together.

Malcolm: Thank you. Can you tell me a little bit about what your current research is focusing on?

Michele: Currently, I'm focusing on advertising and marketing and the law and how right now law firms are hiring more and more marketing and BD people and how that shift could be better leverage to provide better service and more client centric focused service to clients. I think that the marketing and BD people at law firms right now are underutilized and under leveraged. So my current research is on that segment and also on looking at advertising and marketing firms and their trajectory over the last 20 years and comparing it to law firms and looking at how advertising and marketing firms have historically serviced clients and created their teams that service clients and comparing that to law firms. That's my most recent project that I'm focused on.

Malcolm: Before we go, it's time for our regular feature when we ask for your advice to aspiring lawyers so what's your Montfort Maxim?

Michele: I would say take a multidisciplinary approach. I think anybody right now today who wants to be a lawyer in any field (but especially in litigation and dispute resolution) should also get a business degree and, therefore, a good understanding of PR and finance and accounting and advertising and branding and know the difference between all of those things and know how to leverage all of those so that they can communicate and advocate for their clients in all the different avenues that are out there today.

Malcolm: Well, thank you very much Michele and that's it for now please join us again soon for another of our Chancery Lane chats.