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WHY TEACH ADR TO LAW STUDENTS? PART 2: AN EMPIRICAL SURVEY

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I INTRODUCTION

In Part One of this article,[1] we posed the question 'Why teach ADR to Law Students?' The question was generated by a review of the literature on the teaching of Alternative Dispute Resolution (ADR) in a number of Western countries, particularly the United States and Australia. The literature revealed that many law schools in these countries have demonstrated a commitment to teaching ADR theory and practice to their students in keeping with the upsurge in clinical education and the belief that 'black letter' law units[2] expose students to a narrow perspective of legal practice. The commonly held view is that legal education should teach law students 'what lawyers need to be able to do' not just 'what lawyers need to know'.[3]

The rise of ADR education in law schools underscores the central role of lawyers in ADR practice. Whilst lawyers, in their client advocate role, have an ethical obligation to champion their client's case, they also have a duty, both as officers of the court and in discharging their obligations to their clients,[4] to advise clients of ADR

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1 Judy Gutman Tom Fisher and Erika Martens 'Why Teach Alternative Dispute Resolution to Law Students? Part One: Past and Current Practices and Some Unanswered Questions' (2006) 16 (No 1 & 2) Legal Education Review 125

2 In keeping with the practice at La Trobe University, we use the term 'unit' instead of 'subject' or 'course' to designate an individual unit of teaching in which a student enrols and that counts toward a degree in a specific 'course', such as Law.

3 Elizabeth Peden and Joellen Riley, 'Law Graduates' Skills — A Pilot Study into Employers' Perspectives' (2005) 15 *Legal Education Review* 87, 88 citing Australian Law Reform Commission Report No 89 (Canberra: AGPS, 2000) [2.21].

4 See eg, rule 12.3 Professional Conduct Rules Law Institute Victoria <http://www.liv.asn.au/regulation/pdf/arf/conductrules2005.pdf> at 2 November 2007.

options because ADR has been shown to further the administration of an efficient legal system. The increase in court-connected ADR also highlights the role of lawyers as 'dispute resolution gatekeepers'. Most lawyers are exposed to ADR in some way and are called upon to use their legal skills as collaborative problem solvers rather than 'hired guns'.

The growth of ADR is bolstered by the contemporary culture of consumerism and the humanisation of once hallowed professions such as law and medicine. Current professional practice is based increasingly on 'shared decision-making', a trend that accords with the client empowerment model underlying ADR theory and practice.

The literature indicates that ADR is taught in law schools, with varying results, either as a stand alone unit, or by integrating ADR theory and practice into mainstream law subjects. Part One of this article raised important questions for both the academy and the profession. It addressed the question 'Why teach ADR in law school?' In other words, to what extent is it giving students who are bombarded with the adversarial, positional direction of the traditional 'black letter' subjects' insights into the collaborative, problem-solving approach, essential for 21st century lawyering? It also noted that attitudinal change, if any, that may ensue as a result of teaching ADR subjects to law students, remains an important question for research in both the fields of legal education and legal professional practice. Part Two of the article examines this latter topic.

In the presentation of this part of our work, we seek to suggest some answers to these questions by reporting on an empirical pilot study of teaching ADR as a mandatory unit to first-year law students at La Trobe University in 2005.[5] This article provides a brief profile of the students undertaking the unit along a variety of measures and then focuses on a detailed exploration of their views towards ways in which the legal profession manages disputes.[6]

One of the few inquiries into the effect of introducing ADR into law school curricula was conducted across several American universities in the early and mid-1990s following an initiative taken by the University of Missouri-Columbia Law School in 1985.[7] Its goals were to measure 'technical knowledge of dispute resolution and to make comparisons between the several programs surveyed'.[8]

[5] Over the last ten years La Trobe Law has offered students a suite of elective conflict resolution subjects at undergraduate and postgraduate level as well as a professional development program for lawyers and other professionals involved in dispute resolution.

[6] Another aim of the broader project was to explore students' personal attitudes towards conflict in general, something we hope to report on at a later date.

[7] Leonard L Riskin, 'Disseminating the Missouri Plan to Integrate Dispute Resolution into Standard Law Courses: A Report on a Collaboration with Six Law Schools' (1998) 50 *Florida Law Review* 589, 590.

[8] Ronald M Pipkin, 'Teaching Dispute Resolution in the First Year of Law School: An Evaluation of the program at the University of Missouri-Columbia' (1998) 50 *Florida Law Review* 609, 623–30.

Although this study provided inspiration for the current work, it is important to note several differences between it and the current study: a) the teaching of ADR at the University of Missouri (the chief locus of the study) was scattered over several units rather than in a specialised one as described below; b) the students surveyed there were postgraduates rather than primarily first-year undergraduates; and c) the focus of the American research, as mentioned above, was on technical knowledge and comparisons between programs at several universities rather than on changes in attitudes.[9] Subject to the limitations mentioned below, our research provides concrete indications of whether and to what extent these first-year law students altered their perceptions of how lawyers can manage disputes[10] effectively. Whether such changes will affect the way in which these students eventually practice law, if they do, or even whether the changes persist until the students graduate from a generally adversarial law program are questions that cannot be dealt with in this article, though they could be the foci for future research.[11] Nevertheless, if legal practice continues to incorporate ADR, it will be not only because future lawyers possess the knowledge and skills for doing so but also because they are willing to back such interventions. Thus attitudinal change is at the heart of the cultural shift described in Part One.

Five sections follow this introduction. Section II contains a description of La Trobe Law's mandatory first-year ADR unit that is the subject of this empirical study, a discussion of attitude change, and an overview of the methodology used to measure student attitude towards the manner in which legal practitioners

[9] Leonard L Riskin and James E Westbrook, 'Integrating Dispute Resolution into Standard First Year Courses: The Missouri Plan' (1999) 39 *Journal of Legal Education* 509, 516–17.

[10] In the technical language of the conflict resolution field, *conflicts* and *disputes* can be differentiated. See Laurence Boulle, *Mediation: Principle, Process, Practice* (2nd ed, 2005) 83–85. Conflict may be said to occur when there is a difference, actual or perceived, between two or more people. The term 'dispute', however, may refer to a more specific issue or disagreement, eg. an argument about or against something, usually a fact, interest, or a scarce resource, and it reflects the culmination of a process whereby an injurious experience is identified by one party and is rejected by another. See William Felstiner, Richard Abel and Austin Sarat, 'The Emergence and Transformation of Disputes: Naming, Blaming, Claiming …' (1980–81) 15 *Law and Society Review* 631, 654. In effect, a dispute is both a claim and a rejection of it, and a 'dispute' may be seen as narrower than a conflict. Furthermore, whereas conflicts may be latent, disputes are manifest. This technical difference notwithstanding, conflict and disputes are terms that are often used interchangeably. In the research described in this article, we have tried to use the term 'conflict' in its general sense, while referring to 'disputes' in the survey instruments because of the concrete and specific nature of the statements contained therein.

[11] Prior to carrying out the study, the researchers sought and were granted approval to proceed by the Human Ethics Committee of the Faculty of Law and Management at La Trobe University. A grant of AUD$3,000 was provided by the School of Law for research and technical assistance.

and the courts manage conflict. Section III provides and assesses the data about student attitudes towards legal practice and dispute management, demonstrating that statistically significant change in the direction of interest-based approaches and client empowerment took place over the course of a semester. The fourth section presents and analyses data concerning the influence of student background and demography on their attitudes and changes to the latter where it occurred. Section V sets out limitations in the formulation and language of the survey instrument that became evident as the study progressed. The final section offers some concluding observations about the study's findings and their implications for legal education in a world in which ADR is playing an increasingly important role.

II The Survey

Since 2005, the unit 'Dispute Resolution' (DRE) has been taught at La Trobe Law as a compulsory first-year law unit.[12] The goal of the unit is to provide students with a theoretical and practical base for evaluating the dispute resolution processes existing in Australia, with an emphasis on those processes that pertain to legal practice, particularly mediation. Specifically, its objectives are:

- To describe and examine the range of dispute resolution processes available in Australia including arbitration, conciliation, mediation and negotiation
- To present a variety of skills required to assist in dispute resolution
- To provide students with an opportunity to practise these skills
- To encourage students to analyse critically a range of current issues related to dispute resolution processes, including power imbalances between disputants, rights vs. interest-based approaches, 'bargaining in the shadow of the law' and the regulation of third party facilitators
- To develop skills in dispute resolution, communication, research and analysis.

In 2005 the unit had a weekly two-hour lecture program, which focused on theoretical and empirical perspectives pertaining to the range of dispute resolution processes from adjudication to avoidance, but concentrating on mediation. Specialist practitioners in various conflict resolution fields, such as arbitration and conciliation, contributed to the lecture regime, and video/DVD programs were used as a teaching aid in conjunction with the lectures.

In addition to the lecture series, weekly seminars (with 20 students per seminar) of two hours duration were run. The aims of the seminar program were, first, to teach students communication and negotiation skills and second, once these basic skills were

[12] Prior to 2005 it was available only as an upper-year elective.

practiced, to enhance them by introducing students to a generic facilitative mediation process. Students were required to participate in role plays that allow them to experience a co-mediation model in practice, both as disputants and as mediators, and to develop and refine related micro skills. In addition, the seminar program allowed limited discussion, criticism and analysis of the prescribed course readings.

Students were examined on their achievement of the objectives of the unit in several ways. In 2005 skills development was assessed by evaluation of an *in vivo* mediation role play (by the regular tutors and coaches experienced in the field) and by journal feedback, as well as by one section of the final written examination (totalling 35 per cent). Knowledge of theoretical and empirical material was tested by the more traditional modes of a research essay (35 per cent) and the bulk of the formal examination (30 per cent) at the end of the semester.

Whilst the teaching of most of the other law units in the curriculum is based on the adversarial model, 'Dispute Resolution' offers a student an opportunity to reflect on non-adversarial modes of conflict resolution. The unit encourages students to explore the wider role of lawyers by considering their functions as a principled negotiator, a collaborative problem solver, and an agent of client empowerment.

The unit is not designed to promote ADR but to allow students to develop an appreciation of how ADR fits into the overall dispute resolution spectrum, emphasising the Australian context. Even though the study of mediation comprises the bulk of course content, ADR processes are not recommended to students as the best way to deal with conflict in all cases. In fact, the theme of one lecture is a critique of mediation, and many of the readings raise concerns with aspects of mediation in specific contexts. Students thus are encouraged to analyse mediation critically and consider the appropriateness of various dispute management processes for specific contexts of legal disputing.

Furthermore, 'Dispute Resolution' is not taught in a vacuum at La Trobe Law. It is offered alongside 'Legal Institutions and Methods' in first semester of first-year law. The teaching objectives of 'Legal Institutions and Methods' include: considering the make up and operation of the Australian legal system; examining essential lawyering skills such as case analysis, statutory interpretation and legal research; and placing law in Australia in its context by discussing the concepts of legal professional ethics, access to justice and international law.[13] Although reference is made to ADR in the unit, and students are exposed to teaching materials that consider

[13] La Trobe University, 'Legal Institutions and Methods Course Outline and Lecture Guide 2006', 2.

the lawyer's role as client advocate as well as an officer of the court, the primary focus of 'Legal Institutions and Methods' is to acquaint students with the primary sources of law within the context of the adversarial system based on adjudication of civil and criminal cases under the rule of law in open courts. As part of the assessment in 'Legal Institutions and Methods', students are required to prepare a court report that involves both their attendance at, and analysis of, a contested court hearing. In essence, litigation is integral to the unit, the pedagogy of which is more in line with the traditional lawyer's 'philosophical map' proposed by Riskin and mentioned in Part One of this article.[14]

A *Attitudes*

Our research seeks to assess changes, if any, to student attitudes (as opposed to knowledge and skills) towards the manner in which legal practitioners and the courts manage conflict brought by clients into the legal system. We sought to investigate what impact 'Dispute Resolution' may have had in modifying student perceptions of lawyers' roles in helping clients manage disputes for which they had sought legal assistance. We recognised from the outset, however, that many other influences were at work in the academic and personal lives of these students, so that it is impossible to assume any direct causal relationship between the content and teaching of the unit and any changes in attitude.

At the first class students enrolled in 'Dispute Resolution' were asked for basic demographic information and answered questions about their educational choices and previous experience, if any, with the formal justice system. These questions were followed by 19 statements[15] about ways in which lawyers and the Australian legal system manage disputes. Students could strongly agree, agree, disagree, or strongly disagree with the statements, and the results were tabulated on a Likert Scale of one to four according to these four categories, with 'Strongly Agree' being 4.00 and 'Strongly Disagree' being 1.00. A forced choice scale was considered appropriate to promote clarity and approximate the original format of some questions in the major American study. Teaching staff had no way of identifying information provided by individual students.

Most of the statements were generated by two of the researchers (who also are lecturers in the course). Others drew on questions used in the American study by Pipkin because we originally thought it might be useful to promote some degree of comparability with

[14] Gutman, Fisher and Martens, above n 1. See note 125. The original reference is Leonard L Riskin, 'Mediation and Lawyers' (1982) 43 *Ohio State Law Journal* 29.

[15] Actually, there were 20, but through an oversight two statements (9 and 15) were the same.

this study.[16] The two sets of statements sought views both on the students' perceptions of professional practice and what interventions they thought were best for clients in managing disputes.

Attitude change is not formally an aim of most university courses, as it is difficult to assess and raises ethical questions. Nevertheless, the affective domain is often involved in teaching, and a change in attitude is frequently part of an informal 'hidden' curriculum, whether formally acknowledged or not.[17] There is a literature on the teaching of attitudinal change to medical, engineering, science and maths students. These studies use a pre- and post-testing approach, with instruments which are specifically developed to assess attitudes.[18] Our work, however, differs from these studies in that attitude change is not a goal but a by-product of the teaching of ADR knowledge and skills in 'Dispute Resolution'.

The process of attitude change in our context has been conceptualised in diverse ways. Perry describes a maturing of attitudes via several (nine) stages.[19] Bloom represents the affective domain as structured in several hierarchically organised levels.[20] Neither Perry nor Bloom focus much on how students move through the stages and what could assist them to do so. There are, however, several distinct theories described in the literature based on Miller and on Martin and Briggs:[21]

1. Change occurs through behaviour and social learning (that is, learning new attitudes via observation of others' behaviour,

[16] Pipkin, above n 8, 627–28. These questions are indicated by asterisks in the discussion below.

[17] Barbara L Martin and Lesley J Briggs, *The Cognitive and Affective Domains: Integration for Instruction and Research (*1986); Mary Miller 'Learning and teaching in the affective domain' in Michael Orey (ed), *Emerging perspectives on learning, teaching, and technology* (2005) <http://projects.coe.uga.edu/epltt/index.php?title=Teaching_and_Learning_in_Affective_Domain> at 19 November 2007.

[18] Thomas R Kobella, 'Changing and Measuring Attitudes in the Science Classroom' (1989) *Research Matters — to the Science Teacher* No 8901, 1 April 1989 <http://www.narst.org/publications/research/attitude.cfm> at 21 November 2007; Iddo Gal and Lynda Ginsburg, 'The role of Beliefs and Attitudes in Learning Statistics: Towards an Assessment Framework' (1994) 2 *Journal of Statistics Education* <http://www.amstat.org/publications/jse/v2n2/gal.html> at 20 November 2007; Karen D Baum, 'The impact of an evidence-based medicine workshop on residents' attitudes towards self-reported ability in evidence-based practice' (2003) 8 *Medical Education Online* <http://www.med-ed-online.org > at 2 November 2007; Richard L Porter, Hugh Fuller and Richard M Felder, 'College of Engineering Freshman: Success and Attitudes, Part II' (*Working paper, College of Engineering, North Carolina State University,* 1996) <http://fie.engrng.pitt.edu/fie96/papers/118.pdf> at 2 November 2007.

[19] William G Perry, *Forms of intellectual and ethical development in college years: A scheme* (1970).

[20] Benjamin S Bloom et al, *Taxonomy of Educational Objective: The Classification of Educational Goals — Handbook II: Affective Domain* (1964).

[21] Miller, above n 17, 11; Martin and Briggs, above n 17, 3.

especially powerful models and positive reinforcement of desirable behaviour) .
2. Change occurs through cognitive dissonance (attitude is challenged by an (external) need for new behaviour).
3. Change occurs through affective cognitive consistency (attitude changes as new information is processed).
4. Change occurs through change of self concept (a personal need for a different attitude as part of identity development).

Our study focuses on documenting and analysing attitude change as a side-effect of a formal university unit, rather than its goal. We therefore assume that the manner through which attitude change, if any, occurred in this case would be primarily the result of the presentation of new information and the acquisition of new skills, or a combination of the third and first theories mentioned above. In addition, we were also interested to learn if any changes in attitude varied in intensity according to students' background and levels of familiarity with the legal system.

There has been research on aspects of law student attitudes, but none relates closely to the current study. For example, one compares political views of entering law students in the United States with their views at the end of their course but does not attempt to link the results to course content.[22] A second found that most of the nine American students surveyed came to regard business law as more important to their interest in public interest law than they had believed at first.[23] Another study, surveying fewer than 50 American law students, found that having completed a seminar unit on human rights had no effect on their appreciation of economic rights.[24] However, a large-scale and sophisticated survey of Australian law graduates over almost 20 years suggested that 'clinical experiences do make some difference to the attitudes that lawyers hold'.[25] This latter research thus does make a specific link between law course content and participant perceptions, though it differs from the current study in many ways, including that it was only retrospective, focused on graduates, and compared those with clinical exposure and those without.[26]

[22] J D Droddy and C Scott Peters, 'The Effect of Law School on Political Attitudes: Some Evidence from the Class of 2000' (2003) 53 *Journal of Legal Education* 1, 33–47.

[23] Amy Bradshaw, 'Exploring Law Students' Attitudes, Beliefs, and Experiences about the Relationship between Business Law and Public Interest Law' (2005) 20 *Wisconsin Women's Legal Journal* 287.

[24] Donna E Arzt,' Law Students' Attitudes about Economic Rights in the Post Cold War World' (1993) 19 *Syracuse Journal of International Law & Commerce* 39.

[25] Adrian Evans, 'Lawyers' Perceptions of their Values: An Empirical Assessment of Monash University Graduates in Law, 1980–1998' (2001) 12 *Legal Education Review* 1–2, 209–266.

[26] In fact, we have already collected data on final year La Trobe law students who had not undertaken 'Dispute Resolution' and expect to complete a study soon comparing their attitudes with those of the group described in the current article.

B *Methodology*

1 *Hypotheses*

By collecting information on the backgrounds of students taking 'Dispute Resolution', we tried to learn whether such factors as age, gender, and previous experience with sectors of the legal and justice systems could be seen to impact upon student views towards managing conflict within the legal system. Though we did not formulate explicit hypotheses, we did think it may be the case that, for example, females would display different attitudes than males, or that those with some personal experience with legal disputing might see its effectiveness in ways that distinguished them from those without such experience.

As a more central component of the study, we wished to explore the extent to which student attitudes, as revealed in changes to the degree to which they supported or differed with the statements in the survey, altered from the beginning to the end of the semester. We hypothesised that there would be shifts towards collaborative (as opposed to adversarial) stances and towards advancing clients' underlying *interests* (as opposed to their initial *positions* and legal entitlements).[27]

2 *The Instrument*

The survey instrument administered to the 'Dispute Resolution' students contained two sections relevant to the current study.[28] The first (Section A — background) focused on personal demographics and on students' prior experience with the law and the formal justice system. The second[29] (Section C — attitude) was intended to place student responses along an integrated spectrum as set out in Riskin's 'lawyers' standard philosophical map': adversarial vs. collaborative. As pointed out in Part One of this article, a concern with client empowerment is central to understanding the shift from an adversarial lawyering model of professional paternalism towards

[27] In the relevant literature the term *interest* is used in ways that may differ from its use in the legal field. Interest-based conflict management is contrasted with approaches based on power or rights: see William L Ury, Jeanne M Brett and Stephen Goldberg, *Getting Disputes Resolved; Designing Systems to Cut the Costs of Conflict* (1988). It focuses on identifying and addressing underlying needs, fears, desires, concerns, or values: see Eleanor Wertheim, Anthony Love, Connie Peck and Lynn Littlefield, *Skills for Resolving Conflict* (1998) 37. *Interests* are contrasted with *positions*, tangible things people want or specific solutions to a problem**.** A focus on interests is said to open up a wider range of potentially mutually acceptable outcomes than concentrating on initial positions. See inter alia, Roger Fisher, William Ury and Bruce Patton, *Getting to Yes — Negotiating an Agreement Without Giving In* (2nd ed 1991); and Robert H Mnookin, Scott R Peppet and Andrew S Tulumello, *Beyond Winning: Negotiating to Create Value in Deals and Disputes* (2000).

[28] See Appendix.

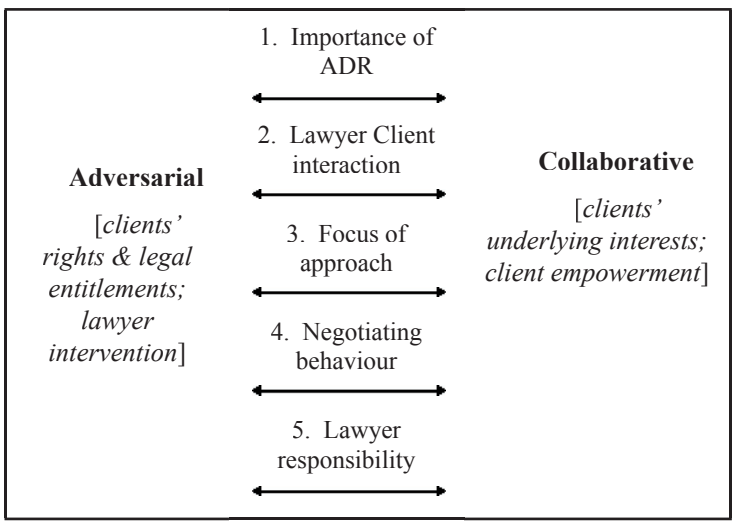
[29] Section B was not used for this study.

one of shared decision-making and client centeredness, as mentioned in Part One, and it was central to the aims of the Missouri Plan.[30]

Thus, items in the attitudinal part of the survey instrument were designed to identify changes in students' perceptions that may indicate shifts from the traditional approach to legal education.

Although there was some overlap among the questions contained in the attitudinal section, they can be sorted into five general categories, each of which illustrates aspects of the adversarial-collaborative continuum (see Figure 1 below).

Figure 1. Adversarial-Collaborative Spectrum



The first category is the broadest, probing for students' perceptions about the importance of ADR in the general practice of law. This category included three statements:[31]

- *3. Lawyers do not often have much occasion to use negotiation or mediation techniques and skills in legal practice.*
- *4. A fundamental principle of Australian law is that the court system is the sole mode of determining disputes.*
- *14. Australian lawyers practise in an adversarial system, hence negotiations and dealings between lawyers must be adversarial in nature*.

A second category focused more explicitly on lawyer-client interaction, seeking to establish student views on the relative importance of disputant empowerment versus lawyer intervention in the process of problem solving. Three statements were designed to be relevant to this category:

[30] Riskin, above n 7, 594.
[31] Perry, above n 19.

- *7. When a person is involved in a dispute, the first thing s/he should do is see a lawyer.*
- *11. A client in a legal dispute will more likely come out better if her/his lawyer empowers the client to make the important decisions concerning appropriate resolution strategies.*
- *18. A client in a legal dispute will more likely come out better if her/his lawyer makes the important decisions concerning appropriate resolution strategies.*

Category three specifically addressed student opinion of the value of rights-based versus interest-based approaches via the following statements:

- *1. When a person is involved in a dispute affecting their legal rights, s/he should always seek a determination of the dispute in a court.*
- *2. Alternatives to litigation should never be used when the stakes are high.*
- *8. Disputes should be determined only by courts as the community then knows what behaviours and standards the law will tolerate and what it will not accept.*

The fourth category examined students' perceptions of lawyers' specific negotiating behaviour and values, particularly the extent to which collaboration with the other party in finding mutually satisfactory outcomes and enhancing relationship is sought. It included the following statements (asterisked statements taken from Pipkin's study):

- 5. *A lawyer's primary obligation to clients is to help them improve their relationship with others.**
- *6. In negotiating, a lawyer should work to get an agreement where all sides believe they have gained something.**
- *12. A lawyer acting for a client in dispute should make a low initial offer of settlement to the other disputant's lawyer so that settlement negotiations begin low and are therefore likely to end low.*
- *16. In negotiating, a lawyer should work solely to get the best possible terms for her/his client.**

A final category, consisting of six statements, also focused on the role of lawyers, but on a more general plane. It attempted to assess student perceptions about the relative responsibilities lawyers have in seeking to meet the underlying interests of their clients as opposed to seeking outcomes based primarily on the legal positions of these clients.

- *9/15. A lawyer's obligation to society is best met by ensuring that s/he assists in gaining what the client is entitled to under law.*
- *10. To assist a client in dispute, a lawyer should first seek to determine what issues divide the parties by finding the law that strengthens their own client's position.**

- *13. When taking instructions from a client about a dispute the most important matter for a lawyer to ascertain from the client is how much money the client will accept to settle the case.*
- *17. The only thing that clients want their lawyers to do is to win their case.*
- *19. A lawyer's obligation to society is best met by providing services that satisfy her/his client's needs.*
- *20. To assist a client in dispute, a lawyer should first seek to determine what issues divide the parties by looking for the needs and interests the disputing parties have in common.**

3 *The Sample*

Although there were close to 300 students enrolled in the unit, for a variety of logistical and other reasons the two surveys, administered at the beginning and end of semester one 2005, resulted in only 156 viable cases (that is, students actually receiving, completing and returning both surveys with valid consent forms). The total number of responses for those who responded at both T1 and T2 (March = T1 and June = T2) was 145–156, depending on the individual questions. The proportion of females to males was about 2:1. Nearly three-quarters of the students entered as undergraduates, the others having already completed a first degree or equivalent. About one-third of the students had prior experience with the court system, and fewer than three-quarters had no personal or family background in the legal or law enforcement professions. Over 80 per cent were younger than 22 years old, with fewer then 10 per cent 30 or older. Most students were enrolled only in the Bachelor of Law, while the second largest group was undertaking a Law/Arts degree, and the remaining students were studying a variety of double degrees such as Law/Asian Studies and Law/Business.

4 *Method*

Our analysis employed the Statistical Package for the Social Sciences (SPSS). SPSS generated frequency distributions for all subgroups on gender, age, and background, and descriptive statistics (means and standard deviations) for all items, each group and each test (Pre-test = T1 and Post-test = T2). Analyses explored differences in attitudes towards legal practice in terms of gender, age, and various other background indicators. Means and standard deviations in attitudes for subgroups were examined, and one-way analyses of variance were conducted to determine whether subgroup differences were statistically significant ($p<0.05$). Change in attitudes over time, also in terms of background indicators, were then examined by comparing mean scores at T1 and T2 and conducting repeated measures tests to determine the significance of differences.

Within the data for each test, we compared results between male and female students, among different age and educational status groups, between groups with and without court experience and those with and without family background in the legal system. We then checked for change by running comparisons (General Linear Model) between these: T1 and T2. All comparisons were checked for significance ($p<.05$).

III Changes in Student Attitudes Towards Legal Practice: Results and Discussion

The second section of the instrument was designed to measure change, if any, in student attitudes towards various aspects of the practices in the legal system. Responses about attitudes towards lawyering and dispute resolution ranged from 1.63 to 3.22 on a scale of 1.00 to 4.00. The statement with the highest mean score (statement 20) prompts a reaction about the extent to which a lawyer should first focus on the common interests of the parties involved (rather than focusing solely on their client's own legal position): students tended to strongly agree with this statement. The statement receiving the lowest mean response score (statement 3) states that lawyers have infrequent opportunity to use negotiation or mediation techniques: students tended to strongly disagree with this statement. There was little or no change to these views between T1 and T2. The descriptions of our results have been gathered into three groups: statistically significant changes, other changes, and little or no change. Only the first group will be discussed.

A *Results*

1 *Statistically Significant Changes and Direction*

Statistically significant change ($p<.05$) in mean scores, with 1 = strongly disagree (SD) and 4 = strongly agree (SA), occurred in response to nine of the original 19 statements.

Statistically significant changes			
Statement	**T1**	**T2**	**P< .05**
9/15. *A lawyer's obligation to society is best met by ensuring that s/he assists in gaining what the client is entitled to under law.*	3.01	2.62	P=.000

Statistically significant changes			
Statement	**T1**	**T2**	**P< .05**
10. *To assist a client in dispute, a lawyer should first seek to determine what issues divide the parties by finding the law that strengthens their own client's position.*	2.83	2.59	P=.000
14. *Australian lawyers practise in an adversarial system, hence negotiations and dealings between lawyers must be adversarial in nature.*	2.36	1.93	P=.000
17. *The only thing that clients want their lawyers to do is to win their case.*	2.67	2.33	P=.000
18. *A client in a legal dispute will more likely come out better if her/his lawyer makes the important decisions concerning appropriate resolution strategies.*	2.75	2.39	P=.000
2. *Alternatives to litigation should never be used when the stakes are high.*	2.10	1.91	P=.002
19. *A lawyer's obligation to society is best met by providing services that satisfy her/his client's needs.*	2.84	3.04	P=.003
16. *In negotiating, a lawyer should work solely to get the best possible terms for her/his client.*	2.84	2.65	P=.004
7. *When a person is involved in a dispute, the first thing s/he should do is see a lawyer.*	1.95	2.09	P=.029

Responses to the first eight of these statements showed a movement in respondents' perceptions of the ways in which lawyers manage conflict from adversarial or position-based approaches towards collaborative or interest-based ones. The ninth moved in

the opposite direction and is specifically addressed below in the 'Discussion' section.

2 *Other Results*

Responses to the remaining ten statements showed non-statistically significant change or none at all.

Other results			
Statement	**T1**	**T2**	**P**
1. *When a person is involved in a dispute affecting their legal rights, s/he should always seek a determination of the dispute in a court.*	1.87	1.77	ns
3. *Lawyers do not often have much occasion to use negotiation or mediation techniques and skills in legal practice.*	1.68	1.63	ns
4. *A fundamental principle of Australian law is that the court system is the sole mode of determining disputes.*	1.74	1.75	ns
5. *A lawyer's primary obligation to clients is to help them improve their relationship with others.*	2.22	2.17	ns
6. *In negotiating, a lawyer should work to get an agreement where all sides believe they have gained something.*	2.93	2.83	ns
8. *Disputes should be determined only by courts as the community then knows what behaviours and standards the law will tolerate and what it will not accept.*	1.81	1.81	ns
11. *A client in a legal dispute will more likely come out better if her/his lawyer empowers the client to make the important decisions concerning appropriate resolution strategies.*	2.89	2.99	ns

Statement	T1	T2	P
12. *A lawyer acting for a client in dispute should make a low initial offer of settlement to the other disputant's lawyer so that settlement negotiations begin low and are therefore likely to end low.*	2.20	2.09	ns
13. *When taking instructions from a client about a dispute the most important matter for a lawyer to ascertain from the client is how much money the client will accept to settle the case.*	2.06	1.99	ns
20. *To assist a client in dispute, a lawyer should first seek to determine what issues divide the parties by looking for the needs and interests the disputing parties have in common.*	3.21	3.22	ns

B *Discussion: Changes in Student Attitudes towards Legal Practice*

As stated above, the researchers organised the data under five separate but related categories. Statistically significant change occurred in reference to at least one statement for each category.

Category one probed for students' perceptions about the importance of ADR in the practice of law. Statistically significant change occurred with respect to statement 14 at the end of the semester significantly fewer students agreed that *'Australian lawyers practise in an adversarial system, hence negotiations and dealings between lawyers must be adversarial in nature*' than had at the beginning. Thus, there was a significant movement away from the view that lawyers' negotiations must be adversarial, with the mean response moving almost half a step (that is, 0.43) from 'strongly disagree' to 'disagree', the greatest change in the entire data set.

A second category sought to establish student views on the relative importance of disputant empowerment versus lawyer intervention. Our findings indicate that, compared to the beginning of the semester, at its end significantly fewer respondents agreed with statement 18 'A *client in a legal dispute will more likely come out better if her/his lawyer makes the important decisions concerning*

appropriate resolution strategies' but more agreed with statement 7 '*When a person is involved in a dispute, the first thing s/he should do is see a lawyer*'.

Data from statement 18 indicate a shift away from lawyer intervention to client empowerment. Responses to statement 7, however, apparently show movement along the spectrum in the reverse direction of lawyer intervention, the sole example in this study. However, in retrospect, the statement is not well formed. First, it actually contains two points, one about timing ('the first thing') and one about the importance of obtaining legal advice 'see a lawyer'). Moreover, one may consult a lawyer about a legal matter to gain a clearer understanding of entitlement but still decline legal intervention or follow a litigation pathway. In addition there is nothing in the content of 'Dispute Resolution' that advises students not to consult a lawyer when having legal disputes. In fact, materials in lectures and reading suggest that to understand the range and consequences of possible options for dealing with a dispute, it is important to understand one's legal rights and entitlements, even though they may be trumped by other interests.[32]

Category three addressed student attitudes towards the value of interest-based versus rights-based approaches. A statistically significant result showed that fewer respondents agreed with statement 2 '*Alternatives to litigation should never be used when the stakes are high*', illustrating a shift towards support of interest-based dispute settlement processes and away from rights-based ones.

The fourth category examined students' perceptions of lawyers' negotiating behaviour and values. Within this category, we found that at the end of the semester significantly fewer respondents agreed with statement 16 '*In negotiating, a lawyer should work solely to get the best possible terms for her/his client*' than at the beginning. It would thus seem that students moved towards a view that lawyers should have regard to the broader interests of their clients rather than specific conditions.[33]

The final category sought to assess changes in student perceptions about the role of lawyers in according primary weight to meeting client needs vs. client entitlements. Results indicated:

- Significantly fewer respondents agreed with statement 9/15 '*A lawyer's obligation to society is best met by ensuring that s/he assists in gaining what the client is entitled to under law*'.
- Significantly fewer respondents agreed with statement 17 '*The only thing that clients want their lawyers to do is to win their case*'.

[32] See eg, Tom Fisher, 'Family Mediators and Lawyers: Communication about Children: PDR-land and Lawyer-land' (2003) 9 *Journal of Family Studies* 201.

[33] However, it is possible that the word 'terms' may be interpreted broadly enough to encompass underlying interests.

- Significantly more respondents agreed with statement 19 '*A lawyer's obligation to society is best met by providing services that satisfy her/his client's needs*'.
- Significantly fewer respondents agreed with statement 10 '*To assist a client in dispute, a lawyer should first seek to determine what issues divide the parties by finding the law that strengthens their own client's position*'.

All of these findings point clearly in the direction of a shift towards valuing broader client needs over narrow legal entitlements.

Taken together, then, the data show statistically significant changes in student attitudes from the beginning to the end of the semester for nine of the 19 statements. Of these, eight move in the direction of generally more collaborative and less adversarial processes, in other words, emphasising clients' underlying interests, rather than rights and legal entitlements, and client empowerment rather than lawyer intervention. There was one anomalous result that has been discussed above.[34]

It is, of course, impossible to ascertain with precision why this change occurred, given the range of uncontrolled factors inherent in this type of research. Nevertheless, it seems likely that the combination of information presented to students through lectures and reading and the skills to which they were introduced in the seminar program contributed to the outcome, though, as noted above, these appeared to have affected the various demographic groupings differentially. DRE readings, lectures, and videos introduced materials to be absorbed cognitively, and specific communication exercises and role plays, conducted in small group settings, provided direct experiential learning opportunities to acquire and practice ADR skills. Thus, although attitude change was not a goal of the unit, it is clear that it did occur in ways that run counter to the standard 'lawyer's standard philosophical map' that guides the traditional law curriculum.

A summary of the above findings in tabular form is produced in Figure 2.

[34] In addition, there was non-statistically significant attitudinal change relating to another five statements, with four also pointing in the direction of collaborative processes.

Figure 2. Student attitudes towards legal practice: change (T1-T2) and direction of change

	Statistically significant change[35]	
Adversarial [clients' rights & legal entitlements; lawyer intervention]	Statements 2, 9 (15), 10, 14, 16-19 ⟶	Collaborative [clients' underlying interests; client empowerment]
Adversarial [clients' rights & legal entitlements; lawyer intervention]	Statement 7 ⟵	Collaborative [clients' underlying interests; client empowerment]
	No statistically significant change	
Adversarial [clients' rights & legal entitlements; lawyer intervention]	Statements 1, 11-13 ⟶	Collaborative [clients' underlying interests; client empowerment]
Adversarial [clients' rights & legal entitlements; lawyer intervention]	Statement 6 ⟵	Collaborative [clients' underlying interests; client empowerment]
Adversarial [clients' rights & legal entitlements; lawyer intervention]	Statements 3-5, 8, 20 ⟷	Collaborative [clients' underlying interests; client empowerment]

[35] P>0.5.

IV Influence of Background on Attitudes: Results and Discussion

The first section of the instrument requested students to respond to questions about their age, gender, and various background factors. As an indicator of the strength and diversity of views held within the sample, we looked at the range of standard deviations (SD). The range of standard deviations was narrow in most sub-samples, ranging from approximately .5 to .8, with by far the greatest deviations relating to the very small cohort of those students aged 30+ (.363 to 1.089). Nevertheless, statistically significant differences did occur.

A *Results*

1 *Gender Differences*

Students were asked to indicate their gender, so that we could see if gender had any bearing on their attitudes towards legal practice and the justice system.

Of the students responding to the statements at both the beginning and end of the semester, the number of males was 51-54, depending on the statement, and the number of females was 98-104.[36] Statistically significant differences appeared with respect to four statements on the instrument. At the beginning of the semester responses to only one statement revealed statistically significant gender difference, as more females agreed with the statement 11 '*A client in a legal dispute will more likely come out better if her/his lawyer empowers the client to make the important decisions concerning appropriate resolution strategies*'. At the end of the semester, however, although the difference still existed, it was no longer statistically significant. In responding to the reverse wording of the statement (*a client in a legal dispute will more likely come out better if her/his lawyer makes the important decisions concerning appropriate resolution strategies*), however, the gap between females and males widened to statistical significance at the end of the semester, with females disagreeing more strongly, while there was no movement in male response.

Responses to two other statements showed statistically significant differences at the end of the semester but not at the beginning. By the conclusion of the lectures, females were more likely than males to disagree with statement 18 '*A client in a legal dispute will more likely come out better if her/his lawyer makes the important decisions concerning appropriate resolution strategies*'. They also were more likely to support the two statements 19 '*A lawyer's obligation to society is best met by providing services that satisfy her/his client's needs*' and 20 '*To assist a client in dispute, a lawyer should first seek*

[36] Different statements elicited different numbers of responses.

to determine what issues divide the parties by looking for the needs and interests the disputing parties have in common'.

Gender & Attitude at Beginning and End of Semester: Mean Scores and Significance (N=154)						
Statement	**T1**			**T2**		
	Male	**Female**	**P<.05**	**Male**	**Female**	**P<.05**
11. *A client in a legal dispute will more likely come out better if her/his lawyer empowers the client to make the important decisions concerning appropriate resolution strategies.*	2.63	2.98	.002	2.84	3.07	ns
18. *A client in a legal dispute will more likely come out better if her/his lawyer makes the important decisions concerning appropriate resolution strategies.*	2.59	2.83	ns	2.59	2.30	.037
19. *A lawyer's obligation to society is best met by providing services that satisfy her/his client's needs.*	2.81	2.84	ns	2.90	3.12	.042
20. *To assist a client in dispute, a lawyer should first seek to determine what issues divide the parties by looking for the needs and interests the disputing parties have in common.*	3.17	3.22	ns	3.08	3.30	.021

2 *Age Differences*

Students also were asked to provide their age, so that we could ascertain if age differences affected attitudes towards legal practice and the justice system and, if so, how. The students were divided into three age cohorts, ages 17–21 (N=110-118), 22–29 (N=24), and 30+

(N=14). Statistically significant differences showed up in relation to the three statements listed in the table below. At the beginning of the semester, the older the student, the less likely they were to agree with statement 2 '*Alternatives to litigation should never be used when the stakes are high,* but the more likely they were to agree with statement 11 '*A client in a legal dispute will more likely come out better if her/his lawyer empowers the client to make the important decisions concerning appropriate resolution strategies*'.

At the beginning of the semester the attitudes of all three groups were very close in showing disagreement with statement 3 '*Lawyers do not often have much occasion to use negotiation or mediation techniques and skills in legal practice*'. However, by the end of the semester the older the student the stronger the disagreement with that statement.

Age & Attitude at Beginning and End of Semester: Mean Scores and Significance (N=148-156)

Statement	T1				T2			
	17–21	**22–29**	**30+**	**P<.05**	**17–21**	**22–29**	**30+**	**P<.05**
2. *Alternatives to litigation should never be used when the stakes are high.*	2.17	2.00	1.64	.019	1.95	1.83	1.71	ns
3. *Lawyers do not often have much occasion to use negotiation or mediation techniques and skills in legal practice.*	1.68	1.63	1.64	ns	1.71	1.54	1.21	.018
11. *A client in a legal dispute will more likely come out better if her/his lawyer empowers the client to make the important decisions concerning appropriate resolution strategies.*	2.78	2.96	3.36	.008	2.96	3.05	3.22	ns

3 *Differences Relating to Enrolment Status*

Students were asked to classify themselves as having either undergraduate (UG: N=103–110) or graduate (Grad: N = 42–45) entry in the Law course, which, it was thought, might show attitude difference as a result of prior academic experience in other fields.

At the beginning of the semester, undergraduate law students tended to agree significantly more strongly than their counterparts with prior degrees with statements 6 'I*n negotiating, a lawyer should work to get an agreement where all sides believe they have gained something*' and 9 '*A lawyer's obligation to society is best met by ensuring that s/he assists in gaining what the client is entitled to under law*'. At the end of the semester, however, there were no longer statistically significant differences between the two groups.

On the other hand, although the two groups entered their law course with nearly similar attitudes toward statement 3 '*Lawyers do not often have much occasion to use negotiation or mediation techniques and skills in legal practice*', by the end of the semester the graduate entry law students disagreed with that statement more strongly than their less educational experienced counterparts.

Student Status & Attitude at Beginning and End of Semester: Mean Scores and Significance (N=145-154)

Statement	T1			T2		
	UG	Grad	P<.05	UG	Grad	P<.05
3. *Lawyers do not often have much occasion to use negotiation or mediation techniques and skills in legal practice.*	1.65	1.71	ns	1.72	1.44	.018
6. *In negotiating, a lawyer should work to get an agreement where all sides believe they have gained something.*	3.02	2.64	.010	2.90	2.69	ns
9. *A lawyer's obligation to society is best met by ensuring that s/he assists in gaining what the client is entitled to under law.*	3.06	2.82	.035	2.61	2.62	ns

4 *Occupational Background and Difference*

The researchers thought that there might be a relationship between student attitudes towards legal practice and the justice system on the

one hand and personal and family background in a related profession on the other. Hence, students were asked, '*Have you or a member of your family an occupational background in the legal professions, police professions, court system?*' Of those responding at both the beginning and end of the semester, depending on the statement addressed, 39–41 indicated having such a background, and 108–115 indicated they did not. At the beginning of the semester there were no statistically significant differences between these two groups. However, at the end, those without a background in the justice system agreed more strongly than those with one with statement 6 '*In negotiating, a lawyer should work to get an agreement where all sides believe they have gained something*', but they agreed less strongly with statement 13 '*When taking instructions from a client about a dispute the most important matter for a lawyer to ascertain from the client is how much money the client will accept to settle the case*'.

Occupation Relating to Justice System & Attitude at Beginning and End of Semester: Mean Scores and Significance (N=146-155)

Statement	T1			T2		
	Jus	**None**	**P<.05**	**Jus**	**None**	**P<.05**
6. *In negotiating, a lawyer should work to get an agreement where all sides believe they have gained something.*	2.78	2.96	ns	2.61	2.92	.025
13. *When taking instructions from a client about a dispute the most important matter for a lawyer to ascertain from the client is how much money the client will accept to settle the case.*	2.05	2.07	ns	2.22	1.91	.009

5 *Previous Court Experience and Difference*

Because the researchers wondered whether and how a student's previous experience with the court system affected the student's attitudes towards legal practice and the justice system, students were asked, *'Have you had experience with the court system?'* Depending to which statement they responded at both the first and last classes, 51–54 reported they had such experience, and 94–101 answered that they had not. Responses to four statements turned up statistically

significant differences at the beginning of the semester, but none registered as significant at the end of the semester. Those with previous court experience agreed less strongly with the following three statements than those without such experience: statement 1 'W*hen a person is involved in a dispute affecting their legal rights, s/he should always seek a determination of the dispute in a court*'; statement 4 'A *fundamental principle of Australian law is that the court system is the sole mode of determining disputes*'; and statement 6 '*In negotiating, a lawyer should work to get an agreement where all sides believe they have gained something'*. However, they agreed more strongly with statement 12 'A *lawyer acting for a client in dispute should make a low initial offer of settlement to the other disputant's lawyer so that settlement negotiations begin low and are therefore likely to end low'*.

Previous Experience with Court & Attitude at Beginning and End of Semester: Mean Scores and Significance (N=146-155)						
Statement	**T1**			**T2**		
	Exp	**None**	**P<.05**	**Exp**	**None**	**P<.05**
1. *When a person is involved in a dispute affecting their legal rights, s/he should always seek a determination of the dispute in a court.*	1.70	1.95	.019	1.85	1.73	ns
4. *A fundamental principle of Australian law is that the court system is the sole mode of determining disputes.*	1.59	1.83	.047	1.85	1.69	ns
6. *In negotiating, a lawyer should work to get an agreement where all sides believe they have gained something.*	3.21	2.75	.001	2.92	2.80	ns
12. *A lawyer acting for a client in dispute should make a low initial offer of settlement to the other disputant's lawyer so that settlement negotiations begin low and are therefore likely to end low.*	2.02	2.30	.006	2.13	2.04	ns

6 *Discussion: Influence of background on attitudes*

The data presented above indicates statistically significant differences relating to background factors. First, with respect to gender, the results appear to show broadly that women in the DRE class entered their law course with a greater interest in client empowerment than did their male counterparts and held those views even more strongly at the end of the semester, with the gender gap persisting. Both groups entered the semester with attitudes solidly favouring meeting client interests rather than focusing on legal rights, but females moved significantly farther in that direction by the end of the unit. This evidence seems to support Kolb and Coolidge's contention that women embody relational attitudes more than men and also seems to indicate that such attitudes were reinforced for women over the course of the semester.[37]

Second, regarding age differences, the results suggest, to a limited extent at least, that when entering the law course older students more than younger ones were more likely to value interest-based interventions over rights-based ones and to favour client empowerment more than lawyer expertise. However, this gap narrowed and became statistically insignificant by the end of the semester, suggesting that the younger students gained greater appreciation of the importance and efficacy of interest-based and client-empowering approaches, perhaps because their stereotype of legal processes as positional and controlled by lawyers was challenged. Nevertheless, although there had been little difference at the beginning of the unit, by the end, older students held a stronger belief that ADR skills were likely to be employed as part of legal practice than their younger classmates. Notwithstanding this result, all groups clearly agreed that mediation and negotiation skills were useful, though there was virtually no change in the attitude of the youngest group during the course of the semester. Although interesting, these findings about age differences can only be suggestive because of the small size of the two older groups.

Third, concerning enrolment status, the results point in the direction of more educationally experienced students entering the law course with attitudes somewhat more collaborative and interest-based than those of their less experienced classmates, but that these differences lessened or disappeared by the end of the semester. This finding, of course, correlates with the information presented

[37] Deborah M. Kolb and Gloria Coolidge, 'Her Place at the Table: A Consideration of Gender Issues in Negotiation' in J W Breslin and Jeffrey Rubin (eds), *Negotiation Theory and Practice* (1991) 261–288. This finding may bear some relationship to those of Droddy and Peters that '[f]emale law students are significantly more liberal than their male counterparts' (above n 22, 46) and Evans that female law graduates place greater emphasis on 'access to justice', 'personal integrity' and 'friendship/loyalty', and less on 'business efficacy', 'employer loyalty', and 'professional ambition' compared to male graduates (above n 25, 263).

above relating to age differences, as would be expected, since in all probability the cohorts overlap significantly. Non-statistically significant data for statements 11 (p=.056) and 14 (p=.057) also show a more pronounced tendency towards an adversarial attitude among the undergraduate group at the beginning of the semester than that of their fellow students with greater educational experience. These differences, too, virtually disappeared by the time of the final class meeting. In addition, the more experienced students, like the older group mentioned above, deepened their appreciation of the importance of ADR skills in legal practice, though, again, both groups acknowledged a strong need for such skills.

Fourth, with reference to occupational background, the findings suggest that, although there was little or no difference at the beginning of the semester, at the completion of the unit those students without a personal or family professional background relating to the law saw greater value in lawyers collaborating with other parties and being less positional than their counterparts with a background relating to the law. It is striking that the attitudes of the two groups moved in distinctly opposite directions with respect to the latter, as tested in statement 13 '*When taking instructions from a client about a dispute the most important matter for a lawyer to ascertain from the client is how much money the client will accept to settle the case*'. Why this should be the case is unclear.

Finally, in relation to previous experience with the court system, it can be seen that such experience had a relatively strong effect on student attitudes before they had attended their first class in the DRE, though attitudes on the whole were not favourable to court-based procedures and strongly interventionalist legal practice. Those with prior court experience tended to be less enthusiastic about adversarial approaches as embodied in the courts and positional lawyer-led negotiations than their classmates without such experience. At the semester's end, there were no statistically significant differences between the groups, though there was some convergence of viewpoints. The two-thirds of the class without experience in the justice system showed less support for courts and lawyer intervention than previously, while the remaining third showed some more support for those statements. That these groups moved in opposite directions may reflect the fact that although they were exposed to new information and skills about ADR, they were also taking more traditional law units, which may have influenced them differentially.

V Limitations of Study

The study has a number of limitations that result in part from the fact that it is a pilot study conceived within considerable time and logistical constraints that did not allow for the pre-testing of

the instrument. For example, the conceptual distinctions among the five categories to which our attitudinal statements related were not as clearly developed as they might have been had there been greater opportunity to refine them between the conceptualisation of the project and the opening of the semester during which the project was to be carried out. We had generated these statements based on our academic knowledge, experience of teaching this subject area and knowledge of the taxonomy of students' learning outcomes of these concepts to provide an overall structure to the study. However, an exploratory factor analysis of the 19 items in the survey instrument conducted only after it had been used revealed seven different factors, making it more diffused than the ideal.

Our questions were refined during discussions with non-legally trained researchers but were not pre-tested with an unrelated group of adults from similar backgrounds to our sample. Therefore we have no confirmation that what the researchers intended the questions to mean was indeed what was understood by the group who answered the questions. In fact, with the wisdom of hindsight, it is evident that several questions were unclearly worded or were ambiguously framed. One example is statement 7, which reads '*When a person is involved in a dispute, the first thing s/he should do is see a lawyer*'. As pointed out above, this statement actually contains two separate points and does not focus clearly on what action the client ultimately takes. In addition, we attempted to build on the evaluation work done by Pipkin mentioned in Part One, though in retrospect we realised that some of his wording was inappropriate for our study. For example, statement 5 reads a '*Lawyer's primary obligation to clients is to help them improve their relationship with others*', but there is nothing in the curriculum that focuses on the role of a legal adviser in building relationships between their client and the other party or parties, though that may be a by-product of successful dispute management.[38]

Further limitations are the effects of sample and contextual variation, for which we were unable to put in place any controls. One is the variation of the composition of the sample: we do not know to what extent and in which ways this group of students might be quite untypical of all other groups of first-year law students. Because our data is the first set of data relating to this instrument, we have no guide as to how 'typical' the responses are. Another is the variation of the wider context: we do not know to what extent any changes in the views of this group are indeed related to their experience of a unit of study about ADR or to other factors as we were unable to do parallel pre- and post-tests of the instrument on a control group

[38] The same holds true to a large extent for statement 6 '*In negotiating, a lawyer should work to get an agreement where all sides believe they have gained something*', though it may be argued that where future inter-party relationships are important, this should be a consideration.

of similar characteristics which has not had any exposure to ADR. Moreover, as mentioned above in respect to interpreting the data about occupational background and attitude change, the effects on students of other law units taken concurrently cannot be factored out.

Thus, in retrospect we recognise limitations with respect to the overall formulation of the survey instrument and to individual questions, both of which could be reduced in a follow-up to this pilot study. Nevertheless, we believe that the current research has generated sufficient statistically significant data in response to the individual statements to substantiate our overall conclusions. As well, it can provide a basis for future work in examining the role of ADR teaching in university law courses.

VI Conclusions and Implications for Legal Education

This part of our article has addressed the question 'why teach ADR to law students' by briefly outlining the mandatory first-year unit 'Dispute Resolution' (DRE) taught at La Trobe Law and examining attitudinal changes towards lawyering and ADR among its students in 2005. Legal education, prompted to some extent by the realities of professional practice, has embraced ADR, at least as an increasingly important avenue for the management of justice relating to the court system, if not always as having a distinct and important value in itself.[39] The curriculum at La Trobe Law mirrors changes that have been taking place in the teaching of law at many other law schools, particularly in the United States, as described in Part One. However, unlike some law schools, La Trobe Law has not sought to treat ADR by systematically injecting information about it across other units in the curriculum, as was the case in some universities mentioned in Pipkin's study, though it certainly is mentioned in some other law units at La Trobe.[40] Rather, it has elected to maximise impact by offering a mandatory unit in the first semester of the law course, thus underlining its importance both as a part of legal practice and as a challenge to the 'lawyer's standard philosophical map'.[41]

DRE offers students an introduction to ADR that is both relatively broad and deep; it combines theory, empirical information, and experiential practice, all of which are assessed. However, the focus

[39] See, generally, Gutman, Fisher Erika Martens, above n 1.

[40] See eg, 'Civil Procedure' and 'Administrative Law'.

[41] As mentioned in Gutman, Fisher Erika Martens, above n 1 at notes 106 and 111, Bush (in the American context) and David (in the Australian one) have advocated a different approach. Robert A Baruch Bush, 'Using Process Observation To Teach Alternative Dispute Resolution: Alternatives to Simulation' (1987) 39 *Journal of Legal Education* 46; Jennifer David, 'Integrating Alternative Dispute Resolution (ADR) in Law Schools' (1991) 2 *Australian Dispute Resolution Journal* 5.

of this study, unlike that of its American predecessors, is not on the acquisition of knowledge and skills, which was measured with the regular academic assessment of the unit. Rather, it has been on changes in students perceptions of legal practice and conflict management, a topic of great importance, given the growing importance of ADR in legal practice, as shown in Part One of this article. Future lawyers must not only have the knowledge and skills to practise ADR or advise their clients to use it, they also must be willing to do so. Thus, their attitudes towards ADR are crucial.

By surveying DRE students prior to the first lecture and immediately following the last, we have been able to document clear changes in their attitudes towards managing legal conflict. Since this research is hardly controlled in the sense of a laboratory experiment, causal links for the changes are impossible to establish and, as noted above, there were limitations to our methodology and execution. Nevertheless, some important findings have emerged.

In very general terms, there appear to be some relationships between student demographic and other background factors on the one hand and attitudes toward legal practice and the justice system on the other. For example, females completing the unit expressed greater support than males for aspects of a collaborative rather than an adversarial approach such as interest-based processes and client empowerment. Older students and those with previous academic qualifications tended to enter the law course with some attitudes illustrating a more collaborative approach than their younger and less experienced classmates, but these differences generally disappeared by the end of the semester.

By the end of the unit, differences had narrowed between older and younger students but had widened between males and females and between those with prior court experience and those without. The first finding lends support to the value of having classes composed of students of different ages and backgrounds. The latter prompts the question: to what extent does ADR embody more feminine, or 'relational', values[42] than traditional legal practices? This topic is worth exploring as increasing numbers of women graduate from law schools.

Stronger results emerged from the second section of the survey instrument, which looked for changes in attitudes within the entire student group without reference to subgroups. Our research has documented unambiguous evidence of change to some assumptions students brought to their law course. In general, they moved from more adversarial to more collaborative stances as measured along two themes: rights vs. interests, and lawyer intervention vs. client empowerment. This result is unsurprising since students were expected to gain greater understanding of these cornerstones of

[42] Kolb and Coolidge, above n 37.

ADR and acquire skills in translating such principles into action. Nevertheless, if changes to the standard lawyer's philosophical map usually acquired in the school curriculum are to be consolidated throughout the degree program, new information and skills must be embraced, not merely absorbed. So, if a goal of legal education is to broaden the perspective and skills base of those entering legal practice, as raised in Part One of this article, making 'Dispute Resolution' a mandatory first-year unit is an important, though probably not sufficient, step.

Thus, Part One of this article addressed the question of 'why teach ADR' by analysing relevant literature on the importance of ADR in legal practice and consequent changes to law school curricula. Part Two has shown that while taking 'Dispute Resolution' as a stand-alone ADR unit, first-year law students recorded changes in their attitudes consistent with the need articulated by many legal educators to enhance awareness of ADR, the changing role of lawyers, and the nature of dispute resolution in the Australian legal system for the next generation of lawyers.

The above notwithstanding, pedagogical and research challenges remain. One concern, raised by Riskin, Pipkin, and others, is the extent to which ADR processes, especially mediation, are seen merely as managerial solutions to the problems of expense and delays in the formal justice system, rather than having value in themselves, for example by promoting potentially better outcomes.[43] As shown in Part One, such a view is also shared by at least some judges.[44] To address this issue, research needs to be conducted on the stated goals, precise curriculum, and teaching of ADR courses.[45]

Another issue identified by several authors cited in Part One, notably Riskin and Westbrook, Zariski, and Thornton,[46] is to what extent attitude changes relating to just one part of a multi-year curriculum actually extend to the completion of the degree and beyond. To what extent will they weather the onslaught of a legal education that continues to be predominantly 'black letter'?

[43] Riskin, above n 7; Pipkin, above n 8; Riskin and Westbrook, above n 9.

[44] Judy Gutman, Tom Fisher and Erika Martens, 'Why Teach Alternative Dispute Resolution to Law Students? Part One: Past and Current Practices and Some Unanswered Questions' (2006) 16 *Legal Education Review* 131.

[45] Kathy Douglas has a long-standing interest in questions like these, as well as in promoting diverse models of mediation to discourage reliance on narrowly legalistic and adversarial ones. See her paper 'Mediation as Part of Legal Education' (paper presented at the 6th National Mediation Conference, Canberra, September 2002) <http://www.leadr.com.au/DOUGLAS.PDF> at 2 November 2007, and 'Mediation as Part of Legal Education: the Need for Diverse Models' (2005) 24(1) *The Arbitrator & Mediator* 1. An integral part of her current PhD research, begun at La Trobe and continuing at RMIT, is to collect empirical data on how mediation is being taught in Australian law schools.

[46] Riskin and Westbrook, above n 9; Archie Zariski 'Disputing Culture: Lawyers and ADR' (2000) 7 *Murdoch University Electronic Journal of Law* 1; Margaret Thornton, 'The Idea of the University and the Contemporary Legal Academy' (2004) 26 *Sydney Law Review* 481.

Furthermore, what effect will actual legal practice have on these attitudes? Useful research could address these issues by conducting longitudinal studies, for example, resurveying the La Trobe Law cohort from this study at the end of their final year.

APPENDIX: SURVEY INSTRUMENT

Section A:

1. Your student identification number: _____

2. Your Age:_____

3. Gender: ☐ F ☐ M

Please tick one

4. Student status: ☐ Undergraduate entry ☐ Graduate entry

Please tick one

5. Course undertaken at La Trobe University in 2005:_____

_____

6. Campus: ☐ Bundoora ☐ Bendigo

Please tick one

7. Is this your first semester of study in a law or legal studies course (including combined courses)? ☐ Yes ☐ No

Please tick one

8. Have you had experience with the court system? ☐ Yes ☐ No

Please tick one

9. Have you or a member of your family an occupational background in the legal professions, police professions, court system?

☐ Yes ☐ No

Please tick one

Section C:[47]

Please answer the following questions by circling the letter[s] that best represents your opinion about the statement.

How strongly do you agree or disagree with the following statements?

SA = strongly agree

A = agree

D = disagree

SD = strongly disagree

[47] Section B is not included since it is not relevant to this study.

	Strongly agree	Agree	Disagree	Strongly disagree
1. When a person is involved in a dispute affecting their legal rights, s/he should always seek a determination of the dispute in a court.	SA	A	D	SD
2. Alternatives to litigation should never be used when the stakes are high.	SA	A	D	SD
3. Lawyers do not often have much occasion to use negotiation or mediation techniques and skills in legal practice.	SA	A	D	SD
4. A fundamental principle of Australian law is that the court system is the sole mode of determining disputes.	SA	A	D	SD
5. A lawyer's primary obligation to clients is to help them improve their relationship with others.	SA	A	D	SD
6. In negotiating, a lawyer should work to get an agreement where all sides believe they have gained something.	SA	A	D	SD
7. When a person is involved in a dispute, the first thing s/he should do is see a lawyer.	SA	A	D	SD
8. Disputes should be determined only by courts as the community then knows what behaviours and standards the law will tolerate and what it will not accept.	SA	A	D	SD
9. A lawyer's obligation to society is best met by ensuring that s/he assists in gaining what the client is entitled to under the law.	SA	A	D	SD
10. To assist a client in dispute, a lawyer should first seek to determine what issues divide the parties by finding the law that strengthens their own client's position.	SA	A	D	SD
11. A client in a legal dispute will more likely come out better if her/his lawyer empowers the client to make the important decisions concerning appropriate resolution strategies.	SA	A	D	SD

	Strongly agree	Agree	Disagree	Strongly disagree
12. A lawyer acting for a client in dispute should make a low initial offer of settlement to the other disputant's lawyer so that settlement negotiations begin low and are therefore likely to end low.	SA	A	D	SD
13. When taking instructions from a client about a dispute the most important matter for a lawyer to ascertain from the client is how much money the client will accept to settle the case.	SA	A	D	SD
14. Australian lawyers practise in an adversarial system, hence negotiations and dealings between lawyers must be adversarial in nature.	SA	A	D	SD
15. A lawyer's obligation to society is best met by ensuring that s/he assists in gaining what the client is entitled to under law.	SA	A	D	SD
16. In negotiating, a lawyer should work solely to get the best possible terms for her/his client.	SA	A	D	SD
17. The only thing that clients want their lawyers to do is to win their case.	SA	A	D	SD
18. A client in a legal dispute will more likely come out better if her/his lawyer makes the important decisions concerning appropriate resolution strategies.	SA	A	D	SD
19. A lawyer's obligation to society is best met by providing services that satisfy her/his client's needs.	SA	A	D	SD
20. To assist a client in dispute, a lawyer should first seek to determine what issues divide the parties by looking for the needs and interests the disputing parties have in common.	SA	A	D	SD