

# AFTER LAW SCHOOL: A CRITICAL EVALUATION OF PRACTICAL LEGAL TRAINING IN THE AUSTRALIAN CONTEXT

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## ABSTRACT

This paper will critically evaluate the current approach to practical legal training ('PLT') in Australia, particularly with respect to the core curriculum requirements under the *Practical Legal Training Competency Standards for Entry-Level Lawyers*, set by the Law Admissions Consultative Committee. The paper compares the approach to PLT in Australia (with a focus on Western Australia) with two other common law jurisdictions: in England and Wales, where the requirement to complete PLT has been replaced with an examination, and in New Zealand, where PLT focuses on skills-based learning. The paper considers whether modifications to PLT in Australia are warranted, in order to meet the changing needs of the legal profession, and having regard to lessons that can be drawn from experience elsewhere.

## 1 INTRODUCTION

In every jurisdiction in Australia, Practical Legal Training ('PLT') represents the final hurdle for most, if not all, aspiring legal practitioners.<sup>1</sup> PLT emerged, in its modern form in Australia, in the late 20th Century as a means to:

...overcome the inadequacies of articles training by providing training in the essential skills and major areas of practice so as to ensure that a person entering the legal profession can function at a standard of competency which can reasonably be expected of a first-year practitioner.<sup>2</sup>

Based on the authors' experience of PLT at different institutions, both as former students and as current teachers, and considering recent research, it is doubtful that the current form of PLT in Australia achieves this goal.<sup>3</sup>

This article examines the current Australian approach to PLT in the broader context of experience in other jurisdictions, especially in England and Wales, and in New Zealand ('NZ'). It considers whether the current PLT approach is "fit for purpose" in equipping new

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<sup>1</sup> Rob Lilley and Christina Do, 'What should an entry-level lawyer look like in a post-COVID world?' (2022) 1 *Western Australian Law Teachers' Review* 19.

<sup>2</sup> Frank Langley, 'Preparing for the Practice of the Law: Post-Graduate Pre-Admission Training in Australia' (1985) 3(2) *Journal of Professional Legal Education* 81, 82.

<sup>3</sup> Lilley and Do (n 1) 24; Francina Cantatore, Tanya Atwill and Rachael Field, *The Job Readiness of Law Graduates and Entry Level Solicitors in Private Practice* (Final Report, 1 December 2022) 73–8.

law graduates with the necessary skills to achieve success as entry-level legal practitioners. It concludes with some suggestions about changes that could be made to the PLT course structure, to better meet the needs of students and of the legal profession more generally. It builds on previous research about alternative PLT models that could be adopted.<sup>4</sup>

## 2 PRACTICAL LEGAL TRAINING IN AUSTRALIA: THE VIEW FROM THE WEST

Western Australia (WA) was late in adopting PLT as a pathway to admission for new legal practitioners. Until the end of 2010, aspiring practitioners completed an ‘Articles Training Program’ conducted by the Legal Practice Board of Western Australia (‘LPBWA’), in conjunction with a period of supervised work as an articled clerk.<sup>5</sup> In contrast, other states such as New South Wales (‘NSW’) and South Australia (‘SA’) commenced PLT courses in the 1970s which progressively became the sole pathway to practice.<sup>6</sup> Numerous PLT courses are now available in Australia, delivered by both university and non-university providers.

All PLT providers in Australia comply with the core curriculum requirements set by the Law Admissions Consultative Committee (‘LACC’) in its *Practical Legal Training Competency Standards for Entry-Level Lawyers* (‘LACC Standards’).<sup>7</sup> While the LPBWA voluntarily adopted the *LACC Standards* some time ago, they now have legislative effect through the adoption of the *Legal Profession Uniform Law* and its subsidiary legislation by WA in 2022. The *LACC Standards* are incorporated into Schedule 2 of the *Legal Profession Uniform Admission Rules 2015* (‘Admission Rules’).<sup>8</sup>

Under the *LACC Standards*, PLT students must complete training in 4 skills areas (Lawyers Skills, Problem Solving, Work Management and Business Skills, and Trust and Office Accounting) as well in three compulsory practice areas (Civil Litigation Practice, Commercial and Corporate Practice, and Property Law Practice).<sup>9</sup> Students must also complete two other units from a number of other optional practice areas (such as Family Law Practice, Criminal Law Practice and Administrative Law Practice) and a period of legal workplace experience (‘LWE’) through a placement, most often, in a legal practice.<sup>10</sup>

The *LACC Standards* are quite specific in their requirements, extending to one or two pages of criteria for most units. An illustrative example is the mandatory Commercial and Corporate Practice unit, which specifies that an entry-level lawyer should be able to conduct commercial transactions such as the sale and purchase of a small business (and identify any

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<sup>4</sup> Lilley and Do (n 1).

<sup>5</sup> Kelli MacMillan, ‘The End of an Era – Western Australia farewells ATP’ (2010) 37(8) *Brief* 35

<sup>6</sup> Lilley and Do (n 1) 21

<sup>7</sup> Law Admissions Consultative Committee (‘LACC’), *Practical Legal Training Competency Standards for Entry-Level Lawyers* (Standards, October 2017) (‘LACC Standards’).

<sup>8</sup> ‘Practical Legal Training Requirements’, *Legal Practice Board of Western Australia* (Web Page) <<https://www.lpbwa.org.au/Becoming-A-Lawyer/Practical-Legal-Training-Requirements>>.

<sup>9</sup> *Legal Profession Uniform Admission Rules 2015* (WA) sch 2 (‘Admission Rules’).

<sup>10</sup> *Ibid*, sch 2, part 2, cl 3.

risks associated with such a transaction), advise on and set up business structures, advise on commercial finance arrangements, and “assess the type of advice needed to assess the revenue implications of standard commercial transactions.” For each of those learning outcomes, there are several so called ‘performance criteria’ that comprise the assessable components of the course.<sup>11</sup>

The ‘admitting authority’<sup>12</sup> of each State and Territory retains its own responsibility for accrediting PLT courses, subject to the *Admission Rules*.<sup>13</sup> In WA, courses approved for new practitioners seeking admission include those offered by the College of Law (Sydney-based) and the Leo Cussen Institute (Melbourne-based), which dominate the national market for PLT and, consequently, tend to be preferred as the PLT providers for the larger national and international law firms. In the case of the College of Law, it also provides PLT courses in New Zealand (since about 2004). The Piddington Society Inc. and Curtin University also provide PLT courses which are only accredited for admission in WA.<sup>14</sup>

Nationally, there are numerous other PLT courses which tend to be locally focused, and which are mostly provided by universities. In some cases, courses are run in conjunction with a local law society such as in South Australia, where the University of Adelaide and the Law Society of SA collaborate in delivering a PLT course.<sup>15</sup> The University of Newcastle offers a unique PLT model, which is integrated with the last 2 years of a student’s undergraduate law studies, and in which the legal workplace experience requirement is managed through the University of Newcastle Legal Centre (a community legal centre operated by the law school).<sup>16</sup>

Despite the attempt to create a nationally consistent approach to PLT, there remain some parochial differences in between jurisdictions as to how graduates may qualify for admission.<sup>17</sup> There are also differences in the way in which PLT courses are accredited. In WA, for instance, PLT course accreditation is governed by the LPBWA, which has its own internal criteria.<sup>18</sup> Thus, accreditation requirements do vary between different jurisdictions (and even within jurisdictions), most notably with respect to completion of a ‘legal workplace experience’ (‘LWE’) component. Under the *LACC Standards*, the minimum LWE

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<sup>11</sup> *Admission Rules* (n 9) sch 2, part 4, cl 14.

<sup>12</sup> Defined in the *LACC Standards* (n 7) as ‘the body responsible in a jurisdiction for approving the content of...PLT courses...’ [2.1]. In WA, the admitting authority is the Legal Practice Board of WA (‘LPBWA’) pursuant to the *Legal Profession Uniform Law Application Act 2022* (WA) s 20.

<sup>13</sup> *Legal Profession Uniform Law* (WA) s 29.

<sup>14</sup> ‘Practical Legal Training Requirements’, *Legal Practice Board of Western Australia* (Web Page) <<https://www.lpbwa.org.au/Becoming-A-Lawyer/Practical-Legal-Training-Requirements>>.

<sup>15</sup> ‘Graduate Diploma in Legal Practice (GDLP)’, *Law Society of South Australia* (Web Page) <<https://www.lawsocietysa.asn.au/gdip>>.

<sup>16</sup> ‘Law in Practice’, *University of Newcastle* (Web Page) <<https://www.newcastle.edu.au/school/law-and-justice/experience/law-in-practice>>.

<sup>17</sup> *LACC Standards* (n 7) 1.

<sup>18</sup> see, eg, LPBWA, *Criteria for Approval of Practical Legal Training Course (PLT)* (1 July 2009).

requirement is 15 days, which has been adopted as the requirement in SA.<sup>19</sup> In WA and NSW<sup>20</sup>, a more onerous LWE requirement of 75 days is imposed in most cases. There are, however, variations to the LWE component, even within a single jurisdiction. For instance, in WA, if the student undertakes their LWE in the John Curtin Law Clinic (part of Curtin Law School), the requirement is reduced from 75 to 40 days. Furthermore, in the Australian Capital Territory, Victoria and WA, the College of Law offers additional courses of study (for an additional fee) whereby students can reduce or completely bypass the requirement to undertake a period of LWE.<sup>21</sup>

### 3 THE EXPERIENCE IN ENGLAND AND WALES

It is noteworthy that over the past decade, the legal profession in England and Wales has undertaken a major review (the Legal Education and Training Review – ‘LETR’) of its system of legal education and training, resulting in the abandonment of the PLT approach adopted in the 1980s and 1990s (the Legal Practice Course – ‘LPC’), and the introduction of a new centralised examination in its place (for solicitors, this is the Solicitors Qualifying Examination – ‘SQE’).<sup>22</sup> Some of the criticisms noted in the LETR were that the generalist curriculum of the LPC lacked utility in an increasingly specialised profession, the inconsistency of standards between different LPC providers, the lack of flexibility in course delivery, and the high costs of the LPC.<sup>23</sup> These criticisms resonate in the context of the Australian approach to PLT.

In England and Wales, the Solicitors Regulatory Authority (‘SRA’) describes the new pathway to legal practice for a new solicitor as follows:

- have a degree in any subject (or equivalent qualification or work experience);
- pass both SQE assessments - SQE1 focuses on functioning legal knowledge and SQE2 on practical legal skills and knowledge;
- have two years' Qualifying Work Experience; and
- meet the SRA's character and suitability requirements.<sup>24</sup>

As can be seen, this involves a substantial departure from the Australian pathway to legal practice for a new practitioner, with the SRA primarily focused on the examination

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<sup>19</sup> ‘Placement and CPD’, *Law Society of South Australia* (Web Page) <<https://www.lawsocietysa.asn.au/gdip>>.

<sup>20</sup> ‘Practical Legal Training’, *Law Society of New South Wales* (Web Page) <<https://www.lawsociety.com.au/practical-legal-training>>.

<sup>21</sup> ‘Work Experience’, *College of Law* (Web Page) <<https://www.collaw.edu.au/learn-with-us/our-programs/practical-legal-training-programs/work-experience>>.

<sup>22</sup> Jack Burke and Hugh Zillmann, ‘Creating a Gold Standard for Practical Legal Training in Common Law Countries’, (2018) 5(1) *Journal of International and Comparative Law* 9.

<sup>23</sup> *Ibid*, 12.

<sup>24</sup> ‘What is the SQE?’, *Solicitors Regulation Authority* (Web Page) <<https://sqa.sra.org.uk/about-sqa/what-is-the-sqa>>.

requirement and the completion of two years of legal workplace experience, rather than whether the practitioner has completed a degree in law and a formal practical legal training course (as is the case in Australia).

The website of the Solicitors Regulation Authority indicates that the legal skills assessment (Solicitors Qualification Exam Part 2 – ‘SQE2’) involves rigorous testing of various skills over a number of days, covering multiple practice areas.<sup>25</sup> Some assessments are oral, whilst others involve the completion of written tasks. The oral assessments are conducted over two half days and cover a mix of advocacy (civil and criminal) as well as interviewing and note taking tasks. Written assessments (conducted over an additional three half days) cover case and matter analysis, legal research, legal writing and legal drafting. Testing covers multiple areas of law: criminal, contract, tort, land law, wills and estates, and business organisations. Questions may also require some knowledge of taxation, and some questions will also raise ethical and professional conduct issues, which students are expected to identify and address.

#### 4 NEW ZEALAND: THE PROFESSIONAL LEGAL STUDIES COURSE

In NZ, law graduates who intend to practice law must first complete the Professional Legal Studies course (colloquially known as ‘Profs’, which is how it will be referred to in this article). Profs is a 13-week full-time (or equivalent) course governed by the NZ Council of Legal Education (‘NZCLE’), which is a statutory body established in 1930 and continued under the *Lawyers and Conveyancers Act 2006* (NZ).<sup>26</sup>

The Profs course is currently offered by the Institute of Professional Legal Studies (which was created under legislation as a wholly owned subsidiary of the NZCLE) and the NZ branch of the College of Law. As with many Australian PLT providers, flexible options are available for students who require a part-time study load or need to attend workshops online or outside of normal business hours.<sup>27</sup>

The Profs course focuses on practical skills that are relevant to legal practice but are not typically taught within an undergraduate law degree. The course content is prescribed by regulations<sup>28</sup> and includes professional conduct and the following skills:

1. Interviewing
2. Advising

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<sup>25</sup> ‘SQE2 assessment specification’, *Solicitors Regulation Authority* (Web Page)

<<https://sqa.sra.org.uk/exam-arrangements/assessment-information/sqe2-assessment-specification>>.

<sup>26</sup> *Lawyers and Conveyancers Act 2006* (NZ) Part 8. See also ‘Background’, *New Zealand Council of Legal Education* (Web Page) <<https://nzcle.org.nz/background.html>>.

<sup>27</sup> See, eg, ‘Profs – Workshop Schedule’, *College of Law* (Web Page)

<<https://www.collaw.ac.nz/learnwithus/our-programmes/professional-legal-studies-course/workshop-schedule>>.

<sup>28</sup> *Professional Legal Studies Course and Assessment Standards Regulations 2002* (NZ).

3. Fact investigation and analysis
4. Writing
5. Drafting
6. Negotiation
7. Mediation
8. Advocacy
9. Problem-solving
10. Practical legal research and analysis
11. Office and personal management<sup>29</sup>

The core skills must be taught contextually against the background of a simulated legal matter or transaction that might be routinely encountered by entry-level lawyers.<sup>30</sup> This is quite different to the Australian approach, which is organised primarily by area of law as outlined in section 0 above. The benefit of the NZ approach is that each of the required skills is only required to be taught and assessed once, whereas under the Australian model, students tend to be assessed several times on the same skills (especially writing and drafting) within different practice areas. For instance, ‘advising’ (in some form or another) appears as an assessable performance criterium eight times across the three compulsory practice areas alone, and 19 times total across the *LACC Standards*. In our experience, this results in pointless overassessment of certain skills across several practice areas at the expense of others.

That said, however, the NZ branch of the College of Law does organise its course along practice area lines, offering six compulsory subjects (being Property Practice, Commercial Practice, Civil Litigation Practice, Interviewing and Advising, Negotiation and Mediation, and Advocacy) and one elective (from Family Law, Criminal Law, In-house Practice, and Corporate Practice).<sup>31</sup> The reason for this may have simply come down to ease of conversion from the College of Law’s Australian PLT course, which is structured predominantly around practice areas rather than skills.

Another major difference between the NZ and Australian approaches is that, in NZ, there is no requirement for graduates to undertake a period of LWE prior to admission. More on this later.

## 5 THE MOVEMENT FOR CHANGE

It is understood that the Council of Australian Law Deans has initiated a reconsideration of the adequacy of legal education in Australia (including both the Priestley 11 requirements and the *LACC Standards*) in preparing law graduates for professional

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<sup>29</sup> Ibid r 2.1.

<sup>30</sup> Ibid r 2.2.

<sup>31</sup> College of Law NZ, *Profs: Course Guide* (Brochure, 7 August 2023) 5, available for download from <<https://www.collaw.ac.nz/learnwithus/our-programmes/professional-legal-studies-course/plsc-handbook>>.

practice. There is also a recently published study of legal practitioners' attitudes which indicates widespread dissatisfaction with the level of "work-readiness" of newly admitted legal practitioners in Queensland.<sup>32</sup> This raises important questions about the pathway of law students to legal practice and especially expectations about the skills and knowledge that entry-level lawyers should possess.

It should be noted that the *LACC Standards* were based on principles developed in the 1990s, they were first released in 2002, and they were later revised in 2015 and 2017.<sup>33</sup> Given the vast changes to the legal profession in the past 30 years, it is questionable whether competency standards first developed so long ago continue to meet the needs of the profession. Taking the compulsory Property Law Practice unit as an example, every newly admitted legal practitioner in Australia must learn how to complete a real property conveyance. Given the diversity of career paths now available to legal practitioners, does such a requirement remain reasonable or relevant in 2023? It may have been the case that in the 1990s, when the *LACC Standards* were under development, conveyancing formed an important component of legal practice in many parts of Australia, so it was important that new practitioners learned conveyancing skills. It is unlikely that this remains the case today, given the rise of licenced conveyancers as a distinct industry (whilst acknowledging, of course, that some legal practitioners do continue to provide conveyancing services). This leads into a broader consideration of how a PLT course should be designed to meet the needs of the profession in the 2020s and beyond.

## 6 CRITICISMS OF PRACTICAL LEGAL TRAINING

A key criticism of the *LACC Standards* is that they focus on specific practice areas, rather than on developing broader skills and knowledge which are relevant to new practitioners in multiple practice areas. Again, to refer to the conveyancing example, consider the relevance of this skill to a new practitioner embarking on a new career as a prosecutor with the Director of Public Prosecutions. Would it be better if, instead, the new practitioner's practical legal training incorporated training on matters of more general relevance such as the use of artificial intelligence, or the role of experts in legal practice (such as forensic scientists, psychologists, and accountants), or even the significance of morality in legal practice? There is no requirement in the *LACC Standards* for any of these matters to be dealt with in a PLT course, although PLT providers have some flexibility to provide additional content to students should they choose to do so. It is noteworthy also that Criminal Law Practice is not one of the compulsory practice areas. It is not clear why it should be compulsory for an Australian PLT student in 2023 to learn how to complete a real property conveyance, but not to learn how to make a simple plea in mitigation in a minor criminal matter before a magistrate.

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<sup>32</sup> Cantatore et al, (n 3).

<sup>33</sup> LACC, *Competency Standards* (n 7) 1

More generally, what is the value to a new practitioner through being forced to develop competencies in practice areas where they will never work in the future? It is at least arguable that these requirements degrade the relevance of PLT training both to the new practitioner and to the profession generally. Also, bear in mind that the new practitioner (or in some cases, their employer) bears the cost of an expensive PLT course (PLT course fees in Australia typically range between \$9,000–\$13,000 for domestic fee-paying students<sup>34</sup>) which in many cases delivers them training about practice areas for which they will have no future need. Would it be preferable for PLT training to instead focus on teaching a new practitioner skills and knowledge in areas that have greater general relevance? Could this lead to a shorter and lower cost course that allows a new practitioner to be better equipped with skills and knowledge to meet the demands of modern legal practice? These are legitimate issues that need to be considered.

Another criticism may be levelled at the requirement for legal workplace experience. Not all law firms are alike. So much is obvious. This inevitably means that the experience of law graduates undertaking their LWE differs, perhaps vastly, from placement to placement. This lack of a consistent training experience was, in fact, one of the criticisms of the articles training program that led to the implementation and adoption of PLT half a century ago.<sup>35</sup>

The LWE requirement also potentially reinforces inequity and nepotism within the profession: students whose parents or close relatives are involved in the profession are likely to find it much easier to find a LWE placement than a person without those connections. Our teaching experience suggests that some students find it very difficult to find LWE placements, especially mature age students looking to transition into a legal career but are working full time in a non-legal role, or international or immigrant students who don't have an established local network or work history. It is also not a stretch to imagine a situation where a disabled graduate is 'overlooked' for a LWE placement due to some perceived inconvenience involved with making any necessary workplace adjustments to facilitate a fifteen week work placement.

In New Zealand, as explored above, lawyers are admitted to practice without having to ever set foot in a law firm. A change to introduce mandatory LWE as a precondition to admission in New Zealand was considered and roundly rejected in 2013.<sup>36</sup> Of course, there is nothing to stop law students and graduates from obtaining a job as a paralegal or clerk in a law firm prior to admission, but it is clearly not a necessity—especially when one considers the requirement of a period of supervised legal practice (usually two years full-time) before a solicitor is entitled to practice on their own account.<sup>37</sup>

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<sup>34</sup> By contrast, the cost of the Profs course in New Zealand for a domestic student is about half that price: see, eg, 'Profs – Professional Legal Studies', *College of Law* (Web Page) <<https://www.collaw.ac.nz/>>.

<sup>35</sup> Langley (n 2) 81–2.

<sup>36</sup> Sir Andrew Tipping, *Review of the Professional Legal Studies Course* (Report, August 2013) 1–2, 9

<sup>37</sup> *Legal Profession Uniform Law* (WA) s 49.

Although the implementation of change with respect to PLT in Australia is likely to take a number of years, the commencement of a review is welcome. There are clear indications that both legal academics involved in delivering of PLT course and the profession more generally are dissatisfied with the current PLT approach, especially with respect to the core competencies. Some practitioners have a bleak view, evidenced by a comment made by a senior practitioner to one of the authors recently to the effect that “[PLT is] a waste of time — we all know it takes at least two years before a new lawyer is any good.” While this may be to overstate the issue somewhat, legal educators and LACC need to pay heed to these sentiments. If the current PLT model is not meeting the needs of the profession, then change becomes inevitable.

From the brief analysis in this article, it should be obvious that the *LACC Standards* are in urgent need of reform to cater to modern legal practice. With the changing nature of legal work, increased specialisation, and changes in the way in which legal practice is organised, there is no longer any such thing as a ‘typical’ entry-level lawyer (if there ever was). In such an environment, subject-oriented practical legal training seems pointless, illustrated by the example highlighted in this article that all new lawyers in Australia must still learn how to complete a real property conveyance.

If it is accepted that the purpose of PLT is to provide a bridge between a student's academic legal study of the law in an LLB or JD degree and the commencement of their work as a new legal practitioner, then PLT must inevitably shift towards skills-based training, along the lines adopted in New Zealand, especially if this could result in courses of shorter duration and lower cost to students. Achieving consistency in the approach to the LWE requirement for different Australian jurisdictions should also be considered. Perhaps even adopting the NZ model, which involves no such requirement, may prove to be a better and more equitable approach?

PLT should be focused on filling the ‘skills gap’ between what is studied in a law degree and the requirements of legal practice. Inevitably, this should be oriented towards skills such as legal drafting, advocacy, negotiation, interviews, and mediation. Some focus on ethics and professional responsibility must also be part of PLT. To this mix, perhaps, could be added introductory training in some specialist areas of non-legal knowledge that a legal practitioner may encounter in the future. The use of technology and the rise of artificial intelligence are obvious areas for focus, but consideration could be extended to other fields of knowledge, such as psychology, forensic science, valuations, and accounting.

The departure from the PLT model in England and Wales and the adoption of a model of work experience plus an independent exam is an interesting development and one which deserves more consideration. However, the change to an exam-based approach appears to have been motivated by concerns about barriers to entry to practice, and inconsistencies in the quality of legal education provided to students. It may be the case that through a combination of the number of law schools in Australia, the HECS/FEE-HELP system, and

the independent and rigorous accreditation process for legal training providers in Australia (with each of Australia's eight State and Territory jurisdictions having a role in regulating legal education), the same issues do not arise here as in England and Wales.

These are not easy issues and there is no simple solution. However, it is hoped that with the commencement of a process to review the core PLT competencies, legal educators will increasingly focus on their role in educating future legal professionals and achieve a balance in delivering a sound education in core legal concepts and providing new practitioners with the skills they require to succeed as entry-level lawyers.