

THE DIFFERENT SIDE OF SOCIETY

Street Practice and Australian Clinical Legal Education

Kieran Tranter[#]

There are three claims concerning clinical legal education (CLE) in the Australian literature. The first, associated with CLE's 1970s heritage, is the claim that CLE is about the study of injustice and the progressive practice of law. The second is that CLE is about skills training. The third is that CLE is about effecting personal value change in students through exposing them to the 'different side of society'. The recent documentary *Street Practice* (2004), as a representation of CLE in Australia, revealed the highly problematic nature of CLE as value change. It showed that emphasis on value change through 'ethical training through experience' presents CLE as another site for the hierarchy, manipulation and egotism long identified by critical accounts of legal culture. Furthermore, at the very moment when conservatism is on the rise in Australia, CLE — in talking and aiming for value change — seemingly has abandoned its progressive origins and joined in this lurch to the right.

Introduction

This article was written in response to the television screening of *Street Practice* by the Australian Broadcasting Corporation in September 2004. *Street Practice* was a four-part documentary concerning the University of New South Wales' CLE program at Kingsford Legal Centre (KLC). Filmed in 2003, it 'documented' the journey of a cohort of law students through the clinic experience with scenes of the students' first day, their first client interviews, their working on files, their antics around the office and their attendance at hearings, and with extracts from 'to-camera' interviews with students, staff and clients. The documentary presented CLE as 'ethical training through experience' — the active management of a subject's experiences with the aim of changing their values. In doing so, it showed the problematic nature of 'ethical training through experience' by revealing its foundation in hierarchy, manipulation and egotism. For what claims to be a progressive movement, this was a devastating representation of Australian CLE, as it showed CLE manifesting conservative preoccupations with the private lives of others and the 'management' of their activities and choices to make them more 'ethical'.

[#] Lecturer, Griffith Law School. A draft of this article was presented at the Flowers in the Desert: Clinical Legal Education, Ethical Awareness and Community Service: Eighth Australian Clinical Legal Education Conference, Melbourne, 12–15 July 2005. The author wishes to thank Bill McNeil, Shaun McVeigh and the anonymous referees for their comments.

What follows is divided into three parts. The first section argues that *Street Practice* represented CLE as engaged in the project of 'ethical training through experience'. The second part shows how *Street Practice* presented this project as grounded on hierarchy, manipulation and egotism. The final section reflects on the implications of this 'lesson' for Australian CLE and concludes with the suggestion that CLE needs to recover its origins in the study of injustice and the progressive practice of law.

Use of a cultural text as a lens to reflect and focus on aspects of legal education is not unusual. 'Law and literature' scholars maintain that their discipline has a particular utility for reflection on legal education.¹ Indeed, a common practice within the legal education literature is to refer to *The Paper Chase* or the like as representing specific cultural narratives about legal education.² This article develops this practice. It takes seriously the only recent popular Australian cultural text about legal education to see what images and messages about legal education, and CLE in particular, were being broadcast. *Street Practice* was a documentary, and as such many filters ranging from the pragmatics of consent to commercial and editorial decisions influenced its final content.³ *Street Practice* was a representation, not some 'true' archive of CLE, and it is problematic to regard it in social scientific terms as a 'representative' of CLE in Australia. The method of this paper is to link the representation of CLE in *Street Practice* to themes within the Australian CLE literature. As a representation of CLE (rather than being representative), *Street Practice* 'animated' themes from the literature, and in this animation — in showing students, clients, lawyers and academics experiencing CLE — it 'represented' these themes in a very different light than is done in the usual technical discussions of clinicians.

***Street Practice* as Ethical Training through Experience**

The history of CLE in Australia has yet to be authoritatively written.⁴ Nevertheless, its literature does have a genesis story. CLE was established in Australia in the 1970s. It represented the confluence of three interrelated cultural and institutional changes. First, it arose in a period marked by the progressivism of the 1960s and 1970s where many lawyers, law students and legal academics were attracted to social engagement and political radicalism:⁵

Thus it appears that the time was ripe for an outbreak of political motivated service organisations in the sense that each was committed to

¹ Kamir (2005).

² Moran (2003), p 473.

³ Some of these filters were alluded to by Fran Gibson in the 2003 Annual Report for the KLC: see Kingsford Legal Centre (2003), p 3.

⁴ Giddings has begun this task: Giddings (1999a), pp 38–42; Giddings (2003).

⁵ Smith (1984), p 49.

an amelioration of powerlessness in relation to a particular social group.⁶

Second, CLE developed in parallel with the establishment during this period of community legal centres and legal aid commissions that aimed to provide legal services to those who could not afford them.⁷ Third, CLE was first offered by Monash and the University of New South Wales,⁸ both of which have been characterised during this era as centres for the progressive teaching and study of law.⁹

Given this historical association, the ideal type of Australian CLE has been law students working at a community legal centre providing legal services to the 'disadvantaged' in the practice areas of minor crime, family, housing, social security, neighbourhood issues and consumer credit law.¹⁰ It has only been in recent years that Australia has developed clinic courses that focus on specific areas of practice (like criminal appeals) or public-interest lawyering.¹¹ Further, while internship style programs — where the law school works in partnership with a range of legal professionals to host students on a placement — also have a pedigree in Australia,¹² it has been the community legal centre-law school partnership that has tended to define Australian CLE.¹³

This has meant that Australian CLE has been closely aligned with community legal centres and 'poverty law' practice.¹⁴ In the United States, there is a division (and perhaps a tension) between CLE that draws inspiration from the Critical Legal Studies (CLS) movement of the 1970s, and focuses on public-interest lawyering and social change, and other programs that claim an older pedigree in the realist movement and regard CLE as providing the opportunity for professional practice development.¹⁵ Australian CLE has tended to relate to the CLS-inspired branch in the United States, and has shared with those programs and literature a 'New Left'-inspired political foundation.¹⁶ As such, it has claimed to be expressly concerned with the structural causes of injustice and has had a focus on the vulnerable and disadvantaged in Australian society — such as refugees, women, the unemployed, public housing residents and the aged. It has claimed to be about advocating for these people, achieving favourable law reform, and breaking

⁶ Basten et al (1983), p 186.

⁷ Basten et al (1983), pp 164–70; Chesterman (1996); Hocking (1997).

⁸ Noone (1997), pp 266–67. The third foundational program was begun in the Legal Studies Department at La Trobe University in 1978: Dickson (2004a).

⁹ Weisbrot (1990), pp 124–28; Carney and Hanks (1986), p xiii.

¹⁰ Dickson (2004a); Rice and Coss (1996), p 7.

¹¹ Rice and Coss (1996), p 39; Giddings (2003), pp 20–21; Weathered (2003); see generally the range of CLE programs in Kingsford Legal Centre (2005).

¹² Lamb and Goldring (1996); Giddings (2000).

¹³ Noone (1997), p 257; Curran (2004b), pp 287–88.

¹⁴ Giddings (1999a), pp 37–38; Giddings (2003), p 22.

¹⁵ Goldfarb (1992), p 718; Blaze (1997), pp 944–54.

¹⁶ Noone (1997), p 266; Smith (1984), p 49; Cranston (1978), p 63.

down the social and legal barriers that these groups have faced.¹⁷ This is the first theme within the Australian CLE literature that CLE is about the study of injustice and the progressive practice of law.¹⁸

Thinking about injustice played only a cameo role on *Street Practice*. In the documentary, it is the clients who talk about justice.¹⁹ Indeed, justice is only mentioned by KLC staff or students twice. In Part 4 of the series, a student told the camera: 'The words "justice" and "fairness" ... you don't often hear them, even though you are doing a law degree. And I think that is a bad thing.'²⁰ However, why that was bad or what it might mean for law, society and legal practice were not articulated. In Part 1, the students were asked to reflect: 'Do you think law and justice are the same thing? Do you think law is justice, do you think its order or do you think it is something else?''²¹ This scene hinted at wider reflection on law and justice, but it quickly ended with the staff member indicating that: 'A lot of people who come through the door have their concept of justice and part of our role unfortunately often, is to explain to them the limits of that concept.'²²

This statement that practising at KLC involves explaining to clients their inadequate concept of justice does not seem reconcilable with elements of the progressive practice of law. It hints at a belief that the law is fixed and immutable and client's claims are personal failures based on ignorance. Further, while *Street Practice* did present CLE as working with clients from marginal groups, there was no breaking down of barriers. In the opening scene in Part 1, demarcation between lawyers and clients was made: 'That is the client area, this is the working area and clients don't cross the barrier.'²³ In this image of maintaining the boundary between lawyers and clients, *Street Practice* did not animate any ideal that CLE was about the study of injustice and the progressive practice of law. Indeed, the closest *Street Practice* came to politics was when a client told a lawyer that the lawyer was being naïve in trusting representations from the 'shifty' Housing Commission.²⁴ However, this does not exhaust the themes with the Australian CLE literature. During the 1990s — reflecting social attitude change, the institutionalisation of CLE and

¹⁷ Parker and Goldsmith (1998), p 48; Dickson (2004b), p 26; Dickson (2004a), p 42; Kenny and Copeland (2000); see also and Styles and Zariski (2001); Curran (2004a).

¹⁸ The elements of a progressive practice of law, and the underlying political commitments that grounded Australian CLE are well expressed by Gabel and Harris (1982). For an alternative account of how this critique developed as a type of legal practice, see Sarat and Felstiner (1995), pp 85–88.

¹⁹ *Street Practice (Part 1)*, Shannon Stone.

²⁰ *Street Practice (Part 4)*, Eric Ribot.

²¹ *Street Practice (Part 1)*, Sinead Eastman.

²² *Street Practice (Part 1)*, Sinead Eastman.

²³ *Street Practice (Part 1)*, Emily Sunman. Compare this with Chesterman's description of the early days of Fitzroy Legal Service: Chesterman (1996), pp 38–43.

²⁴ *Street Practice (Part 3)*, Toula.

community lawyering, and post-Pierce Report reflections on the failures of Australian legal education — a second claim concerning Australian CLE was made: that it was a preferred site for the teaching of practical legal skills.²⁵

However, *Street Practice* did not present CLE as developing students' practical legal skills. There were many images of students exercising skills, with varying degrees of success.²⁶ What was mostly absent was the education. There were no scenes of supervising staff directly teaching and assisting students in developing and refining skills. There was also minimal critical reflection on the practice of skills.²⁷ This is probably a reflection of the documentary form: few viewers would be interested in watching a practitioner edit a student's letter.

However, there is a third theme within Australian CLE literature that *Street Practice* did animate: that CLE is about changing the values and attitudes of students — 'personal development' to use Rice and Coss's phrase²⁸ — through the exposure of students to community legal clients and practice.²⁹ This is the claim that CLE is 'ethical training through experience'.

The phrase 'ethical training' describes a premeditated program of attempting to change the inner life of a subject.³⁰ It is a concern not just with the external actions of a subject, but with their internal values and attitudes. It is about using techniques — encouragement and disciplining — to foster and bring about change in a subject's values and attitudes from undesirable to desirable.³¹ Ethical training is deeply personal for subjects experiencing it. It involves normalising judgments about their current values and attitudes, and direct attempts to change, develop or hone those values and attitudes.³² The

²⁵ Rice and Coss did not consider clinic programs with actual clients to be suitable for skills training: Rice and Coss (1996), pp 25–26. Other writers and more recent Australian CLE programs have emphasised CLE as skills education: Boersig et al (2002), p 54; Giddings (1999a), pp 42–44; Giddings (1999b); Mack (1998). The authors of a popular guidebook on practical legal skills claim their authority is based on 'more than 30 years' collective experience in teaching practical legal skills ... primarily to our clinical students': Hyams et al (1997), p xi. A tension between CLE as politics and CLE as skills training was identified by Zariski in his review of the first Australian CLE conference: Zariski (1991), p 149.

²⁶ A demonstration of these skills was provided by Dean Kelly in Part 2, who showed good critical skills when examining the Lawrence Rivera file.

²⁷ Except for Trudy Sheehan's critique of the client interviewing and client care practices of the anonymous lawyer 'Peter', whose 'macho-like' attitude alienated the client Phyllis: *Street Practice (Part 3)*, Trudy Sheehan.

²⁸ Rice and Coss (1996), pp 30–32.

²⁹ Styles and Zariski (2001); Dickson (2004b), p 28; McCrimmon (2003–2004), pp 65–68.

³⁰ Dean (1998), pp 91–92. A similar definition has been used by Marian Sawer (2003) in her investigation of social liberalism in Australian political institutions and culture.

³¹ The origins of this notion of 'ethical training' are in Foucault's account of 'correct training': Foucault (1977), pp 170–94.

³² Foucault (1977), pp 177–83.

phrase 'through experience' names a particular 'method' of ethical training: the exposure of the subject to new life experiences that are designed to put the subject 'outside their comfort zone'³³ or create a 'disorienting experience'.³⁴ Drawing these strands together, 'ethical training through experience' names the attempt to change a subject's inner life through premeditated structured exposure to 'real life'. Instead of political struggle, law reform projects advocating for policy change or community empowerment, ethical training through experience is about changing values, motivated by the confidence that the changed person would lead a more ethical life.³⁵

This representation of CLE as ethical training was made clearly in *Street Practice*, in that value change was expressly declared to be the focus. At the orientation day, the students were told in no uncertain terms:

Every lawyer that volunteers with us and every staff member and every student brings to this workplace their own set of values about who is deserving and who's undeserving, OK? Cancel those values at the door.³⁶

By Part 4, this was made more explicit by the narrator: 'After a taste of community law, the fight is now on for the hearts and minds of these bright young lawyers.'³⁷ Further, *Street Practice* was explicit in linking this project of value change with an experiential method of exposing students to the gritty real life of clients. This was made at the outset in the program guide for *Street Practice*:

Set at Kingsford Legal Centre, part of the University of New South Wales Law School whose graduates are seen as the pick of the country's legal crop, it follows those who choose to undertake a 'tour-of-duty' working as legal clerks. They take on their first real cases and deal with their first real clients. It's where the lessons stop and the real world begins.³⁸

In certain scenes, the students were shown to understand that they were being ethically trained through exposure to clients. Raymond Lee suggested that it 'is scary when you first come here and suddenly you're put in charge of real people's problems ... you learn best being just thrown in the deep end'.³⁹ Anita Mani indicated that:

³³ Stuen (1995).

³⁴ Aiken (1997), p 25; Quigley (1995).

³⁵ For example, 'active citizenship': see Butcher et al (2003).

³⁶ *Street Practice (Part 1)*, Emily Sunman, Solicitor.

³⁷ *Street Practice (Part 4)*, Narrator.

³⁸ ABC 'Program Summary Reality Bites: Street Practice' www.abc.net.au/tv/guide/netw/200409/highlights/237697.htm.

³⁹ *Street Practice (Part 1)*, Raymond Lee.

Its just been a real eye opener ... I haven't seen the types of problems ... that these people are having before ... I think it's a really, really good experience to see that different side of society and what life is like for them and the problems they have.⁴⁰

That the students were subject to ethical training through experience was the message of the documentary. Most of it involved footage of students interviewing clients from a 'different side of society'. In Part 1, there was Shannon Stone, a child of institutions who claimed he was assaulted in Goulburn Gaol, and Lila, the public housing epileptic complaining of harassment from a neighbour. In Part 2 there was Lawrence Rivera, detained fugitive on the run from a Californian murder charge, and an unnamed victim of domestic violence with her graphic account of an assault by her '6 foot 8 inch Big Maori boy' partner.⁴¹ Part 3 involved the trans-gender nurse's assistant Phyllis, and Part 4 involved many clients with eclectic concerns ranging from dead cats to pornography in the workplace and emotional distress from failure to deliver a television stand.⁴² The epitome of a client representing the 'different side of society' for students to experience was the gregarious Robert Flaherty in Part 2, who was not only interviewed at the KLC, but invited the camera back to his home in order to tell more of his story. Part 2 particularly focused on experience as ethical training. The central narrative of this part comprised the experiences of Dean Kelly and Matthew Payne in attempting to assist Rivera, on their visit to Long Bay Gaol ('I've got no idea what to expect. I've never been in prison only seen gaols in movies')⁴³ and their seemingly failed attempts to find Rivera a pro bono lawyer.

Street Practice was not silent as to the 'end' of this ethical training. The structured exposure to the real was presented as developing the inner life of students, leading to new outlooks that would guide future actions. Specifically, the documentary was about career choices. This point was made candidly in a speech by Magistrate Jennifer Giles to the assembled students in Part 4. Giles attacked life in the 'big city firm' — 'Let me take the romance out of commercial law. Everyone keeps saying, "Oooh, I should be doing commercial law." Commercial law is big debt collecting.'⁴⁴ She suggested that:

It is a much more interesting ride through Community Legal Centres and public interest advocacy ... So I want you ... I NEED you to be advocates, because ... [Students laugh] the big firms are very organised about coming to get you. And there are glamorous young interns in suits and, 'We're paying the highest starting salary this year, and wouldn't

⁴⁰ *Street Practice (Part 1)*, Anita Mani.

⁴¹ *Street Practice (Part 2)*.

⁴² *Street Practice (Part 3)*; *Street Practice (Part 4)*.

⁴³ *Street Practice (Part 2)*, Dean Kelly.

⁴⁴ *Street Practice (Part 4)* Jennifer Giles.

you like to be a summer clerk?’ And it’s utterly seductive. PLEASE stay in the community sector.⁴⁵

During Giles’ speech, the camera focused on Dean Kelly.⁴⁶ Dean, as was revealed in Part 2, had accepted articles at Clayton Utz. Indeed Dean, in his experiencing of Rivera’s situation, was represented as being on the cusp of making the ethical reorientation from commercial to community law. He was shown confiding in Fran Gibson:

Dean: In a sense I didn’t understand how real it was going to be. Like, some of the things that I’ve heard have been quite emotionally shocking for me. And so, yeah, like, it’s quite real.

Fran: I guess, reading between the lines of what you’re saying, one of the reasons you’re here is to see what this legal practice is like and whether you would be interested in doing something like this. Is that fair to say?⁴⁷

Ultimately, the experience of dealing with Rivera, Giles’ speech and Fran’s encouragement failed to affect Dean. He opted to continue with his career path of corporate law:

[Lawyers in large commercial firms] you know they’re helping a client, in the same way that public interest lawyers are helping their clients, and they’ve got just different needs. So it hasn’t necessarily swayed that way I think about public interest law or stuff like that ... I just like money, I think. So not at the expense of everything, but it’d be good to have lots of money.⁴⁸

While Dean did not make the desired change to which the ethical training was directed, other students were presented as being more swayed. Anita Mani, who the narrator described in Part 1 as a ‘commerce law student [who] has wanted to be a lawyer since she was five years old’,⁴⁹ suggested at the end of her placement at KLC:

Previously when I considered eventually going into law, as I might do, I only ever considered the commercial path, and I thought that was sort of the only way to go. I never even knew that there were so many opportunities in the community sector and that work could be so

⁴⁵ *Street Practice (Part 4)*, Jennifer Giles.

⁴⁶ Unlike some of the other students, like Matthew Payne and Carolyn Morris who sat slumped back, arms folded, looking less than impressed at what Magistrate Giles was saying.

⁴⁷ *Street Practice (Part 2)*, Dean Kelly and Fran Gibson.

⁴⁸ *Street Practice (Part 4)*, Dean Kelly.

⁴⁹ *Street Practice (Part 1)*, Narrator.

fulfilling and the people are so interesting ... I've just never ever heard of them before ... before I came here And so it's definitely made me think very differently about my potential career path.⁵⁰

However, the ethical training from their stint at KLC did not manifest in a stampede of law graduates into the community sector. Nevertheless, this 'failure' does not detract from the representation of CLE as ethical training through experience. Through exposure to challenging clients, students' values and opinions were meant to be challenged. Indeed, that his experience of CLE was about internal values was evident to Dean Kelly:

You don't get paid for working here [Laughs]. That's the whole idea of a volunteer law centre, I suppose. Yet here the stuff that you do, you feel very, very good about yourself.⁵¹

In summary, *Street Practice* presented CLE as being about changing the values and career orientation of law students through ethical training through experience. For some contributors to the Australian CLE literature, this was as it should be: CLE has a legitimate role to play in orchestrating law student value change. In commenting on Styles and Zariski's research, Evans writes that 'the dream of every clinical teacher [is] to *prove* that a "clinical experience" in law school will re-order the priorities of law students in favour of public interest lawyering'.⁵² However, *Street Practice*, in its animation of CLE as ethical training through experience, revealed the dark side of this goal.

The Power Resides with the Advocate:⁵³ CLE as Hierarchy, Manipulation and Egotism

In showing CLE as ethical training through experience, *Street Practice* did not just animate this dimension of Australian CLE, but by doing so revealed the problematic nature of institutions directed at changing values. It revealed that ethical training through experience is based on hierarchy, manipulation and egotism. The starting point for this revealing is the express justification presented in *Street Practice* for the project of ethical training through experience.

For Fran Gibson, the ethical training through experience of CLE was justified because:

There's American research, I think, that shows that students go into law school, some, a very high proportion — 75 per cent, 80 per cent — go in there with the mission of helping people. Five years later that is down

⁵⁰ *Street Practice (Part 4)*, Anita Mani.

⁵¹ *Street Practice (Part 2)*, Dean Kelly.

⁵² Evans (2001), p 89.

⁵³ *Street Practice (Part 4)*, Jennifer Giles.

to 10 per cent. So it's the law school that's doing it, you know? So that's frightening to me.⁵⁴

However, the problem of using experience to change values is implied in Gibson's justification. In it, law students and law schools are presented as homogenous entities — law students go in with certain values, they are exposed to law school and their values universally change in a similar way. This assumes a commonality to law students and their reaction to experience. However, *Street Practice* immediately contradicted this assumption. The students seemed quite heterogenous. Four of the ten appeared to be from a non-English speaking background (NESB) and two were identified as mature-age students. While one student confided that he had been raised in a 'happy family ... No one's split up',⁵⁵ another made it clear that he had not.⁵⁶ The students were not the same and did not respond to clients from 'a different side of life' in the same desired way. Dean and Carolyn's exchange after the bus tour of KLC's 'catchment' of southern coastal Sydney demonstrated this dramatically. Here were two students, self-identifying as being from privileged North Shore suburbs, responding in different ways — Dean empathetically and Carolyn less so.⁵⁷

At this point, *Street Practice* points to the suggestion that 'experience' is actually not sufficient for ethical training. The vagaries of individual subjectivity call for more direct intervention to ensure the correct lessons from the experiences are learned. In two separate scenes, *Street Practice* showed a KLC staff member interrogating a student about their responses to clients:

There has been some concern about your attitudes to clients, Carolyn. There was an issue where you made a comment that you could 'smell the client from here'. We just want to understand where you're coming from when you make those kinds of comments. Are you joking, or are you seriously disparaging the client?⁵⁸

These scenes disclosed ethical disciplining. The student's responses to experience were analysed to identify the underlying personal values causing the 'inappropriate' responses. One student accepted the ethical disciplining and contributed:

When I see people for the first time who, for example, have ... gotten themselves involved in numerous situations of domestic violence, there

⁵⁴ *Street Practice (Part 4)*, Fran Gibson.

⁵⁵ *Street Practice (Part 2)*, Matthew Payne.

⁵⁶ *Street Practice (Part 2)*, Dean Kelly.

⁵⁷ *Street Practice (Part 1)*, Dean Kelly and Carolyn Morris. Dean was from Kensington and Carolyn from Waverton.

⁵⁸ *Street Practice (Part 4)*, Joanne Moffit.

is a point where you should realise that this thing is going to happen and it could get out of hand and that's when you should get out.⁵⁹

The other student resisted the ethical disciplining, calling into question the legitimacy of those evaluating her:

I just think maybe some people need to lighten up a little bit. And I think when a controversial statement is made, I've noticed certain solicitors looking at me for a response. They're ultra-defensive, on edge, and constantly looking for some discrimination ... I think that they have prejudged me.⁶⁰

The need to ethically discipline students exposes the problems of ethical training through experience. Exposure to clients and the grit of life was represented as actually not enough, and the personal values of students had to be directly subject to judgment and criticism. These scenes manifest what is implicit throughout the documentary: that the KLC staff use their position as supervisors, as occupying a rung on the academic hierarchy above students, cemented through their responsibility for grades, to engage in interrogating and judging values.⁶¹ This represents law school hierarchy, classically highlighted by Duncan Kennedy in all its established, institutional glory.⁶²

Further, this hierarchy depends on manipulation. If the represented end of the ethical training was for students to become community lawyers, it could be expected that students who did identify with this career choice would be rewarded. However, the opposite was represented. In Part 3, Sue Kim — who expressed a strong interest in practising community law — was sent seemingly unprepared for a pre-hearing conference at the Tenancy Tribunal. She was shown being treated with impatience by the Tribunal Member and with condescension by the Department's representative, while her supervisor sat passively in the background. In reflecting on the experience, a shocked — almost crying — Sue Kim indicated:

Didn't think I was required to, like, submit evidence. I thought we were going to exchange documents and he was ... keep saying that he wants evidence and every time I was about to give it to him, he raises something so I become hesitant and didn't know when to interrupt. That was a bit difficult to me 'cause I didn't want to interfere when somebody's speaking. So yeah, this is the most tense environment I've ever been in, in a conciliation room.⁶³

This scene presented the issue of why a novice, dependant on her supervisor for essential knowledge about what to do, was left to fend for

⁵⁹ *Street Practice (Part 2)*, Matthew Payne.

⁶⁰ *Street Practice (Part 4)*, Carolyn Morris.

⁶¹ Nickolas (2004a), p 608.

⁶² Kennedy (1983), p 63.

⁶³ *Street Practice (Part 3)*, Sue Kim.

herself. What learning outcome was served through this humiliation? The viewer is left to speculate. Assuming it was not a dereliction of duty by the watching supervisor, who should have stepped in the moment things began going sour — why expose a student to this? Was it because this young woman from a non-English speaking background was too confident and needed to be taught a lesson? Did her earlier polished persona require some abrasive contact with the ‘real’? Haunting this scene is the spectre of manipulation: the possibility that it was contrived and managed to ‘benefit’ the student.

Indeed, manipulation of students lingers throughout *Street Practice*. The series was full of images of the students engaged in ethical training through experiencing the real, but there seemed to be a problem of consent. Many of the students, when asked to explain why they had enrolled in CLE, responded by saying they wanted practical legal experience. Matthew Payne explained:

I’ve come down here for something a little different because a law degree is a lot of time in the classroom I could get to the end of the degree and not actually know anything about law at all. So coming here [is] a good opportunity to see how it all works.⁶⁴

Bradley Melman enrolled ‘just to pursue something a little bit different ... practical experience, client-based interaction’; for Carolyn Morris, ‘it’s getting really boring, after four years of black-letter law I want to do something practical and fun’; and for Raymond Lee:

[After] four years at university I thought that this would be a good way to put some of what I’ve learnt in theory to practice. And good as a couple of credit points in your law degree.⁶⁵

Yet this was not what students were shown to be getting in *Street Practice*. Instead, of ‘practice’, they were shown as being subjected to the much more personal and invasive ethical training. There was little evidence in the documentary of students giving informed consent. They were presented as arriving with certain expectations and were shown being manipulated into getting something quite different.

This manipulation of students opens on to what is probably the most significant problem represented in *Street Practice*. If the point of the ethical training was to instil in students a desire for doing community law, a passion for becoming an ‘advocate’ — in Jennifer Giles’ words — for those who ‘cannot pay up to \$200 an hour for a lawyer’,⁶⁶ then *Street Practice* represented CLE as an utter failure. At a basic level, *Street Practice* did not show any clients being tangibly helped by KLC. Shannon Stone and Robert Flaherty both had no cause of action. Dean and Matthew did not get a pro bono lawyer for Lawrence Rivera, and Part 3 finished with the text ‘Toula is still in

⁶⁴ *Street Practice (Part 2)*, Matthew Payne.

⁶⁵ *Street Practice (Part 1)*, Bradley Melman, Carolyn Morris and Raymond Lee.

⁶⁶ *Street Practice (Part 1)*, Narrator.

her flat, so are the Thrips.' For all the other clients, the outcome remained unknown.⁶⁷ There were no broadcasted wins. The contradiction went further. Two clients were shown at the end of their advice session upset and frustrated by the lack of assistance that was forthcoming. Lila in Part 1, instead of getting assistance with her restraining order against her violent neighbour, was told by the volunteer lawyer that she should move.⁶⁸ Phyllis was less passive:

Lawyer: You are not required to perform duties you are not qualified for.

Phyllis: Can I have that in writing?"

Lawyer: From whom?

Phyllis: Oh then I've come up against a brick wall then, that was a waste of time

[fades]

Phyllis: What's your name and contact number?

Lawyer: I am only a volunteer lawyer and only in every couple of months.⁶⁹

More extreme was the emotional turmoil that the student Shellee Smith caused Mr Rendici in Part 3. Rendici had been charged with an extremely minor offence and Shellee was shown using numerous tactics to convince him to plead not guilty. At one stage he agreed to do so, and Shellee appeared delighted:

No. I'm not letting him do this. No, he's going to do not guilty now.
[Interviewer — pleased about the result there] Yeah, I think that ... I think that ... I think it's good. I believe him. I really don't think he put the car jack into the car purposely to threaten people in a public space.

Rendici was shown agonising over his plea over several interviews, with the student using the 'carrot' of a having a pro bono lawyer able to represent him if he pleaded not guilty, and the 'stick' of a possibly hefty fine, gaol and losing his taxi licence if he pleaded guilty. In the end, Rendici —

⁶⁷ Carolyn Morris, the student who required ethical disciplining, was the only one shown getting positive feedback from a client: 'This is was in my pigeonhole this morning actually [holds yellow card] Um ... it's a thank you card from the client I represented at ... um ... the Waverley Local Court, for a mid-range PCA, drink-driving. He says, um ... [reads] 'Dear Carolyn and the Kingsford Legal Centre, Thank you so much for the excellent effort you put in towards helping me. I wish you well in your career. You did a great job. I also wish to thank that Kingsford Legal Centre for the support both moral and legal to people like me who can't afford to pay a solicitor. I'm most happy to donate this little amount towards you cause. Again my sincerest thanks for all. Respectfully yours.' [closes card] And he donated \$100 to Kingsford Legal Centre. *Street Practice (Part 4)*.

⁶⁸ *Street Practice (Part 1)*, John Longworth.

⁶⁹ *Street Practice (Part 3)*, Lawyer, Phyllis.

unrepresented and pleading guilty — received only a \$250 fine. The concluding impression was that this would have been the outcome without him going to see KLC and without the stress and power plays that came from his interaction with the student.

This 'deeper reality' of CLE, represented as an exercise in hierarchy and manipulation, points to a base egotism. The lasting message of *Street Practice* was one of cynicism, for the exercises of power justified by the ethical training through experience appeared to not be about the stated goal of making community lawyers. Instead, it seemed to be all about the students and the KLC staff themselves. This egotism was revealed in the way the 'end' of the ethical training was represented. It was all about career choices and value judgments concerning the types of careers available to law graduates. It was not represented in the political terms of progressive legal practice to address injustice or to service the disadvantaged. Giles' plea in Part 4 made this clear. Students were urged to do community law because it was 'interesting' and the alternative was 'boring'. She expressly disavowed that there were wider political motivations for community law practice because, unlike her generation with free tertiary education, 'the community hasn't done a great deal to help you get this education'.⁷⁰ And, while the students were expectedly shown as preoccupied with their prospects in the employment market,⁷¹ it is remarkable that the staff at KLC were similarly shown to be concerned with their place in the world:

Having worked in a big firm and in legal aid, and here, the public perception is, is very interesting. I've had people say when I was a legal aid lawyer, 'I don't want a legal aid lawyer, I want a good lawyer. I want a real lawyer.' ... And there are a lot of assumptions out there that, you know, you're a good lawyer if you work on commercial transactions but you're not a good lawyer if you just do that 'community stuff', when what you're identifying is that the community stuff is really challenging and many people don't have the skills for it.⁷²

It takes a particular egotist to be so concerned with their place in the world. In noticing this, it seems clear that it takes similar egos to know what is 'right' and have the confidence to ethically train others. Indeed, concern — bordering on anxiety — with self in world, easily slips into judgments about the perceived place of others. And judgment about others who are institutionally lower in the hierarchy and able to be 'managed' presents such an ego with the opportunity to 'help' those others for their own 'benefit'.

In representing CLE as ethical training through experience, *Street Practice*, through showing people living within such a project, revealed how institutionalised attempts at changing values are grounded in exercises of

⁷⁰ *Street Practice (Part 4)*, Jennifer Giles.

⁷¹ Part 3 of the documentary made this the express focus though lengthy comparisons of the summer clerkship interviews and successes of Carolyn Morris and Bradley Melman.

⁷² *Street Practice (Part 2)*, Sinead Eastman.

hierarchy, manipulation and ego. In animating this aspect of Australian CLE, *Street Practice* showed how it undermined the more progressive claims about CLE. *Street Practice* showed that CLE was not really being about encouraging students into community law practice or even about helping clients. There was lots of power, but no politics; precious little talk about injustice; no reflections on the *causes* of poverty; no account or demonstration of progressive legal practice. Instead, *Street Practice* represented a bunch of lawyers and law students engaged in power plays — games in the exercise of hierarchy and in the manipulation of others — for their own sense of self in the world. This is the common criticism of legal practice as the domain of self-absorbed power addicts.⁷³ In short, *Street Practice* represented what CLE has always distanced itself from: mainstream legal culture with its hierarchy, manipulation and egotism.

Reflections on *Street Practice* for Australian CLE

In summary, it has been argued that *Street Practice* presented CLE as involving ethical training through experience; that students were subject to a structured exposure to the real — clients, prison, tribunal hearings — with the express aim of changing their inner values. Further, *Street Practice*, in animating ethical training through experience, revealed how an institutionalised project directed to changing values is grounded in hierarchy, manipulation and ego. In doing so, *Street Practice* suggested that changing values operates problematically, if not antithetically to the foundational claim in the Australian literature that CLE about the study of injustice and the progressive practice of law.

In doing so, *Street Practice* could provoke two responses from Australian CLE. The first would be to dismiss it as mere fiction. In this response, Michael Cordell would be the deceiver who, in his selection and editing of the raw footage, channelled ambit prejudices about lawyers so as to present an unrepresentative account of CLE. This response allows *Street Practice* to be considered as just a welcome piece of publicity.⁷⁴ However, this response — convenient though it is for the pragmatic task of maintaining CLE in a legal education context of shrinking budgets, changed research priorities and faculty indifference — is inadequate. Such a response confuses representation with representativeness. *Street Practice* prioritised CLE as being about value change, a theme well established in the Australian literature. It animated what it means to institutionally attempt to change values through exposure to the poor and disadvantaged. Whether this is what all CLE students experience all of the time in all Australian CLE courses is beside the point. The fact that it appears in the literature and that there were enough scenes and images for Cordell to piece together two hours of documentary should give cause for concern and reflection. The ‘reality’ was that Cordell could make the focus of

⁷³ Ross (2001); Dawson (1996). See also Sharp (2002, 2004).

⁷⁴ KLC’s 2004 annual report refers to the program as ‘creating significant increased community awareness of the Centre, an increase interest from volunteer lawyers and from students’. See Kingsford Legal Centre (2004), p 5.

his documentary the working of hierarchy, manipulation and ego in CLE because he had enough footage of it happening. Granted, there must have been much footage of students, staff and clients working really well together, and of staff correcting students' letters, that ended up on the cutting room floor. However, this does not distract from the fact that there *was* footage of an unprepared student at the Tenancy Tribunal, of clients getting frustrated with the lack of assistance, and of a student crying during her ethical disciplining. The fact that these occurred must be taken seriously. Further, as an animation of a key theme in the literature, these can not be seen as isolated 'failures' of CLE at KLC, but as a representation of a significant part of contemporary CLE in Australia.⁷⁵

The better response would be to take the revelation offered by *Street Practice* seriously. The starting point for this would be that *Street Practice* clearly presented the well-recognised dilemma concerning who CLE actually serves: individual clients, 'the disadvantaged' or the students?⁷⁶ If it is individual clients, then *Street Practice* told a sorry story of not helping and of providing second-rate representation. If it is the 'disadvantaged', then *Street Practice* represented CLE as providing budding commercial lawyers with an opportunity to have a 'guided tour' of the poor; it did not show the bleeding of the next generation of zealous community lawyers. Finally, if CLE is about student education, then *Street Practice* suggested that CLE in Australia has moved away from its foundational political concerns with injustice and embraced a very different project.

It is possible to accept at face value the legitimacy of CLE as value change. *Street Practice* immediately rendered this problematic with the question of consent. It documented that the motivation for students electing to do CLE was the opportunity for practical legal experience prior to the summer clerkship applications. Students wanted the experience, not the ethical training — particularly given the extremely limited employment prospects in community law practice. At this point, *Street Practice* presented the question starkly in terms of the rights and educational, political or ethical justifications by which students are subjected to clients and clients to students.

The justification in the Australian literature is based on a perceived effect of law school on student values. It is an article of faith for Australian CLE (and much of the wider legal academy) that law school is a sausage factory, taking excited, socially aware students and, over four years of exposure to the formalist legal method, squeezing out cynical wealth-maximisers with the

⁷⁵ Furthermore, from my anecdotal experience of being involved in clinical legal education for the past seven years, I have identified 'changing values' as a significant component — if not preoccupation — of Australian CLE. I even actively promoted it early on. This article comes from significant self-doubt after causing some particularly negative outcomes for both students and clients from exposing them to each other. On my earlier enthusiasm, see Tranter (2002); Tranter and Jarvis (2000).

⁷⁶ Rice and Coss (1996); Castles (2002), p 13.

skills and ego for 'big firm' commercial practice.⁷⁷ In this light, CLE is conceived as a remedial exercise aimed at undoing the damage to student values from legal education. *Street Practice* suggests that this needs to be rethought.

The account of legal education as corrosive on student values involves two claims. The first is that law students as a whole tend to enter law school with a set of values broadly conceived as progressive. Indeed, it is often claimed that it is these progressive values which motivated students to choose law in the first place.⁷⁸ The second is that law school is a type of 'total institution' to which students must surrender, and in surrendering have their values and opinions reworked in law's less-than-progressive image.⁷⁹

Any claim to empirical validity for this account of legal education is based on US studies from the 1970s and 1980s. There are some serious questions to be asked about this research and its application to Australia.⁸⁰ While some research — notably Granfield's ethnographic account of Harvard law students in the mid-1980s — has reported change in student values from public-interest-minded to corporate-career-focused, and linked that change to the law school experience,⁸¹ much of the other commonly cited research is not as confident. Erlanger's and Klegon's time-stratified survey of the graduating class of 1976 at the Law School of the University of Wisconsin-Madison identified a 'conventionalising' of the students' perspectives. However, they caution that, without a control group, they could not determine whether the change was:

actually the product of a changed political climate, of a tendency of people to become less radical as they assume more responsibility, or of a tendency for people with deep-seated public interest commitments to avoid law school.⁸²

Stover reports a mark decline in public interest commitment for students of the graduating year of 1980 at the University of Denver, College of Law.⁸³ While he was keen to identify the law school environment as contributing to this value change, he did not consider legal education as the prime influence. Rather, he suggested it was the students' interaction with the profession through clerking that caused the decline; law schools' failure was in not

⁷⁷ McCrimmon (2003–2004), pp 63–65; Styles and Zariski (2001), p 68; Dickson (2003), p 20; Allen and Baron (2004), p 287.

⁷⁸ Dickson (2004b), p 28.

⁷⁹ Brown (2000), p 281.

⁸⁰ The lead article in Australia that does this is Goldsmith's (1995) extended review of Granfield and Stover.

⁸¹ Granfield (1992). The other commonly cited research is the posthumous publication of Stover's (1989) research into the University of Denver, College of Law between 1977 and 1980.

⁸² Erlanger and Klegon (1978), p 31.

⁸³ Stover (1989), pp 10–39.

providing adequate counter-balance.⁸⁴ Other regularly cited studies were not based on time-stratified examinations of a sample group rendering any conclusions 'speculative.'⁸⁵ Further, Schwatz's time-stratified survey of first year law students from two Californian law schools did not find a shift away from progressive values based on how long students were exposed to law school.⁸⁶ Notwithstanding recent American writers presenting this literature as proving the corrosive effect of law schools,⁸⁷ the study's actual findings are much more ambiguous.

Even if the value change literature did prove the corrosive effect of elite American law school during the 1970s and 1980s, there are significant problems with generalising these studies to contemporary Australia. There has not been similar longitudinal studies of Australian students in legal education either in the 1970s or more recently.⁸⁸ Brown draws upon Granfield and Stewart's 1991 interviews with twelve final-year female law students at the University of Sydney⁸⁹ to 'talk about competition at law school'.⁹⁰ Styles and Zariski undertook a single-shot picture of CLE students compared with students who undertook other electives at Murdoch University School of Law to suggest that CLE has a positive effect on students' social justice values.⁹¹ Evans' recent values research tracked the value change in students after graduation and entry into the profession.⁹² Tranter's research into first-year Australian students' values did not find the progressiveness that the Americans found, but reported that students reflected the consumerist and conservative values of the age.⁹³ None of this research suggests that the US value change literature adequately captures the effect of Australian law schools on contemporary students.

⁸⁴ Stover (1989), pp 103-121.

⁸⁵ Using Rathjen's own word to describe his findings: Rathjen (1976), p 96. Carrington and Conley (1977) found that some law students were alienated but did not pontificate on the causes of that alienation and whether that alienation stemmed from the law school experience or wider social factors.

⁸⁶ Schwartz (1980), p 453.

⁸⁷ Chaifetz (1993).

⁸⁸ Contrary to what has sometimes been represented, the Pearce Report and the associated empirical research that it commissioned did not report on the corrosive effect of Australian legal education on law students' values. Indeed, the closest that it came was the suggestion that 88 per cent of Macquarie University law graduates surveyed indicated that a law degree should emphasis the social context of law: Pearce et al. (1987), p 207.

⁸⁹ Stewart (1991).

⁹⁰ Brown (2000), p 279.

⁹¹ Styles and Zariski (2001), following a similar study by Maresh (1997).

⁹² Evans and Palermo (2002, 2005); Evans (2001a).

⁹³ Tranter (2004). This seems consistent with Baron's observation of the 'extrinsically' motivated Australian law student: Allen and Baron (2004); Baron (2002).

Further, it is difficult to reconcile the Harvard Law School documented by Granfield with the experience of contemporary Australian legal education. Notwithstanding that Stewart's participants suggested a similarity between Sydney University circa 1990 and the type of law school experience in the value change literature,⁹⁴ this cannot be assumed to be representative of all Australian law schools fifteen years on. Magistrate Jennifer Giles was right when commenting on generation change.⁹⁵ Australian legal education is now available to a wide range of people, as the diversity of students in *Street Practice* shows. Twenty years after the Pearce Report, the Australian legal curriculum attempts to provide for 'student-centred learning', attempts to include skills education and attempts to place the study of law within a wider social, political and economic context.⁹⁶ Increased availability of legal education, developments in information technology, expansion of legal education to suburban and regional universities, and increased movement towards a user-pays system⁹⁷ mean that many law students spend more time in employment or caring for others than they do studying law. This picture of Australian legal education is a world away from the pressure cooker account of the law school of the value change literature.⁹⁸

What this means is that the justification for CLE as ethical training through experience in remedying the corrosive effects of legal education is hollow: regrettably, students are not that progressive coming into law school;⁹⁹ they are probably much more diverse in terms of age, gender, experience and background;¹⁰⁰ they are largely bearing the cost of their education; and classroom law teaching has radically changed in terms of structure, content and assessment. Further, the relied-upon American research did not, in the first instance, find in any conclusive way for corrosive effect of law school on student values. What is really left is the 'impressionistic' account of what law school does, gathered by the legal academy through either ruminating on their law school experience, or reflecting on the students before them in the classroom.¹⁰¹ Ultimately, there is something sinister to the justification that law

⁹⁴ Stewart (1991).

⁹⁵ For a chronology of Australian legal education, see Parker and Goldsmith (1998).

⁹⁶ Keyes and Johnstone (2004), pp 549–54.

⁹⁷ Johnstone and Vignaendra (2003), pp 1–6.

⁹⁸ As made very clear by Halpern, 'Going to law school ... becomes an all-encompassing endeavour. The law-school experience dominates everything. Family, friends, hobbies, indeed virtually all things central to one's former life become dwarfed by the attempt to cope with the demands of the first year.' See Halpern (1982), p 388.

⁹⁹ Nickolas (2004b), p 51.

¹⁰⁰ Handsley et al (2005), p 111.

¹⁰¹ Schwartz (1980). For a classic example of this in Australia, see Goldsmith's personal discussion of his experience of entry into the University of Adelaide Law School and his sour comments that: 'It is tempting for anyone who went through adolescence and university in the 1960s or 1970s to cast doubt on the altruistic inclinations among the students of the 1980s and 1990s.'; Goldsmith (1995), p 273.

students need the ethical training through experience of CLE to restore them to their pre-law school values. It embodies a disrespectful arrogance concerning students, their values and the lives that they live.¹⁰² It involves the judging of students — not of their external competencies in skills or academic capacities, but of their inner life. It legitimates the exercise of power in the attempt to remake values according to an imagined understanding of the students' 'truer' or more 'authentic' selves — an idealised type that probably has its basis in a romanticised recollection by the clinician of their own law student days. And finally, the grist in this value change machine is the poor and disadvantaged who are instrumentally used as experiential lessons.¹⁰³

This opens to the final 'lesson' from *Street Practice* for Australian CLE, which involves orienting ethical training through experience in its proper political and historical light. To arrogantly want to change another's values and to utilise an institutional position to do so is the fantasy and practice of conservatism.¹⁰⁴ Conservatism names the seeking and use of power to impose on to others a particular understanding of what is right derived from a romantic notion of the 'past'.¹⁰⁵ More specifically, it is particularly *not* about equality or individual rights, but rather about maintaining, through institutional power, particular understandings of what amounts to an 'ethical' worthwhile life.¹⁰⁶ The Australian CLE literature, in its embrace of 'value change', incorporates a conservative agenda. And *Street Practice* animates what that means at the level of people's lives.

For Australian CLE to have adopted conservatism is for it to have joined in what many commentators have identified as the lurch to the right within Australian public culture.¹⁰⁷ This movement can be seen in the enacting of terrorism laws that gazump established rights and freedoms;¹⁰⁸ in industrial relations changes that abolish key foundations of the 'Australian Settlement';¹⁰⁹ in social welfare 'reforms' following US workfare models that

¹⁰² Dickson (2002), p 28, in a candid piece, presents a more worrisome justification. She lists as a foundational assumption that 'most law students come from sheltered if not privileged backgrounds', suggesting that CLE's role is to do something about it.

¹⁰³ See Marsico (1995), who dialectically sees a tension between legal advocacy for social change and care for the immediate individual client. His 'synthesis' is in a 'facilitative' conception of lawyering.

¹⁰⁴ This being the definition of 'conservative' ideology in Jaensch's seminal study on the Australian Liberal Party: Jaensch (1994), pp 162–63.

¹⁰⁵ Jost et al (2003), pp 342–44.

¹⁰⁶ Brett (2003), pp 205–06.

¹⁰⁷ Maddox (2005), p 95; see also Singleton (2005), p 13. While the Australian Social Attitudes Survey identified conservatism within Australian politicians and policies, their review of various surveys did not find a wholesale shift to the right within the wider community: Gibson et al (2005), p 1.

¹⁰⁸ Kirby (2004); Emerton (2004); Michaelsen (2004).

¹⁰⁹ See, for example, White (2005). On the arbitration system as the 'Australian Settlement', see Sawyer (2003), pp 50–67.

ensure sole parents and the disabled live an 'obligated' and 'ethical' life;¹¹⁰ in the rising influence of the religious right in talk of 'family values';¹¹¹ and in attacks on sexual difference,¹¹² abortion¹¹³ and no-fault divorce.¹¹⁴ *Street Practice* showed CLE drawing upon a quite 'different side of society' than the 'different side of society' that its political foundation celebrates. In this context, Kenny, Styles and Zariski's comment that 'clinics enable individuals to develop morally and spiritually through introspection fostered by close personal contact with others'¹¹⁵ takes on a particularly *different* meaning.

This is where our reflection on *Street Practice* ends: with the idea that CLE has joined the conservative right in betrayal of its progressive origins. Maybe it was not just a coincidence of editing that Cordell was unable to show talk about injustice and the demonstration of progressive legal practice in *Street Practice* as the conservative element of doing value change swamped the progressive politics. It is tempting to conclude that progressive goals just cannot come about while instrumentally using community legal centre clients to change the values of law students. This conclusion could be seen as a reflection of the problematic bequest that the 1970s gave to CLE. While social concerns at that time, about poverty, 'the system' and substantive equality, provided Australian CLE with its foundational politics, cultural historians have observed that, parallel with progressive concerns, the 1970s also gave momentum to values talk and concern with the 'inner life' that manifested in later decades in the revitalisation of conservatism.¹¹⁶ As such, within the CLE literature, CLE as the study of injustice and the progressive practice of law has long been conceived as going hand in glove with CLE as developing the personal values of students.¹¹⁷ What *Street Practice* revealed is the contradiction between the progressive politics and the conservative practice — and a realisation that, in the current epoch, it has been the latter that has come to the fore. What is most concerning is that this is occurring at the very moment when talk of injustice and elements of the progressive practice of law — respect for the individual, access to justice, protecting the freedom to live one's life — are becoming increasingly marginalised by the growing conservatism of Australian public culture.

This is the challenge of *Street Practice* to Australian CLE: to get out of the business of value change, to stop prioritising the recruitment for near non-existent community law jobs and respond to the rise of conservatism. This would require a move away from concerns with law students' values and the techniques directed towards value change, and a return to a hard linking of CLE to research into the causes of poverty and disadvantage, and exposure to

¹¹⁰ Mendes (2005), p 135.

¹¹¹ Maddox (2001), pp 228–35.

¹¹² Berns and Berman (2005).

¹¹³ Gibson et al (2005), p 3.

¹¹⁴ Maddox (2005), p 95.

¹¹⁵ Kenny et al (2004), p 21.

¹¹⁶ Rossinow (2002).

¹¹⁷ As acknowledged by Dickson (2004b), p 28; Evans (1999), p 182.

and thinking about the progressive practice of law — a practice of law that empowers clients, provides quality advocacy and contributes to successful law reform. In undertaking such a course, students might have a ‘road to Damascus’ life-changing moment or they might just bag the résumé kudos of doing CLE and continue their commercial law-focused life. In both cases, students would take from CLE a more sophisticated understanding of Australian law and society and, for a time, would have been involved in the progressive practice of law. Whatever the long-term effects of such a revitalised CLE might be, in the immediate term it would be a course that could be justified to students and clients in a way that *Street Practice* suggests current CLE as ethical training through experience cannot be.

This article concludes with the call that CLE return to its political foundation. It needs to abandon attempts at changing the inner life of students and focus on the study of injustice and the progressive practice of law. It needs to stop cavorting with the conservatives from that particular ‘different side of society’ and get back to its ‘right’ side, on the left.

References

Secondary Sources

- Jane Harris Aiken (1997) ‘Striving to Teach “Justice, Fairness and Morality”’ 4 *Clinical Law Review* 1.
- Judy Allen and Paula Baron (2004) ‘Buttercup goes to Law School’ 29 *Alternative Law Journal* 285.
- Paula Baron (2002) ‘Demand and Desire: A Psychoanalytic Contribution to Understanding the Problems of Student Motivation’ 11 *Griffith Law Review* 332.
- John Basten et al (1983) ‘Legal Centres in Australia’ 6 *University of New South Wales Law Journal* 163.
- Sandra Berns and Alan Berman (2005) ‘Homophobia Perpetuated: The Demise of the Inquiry into the Marriage Amendment Bill 2004 (Cth)’ 30 *Alternative Law Journal* 101.
- Douglas A Blaze (1997) ‘Déjà Vu All Over Again: Reflections on Fifty Years of Clinical Education’ 64 *Tennessee Law Review* 939.
- John Boersig et al (2002) ‘Teaching Law and Legal Practice in a Live Client Clinic’ 6 *Newcastle Law Review* 51.
- Judith Brett (2003) *Australian Liberals and the Moral Middle Classes*, Cambridge University Press.
- Helen Brown (2000) ‘The Cult of Individualism in Law School’ 25 *Alternative Law Journal* 279.
- Jude Butcher et al (2003) ‘Teacher Education, Community Service Learning and Student Efficacy for Community Engagement’ 31 *Asia-Pacific Journal of Teacher Education* 109.
- Terry Carney and Peter Hanks (1986) *Australian Social Security Law, Policy and Administration*, Oxford University Press.
- Paul D Carrington and James J Conley (1977) ‘The Alienation of Law Students’ 75 *Michigan Law Review* 888.

- Margaret Castles (2002) 'Adelaide Magistrates Court Legal Advice Clinic' 6 *Newcastle Law Review* 1.
- Jill Chaifetz (1993) 'The Value of Public Service: A Model for Instilling a Pro Bono Ethic in Law School' 45 *Stanford Law Review* 1695.
- John Chesterman (1996) *Poverty, Law and Social Change: the Story of the Fitzroy Legal Service*, Melbourne University Press.
- Ron Cranston (1978) 'Law and Society: A Different Approach to Legal Education' 5 *Monash University Law Review* 54.
- Liz Curran (2004a) 'Innovations in an Australian Clinical Legal Education Program: Students Making a Difference in Generating Positive Change' 6 *International Journal of Clinical Legal Education* 162.
- Liz Curran (2004b) 'Responsive Law Reform Initiatives by Students on Clinical Placement' at La Trobe Law' 7 *Flinders Journal of Law Reform* 287.
- Daryl Dawson (1996) 'The Legal Service Market' 5 *Journal of Judicial Administration* 147.
- Mitchell Dean (1998) 'Administering Asceticism: Reworking the Ethical Life of the Unemployed Citizen' in Mitchell Dean and Barry Hindess (eds), *Governing Australia: Studies in Contemporary Rationalities of Government*, Cambridge University Press.
- Judith Dickson (2003) 'Teaching about Justice as Well as Law' 28 *Alternative Law Journal* 18.
- Judith Dickson (2004a) '25 Years of Clinical Legal Education at La Trobe Uni' 29 *Alternative Law Journal* 41.
- Judith Dickson (2004b) 'The Role of Clinic in Linking Law and Justice' 11 *E Law: Murdoch University Electronic Journal of Law* www.murdoch.edu.au/elaw.
- Patrick Emerton (2004) 'Paving the Way for Conviction without Evidence: A Disturbing Trend in Australia's 'Anti-Terrorism' Laws' 4 *Queensland University of Technology Law and Justice Journal* 129.
- Howard S Erlanger and Douglas A Klegon (1978) 'Socialization Effects of Professional School: The Law School Experience and Student Orientation to Public Interest Concerns' 13 *Law and Society Review* 12.
- Adrian Evans (1999) 'Client Group Activism and Student Moral Development in Clinical Legal Education' 10 *Legal Education Review* 179.
- Adrian Evans (2001a) 'Lawyers' Perceptions of Their Values: An Empirical Assessment of Monash University Graduates in Law 1980-1998' 12 *Legal Education Review* 209.
- Adrian Evans (2001b) 'Efficacy Beyond Reasonable Doubt?' 19 *Law in Context* 89.
- Adrian Evans and Josephine Palermo (2002) 'Australian Law Students' Perceptions of Their Values: Interim Results in the First Year — 2001 — of a Three-year Empirical Assessment' 5 *Legal Ethics* 103.
- Adrian Evans and Josephine Palermo (2005) 'Zero Impact: Are Lawyers' Values Affected by Law School?' 8 *Legal Ethics* 240.
- Michel Foucault (1997) *Discipline and Punish*, Penguin.
- Peter Gabel and Paul Harris (1982) 'Building Power and Breaking Images: Critical Legal Theory and the Practice of Law' 11 *New York University Review of Law and Social Change* 369.
- Rachel Gibson et al (2005) 'Introduction' in Rachel Gibson et al (eds), *Australian Social Attitudes: The First Report*, University of New South Wales Press.
- Jeff Giddings (1999a) 'A Circle Game: Issues in Australian Clinical Legal Education' 10 *Legal Education Review* 33.

- Jeff Giddings (1999b) 'Using Clinical Methods to Teach Alternative Dispute Resolution: Developments at Griffith University' 10 *Australasian Dispute Resolution Journal* 206.
- Jeff Giddings (2000) 'Why Should Lawyers be Different? Professional Placements in Legal Education' 4 *International Journal of Practical Experience in Professional Education* 1.
- Jeff Giddings (2003) 'Clinical Legal Education in Australia: A Historical Perspective' 3 *International Journal of Clinical Legal Education* 7.
- Phyllis Goldfarb (1992) 'Beyond Cut Flowers: Developing a Clinical Perspective on Critical Legal Theory' 43 *Hastings Law Journal* 717.
- Andrew Goldsmith (1995) 'Warning: Law School Can Endanger Your Health!' 21 *Monash University Law Review* 272.
- Robert Granfield (1992) *Making Elite Lawyers: Visions of Law at Harvard and Beyond*, Routledge.
- Stephen C Hallpern (1982) 'On Politics and Pathology of Legal Education (or, Whatever Happened to that Blindfolded Lady with the Scales?)' 32 *Journal of Legal Education* 383.
- Elizabeth Handsley (2005) 'Law School Lemonade: Or Can You Turn External Pressures into Educational Advantages?' 14 *Griffith Law Review* 108.
- Jenny Hocking (1997) *Lionel Murphy: A Political Biography*, Cambridge University Press.
- Ross Hyams et al (1997) *Practical Legal Skills*, Oxford University Press.
- Dean Jaensch (1994) *The Liberals, Allen & Unwin*.
- Richard Johnstone and Sumitra Vignaendra (2003) *Learning Outcomes and Curriculum Development in Law: A Report Commissioned by the Australian Universities Teaching Committee*, Department of Education, Science and Training.
- John T Jost et al (2003) 'Political Conservatism as Motivated Social Cognition' 129 *Psychological Bulletin* 339.
- Orit Kamir (2005) 'Why 'Law-and-Film' and What Does it Actually Mean? A Perspective' 19 *Continuum: Journal Media & Cultural Studies* 255.
- Duncan Kennedy (1983) *Legal Education and the Reproduction of Hierarchy: A Polemic against the System*, Duncan Kennedy.
- Mary Anne Kenny and Anna Copeland (2000) 'Clinical Legal Education and Refugee Cases: Teaching Law Students about Human Rights' 25 *Alternative Law Journal* 252.
- Mary Anne Kenny et al (2004) 'Looking at You Looking at Me Looking at You: Learning Through Reflection in a Law School Clinic' 11 *E Law: Murdoch University Electronic Journal of Law* www.murdoch.edu.au/elaw.
- Mary Keyes and Richard Johnstone (2004) 'Changing Legal Education: Rhetoric, Reality and Prospects for the Future' 26 *Sydney Law Review* 537.
- Kingsford Legal Centre (2003) *Annual Report*, University of New South Wales.
- Kingsford Legal Centre (2004) *Annual Report*, University of New South Wales.
- Kingsford Legal Centre (2005) *Clinical Legal Education Guide 2005–2006* Faculty of Law, University of New South Wales.
- Michael Kirby (2004) 'National Security: Proportionality, Restraint and Commonsense' 13 *Res Publica* 1.
- Ainslie Lamb and John Goldring (1996) 'Professional Placement Programs in Undergraduate Law Courses' 14 *Journal of Professional Legal Education* 109.
- Kathy Mack (1998) 'Integrating Procedure, ADR and Skills: New Teaching and Learning for a New Dispute Resolution Processes' 9 *Legal Education Review* 83.
- Marion Maddox (2001) *For God and Country: Religious Dynamics in Australian Federal Politics*, Department of the Parliamentary Library.

- Marion Maddox (2005) *God Under Howard: The Rise of the Religious Right in Australian Politics*, Allen & Unwin.
- Sally Maresh (1997) 'The Impact of Clinical Legal Education on the Decisions of Law Students to Practice Public Interest Law' in Jeremy Cooper and Louise G Trubek (eds), *Educating for Justice: Social Values and Legal Education*, Ashgate.
- Richard D Marsico (1995) 'Working for Social Change and Preserving Client Autonomy: Is there a Role for "Facilitative" Lawyering?' 1 *Clinical Law Review* 639.
- Les A McCrimmon (2003-2004) 'Mandating a Culture of Service: Pro Bono in the Law School Curriculum' 14 *Legal Education Review* 53.
- Philip Mendes (2005) 'Welfare Reform and Mutual Obligations' in Chris Aulich and Roger Wettenhall (eds), *Howard's Second and Third Governments: Australian Commonwealth Administration 1998-2004*, University of New South Wales Press.
- Christopher Michaelson (2004) 'Antiterrorism Legislation in Australia: A Proportionate Response to the Terrorist Threat' 28 *Studies in Conflict and Terrorism* 321.
- Rachel F Moran (2003) 'Taking Stock: Women of All Colors in Legal Education' 53 *Journal of Legal Education* 467.
- James Nickolas (2004a) 'Power-Knowledge in Australian Legal Education' 26 *Sydney Law Review* 587.
- James Nickolas (2004b) 'Why has Vocationalism Propagated so Successfully within Australian Law Schools?' 6 *University of Notre Dame Australia Law Review* 41.
- Mary Anne Noone (1997) 'Australian Community Legal Centres — The University Connection' in Jeremy Cooper and Louise G Trubek (eds), *Educating for Justice: Social Values and Legal Education*, Ashgate.
- Christine Parker and Andrew Goldsmith (1998) "'Failed Sociologists" in the Market Place: Law Schools in Australia' 25 *Journal of Law and Society* 33.
- Dennis Pearce et al (1987) *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission*, Commonwealth Tertiary Education Commission.
- Fran Quigley (1995) 'Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics' 2 *Clinical Law Review* 37.
- Gregory Rathjen (1976) 'The Impact of Legal Education on the Beliefs, Attitudes and Values of Law Students' 86 *Tennessee Law Review* 87.
- Michael Robertson (2005) 'Challenges in the Design of Legal Ethics Learning Systems: An Educational Perspective' 8 *Legal Ethics* 22.
- Ysaiah Ross (2001) *Ethics in Law: Lawyers' Responsibility and Accountability in Australia*, Butterworths.
- Doug Rossinow (2002) 'The Revolution is About Our Lives': The New Left's Counterculture' in Peter Braunstein and Michael William Doyle (eds), *Imagine Nation: The American Counterculture of the 1960s and '70s*, Routledge.
- Simon Rice and Graeme Coss (1996) *A Guide to Implementing Clinical Teaching Method in the Law School Curriculum*, Centre for Legal Education.
- Austin Sarat and William L Felstiner (1995) *Divorce Lawyers and Their Clients: Power and Meaning in the Legal Process*, Oxford University Press.
- Marian Sawyer (2003) *The Ethical State? Social Liberalism in Australia*, Melbourne University Press.
- Audrey James Schwartz (1980) 'Law, Lawyers and Law School: Perspectives from the First-Year Class' 30 *Journal of Legal Education* 437.

- Cassandra Sharp (2002) 'Scarlet Letter or Chastity Belt? What Legal Dramas of the Twenty-First Century are "Telling" Law Students About a Career in Law' 5 *Legal Ethics* 90.
- Cassandra Sharp (2004) 'Changing the Channel: What to Do with the Critical Abilities of Law Students as Viewers?' 13 *Griffith Law Review* 185.
- Gwynneth Singleton (2005) 'Issues and Agendas: Howard in Control' in Chris Aulich and Roger Wettenhall (eds), *Howard's Second and Third Governments: Australian Commonwealth Administration 1998–2004*, University of New South Wales Press.
- Simon Smith (1984) 'Clinical Legal Education: The Case of the Springvale Legal Service' in David Neal (ed), *On Tap, Not on Top: Legal Centres in Australian 1972–1982*, Legal Service Bulletin.
- Miranda Stewart (1991) 'Conflict and Connection at Sydney University Law School: Twelve Women Speak of Our Legal Education' 18 *Melbourne University Law Review* 826.
- Robert V Stover (1989) *Making It and Breaking It: The Fate of Public Interest Commitment During Law School*, University of Illinois Press.
- Carol Stuen (1995) 'Citizenship Education: Teaching Democracy through Participation' 17 *Educational Practice and Theory* 71.
- Irene Styles and Archie Zariski (2001) 'Law Clinics and the Promotion of Public Interest Lawyering' 19 *Law in Context* 65.
- Kieran Tranter and Lisa Jarvis (2000) 'Clinical Legal Education in a Catholic Law School' 27 *Brief* 9.
- Kieran Tranter (2002) 'Pro-Bono Ethos: Teaching Legal Ethics' 29 *Brief* 12.
- Kieran Tranter (2004) "'Ethical, Ooh, Yeah Ethical is Yeah, What's Right Yeah": A Snapshot of First Year Law Students' Conception of Ethics' 7 *Legal Ethics* 86.
- Lynne Weathered (2003) 'Investigating Innocence: The Emerging Role of Innocence Projects in the Correction of Wrongful Conviction in Australia' 12 *Griffith Law Review* 64.
- David Weisbrot (1990) *Australian Lawyers*, Longman Cheshire.
- Chris White (2005) 'WorkChoices: Removing the Right to Strike' 56 *Journal of Australian Political Economy* 66.
- Archie Zariski (1991) 'Roll over Socrates: Reflection on the Conference on Clinical Legal Education' 9 *Journal of Professional Legal Education* 149.

Television and Film

- James Bridges, Dir, *The Paper Chase*, Twentieth Century Fox, 1973.
- Michael Cordell, Dir, *Street Practice (Part 1)* Australian Broadcasting Corporation, 7 September 2004.
- Michael Cordell, Dir, *Street Practice (Part 2)* Australian Broadcasting Corporation, 14 September 2004.
- Michael Cordell Dir, *Street Practice (Part 3)* Australian Broadcasting Corporation, 21 September 2004.
- Michael Cordell Dir, *Street Practice (Part 4)* Australian Broadcasting Corporation, 28 September 2004.

Internet

- 'Program Summary Reality Bites: *Street Practice*',
www.abc.net.au/tv/guide/netw/200409/highlights/237697.htm.