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Andrew W. Jurs

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DISRUPTION TO DISASTER: THE CASE STUDY OF FOR-PROFIT LEGAL EDUCATION IN RIAZ TEJANI'S *LAW MART*

ANDREW W. JURST[†]

INTRODUCTION

Rarely a day goes by without headlines hailing new approaches to legal education, from mild changes to major modifications to the existing order. These new approaches range from minor tweaks to major overhauls and, in recent years, have included innovations such as formative assessment, flipped classrooms, two-year JD programs, tiered licensing, GRE admissions, online education, and refocusing on practice skills or professionalism—to name a few. Our era of disruption is a time to stop and reflect upon an earlier story of legal education experimentation, namely the rise and eventual collapse of for-profit legal education.¹ It is a story outlined in compelling detail in Riaz Tejani's *Law Mart*,² and one which can be consolidated into a single question with many ramifications: how does the for-profit model affect the management and outcomes in postgraduate legal education? It is a perfectly reasonable question, and one I myself asked many years ago while interviewing for a position at a school managed by the InfiLaw

[†] Associate Dean of Academic Affairs and Professor of Law, Drake University Law School; J.D., 2000, University of California, Berkeley, School of Law; B.A., 1997, Stanford University. Thanks to Katie, Clara, and Milo.

¹ Regarding the collapse and closing of two of the three InfiLaw schools, see Anne Ryman, *Arizona Summit Law School Won't Offer Classes This Fall; Students Told To Transfer*, AZCENTRAL (Aug. 19, 2018, 3:52 PM), <https://www.azcentral.com/story/news/local/arizona-education/2018/08/14/arizona-summit-law-school-wont-offer-classes-fall-2018/988268002/> [<https://perma.cc/7BRF-6MWF>]; Elizabeth Olson, *Unable To Reverse Its Fortunes and Now Unlicensed, Charlotte School of Law Closes*, N.Y. TIMES, Aug. 16, 2017, at B3. The third school, the Florida Coastal School of Law, had been found to be out of compliance with ABA accreditation standards but remained in operation. Lorelei Laird, *Florida Coastal Still out of Compliance with Accreditation Standards, ABA Legal Ed Council Says*, A.B.A. J. (Sept. 4, 2018, 3:13 PM), http://www.abajournal.com/news/article/florida_coastal_is_still_out_of_compliance_aba_legal_ed_council_says [<https://perma.cc/5HXH-BL84>].

² See generally RIAZ TEJANI, *LAW MART* (2017).

System.³ As I slowly came to learn, and as Tejani makes clear in his work, the answer to the question depends largely on who you ask. That does not mean, however, that there is not an answer.

Tejani's analysis of for-profit legal education offers a cautionary lesson as we approach contemporary proposals for major modifications to legal education. That lesson involved the failure of the ABA to appropriately regulate innovations in legal education to protect students, faculty members, and the public at large.

Tejani is well-positioned to assess these issues. He was a professor at Arizona Summit School of Law, an InfiLaw-managed for-profit law school, from 2011 to 2014. His analysis rings true to me, as I also taught at a different InfiLaw-managed school—Florida Coastal School of Law—for two years from 2009 to 2011.⁴ For those not familiar with this corner of the legal education world, it may come as a surprise how the for-profit model corrodes management practices of the schools in question. I count three cascading effects of the for-profit model in management. First, the for-profit model permeates the structure of the schools to the core, affecting their location, their size, and their faculty hiring practices. Second, since the schools are structured to develop profits, this prerogative inevitably leads to a decline in true faculty governance as business concerns trump educational and pedagogical considerations. Finally, the business structure and lack of faculty governance leads to very poor outcomes for students who attend these schools, badly serving those students and the clients they may eventually represent. Most insidious of all, after management's decisions invariably result in terrible student outcomes, management may cast the blame on the students themselves, as at Tejani's school.⁵

Tejani's work describes the management practices, the lack of faculty governance, and the poor student outcomes at for-profit schools and ascribes them to a fundamental theoretical mistake: that neoliberal economic theories in this sphere lead to systematic breakdown through the conscious separation of risk and reward.

³ InfiLaw is a company which serves as the management hub for (formerly) three for-profit law schools, two of which have closed in recent years. *See supra* note 1 and accompanying text. InfiLaw is owned by Sterling Partners, a private equity fund from Chicago. *See Portfolio*, STERLING PARTNERS, <http://privateequity.sterlingpartners.com/#portfolio> [https://perma.cc/4VSW-EMV6] (last visited Dec. 26, 2020).

⁴ I interviewed for a position at Florida Coastal School of Law in October and November 2008 and worked there from July 2009 to June 2011. However, I have not met nor conversed with Tejani, nor did our employment dates coincide.

⁵ For more on this, see *infra* Part III.

By exposing the fallacy of for-profit legal education for what it is, *Law Mart* creates a compelling and absorbing narrative of legal education and the failure of oversight methodologies, and it is a damning indictment not only of the industry but also the accreditors who claim to regulate it. To those who have not considered the for-profit model, who suspect there is no effect, or who are concerned about the ABA enforcement of accreditation standards, I invite you to read Tejani's work. As to both the substance of innovation as well as the failure of regulation, the legal education community ought to consider the implications of this failed experiment on our current era of disruption.

I. THE HISTORY OF THE FOR-PROFIT LEGAL EDUCATION MARKET

InfiLaw's Arizona Summit Law School and Charlotte School of Law have both closed in recent years, while its third and final school, the Florida Coastal School of Law, remained out of compliance with ABA accreditation standards for many years after the law school crisis.⁶ Meanwhile, non-InfiLaw for-profit schools have had similar problems, as demonstrated by the closing of the Savannah Law School—a branch of Atlanta's John Marshall Law School—and the near-collapse of the Charleston School of Law.⁷ Under these circumstances, one may wonder why for-profit legal education had ever been considered a good idea and why it ever was approved by the ABA.

To answer that question, Tejani begins his book with a discussion of how the ABA was reluctant to accredit for-profit legal education at all. The President of the American Bar Foundation at the time, Bryant Garth, described the reaction to the applications for accreditation from for-profit schools as follows: “[E]verybody in legal education pretty much, including me . . . did

⁶ See Laird, *supra* note 1.

⁷ Tyler Roberts, *Savannah Law School Is Closing After Seven Years*, NAT'L JURIST (Mar. 23, 2018, 10:08 AM), <http://www.nationaljurist.com/national-jurist-magazine/savannah-law-school-closing-after-seven-years> [https://perma.cc/9WCM-7WDR]; Paul Bowers, *For Second Year, Most Charleston School of Law Grads Failed the July Bar Exam*, POST & COURIER (Oct. 29, 2018), https://www.postandcourier.com/news/for-second-year-most-charleston-school-of-law-grads-failed/article_45fcdd56-db7d-11e8-a8bc-2f483d8d1986.html [https://perma.cc/U6R7-RT4J]; Orin Kerr, *Charleston School of Law To Close?*, WASH. POST.: VOLOKH CONSPIRACY (May 7, 2015, 1:29 AM), <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/05/07/charleston-school-of-law-to-close/> [https://perma.cc/P58Y-HVHJ].

not want the for-profits to come. We all thought it would undermine some of the values that we think are fundamental to legal education”⁸ Garth stated that when the for-profits sued in antitrust, the ABA was forced to “capitulate” and accredit these programs, even if they did not wish to do so beforehand.⁹ For Tejani, the capitulation of the ABA was indicative of a laissez-faire approach of “letting the market decide.”¹⁰

Through accreditation, for-profit legal education donned itself in the cloak of disruption as a group of “antielitist” rebels promising innovation in a stodgy world of prestige-obsessed academics.¹¹ Viewed in their best light, the schools promised an innovative environment with new technology in the classroom, new professors with practice experience, and a relentless focus on student preparedness for practice.¹² The schools also promised to reach out to students of color and help remediate the lack of diversity in the legal community.¹³ With those objectives, the ABA could rest assured that the for-profit model would be one of “differentiation” but not wildly inconsistent with the previously existing approach to legal education.¹⁴

Even with these promises, the laissez-faire approach had fundamental flaws from the start. Accreditation of for-profit legal education, to Tejani, is indicative of a larger problem in which neoliberal values of market fundamentalism, deregulation, and value maximization permeate society in areas previously unwilling to embrace those ideologies.¹⁵ However, once the neoliberal approach to legal education is adopted, the values of neoliberalism warp the educational model.

Tejani explains that the for-profit model contains self-destructive attributes that degrade and destabilize the previously established legal education models. The core problem is the “moral hazard” of separating the risk of the endeavor from the profits it generates.¹⁶ Just as mortgage-backed securities destabilized the

⁸ TEJANI, *supra* note 2, at 4 (second alteration in original).

⁹ *Id.*; see generally Andy Portinga, Note, *ABA Accreditation of Law Schools: An Antitrust Analysis*, 29 U. MICH. J.L. REFORM 635 (1996).

¹⁰ TEJANI, *supra* note 2, at 4.

¹¹ *Id.* at 80.

¹² On the issue of innovation, see *id.* at 80; on the issue of practice readiness, see *id.* at 63.

¹³ *Id.* at 16–17.

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 5–7.

¹⁶ *Id.* at 5.

housing market and helped lead to the Great Recession, the moral hazard of profit and risk separation would destabilize for-profit legal education at the InfiLaw schools.

Even before the titanic forces of the Great Recession began to tear apart for-profit legal education, InfiLaw knew that selling a message of profiteering and neoliberalism on its face would not be a successful marketing strategy. In response, Tejani explains, they reacted by creating a facade of culture-based rationales for their model. These “mission pillars” include “serving the underserved, providing student-outcome centered education, and graduating students who are practice-ready.”¹⁷ One can immediately see that these mission pillars directly explain the market differentiation that InfiLaw sought to obtain, and they were marketed as such,¹⁸ but to Tejani their true purpose was more nefarious. The culture, he states, “functioned to hold back community reflection on the moral hazard of for-profit legal education.”¹⁹ So while the mission pillar of “serving the underserved” sought to show *outside* observers the positive results that disruption could bring, it served the *inside* purpose of showing a socially conscious mission to investors.²⁰ However, once investments have been made, the for-profit model, by its very nature, demands “perennial growth.”²¹ The need for profit expansion led to contradictions between actions and explanations, as when the corporation sought new revenue from increasingly vulnerable students but then used the “mission pillars” to remind its personnel that the “mission was ideologically praiseworthy.”²² Similar dynamics affect the other mission pillars of student-outcome-centered education and creating practice-ready graduates.

Maybe, without the Great Recession, this for-profit model could have pattered along without catastrophic consequences, but even before the law school crisis it was clear that major fault lines lay underneath the neoliberal approach to legal education. I can personally attest to the existence of these problems, as my own experiences at an InfiLaw school before the post-recession legal education collapse revealed the irreconcilable cross-purposes inherent in the for-profit model. However, the weaknesses in for-

¹⁷ *Id.* at 62.

¹⁸ *Id.* at 64.

¹⁹ *Id.* at 60.

²⁰ *Id.* at 69.

²¹ *Id.*

²² *Id.* at 71.

profit legal education would be dramatically exposed to all by the reduction in law school applications during the law school crisis of 2012 and beyond.

II. THE “LAW SCHOOL CRISIS” AND THE MANAGEMENT RESPONSE

Very few expected the rapid decline in legal education that occurred in the 2010s, and once it started, no one knew when the decline would end. In the 2010–2011 academic year, 52,448 1L students entered ABA-approved law schools—a record high.²³ By the 2015–2016 academic year, the entering class had fallen to 37,071—nearly a thirty-percent collapse.²⁴ The colossal changes in legal education in these years altered management styles and practices at a great many law schools, but the effect on the InfiLaw schools—as documented by Tejani in the most compelling chapters of his book—demonstrates the fundamental contradictions of their model.

Like most law schools, Arizona Summit, where Tejani was teaching, saw steep declines in applications between 2012 and 2014.²⁵ In the years immediately preceding the downturn, the school's investment prospectus indicated a near-term growth of the student body to over 500 students per year, a number described as a forty percent increase each year and “what investors want to see.”²⁶ To meet the needs of those larger classes, the school made two major decisions with lasting impacts: it hired a cohort of twelve tenure-track and permanent legal research and writing professors in the 2011–2012 academic year, and it signed a ten-year lease for an enhanced location in the Phoenix city center.²⁷ Instead of phenomenal growth, however, the next few years saw a steep downward trend in the legal education market. Declining revenues quickly led to major institutional problems.

²³ AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, ENROLLMENT AND DEGREES AWARDED, 1963–2012 ACADEMIC YEARS, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/enrollment_degrees_awarded.pdf [https://perma.cc/24YZ-RJR5] (last visited Dec. 26, 2020).

²⁴ AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, ABA LAW SCHOOL DATA: CHANGE IN 1L MATRICULANTS, 2016 v. 2015 (Dec. 15, 2016), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2016_v_2015_1l_matriculants.xlsx [https://perma.cc/ANA9-V45M].

²⁵ TEJANI, *supra* note 2, at 105.

²⁶ *Id.* at 106–07.

²⁷ *Id.* at 89.

To understand the scope of the problem, it helps to understand the magnitude of the decline. On the front end, total applications declined from 450 in the 2011 admissions cycle to 262 in 2014.²⁸ Simultaneously, more students who started at Arizona Summit transferred to other schools, with twenty percent leaving at the start of the slide and the number increasing to an unspecified “all-time high” the next year.²⁹ Declining applications and increased transfers from the top of the class quickly altered the composition of the student body. The median LSAT/GPA for entering students had been 148/3.05 in 2011; by 2013, the profile had fallen to 144/2.88.³⁰ Even more troubling, many of the top students transferred to other schools, resulting in a student body with a disproportionate number of at-risk students.³¹ These circumstances challenged the school’s fundamental model.

The administration initially responded with several modest measures. First, to increase the number of students eligible to enroll, the school transformed its Alternative Admissions Model Program for Legal Education (“AAMPLE”) program—a supplementary program initially designed to identify low-score but high-potential students³²—into an “alternative admissions” system.³³ Meanwhile, on the issue of transfer attrition, the school added procedural steps that required potential transfer students to meet with administrators prior to leaving and sometimes prior to applying to transfer,³⁴ then emphasizing the “we took a chance on you” nature of the school.³⁵ Some would even deny letters of recommendation to transfer students.³⁶ Yet by the 2012–2013 academic year, these measures failed to reverse the negative enrollment trends for the school.

²⁸ *Id.* at 105.

²⁹ *Id.* at 101 (discussing the twenty percent figure for the 2011–2012 academic year); *see also id.* at 129 (“all-time high”).

³⁰ *Arizona Summit Law School: Admissions*, L. SCH. TRANSPARENCY, <https://www.lstreports.com/schools/arizonasummit/admissions/> [<https://perma.cc/MM33-3GW9>] (last visited Aug 10, 2020) (detailing statistics for the years 2010 through 2017).

³¹ *See* TEJANI, *supra* note 2, at 101.

³² *Id.* at 50–51, 183.

³³ *Id.* at 51 (explaining that enrollment from AAMPLE rose from eleven percent of that class in 2005 to eighty percent in 2011); *id.* at 55–56 (describing the use of AAMPLE as a way to justify increased admissions and revenue); *id.* at 183 (stating that the law school increased their admission of AAMPLE students over time).

³⁴ *Id.* at 100.

³⁵ *Id.* at 101.

³⁶ *Id.* at 101–02, 168.

Since these more modest measures could not reverse the downward trends at Arizona Summit, the administration took the major—and catastrophic—step of completely overhauling the school's curriculum. Tejani makes clear that the plan—the “Legal Education 2.0” initiative created by McKinsey business consultants—never had the intention of helping students with their educational goals or as future attorneys.³⁷ Instead, the initiative served two different goals, primarily to soothe investors who sensed their capital commitments to the InfiLaw venture were in jeopardy³⁸ and, later, to market the school as different and innovative to prospective students.³⁹ With those purposes, the mechanisms would never be as important as the perception of curricular innovation; however, in essence the plan was to engage in “course integration” by combining first-year law classes in pairs: “torts with civil procedure, contracts with property, and legal writing with criminal law.”⁴⁰

Whether or not these curricular reforms had—or have—merit, the story of the Law 2.0 initiative is instead one about the depths to which InfiLaw management would sink to achieve the goal of its implementation. Since the proposals were business-model-driven, InfiLaw management recognized the need for a veneer of faculty input.⁴¹ So the school created committees to review the proposals, although as Tejani makes clear, these committees were never intended to serve a role of true review but were instead stacked with administration-friendly faculty and “noninstructional staff.”⁴² Meanwhile, as the committees met to discuss proposals, the Dean made clear that immediate implementation would be necessary: “Our public relations department is already chomping at the bit to market this new program”⁴³

What I found remarkable in this part of the story is that, while facing a clear mandate from the corporate management of InfiLaw to pass the Law 2.0 initiative, the faculty repeatedly expressed misgivings about the effect of the proposal on the students.⁴⁴ In response, the Dean of the School made two ominous statements:

³⁷ *Id.* at 112, 132.

³⁸ *Id.*

³⁹ *Id.* at 131.

⁴⁰ *Id.* at 128–30 (emphasis omitted).

⁴¹ *See id.* at 131–32.

⁴² *Id.* at 121, 132.

⁴³ *Id.* at 131 (emphasis omitted).

⁴⁴ *Id.* at 136–38.

first, that even if the faculty voted it down it would be implemented anyway; and second, that the Law 2.0 program was the school's chance "to build a better mousetrap."⁴⁵ Remarkably, in spite of the management's wishes, the faculty voted against the proposal.⁴⁶

Those who believe faculty governance is an important value will be appalled at what happened next. The Dean's initial response was to declare the faculty vote to be an endorsement of the proposal.⁴⁷ Next, committees consisting of nontenured faculty, staff, and academic support counselors "reworked" the Law 2.0 plan, although Tejani makes clear these late-stage changes were "de minimis."⁴⁸ Most insidious of all, management manipulated who would be eligible to vote on the proposal in subsequent meetings by firing one prominent critic of the proposal and hiring several visiting professors close to the Dean.⁴⁹ It should surprise no one to learn that eventually the Law 2.0 initiative passed.⁵⁰

Yet even after the passage of the consultant's plan, InfiLaw would continue to retaliate against those deemed disloyal. At the end of the academic year, two additional critics of the initiative—a married couple—did not have their contracts renewed.⁵¹ Both were tenured at the time.⁵² The message was clear to all remaining faculty: "[P]rofessors felt disheartened that the most vocal among them could be removed for standing up for students."⁵³ The dismissals "meant that the security to write or speak out against popular or executive decisions—even in *designated* spaces for faculty deliberation—was attenuated"⁵⁴

In the final *coup de grâce*, Tejani then notes that shortly after the Law 2.0 initiative, the American Bar Association Section on Legal Education and the Bar sent a site inspection team to his school for a regular review of compliance with ABA standards.⁵⁵

⁴⁵ *Id.* at 138.

⁴⁶ *Id.* at 144.

⁴⁷ *Id.*

⁴⁸ *Id.* at 150.

⁴⁹ *Id.* at 150–51.

⁵⁰ *Id.* at 151.

⁵¹ *Id.* at 157.

⁵² *Id.*

⁵³ *Id.* at 173.

⁵⁴ *Id.*

⁵⁵ *Id.* at 186. At the time of the events in question, the ABA Section of Legal Education and Admission to the Bar required a site visit every seven years. AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, 2013–2014, at 77 (2013),

The timing could not have been any worse for management, occurring only months after the Law 2.0 fight.⁵⁶

ABA standards, familiar to most professors and all administrators of ABA-accredited law schools, mandate certain minimum standards in areas including faculty governance,⁵⁷ academic freedom,⁵⁸ “security of position” for faculty,⁵⁹ admissions standards,⁶⁰ and bar passage rate.⁶¹ Yet even in the face of the Law 2.0 debacle, the site visit team never raised serious questions about the governance style at the school,⁶² confounding Tejani’s perception that the school was “bound for reprimand”⁶³ and frustrating others’ beliefs that the ABA should have done more.⁶⁴ ABA site visit documents are not publicly available, but the fact that the school remained accredited suggests the accuracy of these perceptions—that ABA oversight failed completely.

https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_final_aba_standards_and_rules_of_procedure_for_approval_of_law_schools_body.authcheckdam.pdf [https://perma.cc/HJP7-PYEZ] [hereinafter ABA STANDARDS AND RULES 2013–2014]. Since that time, the Council has modified site visit frequency to every ten years. AM. BAR ASS’N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, 2018–2019, at 52 (2018), https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2018-2019ABASStandardsforApprovalofLawSchools/2018-2019-aba-standards-rules-approval-law-schools-final.pdf [https://perma.cc/XPA7-NH8R].

⁵⁶ The final and deciding vote on the Law 2.0 proposal occurred on February 26, 2013. TEJANI, *supra* note 2, at 151. The ABA site visit to the school occurred September 29 to October 2, 2013. AM. BAR ASS’N, SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, THE CHALLENGES OF LEADERSHIP: 2013–2014 ANNUAL REPORT 29, https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_2014_annual_report.pdf [https://perma.cc/TNM8-ARF5] (last visited Dec. 26, 2020).

⁵⁷ See ABA STANDARDS AND RULES 2013–2014, *supra* note 55, at 13 (Standard 207 required “faculty [to] have a significant role in determining educational policy.”).

⁵⁸ *Id.* at 34 (Standard 405(b) required a law school to “have an established and announced policy with respect to academic freedom and tenure.”).

⁵⁹ *Id.* (Standard 405(b) required a law school to have an established policy on tenure, while 405(c) required clinical faculty to have “a form of security of position reasonably similar to tenure” and 405(d) required “security of position” for legal writing faculty.).

⁶⁰ *Id.* at 37 (Standard 501(a) required law schools to “maintain sound admission policies and practices,” while 501(b) prohibited law schools from admitting applicants “who do not appear capable of satisfactorily completing its educational program and being admitted to the bar.”).

⁶¹ See *id.* at 19–21 (Interpretation 301-6 explained detailed metrics for assessment of bar passage rates, to determine compliance with Standard 301 regarding maintenance of “an educational program that prepares its students for admission to the bar.”).

⁶² TEJANI, *supra* note 2, at 186.

⁶³ *Id.* at 177.

⁶⁴ *Id.* at 186.

As a coda to the story, I will note that the bar passage rate for Arizona Summit continued to drop, as Tejani anticipated it would, from 75.8% in 2010 to 27.6% in 2017.⁶⁵ The ABA, in reaction to a bar passage rate of thirty-three percent in 2016, placed the school on probation in March 2017 for failing to comply with ABA Standards on Admission and Academic Standards.⁶⁶ In May 2018, Arizona Summit's bar passage rate continued its decline, clearly establishing that the school failed to comply with ABA standards, and so the ABA finally revoked the accreditation in June 2018.⁶⁷ InfiLaw responded by filing a lawsuit against the ABA, although that suit was ultimately dismissed in January 2019.⁶⁸

III. IMPLICATIONS

By examining the business practices of the for-profit legal education model under the strain of the post-recession bubble bursting, Tejani explores the insidious effects of profit-driven legal

⁶⁵ *Arizona Summit Law School: Bar Exam Outcomes*, L. SCH. TRANSPARENCY, <https://www.lstreports.com/schools/arizonasummit/bar/> [<https://perma.cc/B4H5-V8GB>] (last visited Aug. 10, 2020) (detailing bar passage rates there between 2008 and 2017).

⁶⁶ Memorandum from Barry A. Currier, Managing Dir. of Accreditation and Legal Educ., Am. Bar Ass'n, to Licensing Auths. for the State of Arizona (Mar. 27, 2017), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/March2017CouncilOpenSessionMaterials/2017_march_public_notice_re_arizona_summit_probation.authcheckdam.pdf [<https://perma.cc/AZW6-KC89>]. See also Anne Ryman, *Arizona Summit Law School in Phoenix Put on Probation for Law Bar-Passage Rates*, AZCENTRAL (Mar. 27, 2017, 4:54 PM), <https://www.azcentral.com/story/news/local/phoenix-education/2017/03/27/arizona-summit-law-school-probation-low-bar-passage-rates/99698686/> [<https://perma.cc/M2M2-FC67>].

⁶⁷ Public Memorandum from Barry A. Currier, Managing Dir. of Accreditation and Legal Educ., Am. Bar Ass'n, to Licensing Auths. for the State of Arizona (June 8, 2018), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/18_june_arizona_summit_public_notice.authcheckdam.pdf [<https://perma.cc/9GXC-PXJK>]. See also Stephanie Francis Ward, *Arizona Summit Loses Accreditation Approval, Which May Be a First for an Operating Law School*, A.B.A. J. (June 11, 2018, 9:30 AM), http://www.abajournal.com/news/article/arizona_summit_loses_accreditation_approval_which_may_be_a_first_for_operat [<https://perma.cc/CH47-ZB8B>].

⁶⁸ Stephanie Francis Ward, *Arizona Summit Sues ABA, 3rd For-Profit InfiLaw School To Do So*, A.B.A. J. (May 24, 2018, 5:17 PM), http://www.abajournal.com/news/article/arizona_summit_sues_aba_3rd_for-profit_infilaw_school_to_do_so [<https://perma.cc/KE3V-STTV>]. The complaint is publicly available. Complaint, *Arizona Summit Law School, LLC v. Am. Bar Ass'n*, No. 18-CV-01580 (D. Ariz. May 24, 2018), http://www.abajournal.com/images/main_images/Arizona_Summit_ABA_complaint.pdf [<https://perma.cc/3G5D-M63C>]. The dismissal is posted on the court's docket. Order Granting Stipulation of Dismissal, *Arizona Summit Law School, LLC v. Am. Bar Ass'n*, No. 18-CV-01580 (D. Ariz. Jan. 15, 2019).

education. In so doing, his exposé should serve as a warning to future “disruptors” in the field.

In legal education, profit motive affects the core structure and setup of the schools operating under this model. Incentive structures will differ greatly among schools imbued with a profit motive when basic choices are made about the schools’ location, size, or faculty hiring practices. Locations for a for-profit law school must be underserved by law schools of similar academic profiles, must have a sufficient number of working adults to consider advanced training, and must serve a legal market of sufficient size to absorb graduates of the new school. Thus, InfiLaw chose to establish or buy schools in large cities—Phoenix, Charlotte, and Jacksonville—without competing law schools nearby,⁶⁹ in states with double-digit population growth,⁷⁰ and in states without lawyer saturation.⁷¹ Similarly, the profit motive affects whom the school will hire and under what terms. Tejani explains that faculty at InfiLaw schools would be split between traditional doctrinal faculty, often hired on the national hiring market, as he was, and members of the local bar as “teaching track” faculty.⁷² Since faculty on the teaching track were not subjected to the same standards of tenure, their positions contributed to what Tejani calls “managed precarity”—a system whereby employees are loyal out of feelings of insecurity rather than out of choice.⁷³

In *Law Mart*, Tejani spends significant time describing the hiring practices of the schools and, to some extent, relates these to

⁶⁹ Of course, Charlotte and Jacksonville had no other law schools. Phoenix did, with Arizona State, but the student profile of A.S.U. indicates it is unlikely to be a direct competitor with Arizona Summit. *Compare Arizona Summit Law School: Admissions*, *supra* note 30 (detailing statistics for the years 2010 through 2019), with *Arizona State University: Admissions*, L. SCH. TRANSPARENCY, <https://www.lstreports.com/schools/asu/admissions/> [<https://perma.cc/TB9W-GRYY>] (last visited Dec. 26, 2020) (detailing statistics for the years 2010 through 2019).

⁷⁰ U.S. CENSUS BUREAU, POPULATION DISTRIBUTION AND CHANGE: 2000 TO 2010 tbl.1 (March 2011), <https://www.census.gov/prod/cen2010/briefs/c2010br-01.pdf> [<https://perma.cc/W5XE-CFUV>].

⁷¹ See AM. BAR ASS’N, ABA NATIONAL LAWYER POPULATION SURVEY: 10-YEAR TREND IN LAWYER POPULATION BY STATE (2015), <https://noticiasmicrojuris.files.wordpress.com/2016/01/national-lawyer-population-by-state-2005-2015.pdf> [<https://perma.cc/G6Y4-8XW3>] (last visited Dec. 26, 2020) (showing thirty-percent or more increases in lawyers in Arizona, Florida, and North Carolina); Matt Leichter, *Lawyers Per Capita By State*, THE LAST GEN X AMERICAN, <https://lawschooltuitionbubble.wordpress.com/original-research-updated/lawyers-per-capita-by-state/> [<https://perma.cc/KUE3-Y4Q2>] (last visited Dec. 26, 2020).

⁷² TEJANI, *supra* note 2, at 39–40, 124–25.

⁷³ *Id.* at 28 (emphasis omitted).

the instability of the for-profit schools, but does not tie these on a fundamental level to choices made at the time of the schools' setup. I suspect this has mainly to do with his employment at Arizona Summit starting near the beginning of the post-recession admissions slide in 2012, but I think it would have been helpful for a deeper review of these earlier foundational matters as a contributing factor to later instability under the stress test of matriculation declines from 2011 to 2015.

The law school bubble bursting forms the core of the book and is where Tejani's work demonstrates its enormous importance. When InfiLaw placed their schools in high-flying regions during the early 2000s, they gambled that those areas would continue those growth patterns. However, the states where InfiLaw schools were located—Arizona, Florida, and North Carolina—were three of the most severely affected states in the country during the Great Recession.⁷⁴ Initially, the response of the InfiLaw schools was similar to other schools, in trying to consider alternative strategies to deal with the changes in the market. However, as applications dramatically declined, the weaknesses of the for-profit model led to a situation striking at the core of faculty governance.

The priority of profits over pedagogy demonstrates the negative effects for-profit can have on faculty governance and instructors' roles not only as instructors but as stewards. The ABA mandates that faculty are to have a primary role in curricular matters, and while that standard has been strengthened since 2012, the Law 2.0 debacle described by Tejani in *Law Mart* violates any standard the ABA could have in the area. InfiLaw management decided that to show market differentiation and to attract applicants, they would institute curricular reform created by management consulting giant McKinsey and Company.⁷⁵ The faculty objected, having serious concerns about the effect of the changes on students, and bravely voted down the changes two

⁷⁴ See Ana Swanson, *They're Some of the Unluckiest Places in America—and May Confirm What's Wrong with the Economy*, WASH. POST (June 23, 2016, 7:00 AM), <https://www.washingtonpost.com/news/wonk/wp/2016/06/23/the-most-unlucky-places-in-america/> [<https://perma.cc/N82A-RVUB>] (citing Florida and Arizona as states with the highest negative impact on employment from the Great Recession); Ronald Brownstein & Scott Bland, *Obama's Key States Are Among the Hardest Hit by Recession*, ATLANTIC (Sept. 30, 2011), <https://www.theatlantic.com/politics/archive/2011/09/obamas-key-states-are-among-the-hardest-hit-by-recession/245948/> [<https://perma.cc/D5QW-P9CW>] (citing Arizona and Florida as two of the four states hit hardest by the recession).

⁷⁵ TEJANI, *supra* note 2, at 132.

separate times.⁷⁶ Yet in response to faculty opposition, management reacted not with humility and introspection but with vindictiveness and manipulation. They fired faculty who spoke out against the change.⁷⁷ They told the faculty that InfiLaw would impose the change whether or not they passed the proposal.⁷⁸ They made clear that votes would continue until passage occurred.⁷⁹ Finally, management manipulated the number of eligible voters by hiring additional voting faculty on temporary contracts.⁸⁰ In the end, Law 2.0 passed.

By tying this narrative to the weaknesses of faculty governance at Arizona Summit and the failures of ABA oversight generally, Tejani serves up a chilling reminder of the importance of these abstract principles for all of legal education. I can find no more damning indictment of ABA oversight than his astonishment that, mere months after the Law 2.0 debacle, ABA inspection teams visited Arizona Summit and *never commented on the issue at all!*⁸¹ Considering the shocking failure of the ABA to intervene, they too must share some of the blame for negative effects continuing after the site visit.

The final effect of for-profit governance of the InfiLaw schools involves the outcomes for the students who enrolled. It cannot surprise anyone to learn that a school more concerned about marketing than sound pedagogy,⁸² about meeting investors' expectations rather than students' needs,⁸³ and about enrollment numbers rather than enrolling students' credentials⁸⁴ would run into major problems in the post-recession legal education collapse. From the high point of 2010–2011, enrollment at Arizona Summit declined 42%, from 450 to 262, while the academic profile changed from a median LSAT/GPA of 148/3.05 to 144/2.88.⁸⁵ The problem with short-sighted admissions policies is their latency period which, by the nature of law school curricula, delays negative outcomes. Since an entering class will usually take three years to

⁷⁶ Regarding the Law 2.0 change, see *supra* notes 37–54 and accompanying text.

⁷⁷ See *supra* notes 49, 51 and accompanying text.

⁷⁸ See *supra* note 45 and accompanying text.

⁷⁹ See *supra* note 49 and accompanying text.

⁸⁰ *Id.*

⁸¹ See *supra* note 55 and accompanying text.

⁸² See *supra* note 39 and accompanying text.

⁸³ See *supra* note 38 and accompanying text.

⁸⁴ See *supra* notes 38–40 and accompanying text.

⁸⁵ TEJANI, *supra* note 2, at 105 (discussing total enrollment); *Arizona Summit Law School: Admissions*, *supra* note 30 (detailing enrollment profile).

complete the program of study, bar results fall in response to altered entrance credentials after several years. This is exactly what happened at Arizona Summit. Starting with a bar pass rate of nearly seventy-six percent in 2010, the pass rate for graduates of Arizona Summit dropped below fifty percent in 2015—exactly three years after the 2012 admissions cycle started the post-recession enrollment collapse.⁸⁶ The the bar exam pass rate fell to the mid-twenties in 2017, and was 20.4% around the time of the accreditation revocation in 2018.⁸⁷ InfiLaw will tell anyone that “ultimate bar pass” is the statistic here that matters, in that all one needs to know is whether a student ever finally passes a bar exam.⁸⁸ This is another self-justifying talking point to obfuscate the truth, which is that the profit motive led the school to admit students who could not pass the bar, and they did not pass the bar.⁸⁹

Tejani’s treatment of the bar pass issue in *Law Mart* could have been greater, although he connects it to the problem of neo-liberal management of education since, in a for-profit educational model, the risk and reward will always be separate—risk for the student, reward for management.⁹⁰ Had the manuscript of *Law*

⁸⁶ *Arizona Summit Law School: Bar Exam Outcomes*, *supra* note 65 (detailing statistics for the years 2008 through 2018).

⁸⁷ Comm. on Examinations, *July 2018 Examination Results*, ARIZ. SUP. CT., <https://www.azcourts.gov/Portals/26/admis/Stats/July2018ArizonaUBESStatisticsfinal20181031.pdf> [<https://perma.cc/L6NA-S5EU>] (last visited Dec. 26, 2020). Post-revocation statistics show continued decline, as the pass rate fell to 10.5% for the July 2019 examination and 3.03% for the February 2020 test. Comm. on Examinations, *July 2019 Examination Results*, ARIZ. SUP. CT., https://www.azcourts.gov/Portals/26/admis/2019/AZUBE_719StatsRevised.pdf [<https://perma.cc/XAK9-C7AL>] (last visited Dec. 26, 2020); Comm. on Examination, *February 2020 Examination Results*, ARIZ. SUP. CT., https://www.azcourts.gov/Portals/26/admis/Stats/AZUBE_220Stats.pdf [<https://perma.cc/8MTU-5FC4>] (last visited Dec. 26, 2020).

⁸⁸ Anne Ryman, *Arizona Summit Law School Has Nation’s Lowest Bar Passage Rate for ‘15 Graduates*, AZCENTRAL (May 21, 2019, 2:56 PM), <https://www.azcentral.com/story/news/local/arizona-education/2018/03/23/arizona-summit-law-school-second-lowest-bar-passage-rates-country/450085002/> [<https://perma.cc/32JS-M588>] (showing InfiLaw employees defending “ultimate bar passage”); Debra Cassens Weiss, *This Law School Had a 30% Bar Pass Rate; Do Lower Standards Presage Troubled Times for Law Grads?*, A.B.A. J. (Oct. 26, 2015, 9:03 AM), http://www.abajournal.com/news/article/this_law_school_had_a_30_bar_pass_rate_is_it_a_sign_of_more_widespread_fail [<https://perma.cc/WK5U-6BXS>] (same).

⁸⁹ Paul Campos discussed the collapse in pass rate three years after low admissions standards in an article published in *The Atlantic*. Paul Campos, *The Law-School Scam Continues*, ATLANTIC (Oct. 23, 2015), <https://www.theatlantic.com/education/archive/2015/10/law-school-scam-getting-worse/412159/> [<https://perma.cc/FV4T-7V4J>].

⁹⁰ TEJANI, *supra* note 2, at 3–6.

Mart been completed a year later than it was, I suspect that he would have spent more time here, mainly because this issue is the one that *finally* resulted in ABA attention: the ABA revoked Summit's accreditation in July 2018.⁹¹ But whether or not the book follows the story to its end, it highlights the disastrous consequences of for-profit management for those least able to afford them.

I will note one final irony, one which leapt off of the page at me when I read it because it seemed to summarize the InfiLaw ethos. In his conclusion, Tejani explains InfiLaw's greatest trick of all: to cast the failure of students to obtain jobs as a matter of "*personal responsibility*" rather than any "structural" forces or "disadvantage" in play.⁹² Having read the first seven chapters of the book, anyone would conclude the "blame the victim" mentality is morally bankrupt and reprehensible. For InfiLaw, however, it is entirely consistent with its neoliberal approach to education—privatized gains from risk shifting to the individual—and explains perfectly why for-profit has no place in legal education.

CONCLUSION

Law Mart is an engaging read about an important story involving the risk and collapse of for-profit legal education. Tying the rise of proprietary education to neoliberal corporate practices, Tejani shows why the schools were structured the way they are and why, within those structures, the seeds of their destruction had already been planted. Anyone who has followed the ups and downs of legal education in the 2010s would be interested in learning about the impact of the recession on these schools.

More importantly, the book also shows why they lasted as long as they did, mainly because of ABA acquiescence. Months after the Law 2.0 debacle, the ABA council had a perfect opportunity to shift management practices of Arizona Summit by threatening sanctions for obvious noncompliance with ABA standards on admissions and faculty governance. Yet the ABA did nothing. Its failure to engage in real oversight made a mockery of the rules, and real people—students, faculty, and the public—got hurt in the process.

As legal education considers the next great wave of innovation and change, we should all keep in mind this lesson, and remain

⁹¹ See *supra* notes 66–67 and accompanying text.

⁹² TEJANI, *supra* note 2, at 206 (emphasis added).

diligent so that it does not occur again. Tejani brought this lesser-known but important story to light and deserves great credit for doing so.