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“BEST PRACTICES”: WHAT’S THE POINT?

IRA P. ROBBINS*

INTRODUCTION

In *Best Practices on “Best Practices”: Legal Education and Beyond*,¹ I formulated a definition of “best practices” where one had not clearly existed before. I proposed that, properly understood, best practices means “those actions that surpass all others in pursuit of a goal or purpose according to some objectively measurable standard.”² I then applied this definition to the book, *Best Practices for Legal Education*,³ and concluded that “[t]he concept of best practices is simply incompatible with legal education.”⁴

I am grateful that Professor Stuckey, the book’s principal author, has taken the time to respond to my article.⁵ I had expected to begin this reply with a summary of our points of agreement and disagreement and proceed accordingly (a best practice for replying to a critique of one’s work?). Once I read his response, however, I realized that the former were few and the latter were numerous.

Professor Stuckey and I agree that legal education can be more effective than it currently is and that reform efforts ought to be encouraged. From there we part company in significant ways. Indeed, he commences his criticism by writing, “Our debate is about the title to the book.”⁶ If this were the extent of his misuse of the term “best practices,” I would be, well, less displeased. But it is not. One only has to look at his nine chapter titles to realize that the problem lies much deeper.⁷ Moreover, not only does Professor Stuckey employ the term

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¹ Ira P. Robbins, *Best Practices on “Best Practices”: Legal Education and Beyond*, 16 CLINICAL L. REV. 269 (2009).

² *Id.* at text accompanying note 144 (emphasis removed).

³ ROY STUCKEY AND OTHERS, *BEST PRACTICES FOR LEGAL EDUCATION* (2007) [hereinafter *BEST PRACTICES FOR LEGAL EDUCATION*].

⁴ Robbins, *supra* note 1, at text following note 48.

⁵ See Roy Stuckey, “*Best Practices*” or *Not, It is Time to Re-think Legal Education*, 16 CLINICAL L. REV. 307 (2009).

⁶ *Id.* at text preceding note 3.

⁷ The chapter titles are: “Reasons for Developing a Statement of Best Practices”; “Best Practices for Setting Goals of the Program of Instruction”; “Best Practices for Organizing the Program of Instruction”; “Best Practices for Delivering Instruction, Generally”; “Best Practices for Experiential Courses”; “Best Practices for Non-experiential Teaching Methods”; “Best Practices for Assessing Student Learning”; “Best Practices for

many dozens of times in many contexts, but he also makes sweeping assertions that quickly belie his summary of our debate. He writes, for example, that “[e]vidence of [a school’s commitment to doing the best job it can to prepare its graduates to practice law effectively and responsibly] could be the extent to which a school employs best practices for legal education, as described in this document or elsewhere.”⁸ Obviously our disagreement is hardly a matter of book title alone. Professor Stuckey rejects all aspects of my best-practices template, as well as the dictionary definitions of both “best” and “practice.”

With all due respect, I submit that Professor Stuckey misses the point. In fact, he misses so many points that I think it is important to join the issues directly and without any ambiguity. Simply put, from beginning to end—literally, from the title of his article to his concluding sentence—his response is replete with misunderstanding about best practices, both the concept and its application.

I. RESPONSE TO CRITICISMS

A. *Definition of “Best Practices”*

Professor Stuckey begins his response article by questioning my reasons for formulating a definition of “best practices”: “Professor Robbins does not explain why he chose to create his own definition of ‘best practices’ rather than to use one of the various pre-existing definitions he discusses in the article.”⁹ I did not discuss various pre-existing definitions, because there were no such definitions to discuss. Instead, I surveyed three models (the industrial model, the successful-practices model, and the qualitative-best-practices model) in which the concept of best practices had been employed.¹⁰ However important they may be, these models were no more than applications of unstated definitions. While I described the steps taken to achieve best practices within each model, I concluded this section of my article by stating: “There are pros and cons associated with any model of best practices Without certain attributes, however, some practices do

Assessing Institutional Effectiveness”; and “Components of a ‘Model’ Best Practices Curriculum.” See *BEST PRACTICES FOR LEGAL EDUCATION*, *supra* note 3, at i.

⁸ *Id.* at 40. See also Robbins, *supra* note 1, at notes 39-43 and accompanying text (describing some contexts in which *Best Practices for Legal Education* uses the term). Professor Stuckey appears to contradict this assertion elsewhere in the book. See *BEST PRACTICES FOR LEGAL EDUCATION*, *supra* note 3, at 4 (“[We will never] be able to reach universal agreement about the specific knowledge, skills, and values that law schools should teach if for no other reason than the vastly diverse practice settings in which our graduates work.”).

⁹ Stuckey, *supra* note 5, at note 7.

¹⁰ See Robbins, *supra* note 1, Part II.B.

not merit the appellation 'best.' ”¹¹ In the subsequent section, “Worst Practices on Best Practices,” I discussed the failures of many attempts to achieve best practices and identified the reasons for those failures: no objective goals, no objective standards, and no methodology.¹² With this background, I sought to articulate those attributes that are the *sine qua non* of best practices. Building on the dictionary definitions of “best” and “practice,”¹³ I incorporated the requisite attributes and formulated the following definition: “those actions that surpass all others in pursuit of a goal or purpose according to some objectively measurable standard.”¹⁴ Professor Stuckey rejects my definition as a mere “cobb[ling] together [of] dictionary definitions of ‘best’ and ‘practices’”¹⁵ But, as the author of *Best Practices for Legal Education*, he does not propose an alternative definition for his key term, either in the book or in his response article.

B. Application of the Definition

More significant than his rejection of my definition, Professor Stuckey dismisses my application of the three prongs of my template to *Best Practices for Legal Education*: “All accredited law schools share common goals, there is only one superior method to achieve law schools’ objectives, and law schools can evaluate the quality of their programs of instruction according to some standard and could objectively verify their success with different and better metrics.”¹⁶ I will address each of these points in turn.

1. No Common Goal

Stating that all accredited law schools share common goals,¹⁷ Professor Stuckey writes:

Professor Robbins contends that *Best Practices for Legal Education* fails to meet his first criterion because “[g]oals for legal education vary among, and even within, institutions.” Certainly, most law schools have multiple missions and these vary from institution to institution. As a consequence, the curriculums of law schools should have different emphases. They should not look exactly alike.¹⁸

No quarrel from me. But if law schools’ missions, goals, or emphases

¹¹ *Id.* at text following note 107.

¹² *See id.* Part III.

¹³ *See id.* at notes 142-43 and accompanying text.

¹⁴ *See id.* at note 144 and accompanying text (emphasis removed).

¹⁵ *See Stuckey, supra* note 5, at note 7 and accompanying text.

¹⁶ *Id.* at paragraph following note 8.

¹⁷ *Id.*

¹⁸ *Id.* at paragraph containing note 9 (footnotes omitted).

are different, how can we fairly and intelligently compare the extent to which one or another school uses best practices?

Professor Stuckey continues:

One of the things that law teachers should be able to agree about is the overall purpose of a legal education. At its core, legal education is a professional education, and part of the mission of every law school is to prepare its students to enter the legal profession. It is why law schools exist.¹⁹

Again, I do not necessarily disagree that part of the mission of every law school is to prepare its students to enter the legal profession. But what does preparation to enter the legal profession *mean*? I wrote that, “[w]ithout clearly stated goals or missions, there is no way that a best practice can lead to success,”²⁰ and that with vague generalities, “it is impossible to achieve a goal in a manner surpassing all others.”²¹ Yet Professor Stuckey responds only with such generalities. He cites, for example, American Bar Association (ABA) requirements that all accredited law schools “maintain an educational program that prepares its students for admission to the bar and *effective and responsible participation in the legal profession*,”²² and “provide ‘substantial instruction’ in a range of subject areas.”²³ Professor Stuckey also refers to the Carnegie Report’s similarly vague statements that “the formation of competent and committed professionals deserves and needs to be the common, unifying purpose,”²⁴ and that “the common task of all professional education . . . is ‘preparing students for the complex demands of professional work—to think, to perform, and to conduct themselves like professionals.’ ”²⁵

Absent from this argument are the precision and objectivity necessary to a determination of what is best. Professor Stuckey states:

Professor Robbins argues that “[o]nly those schools that teach students to perform a given skill or task in the best possible manner would reflect best practices in legal education.” This is incorrect. It is not the function of law schools to develop professional expertise fully, no more than it is to teach all the law that students will need

¹⁹ *Id.* at paragraph following note 11.

²⁰ Robbins, *supra* note 1, at note 112 and accompanying text.

²¹ *Id.* at note 194 and accompanying text.

²² See Stuckey, *supra* note 5, at note 12 and accompanying text (Professor Stuckey’s emphasis; citation omitted) (quoting ABA Standard 301(a)).

²³ *Id.* at note 13 (citation omitted).

²⁴ See *id.* at note 15 and accompanying text (citation omitted).

²⁵ *Id.* at note 16 and accompanying text (citation omitted). For another example of a vague and immeasurable assertion of shared goals, see *id.* at note 21 and accompanying text (“[I]n *Best Practices for Legal Education*, we encourage law schools to ‘design and offer programs of instruction that aim to take novice learners and equip them to develop into expert problem-solvers.’ ”) (citation omitted).

to know to practice law effectively.²⁶

With this non sequitur, Professor Stuckey completely misses the point about best practices. I never claimed that the function of law schools is to develop professional expertise fully. That clearly does not follow from the sentence he quotes. More important, even if I had made such a claim, how can Professor Stuckey argue persuasively that best doesn't mean best? What definition is he using?²⁷ He never says, either in *Best Practices for Legal Education* or in his response article. Rather, he writes:

In *Best Practices for Legal Education* we recommend specific outcomes that law schools should seek to achieve. We include a statement of twelve core general characteristics and abilities that entry level lawyers should have on day one in practice. We also provide a definition of professional competence, and we provide a more detailed description of the knowledge, skills, and values of effective, responsible lawyers. I think it is difficult to argue that any of the outcomes we propose should not be among every law school's objectives, but we invite and encourage debate about this. If it turns out that it is impossible for law schools to achieve these outcomes in three years, then law teachers need to make this clear to bar admissions authorities and begin a dialogue to determine exactly what responsibility law schools bear for preparing students to practice law.²⁸

In what scheme of best practices does one invite and encourage debate and begin a dialogue *after* the "best practices" have been pronounced and published? The debate and dialogue should *precede* the assertion of best practices to determine *whether* best practices exist in a given area.²⁹

2. *No One Way to Reach the Common Goal*

Even if there were a specific agreed-upon goal for legal education, I argued that, for a practice to be considered best, there must be only one way to achieve that goal that is clearly superior to all others.³⁰ I stated that, in part because "law schools are rife with disagreement about methodology,"³¹ "this precondition is . . . absent from

²⁶ *Id.* at paragraph containing note 18 (citation omitted).

²⁷ And in what way does it help his argument to quote the statement from the Carnegie Report that students "must become 'metacognitive' about their own learning"? *See id.* at note 19 and accompanying text.

²⁸ *See id.* at paragraph containing notes 24-26 (footnotes omitted).

²⁹ I am not now arguing against any of the ABA standards or the recommendations contained in the Carnegie Report or *Best Practices in Legal Education*. Rather, I challenge whether any of these can properly be considered best practices.

³⁰ *See* Robbins, *supra* note 1, at text following note 194.

³¹ *Id.* at paragraph containing note 200.

Best Practices for Legal Education; indeed, it may be unattainable, given the nature of legal education in general.”³²

Not surprisingly, Professor Stuckey disagrees. He writes: “*Best Practices for Legal Education* describes a clearly superior way to achieve the shared educational goals of law schools[.]”³³ He then quotes five recommendations from the book³⁴ and instantly concludes in *res ipsa loquitur* fashion, “[t]his is how law schools can achieve their common educational objectives.”³⁵ Such an empty statement is unhelpful to the debate. *Why* do these five recommendations comprise the “clearly superior” way to accomplish the shared goals of law schools? *What methodology was used* to determine their superiority? *How* should institutions and teachers develop a clear understanding of precisely what they want students to learn? *How* should the curriculum be organized to deliver instruction in professional knowledge, skills, and values in a congruent, progressive, and integrative manner? *How* should teachers select teaching methods that will achieve their educational objectives as effectively and efficiently as possible? *How* should teachers go about choosing teaching methods as skillfully as possible? And, perhaps most important for present purposes, *how* should teachers and institutions evaluate the degree to which they are succeeding?

Unfortunately, Professor Stuckey does not answer any of these questions. He only adds, apparently gratuitously, “[u]nless Professor Robbins can propose an equally superior way to achieve the educational objectives outlined above, he is incorrect in contending that *Best Practices for Legal Education* fails to meet his second criterion.”³⁶ Leaving aside that I had hoped our disagreement would not become personal,³⁷ I submit that Professor Stuckey misses the point yet again. It is not that *Professor Stuckey* cannot devise a way to achieve clearly superior educational objectives; it is that *no one* can. If he believes that his recommendations are clearly superior to all

³² *Id.* at paragraph containing note 195.

³³ Stuckey, *supra* note 5, at sentence preceding note 28.

³⁴ *See id.* at notes 28-32 and accompanying text:

(1) educational institutions and individual teachers should have a clear understanding of what they want students to learn; (2) the curriculum should be organized to deliver instruction in professional knowledge, skills, and values in a congruent, progressive, and integrative manner; (3) teachers should select teaching methods that will achieve their educational objectives as effectively and efficiently as possible; (4) teachers should employ chosen teaching methods as skillfully as possible; and (5) teachers and institutions should evaluate the degree to which they are succeeding.

Id. (footnotes omitted).

³⁵ *Id.* at text following note 32.

³⁶ *Id.*

³⁷ *See also infra* at text following note 63 (emphasizing the impersonal nature of this debate).

others, he should share his precise reasons for reaching such a momentous conclusion.

3. *Results of Best Practices Are Not Objectively Verifiable*

I stated in my article that “legal education cannot be endowed with a set of best practices because those practices cannot be objectively verified in relation to all other current or previous practices in the field.”³⁸ I added, “[t]his final precondition is arguably the most important of the [criteria for best practices] because of the very nature of best *qua* superior to all others.”³⁹ Strangely, Professor Stuckey responds by ignoring my definition of best practices and looking only to the dictionary definition of “best” that I had cited and supplemented:

The “objectively verifiable” requirement is not in the definitions from which Professor Robbins derived his criteria. The definition of “best” chosen by Professor Robbins only requires that the superiority of the practice be demonstrated “according to *some* standard.” Therefore, even under Professor Robbins’ definition, a practice does not have to be “objectively verifiable” in relation to all current or previous practices in order to qualify as a “best practice.”⁴⁰

Even a cursory reading of my article shows that, in the sentence immediately following my reference to the dictionary definitions of “best” and “practice,” I formulated a working definition of “best practices”: “[T]he term should be defined as *those actions that surpass all others in pursuit of a goal or purpose according to some objectively measurable standard*. This definition can serve as the basis for a template to determine whether a purported best practice is in fact a best practice.”⁴¹ Why Professor Stuckey chooses to ignore this definition and rely on the dictionary definition of “best”—particularly after he has already chastised me for “cobb[ling] together dictionary definitions of ‘best’ and ‘practices’ ”⁴²—baffles me.⁴³

³⁸ Robbins, *supra* note 1, at text following note 213.

³⁹ *Id.*

⁴⁰ Stuckey, *supra* note 5, at text accompanying note 34 (Professor Stuckey’s emphasis; other emphasis removed; footnote omitted).

⁴¹ Robbins, *supra* note 1, at text following note 144 (footnote omitted).

⁴² See *supra* note 15 and accompanying text.

⁴³ Further discussing my definition, Professor Stuckey writes:

One of the ironies of Professor Robbins’ definition is that (by his own admission) it would disqualify most current usage of the term “best practices.” While he may prefer that the term be used differently, when one’s definition is at odds with almost all current usage the problem may be the proposed definition, not the term.

Stuckey, *supra* note 5, at note 8. If the usage of a term (or a law, for that matter) is incorrect, it *should* be modified or rejected. That’s the way knowledge and understanding are advanced. Professor Stuckey refers to *current* usage. How does a usage become current? Doesn’t the use of that word allow for change over time? Suffice it to say that I am content to have my proposed definition and its application tested in the marketplace of ideas by

Moreover, Professor Stuckey's reliance on "some standard" is too amorphous to provide any assurance of meaningful comparison. He compounds this indefiniteness when he articulates his so-called standard: "One type of standard commonly used as an evaluation tool is *opinion*. If a law school wants to evaluate the quality of its educational program, it can seek the opinions of people who have relevant information about it."⁴⁴ To determine best practices, he says, we should ask students for their opinions of teachers and courses. We should also ask them about their "overall educational experiences" after each semester and once they have been in practice.⁴⁵ In addition to consulting students, we should seek the opinions of employers, ABA site-inspection teams, and, if necessary, independent outside evaluators.⁴⁶ While I do not question the merit of consulting students, graduates, employers, outside faculty and administrators, and others for various purposes, I do question the relevance of their subjective opinions when it comes to determining and evaluating best practices. Opinion is of little value when assessing what is "best."⁴⁷ Without objectivity, such a standard is no standard at all.⁴⁸

Returning to my criterion of objective verifiability, Professor Stuckey writes:

Let us now consider how one might objectively verify the quality of an educational program. Professor Robbins does not believe it is possible "because the nature of measuring quality among law schools and within legal education is inherently subjective and, therefore, open to extreme (and perhaps desirable) disagreement." Yet, Professor Robbins explains earlier in his article that one way (the "best" way?) to develop a system for objective verification is to look to the process of benchmarking. Professor Robbins does not seem to consider the possibility of establishing benchmarks of educational quality for law schools.⁴⁹

Professor Stuckey misses the point here in two critical ways. First, benchmarking is neither a definition of best practices nor a substitute

impartial observers who may agree that something other than the best should not be equated with "best."

⁴⁴ *Id.* at second paragraph after note 34 (emphasis added).

⁴⁵ *See id.* at third paragraph after note 34.

⁴⁶ *See id.* at paragraphs containing and following note 35.

⁴⁷ *See* Robbins, *supra* note 1, at text accompanying note 1 (presenting Jerry Seinfeld's observations on "the best").

⁴⁸ I cannot help but wonder about the extent to which Professor Stuckey is influenced by the highly subjective "law porn" that inundates law faculty mailboxes in an effort to affect the *U.S. News & World Report* annual rankings of best law schools. *See id.* at notes 215-20 and accompanying text (discussing law porn and the value of the *U.S. News* rankings).

⁴⁹ Stuckey, *supra* note 5, at paragraph containing notes 36 & 37 (footnotes omitted).

for it. It is only a part of the process of determining best practices.⁵⁰ I wrote: "As used in the field of professional instruction, a best practice appears to be a starting point, an innovative idea that may lead to a set goal, but not necessarily the means to achieving that goal."⁵¹ Measurement is still key to determining relative success.⁵²

The second way in which Professor Stuckey misses the point about benchmarking is through the example he discusses. He writes that

benchmarks are being used today to measure the quality of legal education in England, Wales, Northern Ireland, and Scotland. The Quality Assurance Agency for Higher Education (QAA) was created in 1997 to "provide an integrated quality assurance service for UK higher education[]" . . . [and] to define clear and explicit standards including frameworks for higher education The QAA also conducts audits to determine if schools are providing education of an *acceptable quality* and at an *appropriate academic standard*.⁵³

What is "acceptable" or "appropriate" should not be equated with what is "best." In the QAA context, acceptability and appropriateness do not have to be evaluated by comparison and can be determined from opinions. Why? Because the Quality Assurance Agency sought to identify not best practices, but only baselines. Professor Stuckey seems to recognize as much when he writes: "[T]he QAA developed benchmark standards for law schools These are *minimum standards* that apply to all law schools. Each school is free to set higher benchmarks for its students."⁵⁴ So to support his argument for recognition of *best practices* in legal education, Professor Stuckey turns the concept on its head by relying on an approach that seeks to achieve *lowest common denominators*.

Professor Stuckey says that he would endorse "[t]he development of benchmarks for legal education in the United States."⁵⁵ If understood as minimum standards, so would I. Indeed, in many ways I think this is actually the way Professor Stuckey understands best practices.

⁵⁰ I actually like the idea of benchmarking. In fact, I described the concept of benchmarking at length, *see* Robbins, *supra* note 1, Part II.A., and described three styles of benchmarking (competitive, cooperative, and collaborative). *See id.* at notes 66-70 and accompanying text.

⁵¹ *See id.* at text following note 80.

⁵² *See id.* at note 50 and accompanying text (noting the importance of continuous measurement for benchmarking); *see also id.* at paragraph containing note 228 ("Successful benchmarking depends on having an objectively verifiable, agreed-upon industry standard.").

⁵³ Stuckey, *supra* note 5, at paragraph containing notes 38-40 (emphasis added; footnotes omitted).

⁵⁴ *Id.* at paragraph containing note 41 (emphasis added).

⁵⁵ *Id.* at paragraph following note 41.

He writes, for example:

All law teachers should be able to articulate clearly what their law schools do and what they seek to accomplish in each of their classrooms. As we explain in *Best Practices for Legal Education*, setting clear educational objectives has to be the first step in reforming legal education. Only when law teachers know what they are trying to accomplish can they begin to consider how to measure their success.⁵⁶

I do not disagree. In fact, he appears here to come close to acknowledging some of the ideas I expressed in my article—for example, that benchmarking is a step in the process, that benchmarking does not in itself constitute best practices, that measurement is essential, and that we are not at the point at which we can adequately measure success. But he never quite gets there.

II. ON DISTRACTION AND THE PRECISION OF LANGUAGE

Professor Stuckey says that our disagreement about best practices is a distraction and a diversion:

I do not think it is important whether either of us is right or wrong about the appropriate use of the term “best practices.” Debating the appropriateness of the title of the book and whether law teachers should be discussing “better” practices instead of “best” practices is distracting. It diverts our time and attention from working to improve legal education.⁵⁷

This is an unfortunate characterization of the argument, for it leads me to believe that he misses another major point—namely, how can one honestly and reasonably work to improve legal education without evaluating whether one practice is better than another? And how can one perform such an evaluation without precise language and objective analysis?

Professor Stuckey perpetuates this imprecision by flippantly offering alternative book titles, without appreciating the nuances of difference.⁵⁸ The title of his response article is itself revealing: “‘Best Practices’ or Not, It is Time to Re-think Legal Education.” These are two entirely different enterprises. One—rethinking—requires the de-

⁵⁶ *Id.* at text following note 44. *See also id.* at final paragraph (“*Best Practices for Legal Education* does not answer every question or explain how to resolve all of the issues that legal educators should be trying to address. It simply provides *some basic information* about learning theory and teaching methods that might assist law teachers who want to improve the quality of legal education at their institutions or just in their courses.”) (emphasis added).

⁵⁷ *Id.* at paragraph containing notes 5 & 6.

⁵⁸ *See supra* at notes 6-8 and accompanying text (discussing Professor Stuckey’s assertion that “[o]ur debate is about the title to the book”).

velopment of competing thoughts. The other—best practices—requires subjecting those thoughts to the rigors of objective analysis. The first is a precondition to the second. To rethink without objective analysis may be productive and lead to beneficial reforms (short of accurate comparative assessment). However, only to rethink and *call it* best practices is inaccurate, ill-considered, and slipshod. Even Professor Stuckey says that using the term "best practices" for his project and book title "was perhaps a bit brazen or presumptuous."⁵⁹ Yet he continues to pursue his misunderstanding:

If Professor Robbins had raised his objections before the book was published, he might have persuaded us to call the book "successful practices," "better practices," or "good practices." I could have been satisfied with any of those. In hindsight, I think the most appropriate title would have been, "Principles of Effective Educational Practices for Law Schools and Law Teachers." That title would probably not have fit on the binder, however. It is too late now, of course, to change the title of the book⁶⁰

While it is too late to change the title of the book, it is not too late to recognize its limitations. After all, we are not talking about rocket science or brain surgery here.⁶¹ Did the group of authors need an outsider to debunk the obvious misuse of its key term? Equally important, now that I *have* raised objections, I am nonplussed that in his concluding sentence Professor Stuckey expresses confidence in his admittedly brazen or presumptuous use of the term and conveys optimism that "the next version of the book can be titled 'Best Practices *in* Legal Education' rather than 'Best Practices *for* Legal Education.'"⁶² He just does not seem to get the point—or be willing to recognize—that, for present purposes, these titles are fungible.

Professor Stuckey writes:

Professor Robbins quarrels with the statement in *Best Practices for Legal Education* that "most law schools do not employ the best practices for educating lawyers." "[F]or Professor Stuckey to write that 'most law schools do not employ the best practices for educating lawyers' is to presume knowledge that he does not—and one cannot—have." Without going into any personal qualifications I might have to support that statement, I would simply point out that this statement first appeared in an early draft of the book and remained there for years. Every draft was posted on-line, and many

⁵⁹ See Stuckey, *supra* note 5, at sentence following note 45. See also Robbins, *supra* note 1, at text following note 229 (describing the improper use of best practices as "a jactation of superlative excellence that simply does not exist").

⁶⁰ See Stuckey, *supra* note 5, at paragraph containing note 45.

⁶¹ And if we were, would *good* practices be good enough? Or would we want *best* practices?

⁶² See Stuckey, *supra* note 5, at final sentence.

people made suggestions for improving the book. No one ever challenged the accuracy of the statement. Neither does Professor Robbins, for that matter.⁶³

This debate is decidedly *not* personal. It has nothing to do with Professor Stuckey's (or his contributors') qualifications. It has to do with a definition and its application. Nevertheless, when he writes that "[n]o one ever challenged the accuracy of the statement," he is blatantly wrong. I did challenge it—in *the very sentence of mine that he quotes*. Without attention to those actions that surpass all others in pursuit of a goal or purpose according to some objectively measurable standard, it is meaningless to discuss "best practices" for educating lawyers.

There is always room for intelligent discussion of reform of educational goals and practices.⁶⁴ Thus, if he had titled the book "A Vision and a Road Map for Improving Legal Education,"⁶⁵ or "Principles of Effective Educational Practices for Law Schools and Law Teachers," or "Recommended Minimum Standards for Legal Education," and referred throughout the book not to "best practices," but to "suggestions for reform" or some equivalent phrase, I would have no objection.⁶⁶ However, I draw the line at the misuse of the concept of best practices to convey a false sense of security, an unsubstantiated sense of acceptance or endorsement. The central tenet of Professor Stuckey's article is that "best" can mean something other than best and that the difference really does not matter.⁶⁷

⁶³ *Id.* at paragraph containing notes 48 & 49 (footnotes omitted).

⁶⁴ Professor Stuckey writes that I do not truly believe this. Without citation to any portion(s) of my article, he states:

One of the most disheartening aspects of Professor Robbins' article is its lack of faith that law schools can or even should change. Professor Robbins argues that there are lots of goals and no way to verify progress, which leads inevitably to inaction. In this way Professor Robbins falls into a perennial trap: he lets the perfect (or the "best") be the enemy of the good.

Id. at full paragraph preceding note 42. Unfortunately he misses the point (again). I have not argued here or elsewhere that law schools cannot or should not change. Nor have I argued that there is no way to verify progress. Rather, I have maintained that there is no way to identify what is *best* in legal education. Professor Stuckey's conclusion about inaction, therefore, stems from his own misunderstanding of the difference between successful reforms and best practices. Indeed, if we were to shift our attention from identifying best practices to focusing on approaches that work in practice, there might actually be *more* time to think about positive reforms. To fixate on my faith in reform, especially incorrectly, is hardly productive.

⁶⁵ See Robbins, *supra* note 1, at note 30 and accompanying text (discussing the words "A Vision and A Road Map" in reference to *Best Practices for Legal Education*).

⁶⁶ In fact, I would not have seen the need to write my article—or I would have chosen another context in which to apply my definition.

⁶⁷ See Stuckey, *supra* note 5, Part IV (first paragraph) ("So, who is right? Was it improper usage to include "best practices" in the title of our book? Should we refrain from using the term "best practices" in discussing educational reform? I do not think so, but I

CONCLUSION

I respectfully request that the reader refer to the concluding section of my main article, for nothing in Professor Stuckey's response has changed either my thinking or anything I wrote there. I have said many times in this article that Professor Stuckey misses the point. For example, he says that our debate is merely about a book title. He rejects my definition of "best practices," but does not formulate another one. He does not (or is unwilling to) recognize where the subjective ends and the objective begins—and why the difference is critical to the conception of what is "best." He says that our debate is a distraction from reform in legal education.

Rather than a distraction, when properly understood and applied the concept of best practices helps us to analyze, to evaluate, and to make recommendations fairly and with confidence in the use of superlatives. When improperly understood and applied, as in *Best Practices for Legal Education* and Professor Stuckey's response article, we are left to wallow in a quagmire of invalidly and unreliably tested subjective opinions. While perhaps important for consideration of what may be good and worth trying (in legal education or elsewhere), these opinions—by definition—cannot identify for us what is best. *That's* the point.

