TASTE

Meet the Clients

By Cameron Stracher
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The recent arrest of Anderson Kill & Olick paralegal Brian Valery for practicing law without a license raises a number of questions about how the ersatz Fordham graduate could have gotten away with representing corporate clients in complex litigation -- without ever having gone to law school. The more salient question, however, is: Would it have mattered if he had?


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Legal education has been taking a beating recently. This month the Carnegie Foundation for the Advancement of Teaching issued a report criticizing the Socratic case method that dominates law-school teaching. According to the report, it does little to prepare lawyers to work with real clients or to resolve morally complex issues. Several months ago Harvard Law School announced a reform of its first-year curriculum to require classes in "problem solving," among other things. There appears to be an emerging consensus that although law schools may teach students how to "think like a lawyer," they don't really teach them how to *be* a lawyer.

It is hard not to agree. One of the biggest problems with the current state of legal education is its emphasis on books rather than people. By reading about the law rather than engaging in it, students end up with the misperception that lawyers spend most of their time debating the niceties of the Rule Against Perpetuities rather than sorting out the messy, somewhat anarchic version of the truth that judges and courts care about. When they graduate, young lawyers rarely know how to interview clients, advocate for their positions, negotiate a settlement or perform any number of other tasks that lawyers do every day. In short, they are woefully unprepared to be lawyers, despite the outrageous hourly fees charged for their services.

By giving students the false idea that being a lawyer is all about intellectual debate, we also drive the wrong students to law school in the first place. The hordes of English majors who fill our classes might think twice if they knew that economics and mathematics -- with their emphasis on problem-solving -- are the best preparation for a career in law. Flowery prose is seldom valued by an overburdened judiciary.

In addition to misleading students, the current system harms clients who often assume that their lawyers have more experience than they do. The system works for no one except, perhaps, lawyers at the biggest firms who can hire teams of associates to do the legal research that the case method is good at teaching. It should come as no surprise that most members of law-school faculties are big-firm refugees who graduated from elite schools and have little incentive to change the system.

In the good old days, of course, lawyers didn't think they could learn the law through a series of hypotheticals. Instead, like most of the Founding Fathers, they apprenticed themselves to practitioners and learned the skills they needed by doing. The case

method was invented in the late 1800s by Christopher Columbus Langdell, the dean of Harvard Law School. (Harvard Law wasn't even founded until 1817.) Formal licensing requirements followed, and soon the state bars imposed exams upon the newly graduated that reinforced the notion that being a lawyer meant memorizing definitions and rules. Along the way, few bothered to ask if clients were actually well-served by a lawyer who knew the difference between assault and battery but couldn't negotiate a plea bargain for someone who had committed either.

These days, to call law school a "trade school" is considered an insult to the establishment. Professors are firmly entrenched in their intellectual camps and pursue their academic agendas. Faculty members with "real world" experience are rarely hired on that basis alone -- although it is quite common to hire professors who have clerked for judges but never practiced at all. The Carnegie Foundation is to be admired for advocating more clinical education, in which students will have an opportunity to learn some hands-on skills.

But at the moment law-school clinics are short-term experiences. Students engage in limited representations in a specific field of practice, usually with a liberal tilt. (When was the last time, for example, that a law school opened a clinic to help small-business owners deal with claims brought against them under the Americans with Disabilities Act?) A few more clinics will not change the fundamental prejudice against experiential training when the entire system is rigged against it.

If law schools really want to change the way they train young lawyers, they would look to medical schools. The latter require clinical "rotations" in the last two years of a student's education and then demand at least one more year of training after graduation. By the time your doctor is licensed, he has examined hundreds of patients.

While many new lawyers will start out at big firms where they will rarely get to meet a client, most still go to smaller firms where they will meet clients immediately. The state bars profess interest in protecting the public, but none seem to care whether new lawyers can actually do the tasks with which they will soon be confronted.

Of course, law schools do not have the luxury of large teaching hospitals, with a mostly compliant indigent population on which their greenhorns can practice. And lawyers can't perform needle sticks on a corpse, as doctors can (no jokes, please). They are also restricted by the accrediting rules of the American Bar Association, which limit how many clinical hours a student may take.

But law schools can still act. They could team with local practitioners and institutions and demand that their students gain sustained clinical experience -- broadly defined to include anyone needing legal help, not just the usual (nonprofit) suspects. The state bars could refuse to license lawyers until they performed at least one year of postgraduate work, as some other countries require.

Law is not brain surgery. It is a skill that can be acquired through practice and repetition. This is perhaps the most interesting lesson from Brian Valery, the over-ambitious paralegal: He fooled those around him who ought to have known best. In the late 1990s, I litigated against another paralegal who later pleaded no contest to five criminal misdemeanor charges of unlicensed law practice. What struck me about him at the time was how good he was at his job. He blustered, bluffed, threatened and cajoled with the best of them. He knew the law and argued it capably. But then again, he learned his trade the old-fashioned way: He practiced it.

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