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The Wise Counselor: Review of *Legal Upheaval: A Guide to Creativity, Collaboration, and Innovation in Law* by Michele DeStefano*

Honorable William G. Young^{†‡}

Imagine this: Suppose all your legal skills, all your hard earned substantive knowledge, all the nuances of practice and procedure, all your experience in negotiation, drafting, and advocacy – all of it – is sufficient to get you in the client’s door, but it turns out that the client simply assumes you have all those skills and actually wants something more, much more.

This is the provocative thesis of Professor Michele DeStefano’s brilliant new book about human interaction against a backdrop of ever quickening technological change in the legal arena. It is not a “law book” in any traditional sense. There’s nothing here about the rule against perpetuities, complex credit swaps, condominium master deeds, or even how to cross examine an expert. Yet Legal Upheaval is a profound (and optimistic) work of legal reasoning that deserves the widest possible audience.

This is a neat trick and DeStefano is just the one to pull it off. A distinguished scholar, DeStefano is a professor of law at the University of Miami, the guest faculty of the Harvard Law School Executive Education

* Recognized by the ABA as a Legal Rebel, Michele is a law professor at the University of Miami School of Law, guest faculty at Harvard Law School Executive Education, and the founder of LawWithoutWalls, a multi-disciplinary, international think-tank of more than 1,000 lawyers, business professionals, entrepreneurs, and law and business students. Michele is an author, speaker, and consultant on innovation, culture creation, and teaming. Through her company MOVELAW, Michele creates bespoke, experiential-learning workshops grounded in human-centered design to transform how lawyers collaborate and create culture change. Her book, *Legal Upheaval: A Guide to Creativity, Collaboration, and Innovation in Law* leverages more than 100 interviews with General Counsels at international corporations and Heads of Innovation at law firms.

† Honorable William G. Young, Judge of the United States District Court, District of Massachusetts, has been an active trial judge for more than 25 years, serving on both the Massachusetts Superior Court (1977–85) and the United States District Court for the District of Massachusetts (1985–present).

‡ This review was first published in Modern Legal Practice published by Globe Law and Business <https://www.globelawandbusiness.com/journals/modernlegalpractice>.

Program, and founder of the immensely successful LawWithoutWalls. (Full disclosure, years ago – never mind how many– she was my law clerk).

A strikingly original thinker, DeStefano is, first and foremost, a teacher. It shows. DeStefano here tackles the issue of innovation in the legal profession – yet even as she raises the most compelling and far-reaching issues that confront us, she approaches them with genuine humility and a simple, humane, prescriptive process to advance the client’s genuine interests.

Well documented at every step, Legal Upheaval is peppered with a remarkably diverse array of apt quotations that illustrate her every point. A master of heuristics and mnemonic devices DeStefano both outlines and diagrams her analyses.

Make no mistake – we would reject her thesis at our peril for the ways in which we deliver legal services, the fora in which they play out, and indeed the manner of conceiving and expressing legal norms all are evolving at an ever accelerating pace. Indeed, DeStefano is far from alone in recognizing the need for a markedly broader interaction between lawyer and client. See e.g. A. Gavis & M. Young, *A Need For Lawyers With More Empathy*. In sum, today legal skills alone are simply not enough.

This is but the launching pad for Legal Upheaval, however. Once it’s accepted that legal skills alone are not enough, De Stefano really takes off. First, she posits an entire “Lawyer Skills Delta” going far beyond a solid base of “Lawyering and Legal Expertise” and then she explains – much like a practical training manual – how to navigate the “Delta” to embark on meaningful innovation and client satisfaction.

These major sections are the living heart of Legal Upheaval. DeStefano unhesitatingly details precisely how to create the conditions where innovation can flourish. In her view, assuming adequate lawyering and legal expertise, there are four necessary pre-conditions to reaching out for innovation and creativity with clients. These are: concreteness, organization, service, and tech savvy (C.O.S.T). With these necessary pre-conditions explained and in place, she moves on to the skills most desired in navigating the Delta – an open mind, an open heart, and an open door, all hopefully leading to a collaborative creative problem finding and solving team.

Easy enough to outline. The devil is in the details. De Stefano doesn’t flinch. The jewels are her apt, easy-to-understand real world examples of these concepts.

Legal Upheaval is in no sense a theoretical text. Throughout, theory is illustrated and confirmed by practice. Indeed, DeStefano makes it seem as attainable as one-two-three. Or “three-four-five” in her parlance – “three phases over four months with five iterative steps overlaid along the way.”

It is the “process” that counts. As she quotes Chuck Close, “Inspiration is for Amateurs; the rest of us just show up and get to work . . . All the best ideas come out of the process; they come out of the work itself.”

Convincingly argued throughout, Legal Upheaval is so broadly adaptable to the lawyering process that it invites – indeed it compels – reflection and reaction. Recognizing that the view of an old sitting judge is perhaps not the best vantage point from which to look at today’s rapidly changing legal landscape, these thoughts nevertheless come to mind:

Legal Upheaval persuasively argues that lawyers need to become wise counselors for their clients. Who’s going to pay for this major attitudinal shift? Years ago, Carl Sapers, a distinguished Boston lawyer, brilliantly observed in Legal Chowder that in order to increase their revenues, lawyers, like airlines, unbundled their services and became piece workers. He lamented “specialist lawyers, each of whom, like the hedgehog, knew only one thing but knew it very well.” Now DeStefano in Legal Upheaval signals the death knell of such overly specialized practice and recalls us to the days when clients turned to their lawyers more for wise counsel than for narrow legal problem solving. Is this a profitable model? Is this even a permissible question? While Legal Upheaval persuasively limns what clients want and what elements make for client satisfaction, it is silent on the matter of billing.

This is a deeply moral book. Its morality shines through each example and every quote. It is the classicist’s view of the law as a fundamentally moral endeavor seeking to enhance everyone’s opportunities and realize everyone’s potential. Yet “innovation” per se is not a value laden concept. The brilliance of the attorneys who devised the system of allocating risk among retailers, banks, and credit card companies without recourse to the courts to the end that the public continues to have enormous confidence in the security and free flow of credit – that brilliance is matched by the brilliance of the attorneys who so warped the Federal Arbitration Act and stretched it far beyond its original meaning to eviscerate our civil rights and consumer protection laws and bar millions of our citizens from meaningful access of justice. Both teams of attorneys were – and are – masterful innovators. Their clients are, and should be, very satisfied. One hopes for the recognition that technique for the sake of technique, however effective, is not the goal of a legal system, even one admittedly in upheaval. Ours is a value laden profession.

Finally, I cannot refrain from wondering what would happen were Legal Upheaval’s theory, precepts, and practices applied to my corner of the profession – the judiciary. Of course, I am not the one to say. Instead, we must listen, truly listen – with “open mind, open heart, [and] open door.” Will we do it?

This much I know is true – we judges are simply too slow. Business realities move far faster than the courts' pace. Frequently, by the time a case is adjudicated, the realities of the marketplace have made the judgment obsolescent or moot. Moreover, we're vastly too expensive, pricing out average litigants and denying those who most need the courts access to the very system where each can be individually heard.

What people want (and corporations too when they face a real adversary) – over 40 years of judicial service convinces me – is speedy access to the nation's juries. Tragically, we have all but forgotten this. Instead of offering the public what they actually want, we fob them off with, as that great judge Tom Eisele puts it, “a series of irritating intermediate events.”

Michele DeStefano's Legal Upheaval powerfully reminds us that we – each of us, individually and together – have within ourselves the means to get where we wish to go. We owe her a vote of thanks, best exercised by readying and adsorbing her valuable book.