LICENSE TO LIVE

BRITTNEY SALINE

With frivolous licensure threatening the fitness community, Brittney Saline investigates how regulation has failed many other industries.

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David G. Spielman

Courtesy of Institute for Justice

Isis Brantley learned ancestral hair braiding as a child. She went on to open her own salon in 1995 in Texas but was arrested two years later for practicing without a state-issued license.

Over, under, twist. Tuck and lock.

Isis Brantley worked quickly, weaving a woman's untamed tresses into an intricate bundle of braids and twists. At her side in her small Dallas, Texas, studio, apprentices practiced their pleats on other clients' heads, learning the art of African braiding.

Also known as ancestral braiding, African braiding dates back more than 5,000 years, when differing styles of braids served as tribal identifiers such as rank, occupation, age and marital status. For many black men and women today, braiding remains an integral part of their cultural identity.

Brantley began braiding as a child, practicing skills learned from her mother on neighbors in a small, impoverished community in southern Dallas. She has made her living braiding since 25, and in 1995, at 36, she opened her own salon.

Her mission isn't just to make people look good; it's to make them feel good, too. In a society in which mainstream fashion showcases smooth strands created by harsh chemical relaxers that tame kinks and curls, Brantley helps her clients love their locks.

"We heal through hair by teaching them to love their hair," she said, "and teaching kids to have a higher self-esteem by embracing what they naturally have, what God has naturally blessed them with."

Then she got arrested.

The date was Oct. 13, 1997, a Monday. Two women entered her store, inquiring about a consultation. After a few moments, one of them reached into her jacket pocket and pulled out a badge, telling Brantley she was under arrest for braiding hair without a license.

"What about my children?" Brantley asked, in shock.

"I'll give you time to call," the officer said.

By the time Brantley had coordinated after-school care for her five young children, five more officers—uniformed—had arrived. The undercover officer with the badge pulled out a pair of handcuffs.

"I thought, 'Whoa, I am going to jail for real,'" Brantley recounted.

At the time, braiding hair in Texas without a state-issued cosmetology license constituted a criminal offense. Though braiders use only their hands and no chemicals or dyes, becoming a legal braider required 1,500 hours of cosmetology training, which doesn't include braiding instruction. Regulation continues to this day, with 24 states requiring braiders to become licensed as cosmetologists or hairstylists as of July 2014.

The officers cuffed Brantley in front of her clients and students, led her outside and drove her downtown, where she spent the next 24 hours incarcerated.

"They fingerprinted me and threw me in jail with a bunch of criminals," she said.

Regulation Nation

Imagine a world in which CrossFit affiliate owners could be arrested or fined a hefty sum for teaching the air squat without government permission. The concept is not too far removed from reality.

On March 26, 2014, legislation requiring licensing of personal fitness trainers went into effect in Washington, D.C., with the Omnibus Health Regulation Amendment Act. With nine occupations addressed in the law, the legislation holds personal and athletic trainers accountable to a to-be-determined set of government-mandated licensing fees and standards of practice, potentially overseen by the D.C. Department of Health's Physical Therapy Board. Enforcement of the law is currently on hold as officials rework many of the details.

Though similar legislation introduced in nine other states failed to pass, longstanding efforts by lobbying organizations, including the American College of Sports Medicine and the National Strength and Conditioning Association, indicate that the fight is yet in its first rounds.

Occupational regulation finds its roots as far back as 1780 B.C., when fees for medical services and punishments for malpractice were determined by the Babylonian Code of Hammurabi, the law code of ancient Mesopotamia. In early 16th-century England, Henry VIII founded the Royal College of Physicians and Surgeons, granting the authority to license physicians to the state and the church. Physician licensing began in the United States in 1639, and in 1888 states were given the authority to grant licenses to protect the health, welfare or safety of citizens in the Supreme Court Case Dent v. West Virginia.

As time went on, regulation expanded to industries outside the medical field, beginning with legal and financial services. Between the early 1950s and the 1980s, the percentage of U.S. workers in occupations governed by licensing laws grew from less than 5 percent to nearly 18 percent. By 2008, that number had ballooned to 29 percent, according to the Journal of Labor Economics.

While superfluous licensing laws might bring the public a comfortable promise of quality, the illusion of guaranteed security comes at the cost of quality, entrepreneurship and a free, competitive market.

Today, occupational regulation in the U.S. appears in three forms: registration, certification and licensure. Licensure is the most restrictive of the three—practicing a regulated occupation in exchange for compensation without meeting government standards is illegal. Punishments vary by occupation and state, ranging from fines of several thousand dollars to jail time.

In the 2006 regulation article "A License for Protection," Morris Kleiner, professor at the University of Minnesota Humphrey School of Public Affairs, wrote, "The publicly stated rationale behind licensing was to provide public protection at a time when occupational standards did not exist or were not particularly strict, and information on individuals and their businesses was difficult to obtain."

But does licensing always guarantee high-quality service? Kleiner didn't think so.

"Evidence of consumer benefits is scarce," he continued. "For example, malpractice insurance premiums for pastoral counselors, marriage and family therapists, and professional counselors—who are licensed only in some states—show no difference for individuals of the same age and experience."

A 1990 Federal Trade Commission report found that "occupational licensing frequently increases prices and imposes substantial costs on consumers. At the same time, many occupational licensing restrictions do not appear to realize the goal of increasing the quality of professionals' services."

Additionally, in 2001, the Canadian Office of Fair Trading compared the results of 15 academic studies that focused on the effect of occupational regulation on dentists, optometrists, pharmacists, lawyers and accountants in the U.S. and Canada, finding an increase in quality among the regulated workers in only two instances.

So, if regulation doesn't necessarily mean higher quality services, what does it mean? Higher prices and fewer choices for the consumer, for one, as well as restricted entry into the field for practitioners and entrepreneurs.

In a 2011 policy paper for the W.E. Upjohn Institute, Kleiner wrote that "several studies have found a number of cases where licensing reduces employment, increases prices but does not result in better services. For example … more stringent occupational licensing of dentists does not lead to improved measured dental outcomes of patients, but is associated with higher prices of certain services, likely because there are fewer dentists."

Perhaps even more confounding than the disconnect between licensing and quality is the range of occupations that are licensed, which borders on the ridiculous. For example, 21 states require auctioneers to be licensed, California licenses upholsterers, and in Louisiana you'd better not try to arrange flowers without the state's permission. All 50 states require hairstylists to be licensed, though the number of training hours required varies considerably from state to state, as do the murky delineations between barber, hairstylist, cosmetologist and esthetician.

President Obama seems to agree that excessive occupational licensing is detrimental to the nation's economic health. In his budget for the 2016 fiscal year, Obama allocated $15 million to study the effects of occupational licensing, seeking "to reduce occupational licensing barriers that keep people from doing the jobs they have the skills to do by putting in place unnecessary training and high fees."

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Entrepreneurship Gone to the Dogs

Grace Granatelli is all too familiar with the restrictions of occupational licensing.

Though she had been practicing for nine years as a certified canine massage therapist in Scottsdale, Arizona, her certification was insufficient to meet the demands of the state, which mandated that a licensed veterinarian conduct the performance of any "manipulation" on an animal.

And so, after practicing for nine years, Granatelli received a cease-and-desist letter from the Arizona State Veterinary Medical Examining Board in October 2013 and was forced to close Pawsitive Touch, a business she said felt more like a calling than a job.

Terry Runion

Grace Granatelli, a certified canine message therapist, was forced to close her 9-year-old dog-massage business after the state of Arizona sent her a cease-and-desist order because she was not a veterinarian.

"It filled me spiritually," she said.

Spending her childhood under the watch of her grandmother, a breeder, Granatelli said her passion for dogs took root before she could walk.

"I was raised where golden retrievers were my siblings," she said. "I have pictures as a baby and I'm kind of in the middle of the pack."

Though she entertained a conventional career in finance for several decades, it wasn't her passion, and so in 2004 she successfully completed a course in canine massage therapy from Equissage, a leading trainer of equine-sports massage therapists.

Stemming from the practice of equine massage, popularized in the 1980s by Jack Meagher—who went on to become the United States Equestrian Olympic Team's first equine massage therapist—canine massage is described by Equissage as "the therapeutic application of hands-on deep tissue techniques to the voluntary muscle system for the purpose of increasing circulation, reducing muscle spasms, relieving tension, enhancing muscle tone, promoting healing and increasing range of motion in all breeds of dogs."

For Granatelli, massaging dogs fulfilled her in a way she never experienced crunching numbers as a financial planner.

"You can see (the dogs) kind of melt," she said. "They look so happy, and their eyes were bright and clear."

She made sure her clients knew she was not a veterinarian, making no claims to offer veterinary services. On her website, she describes canine massage as a companion to veterinary care and advises clients that massage is not a suitable replacement for regular veterinary care.

Yet in September 2013 she received a letter from the board in which she was accused of doing just that: practicing veterinary services, in exchange for compensation, without a license. It's interesting to note that Arizona law does not consider such

Courtesy of Grace Granatelli

Grace Granatelli described her dog-massage business as a calling—not a job. The state or Arizona said she needed to be a veterinarian to provide her services. Arizona has no veterinary schools.

invasive procedures as equine dentistry, including the removal of teeth, requisite of a veterinarian's license.

"It wasn't like I was trying to take business away from (veterinarians)," she said. "I was working within the veterinarian community."

One month after dutifully returning a questionnaire included in the letter and describing the scope of her practice—including details of compensation—she received the cease-and-desist order from the board. For each day she continued to massage dogs, she would risk a fine of US$1,000 and six days behind bars. Additionally, if criminal charges were sought, she could be found guilty of a Class 1 misdemeanor, facing $2,500 in fines and six months in jail.

Her options were to either close her business or invest four years and thousands of dollars in veterinary school, of which Arizona has none. Most veterinary schools don't offer courses in animal massage, anyway.

Granatelli closed her business.

"To take this away from me when I can help (dogs), see them happy and relieved and feed my spirit, it's very difficult," she said, her voice breaking.

For each day she continued to massage dogs, Grace Granatelli would risk a fine of US$1,000 and six days behind bars.

Barbara Gardner, a successful interior designer with nearly a decade of experience, has also run into the barriers to entrepreneurship imposed by occupational licensing.

After retiring from her position as a health-care executive, she turned a lifelong hobby into a business, opening her own interior-design studio, Collins Interiors, in Princeton, New Jersey, in 2006. Over the past eight years, she has built a strong base of clients from New Jersey, New York and Pennsylvania. Specializing in interior-design plans for large residences, her services in refurbishing and accessorizing homes have been well received, and her work has been featured in Sarasota Magazine, SRQ Magazine, The Herald Tribune, Design NJ, Princeton Magazine and New York Spaces Magazine.

One year after launching her business, Gardner opened a second studio in Sarasota, Florida, to where she often traveled to care for her elderly parents. Over three years, she built a solid practice in Sarasota, helping clients create the perfect aesthetic for their homes, from furniture schematics to the art on the walls.

But in 2009, "out of the clear blue sky," she received a letter from the office of the Florida Attorney General. The letter threatened her with a $5,000 fine for practicing interior design without a license and ordered her to remove all terminology describing her as an interior designer from her website.

In 1988, the American Society of Interior Designers had lobbied the Florida Legislature for adoption of an interior-design title act, meaning anyone could practice interior design without a license as long as he or she didn't use the term "interior designer" or "interior design." Six years later, the law was transformed into a practice act: Anyone who charged a dime for so much as recommending a kitchen color scheme without a license would be considered a criminal.

To obtain a license, Gardner would have to invest more than five years in a state-approved interior-design program and complete an apprenticeship under a licensed interior designer.

Gardner, who had practiced for years in states that do not require such a license, was incredulous. Florida, Louisiana and Nevada are the only states that license interior designers.

"I thought, 'Who is gonna hire me? I am their competition,'" she said. "I also felt like that was kind of an insult. I had already built a successful practice."

She also scoffed at the idea of licensing interior designers as a matter of public safety.

"I do not do structural things," she said. "I don't tell a client where to move a wall or how to move a roof line. What I do is art."

She's not the only one who thinks so.

When licensing of interior designers in Colorado was proposed in 1999 by the Colorado Interior Design Coalition, the Colorado Department of Regulatory Agencies "found no evidence of physical or financial harm being caused to Colorado consumers by the unregulated practice of interior designers."

So what's the big deal?

"The message was they're trying to kick people out," Gardner said of licensed designers in Florida. "They don't want competition."

In May 2009, Gardner joined forces with two other interior designers in a lawsuit led by the Institute for Justice, a not-for-profit law firm, against the Florida Board of Architecture and Interior Design. The Institute maintained that the law placed an "unconstitutional prior restraint on truthful commercial speech" that violated their rights to due process and equal protection under the 14th Amendment, which protects citizens' rights to earn an honest living free from unreasonable government interference.

Nine months later, the plaintiffs earned a partial victory when the law was amended in federal district court to allow the unlicensed practice of residential interior design only, leaving the unlicensed practice of commercial interior design a first-degree misdemeanor punishable by up to one year in custody.

Though the institute's appeal for total reform of the law was ultimately dismissed in 2011, it maintained that "interior design regulations drive up prices, limit choices and disproportionately exclude minorities and older mid-career-switchers from working in the field," citing a 2009 study showing that interior-design firms in regulated states earn $7.2 million more than those in unregulated states, beating out the competition by simply excluding them from the practice.

Cartel of Caskets and Chrysanthemums

In a piece titled "Intro to Personal Training Licensure," Russ Greene of CrossFit Inc. wrote that "only participants in the fitness industry have the technical knowledge to regulate the profession, yet all practitioners have private interests that directly conflict with the public interest. What's to prevent a licensing board of fitness professionals from becoming a cartel that crushes competition and maximizes its own profits?"

Louisiana's flower industry has seen just that. Since 1939, aspiring florists in Louisiana have had to pass a written test and a practical exam wherein they are given four hours to demonstrate their floral-arranging skills before a panel of state-licensed florists. Those florists, of course, would create a competitor of any candidate they approved for a license. Though the law was amended in 2010 to require only the written exam, to this day, every Louisiana florist's shop must have a licensed florist employed and on site for at least 32 hours per week.

Monique Chauvin, owner of Mitch's Flowers in New Orleans, has been arranging flowers for nearly 16 years. Her work has been featured in USA Today, the Times-Picayune and New Orleans Magazine.

The practical exam for florists was well known for requiring examinees to produce outdated arrangements using antiquated procedures and tools.

After buying the shop in 1999, she learned the art of balancing different colors, types of flowers and containers, as well as plant care, directly from her predecessor, a licensed florist.

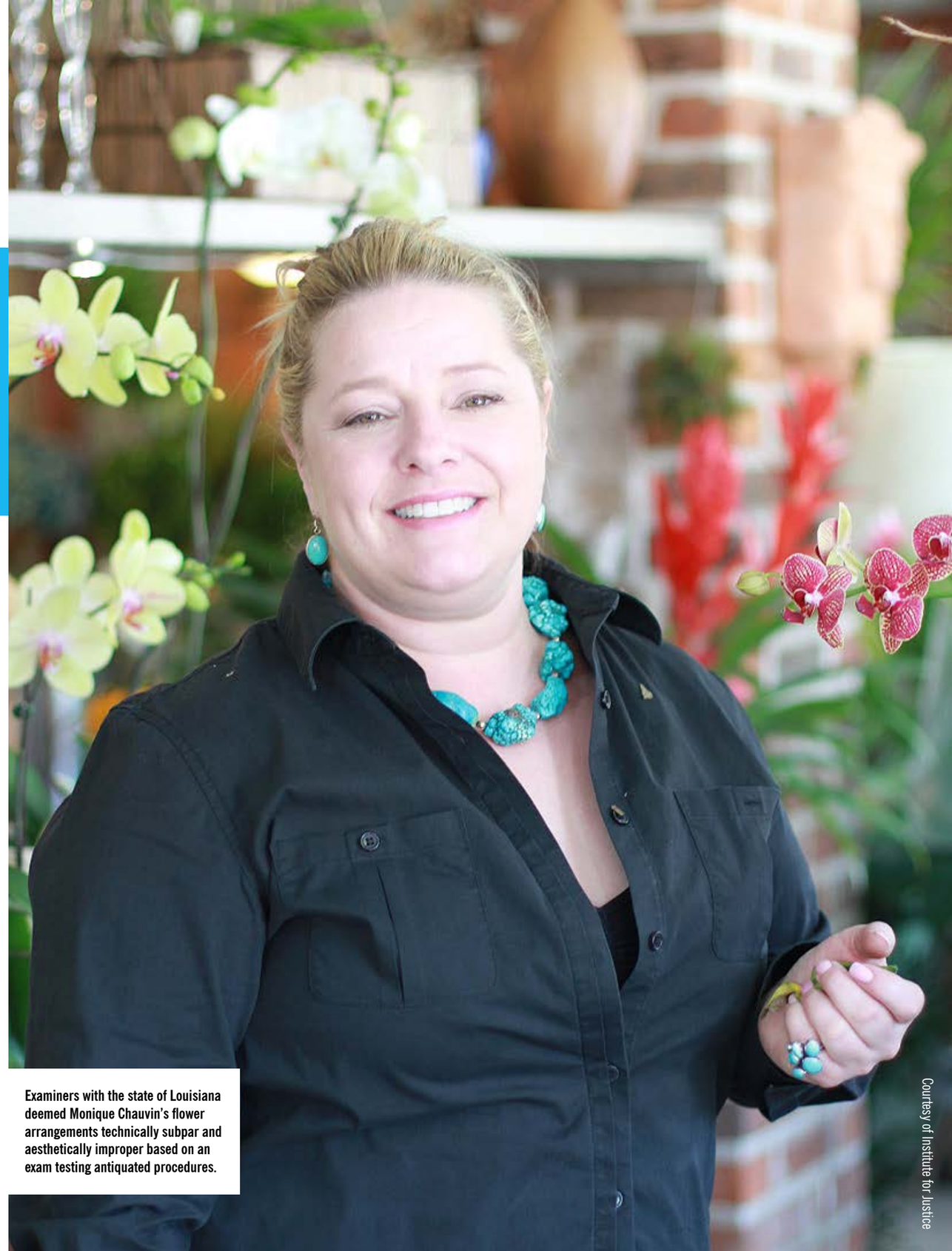
When he left the store, Chauvin hired a replacement with several years of arranging experience. In 2000, the pair set out to take the licensing exam, purchasing hundreds of dollars of state-issued study material and lessons from a florist who specialized in helping people pass the practical exam.

Why would Chauvin and her experienced employee need a specialist's help? The practical exam was well known for requiring examinees to produce outdated arrangements using antiquated procedures and tools.

"In (the study materials) it tells you you have to make a double corsage," Chauvin said, describing a large wrist decoration popular decades ago. "None of us knew what a double corsage was."

"We still make wrist corsages, but a double corsage is real big, and the girls today don't want anything real big," she added.

After paying $150 each to take the exam, the pair showed up at Louisiana State University to answer questions about floral diseases and arrangements. The test also included questions such as the following (the correct answer is "b"):



Examiners with the state of Louisiana deemed Monique Chauvin's flower arrangements technically subpar and aesthetically improper based on an exam testing antiquated procedures.

Courtesy of Institute for Justice

If you have problems or suspect someone of illegally selling cut flowers, you should:

a. call the police

b. call the Louisiana Department of Agriculture

c. investigate to the fullest extent possible

d. none of the above.

Then came the practical exam on which Chauvin spent four hours attempting to piece together arrangements using antiquated machinery such as a steel-pick machine and techniques that hadn't been used in decades, such as wiring bouquets and wreaths.

"(Florists) used to have to wire every single stem, and that is very time-consuming," Chauvin said, comparing wiring to the more modern practice of using floral tape or other plant material to support the stems. "Your flowers are not in water, and so the longevity of (the flowers) is shortened. So the way we make a lot of things today, we try to keep the natural stems if we can."

Though Chauvin's partner, who was older and had more experience with the outdated procedures, passed the exam, the examiners deemed Chauvin's arrangements technically subpar and aesthetically improper, and she failed. She was enraged.

"It's basically like art," she said. "If you like it, you're gonna buy it. If you don't, you're not gonna buy it … to me, the public will decide if you're going to stay in business or not."

"If you like it, you're gonna buy it. If you don't, you're not gonna buy it … to me, the public will decide if you're going to stay in business or not."
—Monique Chauvin

In 2007, Dick M. Carpenter, director of strategic research at the Institute for Justice, did an experiment to determine whether regulation increased the quality of floral arrangements. He asked 18 randomly chosen florists—eight unlicensed florists from Texas and 10 licensed florists from Louisiana—to judge 50 floral arrangements purchased from randomly chosen stores, half from Texas and half from Louisiana. The arrangements were identical in theme and similar in value.

Carpenter wrote in his report, "Florist-judges were given rating sheets and asked to score all 50 arrangements based on the printed criteria, such as proportion, balance, color, form and workmanship. Judges did not know any arrangement's state of origin or even that arrangements had come from different states. Possible total scores for each arrangement ranged from 10 to 50 … The judges' ratings of floral arrangements were essentially the same no matter which state the arrangements came from, regulated Louisiana or unregulated Texas."

After judging the arrangements, the florists discussed the experiment in focus groups. Carpenter reported, "Many in the focus groups thought that instead of producing quality florists, the licensing scheme served two purposes—raising money for the state and shutting out competition."

Adam B. Summers, a policy analyst for Reason Foundation, also said superfluous licensing laws often exist purely to enhance the bottom line of lobbying industries and businesses.

"By getting the government to enact or increase regulations, while generally exempting themselves from the new requirements, current practitioners raise the costs of doing business for anyone else," he wrote in his study "Occupational Licensing: Ranking the States and Exploring Alternatives." "This reduces competition and increases profits."

Not even monks are immune to pervasive monopoly attempts by industry leaders.

For centuries, Benedictine monks have buried their own in simple wooden caskets handmade at the monastery. Saint Joseph Abbey, a monastery in Saint Benedict, Louisiana, has long continued that tradition, burying their dead in caskets made of the same cypress the monastery harvested and sold to support its educational and medical needs.

After Hurricane Katrina devastated the monastery's timber supply in 2005, Deacon Mark Coudrain suggested the monastery buy timber and sell homemade caskets to support itself. In his pre-monastic life, Coudrain had been a cabinet maker, and locals had often inquired about purchasing the caskets.

The monks built a woodshop in an old cafeteria, eventually expanding to a 5,000-square-foot space in a separate building.

David G. Spielman

Saint Joseph Abbey began making and selling caskets to support itself and to minister to the grieving. The state of Louisiana told the monks they would have to operate a funeral home to continue their practices.

With stations for woodcutting, assembly, sanding, finishing and upholstering, Coudrain said casket making serves as a physical symbol of the Benedictine life of devotion.

"The Benedictine lifestyle is prayer and work," he said. "It's sort of an environment of prayer. We all pray for the people who are going to be in them."

Supplying mourners with caskets directly, he added, has helped the monks to minister to the grief stricken.

"People come in at a very difficult time sometimes to look at the caskets," he said. "In essence, we try to make the casket purchase as simple as possible while being there and helping to share in their grief."

But one month after publicizing Saint Joseph Woodworks in an article appearing in the Archdiocese of New Orleans newspaper, The Clarion Herald, on Dec. 11, 2007, the monastery received a cease-and-desist order from the Louisiana State Board of Embalmers and Funeral Directors.

Unbeknownst to the monks, it was a crime to sell funeral merchandise without a funeral-director's license—even though Louisiana law does not even require caskets for burial.

Unbeknownst to the monks, it was a crime to sell funeral merchandise without a funeral-director's license—even though Louisiana law does not even require caskets for burial. To obtain a license, monks would have to spend one year as apprentices at a funeral home, pass a funeral-industry exam and convert the monastery into a funeral establishment by installing embalming equipment and building a 30-person chapel.

Courtesy of Institute for Justice

Following in her teacher's footsteps, Nivea Earl went on to win a braiding-regulation lawsuit in March 2015 in Arkansas.

"It was quite a shock," Coudrain said. "We had no idea this would be illegal."

It wasn't illegal for the monks to make the caskets or even to sell them out of state—they just couldn't sell caskets in Louisiana without giving the board a cut.

"What was legal was we could sell them to funeral homes, and they could resell them," Coudrain said. "But we could not sell them directly to the public, which was our whole point in being able to minister (to the public)."

The board's latitude regarding sales of caskets to funeral homes for resale is easily understood when you consider how much the monks charged per casket: $1,500-$2,000 compared with the $2,000-$10,000 charged by funeral homes.

For three years, the monks attempted to persuade state legislature to amend the law.

"Each time, it never got off committee," Coudrain said. "What we saw was a very strong lobby."

After being subpoenaed in 2010, Coudrain, along with Abbot Justin Brown, filed suit against the board, citing the Due Process and Privileges Clause of the 14th Amendment to the U.S. Constitution. Meanwhile, the monastery continued to sell caskets, unwilling to halt their ministry to the bereaved.

"At a certain point in the litigation my father died, and I sold my mother a casket," Coudrain said. "We could have been fined and jailed because I sold my mother a casket."

After a federal judge ruled in the monastery's favor, the U.S. District Court for the Eastern District of Louisiana denied the Louisiana Board of Embalmers and Funeral Directors' motion to dismiss the monastery's challenge in 2011. Two years later, Saint Joseph Abbey claimed victory when the U.S. Supreme Court rejected the board's petition to hear the case and overturn the District Court decision.

Red Tape for Decades

In the months after Brantley was arrested for braiding hair without a cosmetology license and an injunction was placed on her salon, she continued to braid from inside her home. But the client base she had cultivated over the past decade slowly tapered off, frightened away by gossip and hearsay spread by Brantley's licensed competitors. As her business dwindled, she lost her apartment and was forced to move in with a family member, her five children in tow.

"My kids literally became homeless," she said, tearing up at the memory. "I felt like I was in captivity, like I had done a hideous crime to someone, and all I wanted to do was feed my babies."

She earned a partial victory when, in 2007, after a decade-long legal battle, the Texas legislature overturned the law requiring braiders to have a cosmetology license and implemented a license specific to braiders.

"What that means is every girl who has been braiding since they were 9 can now braid for money and not be in violation of any regulation laws," she said.

But her fight was not over. Because the new braiding license was written in as a part of the state's barbering statute, Brantley was legally obligated to obtain a barber-instructor's license to teach braiding.

Teaching braiding to the next generation was just as important to Brantley as the practice itself, she said.

"There are so many people in the community braiding, and they want to work," she said. "They are already working informally in their communities. They already have a marketplace. … If we are allowed to use our hands to make an honest living, then women won't be on welfare. Women won't be homeless. This is the only economic upward mobility we have, and that is the beauty and the art of ancestral braiding."

Though she had taught braiding ever since she opened her salon, as her studio, The Institute of Ancestral Braiding, grew in notoriety, Texas officials took notice of her once more. In 2013, she was ordered by the state to get a barber-instructor's license.

To do so, Brantley would have to complete a 1,500-hour curriculum for a barber's license and a 750-hour curriculum for barber instructors, and she would have to pass four exams covering material irrelevant to braiders, such as cutting, shaving, shampooing, bleaching and straightening. Additionally, she would have to convert her studio to a barbering school by spending more than $20,000 to relocate to a 2,000 square-foot space and install 10 workstations with reclining chairs, five sinks, several hooded hair dryers and more. She would even have to place a sign on her storefront advertising her studio as a barbering school.

Again, Brantley sued, bringing the issue to federal court. After a 19-month legal battle, a federal judge in Austin ruled in her favor in January 2015, declaring the law unconstitutional after lawyers for the state failed to find even one example of a barbering school that taught hair-braiding curriculum. She was now free to pass her skills on to the next generation. Three months later, the state of Texas deregulated hair braiding completely with a unanimous vote by the Texas House of Representatives. Nivea Earl, one of Brantley's former students, even went on to win her own braiding-regulation lawsuit in March 2015 in Arkansas.

It was a privilege that came at tremendous cost: decades of jumping through hoops and cutting through red tape.

"This has debilitated my life for the last 20 years, not being able to work for myself and pass it down in the way that I would like to," Brantley said. "I had to do it the way I'm doing it now, and that's one little strand of hair at a time." ■

ABOUT THE AUTHOR

Brittney Saline contributes to the CrossFit Journal and CrossFit Games website. She trains at CrossFit St. Paul.