Session 1: Innovation in Legal Services

Summary of Proceedings by Jay T. Conrad

Moderator: Steven W. Bender, Associate Dean for Planning and Strategic Initiatives and Professor, Seattle University School of Law
Panelists: Michael Cherry, Matthew Spencer, Michael Dee, Georgia Woodruff

Abstract: This panel featured two "disrupters" who detailed their experiences innovating in the legal services space. The first panelist spoke about data-driven regulatory reform and the other spoke as an entrepreneur whose product introduces artificial intelligence (AI) into the legal recruiting process. Two additional panelists provided commentary regarding the second panelist's presentation. The panel provided insight on the topics of: (1) the legal regulatory process at large; (2) how a data-driven and feedback-oriented sandbox provides an alternative regulatory process; (3) the legal hiring and recruiting process and (4) how AI allows law firms to consider alternative hiring metrics when assessing candidates and determining the likelihood of a candidate's success at the firm. During the commentary, a client of the platform spoke about his experiences with the platform. An expert in legal hiring who has worked both on the academic side as well as with firms, asked additional questions about the platform. In the Q&A portions of each presentation, the panelists addressed questions from symposium organizers and attendees regrading equity and validity of their proposed "disruptions."

I. Introduction

Moderator Professor Steven W. Bender began the panel with a review of previous symposiums. This panel on innovation in legal services built on panels of symposiums past on the same topic, including having one panelist, Mr. Michael Cherry, returning to expand further on this presentation from the previous year. This year's discussion of innovation in the legal services space focused on the panelists' personal disruptive efforts regarding the use of data to change ingrained processes in each of their fields of expertise. Professor Bender then introduced the panelists, Mr. Cherry and Mr. Spencer, by discussing their backgrounds and what topics they would each be discussing during the session.

II. Innovation in Legal Services

Presenter: Michael Cherry, Chair of the Washington Supreme Court's Practice of Law Board

Michael Cherry began his presentation by highlighting his history of disrupting a variety of industries, including manufacturing, oil and gas, and engineering. His work started back in 1980 when almost all legal work was done by typewriters until expensive computers and word processors were introduced into the legal industry. Mr. Cherry was instrumental in coming up with systems that allowed lawyers to replace those technologies with PCs. He noted that this early disruption was done before he was a lawyer. He also noted that he has not been a lawyer for very long, but has been impactful in his short career. He's tried to focus on how to change how the law is practices with technology.

Mr. Cherry made a disclaimer that although is the Chair of the Practice of Law Board and much of the information he was going to discuss had been presented to the Supreme Court, his presentation consisted

of his own opinions. However, the Practice of Law Board plans to take a proposal to the Supreme Court this year regarding implanting data-drive legal regulation via a legal regulatory lab.

In introducing his presentation on data-driven regulation, Mr. Cherry outlined that he would discuss current legal regulation process, data-driven legal regulation process, and the Legal Services Market would be discussed. He then introduced a Model of Change that he uses in disrupting industries. He said it works for new innovation as well as problem solving. It takes us from what is to what should be. The Model starts with asking "what is," as in what is the current problem or situation. Then, Mr. Cherry said he creates a plan, referring to it as the "action stage." The Model then ends with what should be. Mr. Cherry emphasized that it is important to keep "what should be" forefront in mind during the planning (action stage). He said it is common to jump on "CBCs" – could be causes. Mr. Cherry said that focusing on CBCs can result in solving a symptom and not the root cause of the problem.

Mr. Cherry then moved to discuss the current process of regulatory reform. He said that generally, a new or changed regulation is proposed by learned professionals and stakeholders, but rarely the public. The proposed rules are drafted and commented on, and then formalized. Speaking directly to students who are just joining the field, Mr. Cherry advised that they are entering a conservative (small "c") profession. Mr. Cherry defined conservative as not political, but highly resistant to change. He said the most common thing heard in the legal industry is "that's how we've always done it. You don't understand and that won't work." Mr. Cherry said that the manner in which rules are formalized is an example of that.

Then, Mr. Cherry presented examples of data-based regulatory processes that he has worked on. He started with Washington State's concerns about malpractice insurance. The proposed change was that every lawyer should have malpractice insurance – the "what should be." Professionals, experts, and lawyers (including those who struggle to find cost-effective insurance) were brought together to discuss this problem. The current process is that lawyers should report when they have the insurance (the "what is"). The new proposal was that lawyers should report their level insurance to their clients instead (the "what should be"). This proposal would move the standard from mandatory insurance to a middle ground. The group drafted and commented on the rules before formalizing them. These rules went into effect about one year before this presentation occurred. Mr. Cherry then asked if this change had made any difference.

Looking back to the Model of Change, Mr. Cherry said that the issue with the way the problem was solved was that it was missing feedback as a component of the process. At not time in the example above was it determined how feedback would be measured to see if the rule change had an effect. Specifically, there was no feedback determining on how many lawyers obtained malpractice insurance, how many claims were made against lawyers, or whether the new rules made a difference in the number of people who had to be compensated from funds raised for that purpose. Without thinking about what success meant, and without feedback, a new rule was implemented but there's no way to know if it was effective in its purpose. Mr. Cherry said that if you don't plan your data model for measuring success in advance, then anything becomes success.

Mr. Cherry than introduced a second example. The rules for professional conduct were updated regarding advertising. Again, lawyers, learned professionals, and stakeholders were brought together to discuss the new advertising environments such as social media. They drafted rules, commented, and formalized the rules. This process was the same as the traditional rule making process. The very minor change to the advertising rules took sixty months – that's five years to implement new rules using the traditional model.

Mr. Cherry displayed a Model of Change that incorporated a new addition: a "what is" portion that looks at the "now," in addition to the "what is" potion that looks to the "then" (problem to be solved). Mr. Cherry emphasized that if it takes five years to solve a problem, then the problem doesn't exist anymore

because the environment or situation will have changed. That is why a data-driven regulatory reform model is important. It can be used to address two issues: getting feedback on whether or not the rules changes made actually affect a positive change (or any change at all), and doing this in a much faster way. This concluded the part of Mr. Cherry's presentation on the current legal regulatory process.

Mr. Cherry then discussed the data-driven legal regulation process. He said it borrows from the scientific approach. The basic scientific model is what is used for most scientific studies, including in the medical field and in social sciences. The model begins with a person observing a situation or problem. They then research it and propose a hypothesis for change. That idea is tested with an experiment. The data is analyzed and reported on. This cycle can go on and on. Mr. Cherry said that he personally has been very interested in studies such as what is going on with the COVID-19 vaccines and measuring COVID-19 and the changes in the variants. Most of these papers follow this basic scientific approach.

Mr. Cherry then asks how we adapt this for regulation. Mr. Cherry displayed in his slides a simplified form of a model he has considered for this. Talking through the model, Mr. Cherry said that it starts with questioning the rule. Then, the rule is researched. Then a new rule is drafted, which is essentially the hypothesis. Then the rules makers create an experiment to test the new rule. This is done by looking at the rule in usage to see if the hypothesis is working. If the test is not working, then it should be modified until there is a workable test. Data from the working rule is analyzed for harm and benefit. If there's no harm, the rule can be published. If the rule is not working, then it can be repeated until it working. According to Mr. Cherry, if there is one data point, it's just an incident. If there are two points, a line can be created. If there are two or more points, then there is a model. In doing this, the test of the new rules can be large enough to produce meaningful data. The test and results must also be repeatable. It's best when the published paper in the scientific experiment is tested and repeated by peers for review. For example, if the new rule is being tested in Washington State and also in Utah, then the resulting data should match. This replicates that the change is good.

Mr. Cherry then asks how we would create a sandbox for testing these new rules. He introduces what is being proposed in Washington State. The mode previously presented has been modified to create the sandbox. First, an application for a lab is submitted. Then a board is created to review the lab. If the board approves of the lab, then the Supreme Court will draft an order authorizing that lab participant to operate in Washington under the modifies rules. They provide legal services in the lab, where they are highly monitored. They report the data, which the board reviews. If the reports are okayed, the person continues to operate in the lab until the end of the term. If the reports are not okayed, the lab is stopped or revised. At the end of the term, the participant files a final report. If there is benefit, then a court order would define the ongoing operation. This is the model of a sandbox or a lab. In the blueprint of the lab, that is, the expanded model proposed, each of these steps become its own flow chart of how it operates.

Mr. Cherry warned that if we continue to be too slow in changing rules or in innovating, then we will become effected by what is called "spontaneous deregulation." Mr. Cherry says this is happening now. "Spontaneous deregulation," as a term, is from a Harvard Business Review report that discusses how innovators ignore laws and regulations that appear to preclude the innovator's approach. Existing rules are seen as unwanted holdovers from a bygone era that is not yet ready for the innovator's creations. Laws and regulations need to be changed to reflect the new tech-enabled realities. Mr. Cherry then discussed Grace Hopper, the well-known naval officer (and one of the Navy's first computer programmers) who coined the word "bugs." She is also known for her expression, "it's easier to ask for forgiveness than to get permission," which is used ubiquitously throughout the tech industry to justify disruptive actions or innovations.

Moving to a look at Utah's legal services innovation sandbox, which Mr. Cherry considers to be succeeding at legal services innovation, Mr. Cherry said that most people moving through the sandbox

were lawyers rather than outside entrepreneurs starting businesses. Utah is looking at alternative business structures such as non-lawyer investment law firms, virtual law firms with fee splitting, and online legal services providers. There have been thirty-two applications operating in the sandbox as of February 2022. These applicants have provided over 16,000 legal services (transactions) with over 10,000 unduplicated clients and less than 0.01% complaints – and every one of those complaints has been resolved. Mr. Cherry noted that that is a significant amount of legal work that is being done without harm. He also noted that complaints were being measured and timely addressed. However, thirty-two is still a small number of applicants. Thus, we must be careful in extrapolating too much from the current sandbox; however, so far things seem to be going well.

Mr. Cherry then turned to Washington State's contribution to the legal regulatory sandbox models. There are two models that Washington is "adding to the mix" [sic]. The first one looks at three axes to create a three-dimensional model: the first axis is risk of harm to consumers, which could be low or high; the second axis measures the impact to access to justice, which could be a gap which is unchanged or it could be reduced; finally, the third axis measures the time of greatest risk, which can either be now or in the future. Mr. Cherry explained the third axis through an example of a will being drafted. When the will is drafted, there is very little chance of risk or harm to the consumer because of the legal parameters of the will drafting process. Then, the will probates sometime in the future. That's when there's the greatest chance of risk, because that is when it will be discovered whether it was a "good will" [sic] or not. In terms of the second axis, if the will was drafted online, for example, and made it easier or more affordable for people to get a will, then that would have increased the access to the justice. So, if something is low risk and the risk is likely to occur in the present, and if it reduces the access to justice gap, then it should be proven. If something were high risk to consumers, the risk occurred in the future at an unknown time, and if it does little to reduce the access to justice gap, then it is likely to be rejected from the sandbox. The axes used in the model are not labelled or to scale; they have been adapted from other industries that use this sort of risk model, where the risk is equal to the likelihood times the harm. The legal regulatory sandbox model uses a simplified version of these models: if the likelihood of harm is something that is very unlikely, it is awarded one point; if it is possible, then two points; if it's almost certain, than three points. Measuring the harm, if the harm negligible, then it has one point; if the harm is manageable, then it gets two points; if it is catastrophic, then it gets three points. Thus, something that is very likely to happen and cause catastrophic harm scales to a nine, whereas harm that is very unlikely and negligible scales to one. These models are documented in the *Blueprint for a Legal Regulatory Lab in Washington State* handbook, which is available on the Washington State Bar Association website. Mr. Cherry encouraged symposium attendees to read the handbook and provide feedback on it.

Other jurisdictions are also carving new avenues for legal services. Arizona is not sandboxing, but is aggressively allowing alternative business models to be considered and approved. As mentioned before, Utah is "in the lead" [sic] in terms of sandboxing. British Columbia is making strides in recognition of their indigenous peoples and ensure that any legal reform takes into account the indigenous communities there. Other states considering legal regulatory sandboxes include Florida, who recently rejected it, and California, who is still considering it. Several states are looking at allowing new types of practitioners in the same manner as Washington State's LLLT program (which has been sunsetted). Several states are looking at online legal services and courthouse navigators. New York has an interesting program where social workers appear to be able to give advice in legal situations. These are just a few examples to illustrate that Washington State is not alone, unique, or in the lead in its pursuit of legal regulatory reform – we're just trying to do our own version of it.

Finally, to close out his presentation, Mr. Cherry turned to the legal services market, which he believes lawyers do not look at enough. There's an imbalance in the legal services market in Washington. Right now, there are consumers who want and need legal services but cannot find them at a price that they can or are willing to pay at the time of that need. Mr. Cherry clarified that that is not an income issue, because there are people with very high incomes who cannot find the legal services that they need as well as those

with less economic resources who cannot find the help they need; there are gaps across all income levels. Then, there are services providers who are offering legal services at a price which consumers are unable to pay or that are not available at the time of the consumer's need. This makes a market imbalance, but also an opportunity.

Mr. Cherry called this a "legal services void:" the inability of consumers to obtain legal services in current market across geography, type of legal service needed, availability, and economics. However, this void makes a market that is ripe for disruption. A market is ripe for disruption when consumers don't trust the system, when new technological solutions remain unused, when the product or services are not generally affordable, and when inconvenience of obtaining services is at an all-time high. Mr. Cherry cited *Entrepreneur Magazine* as the source of this definition. According to this definition, the legal services market is ripe for disruption.

The Practice of Law Board mapped the legal services market in Washington State in 2020. This map includes all sizes of firms, limited license practitioners, legal services that are mostly online or technologically driven that fundamentally target lawyers, and the same type of legal services but that target consumers. There is some overlap as some legal services target both lawyers and consumers. There is also legal aid, which is a community which is also moving into technology use in providing services. Breaking this down, in the online legal services sector, which is also the sector most likely to participate in the lab, there are over fifty online legal services providers. About twenty of them offer services primarily to legal providers (for example, Westlaw). About fourteen provide services to legal providers and consumers (such as LegalZoom), and about seventeen provide services primarily to consumers (such a Fair Shake or Hello Divorce). Mr. Cherry said that the online legal services sector continually shocks him because it covers such a wide spectrum of legal matters, and being offered in a timely and cost-effective manner to consumers at the time of need – even on a Sunday morning when other providers aren't available Several different models exist, from referral to a legal provider to full do-it-yourself service. These services are getting positive reviews and venture capital is making substantial investments, even to the point of consolidation in this sector. Mr. Cherry recommended symposium attendees read an article in the *New York Times* called "Scared to Death by Arbitration: Companies Drowning in their Own System." It's the story of how Fair Shake is disrupting the area of adhesion contracts, which are signed with purchased services, and how they are providing arbitration as demanded by those contracts.

These modern companies are also not waiting for regulators. For example, *Upsolve v. James* has been decided in New York. Upsolve provides bankruptcy consultation to people – they are not a law firm, but more like a non-profit agency. In this case, Upsolve asked for a preliminary injunction against the Attorney General in New York (where the AG litigates the unlawful practice of law). Upsolve received the preliminary injunction restraining the AG from taking action against them for unlawful practice of law. Mr. Cherry read this as the court saying that Upsolve has the right to associate with potential clients and have access to the courts. That's a First Amendment freedom of association claim, which the court wasn't keen on, but did uphold that Upsolve has the right of free speech to give legal advice to their clients. The court did not look at this question on the facial validity of New York's UPL [sic] (unlawful practice of law) rules and didn't distinguish between lawyers and non-lawyers. They did say that the issue was a narrow one and that Upsolve had a First Amendment protection to the precise legal advice that Upsolve plans to give to its clients, and in the precise setting of an advisory role before the consumer gets to court. Mr. Cherry said that his reason for bringing this case to the attendee's attention is to show how disruptive legal services providers are not going to wait to be regulated. These disruptive companies are going to go to the courts and make First Amendment and other claims regarding their right to provide legal services. And, they are making good arguments against UPL.

Mr. Cherry then returned to the overview of the legal services providers in Washington State survey. He defined "medium firms" as those with about twenty-one to fifty-one admitted and active practitioners.

There are approximately 1,337 lawyers are employed in Washington State in medium-sized firms. “Large firms” indicates fifty-one or more admitted and active practitioners, and though there are fewer of these all the time due to consolidation, there are still about 2,498 lawyers employed by large firms in Washington State. The bulk of the work is being done in solo and small firms, which have twenty-one or fewer practitioners but account for approximately 13, 585 lawyers in Washington State. About half of limited license legal technicians (LLLT), of which there are only thirty-eight in Washington, work in their own firms or with a partner while the remained work within small firms. Mr. Cherry emphasized that you can’t tell how much work or the impact of the work of each firm based on its size, especially given that some small firms have very specific niches. Mr. Cherry recommended looking to small firms, as they make up the bulk of the Washington State’s legal services provisions, when looking at which regulations to remove to facilitate more legal work being done for the public.

Mr. Cherry then took questions from symposium attendees. Professor Bender started by asking what role law schools and law students play in data-drive re-regulation. Mr. Cherry said students should be thinking about the kind of practice each wants to build and how they would do this kind of innovation. For example, a virtual firm can be much more than just not having a brick-and-mortar operation. It could be a lawyers who do different types of law that each have their own practices, but work together for a client and bill as if they were their own firm. It would look to the client to be one entity, but in the background it would be separate entities doing separate things. But by coming together, they have the right resources to come to bear on the client’s problem. Then, secondly, law students can provide comments on the models presented at the symposium. In particular, there is a need for more diversity of opinions, such as from students and new lawyers. It’s important to be actively involved in what the future of the law looks like, because it’s students who are going to live with it.

An attendee then asked two questions about the “feedback loops” in the model presented by Mr. Cherry. First, she asked who was providing the feedback. Second, she asked how, with disrupters coming in and not waiting for regulations to govern them, how the Practice of Law Board handles old laws that have been overruled by the courts on this topic. She noted that some lawyers might be trying to adhere to rules that are no longer being enforced. Mr. Cherry answered the first question very simply: the feedback comes from the public. The lab has built-in mechanisms such as complaints as well as success feedback so that the public can say what is working. Mr. Cherry acknowledged that this was something that happened with the LLLT program. Because that program was not designed to measure data, there’s no data to the benefit of LLLTs – there’s only data on the cost of the program. There were concerns about being able to collect data and still protect client confidentiality. Mr. Cherry says that there is a ton of data that can still be collected, it just needs to be done conscientiously, and that its incumbent that we figure out how to measure legal work’s benefit to consumers. Thus, the feedback data comes from the consumer but it also comes from having feedback mechanisms built into the program. To the second question, Mr. Cherry said two things would happen. Two things can happen. As a metaphor, Mr. Cherry said that we are becoming the taxi system that did not see ride-share companies approaching. Then suddenly, despite laws saying who can pick up a passenger at Sea-Tac Airport, and even though companies were charged a significant amount of money for the right to pick up passengers at Sea-Tac Airport, it was unenforceable because the public wanted ride-share services. He pointed to how there are now taxicabs listed in ride-sharing applications but under the rules of the ride-sharing companies, not the Commission. So, if nothing is done, it’s going to happen, and in an unstoppable way – the UPL rules will become unenforceable. Worse, it will make it look like lawyers are a monopoly trying to protect their monopoly position. We have to start looking forward and assessing which rules of professional conduct absolutely protect the public, and get rid of archaic rules that merely exist to protect the image of the profession. Mr. Cherry admits to being a minority in this opinion. He thinks that consumers can protect the consumer, and that the legal profession does not need to be so patronizing. Only when the consumer can’t protect itself, should regulators step in. This would fall, then, more to the AG due to fraud or misrepresentation rather

than determining who is entitled to practice law. Mr. Cheery reminded the symposium attendees that he was speaking from his own opinion, though he does try to convince the courts to think in a different way.

Professor Bender thanked Mr. Cherry for his remarks and stated that this is taught to students as "Travis's Law" from Uber, that "build it, and the public will clamor for regulatory change, and that will happen." Professor Bender also read allowed an attendee comment in the Zoom Chat that the concept of a virtual firm that appears as one firm is applicable to other fields as well, such as procurement, and that doing so can increase equity and inclusion across many industries. Professor Bender then asked Mr. Cherry to put into the Zoom Chat ways that students could get involved in legal regulatory change before he pivoted to the next portion of Session 1 of the symposium: innovation in legal recruiting.

III. Innovation in Legal Recruiting

Presenter: Matthew Spencer, CEO, Suited

Professor Bender introduced Matthew Spencer, the co-founder and CEO of Suited. Mr. Spencer has an MBA from USC and spent eleven years as an investment banker before deciding to create a solution within the legal space. Although Mr. Spencer's innovation goes beyond the legal sector, legal hiring is at the center of what was discussed at the symposium. Professor Bender reminded attendees that two commentators would respond to Mr. Spencer's presentation before student questions were addressed. One commentator was Michael Dee, who is a Duke Law graduate formerly at DLA Piper as a lawyer and as a legal recruiting manager. He now works in the Washington DC office of Orrick Harrington and Sutcliffe (hereinafter "Orrick") as Senior Manager for Law School Relations and Diversity Recruiting. Orrick is a Suited client. The second commentator will be Georgia Woodruff, former Assistant Dean for the Center for Professional development at Seattle University School of Law. Before that, she directed the Pepperdine Caruso School of Law Career Development Office. She is now at a Seattle-based firm Foster Garvey as Director of Legal Talent and Professional Development. Her perspective will be from that of a professional who is not using artificial intelligence (AI) in recruiting, both from both the law school and the firm perspective.

Mr. Spencer began by thanking Professor Bender for the introduction and to the commentators for participating with him. Mr. Spencer's presentation was titled, "The Human Capital Intelligence Platform Built for Law." He started by explaining his solution, Suited. At its core, Suited is a recruiting network that was built specifically for the legal industry. The platform leverages AI and industrial organizational (IO) psychology-based assessments. This helps firms identify and hire the best possible talent. Suited enables firms to efficiently expand their hiring reach beyond a limited set of schools that they may have historically hired from. This ensures greater diversity in their pipeline, and to make better, more equitable, and data-driven hiring decisions. Suited inaugural launch was within the investment banking industry. Mr. Spencer reminded attendees that his background was in that space in a variety of capacities, including as a Chief Human Capital Officer. In that role, he oversaw all talent management strategies. This lead to the realization that there were a number of challenges experienced by the firm that were true across the industry. He felt that at the time, the tools available were very limited in terms of the impact they would have on these challenges, and even relevance to the investment banking industry. Because of that, Mr. Spencer decided to build his own tool focused on nuanced industry recruiting practices. After launching in 2019, Suited very quickly pivoted to the legal industry because the underlying hiring challenges were the same as the investment banking industry. Mr. Spencer displayed a slide showing a wide variety of law firms that Suited works with. They vary in size and geography.

Mr. Spencer highlighted two other members of the Suited team, Mr. James Cole Junior and Angela Vallot. Both are Legal Industry advisors at Suited and on the corporate board, which gives them oversight across all that Suited is doing. Both also have deep backgrounds in big law dealing with diversity and

inclusion (D&I) and recruiting-related challenges. Mr. Spencer detailed both Mr. Cole and Ms. Vallot's extensive and impressive backgrounds. But Mr. Spencer said beyond these important employees are the clients themselves, which operate as a Brain Trust to help build and develop the platform.

Mr. Spencer then introduced the main hiring challenges within the legal space that Suited helps to address. This includes diversity goals not being met, the impossibility of considering all candidates, the imprecise and biased process, and the high cost of hiring mistakes. Mr. Spencer noted that all firms within the professional services industry face these challenges, in particular because there is a large pool of potential talent. There are too many candidates for a firm to consider ever candidate, so they have to shrink that pool to be able to manage the hiring process. Firms historically have done this by looking at certain metrics – the only metrics available to them so early on in the process – which is where the candidate attended law school, the rank of that law school, their GPA while in law school, etc. Unfortunately, these metrics are not reliably predictive of long-term performance. And, they have systemic biases inherently wrapped up in them. The process is imprecise, and because of that, firms struggle to know what is driving success within the firm and how the available information should be leveraged to make better hiring decisions. When a hiring mistake is made, that is, when someone does not perform or does not stay with the firm, it tends to be an expensive mistake. These issues make the process ripe for disruption.

Turning to how Suited approaches these problems differently, Mr. Spencer explained that new clients are asked to complete assessment. Part of that onboarding captures those classic resume-based metrics that are traditionally relied upon and that form historical biases in the hiring process. This data is correlated against employee performance within the firm. Suited has shown that just over 3.5% of an attorney's future performance is determined by law school GPA. Being in the top 10% of a law school class indicated a startling less than 1% of performance. These classic metrics are positively correlated with performance, meaning they aren't wrong to use in the hiring process; however, the level of magnitude and impact on predicting future performance is relatively small relative to the emphasis put on it in the hiring process. This has been found across diverse firms in different industries. This data allows Suited to help firms assess how accurate their historic metrics actually are.

Furthermore, this data allows an analysis of systemic bias. Using data from two cycles of OCIs, 7000 candidates' data were placed in the platform. Of those, 2500 were from T14 law schools. Looking at this data, if a theoretical deployment of a hard GPA cutoff of 3.5 were instituted as a candidate selection criterion, then there would be a substantial adverse impact against Black, Asian, and Hispanic students relative to White students. This is important for firms to understand, because there absolutely is bias in resume-based data. It goes back to who is even selected for law schools.

Thus, looking at how little these classic metrics determine performance, and looking to how this criterion is imbued with bias that goes against diversity-building efforts, the conclusion is that these historic metrics should not be relied upon in hiring. The problem is that there's not many other metrics available for firms to rely on. There's got to be a better way.

With Suited, the basis begins with an in-house developed IO-based assessment. A team of employees with PhDs across IO psychology and AI build and develop the assessments. As part of Suited's pivot to serving the legal community, hundreds of hours of IO psychologist-led focus groups were completed. These interviews were conducted with associates, HR, D&I, and even firm leadership to predict long-term performance. The conclusions from the interviews can then be combined with the academic criteria, but also with their preferred ways of working and what drives and motivates them, across ten different psychometric or personality characteristics, nine different values, and three stress response styles. This includes what Mr. Spencer referred to as "essential competencies," which are innate cognitive skills

(rather than learned skills) that are important to lawyering, such as attention to detail and logical reasoning. All of this forms the basis of an assessment.

But why use assessments in general? Mr. Spencer says that IO-based assessments are not new. They've been used in pre-employment hiring for decades. As such, Suited is not reinventing the wheel so much as re-deploying a tried-and-true proven process in a new format. He says that according to The Society for Industrial Organizational Psychology, scientific research clearly shows that personality assessments developed according to modern professional standards can predict which job applicants are most likely to be successful performers, be more satisfied on the job, and are less likely to quit without unfair discrimination. Mr. Spencer emphasized the importance of that last piece – unfair discrimination – and how Suited focuses on not just performance but also on retention. So, assessments overall have a ton of different value. In order for them to deliver on that value, though, they must be meet certain criteria. For one, they must be industry specific. If the assessment is not looking at the specific needs of the industry or what makes candidates successful within it, it can actually do harm to the firm. Second, the assessments need to be job relevant. This is practical but also this can eliminate bias, as it looks to the role and no other extraneous factors. Third, they need to be built by IO psychology experts. Firms should leverage the decades of research in this field when hiring. Fourth, the assessments must be tested for adverse impact. For example, the assessments should look to factors which are not expected to show differences across demographic groups. The assessment should be tested multiple times to ensure this is not happening. Finally, the assessment should not measure mental state. For example, not measuring anything with health consequences from a legal and equity perspective.

Although the assessments themselves are not a re-invention of the wheel, to quote Mr. Spencer's earlier description, bringing AI into the process is the new component. Applying cutting-edge data science and machine learning technology to these tried-and-true methods allows Suited to look at, interpret, and understand what drives success in a given firm. AI becomes a powerful part of this process because it can assess many more characteristics than a human manually can, as well as better assess the complex interactions of those variables. Suited is able to look at over a hundred different variables in their assessments, but with AI, they can look at over 10,000 statistical relationships of how that data ultimately can be combined. This improves the firm's ability to better understand the complexities of human behavior leading to success in the firm. This differs from the traditional approach of using IOS psychology-based data in pre-hiring assessments, which often highlight only one statistically significant characteristic in high performers and that becomes the hiring baseline trait. Mr. Spencer said that this traditional route lead to strong archetypes where firms hired the same types of individuals repeatedly, which misses the hundreds of ways this data could be combined and still equal a high-performing employee. For example, a candidate may under index in characteristic, but balance that by over indexing in another desirable trait. AI allows for an understanding of the complete picture of high performers at a level that human beings and traditional statistics simply cannot achieve. AI is also unlike human-led decision making in that the selection models can be tested for bias. Suited puts clients' hiring models through rigorous adverse impact testing to assess whether the selection rates favor certain demographic groups over others. Then, the model can be adjusted before hiring processes begin. Importantly, this testing is done against the actual pool of candidates that is going to be selected from rather than a theoretical pool, and this testing is done perpetually throughout the lifetime of clients' use of those models against an ever-growing and changing candidate pool. Over 10,000 law students have come through the Suited platform since 2020. With AI, Suited can look at all of these law students and provide insights into selection rates across all demographic and academic backgrounds.

Mr. Spencer also stated that using AI allows a much higher level of accuracy in predicting future performance than traditional resume-based selection and interview-based criterion. Resume-based criteria only have about a 5% correlation to the future performance of an attorney, while interview-based criteria have a 26% correlation to predicting performance. Machine learning (ML) interpreted traits have a 30-

50% corollary range. Despite this, Mr. Spencer did remind attendees that ML-based criteria will never be the "silver bullet" to replace all criteria in hiring, and that there are many other predictors of success such as mentorship after hiring, "stretch opportunities," training and development of attorneys, or other factors. Yet using ML does begin to fill in the missing 70% of data that was previously unexplainable beyond resume- and interview-based predictions of performance. And, it gives a much higher chance of a hired candidate turning into the type of performer the firm is seeking. Returning to issues of diversity and equity, Suited's ML-based criteria help eliminate adverse impact among candidates seen in traditional resume- and interview-based predictions of performance. Mr. Spencer states that this meets industry standards for diversity-improving hiring processes. Ultimately, using AI leads to a more accurate, more equitable, and overall better hiring decision.

Finally, Mr. Spencer addressed how Suited approaches candidates to become a part of their hiring pool available to firms. He spoke to candidates' lack of enthusiasm for completing an additional assessment s part of their overall hiring process. Yet what it ultimately gives them is an opportunity to be considered on factors other than just their resume, which candidates are very favorable towards. And, because it's a standardized assessment across the legal industry, it only needs to be completed one time by a candidate before being shared across all of Suited's partner and client firms. Candidates have full control of their data and can decide which firms can access their assessment results. Suited's platform is most appealing to students who have attended non-target universities or law schools who have a new route to being discovered through the assessment process. Thus, the platform is beneficial not only for law firms, but also for law students and potential candidates.

In conclusion, Mr. Spencer said that we hear the word "disruption" often. Suited does see its platform as being disruptive, but more disruptive to the idea of what drives performance and success in law. It is disruptive to what metrics should be relied on in the hiring process itself more so than disrupting the hiring process at large. Suited seeks to work within the very well defined OCI recruiting process, but to bring firms more information earlier in the process. Firms decide how and when to use the data (whether before OCI, during callbacks, or when looking at write-in candidates, for example). Returning to how Suited benefits candidates, it allows disabilities accommodations without alerting firms to that accommodation request. Mr. Spencer then turned to Suited's recent work with law schools. They have developed a student guide that helps inform students before OCIs begin to help candidates understand the assessment tool and how to take and complete it before a firm invites them to do it. This can give law students the advantage of their data quickly connecting to those different firms in the heat of the OCI process. Mr. Spencer than passed the presentation to Mr. Dee for additional commentary.

IV. Commentary Innovation in Legal Recruiting

Panelists: Michael Dee, Orrick, Herrington & Sutcliffe LLP, Senior Manager, Law School Relations & Diversity Recruiting & Georgia Woodruff, Director of Legal Talent & Professional Development, Foster Garvey PC (former Assistant Dean, Center for Professional Development, Seattle University School of Law)

Mr. Dee was the first commenter on the Suited process. He said that when Orrick first approached Suited, they had hiring pain points in mind, such as process efficiency and fairness concerns. Orrick was interest in what kind of data and value Suited could add to their process. As a result of their partnership, Orrick identified four areas in which Suited has helped them improve their hiring process: seeing candidates as "more than meets the eye," expanding the pool of candidates, meeting DEI goals, and meeting Orrick in its curiosity.

Mr. Dee cited a 2012 study that found that the average recruit spends only 7.4 seconds looking at a resume. He correctly asserted that one cannot get an understanding of anyone, much less a candidate, in

that short amount of time. He said that even a twenty-minute interview doesn't tell the full, complex story of what a candidate can bring to the firm. Suited is a way to expand and level the hiring playing field because the assessment is standardized; it's more of an "apples-to-apples" comparison of candidates. The different metrics measured by Suited flesh out a candidate more thoroughly than a twenty-minute conversation can achieve. Although the legal industry is resistant to change, Suited offers benefits that made it easy for Orrick to proceed with them as a hiring tool.

Mr. Dee believes that using Suited can be a two-sided coin: on one side, firms have a better understanding of candidates, but it also allows candidates to have a better understanding of the firms' cultures. In the traditional process, candidates can't know if what they are being told about the culture by the firm is accurate, or if it comports over to their authentic selves. Orrick likes that Suited meets their curiosity for knowing what makes the firm unique and what makes attorneys successful at Orrick. This, of course, varies by firm. There are so many characteristics that Suited is assessing. This allows Orrick and other law firms to pitch themselves to candidates in a more data-driven manner.

Referencing the "network effect" brought up earlier by Mr. Spencer, Mr. Dee stated that any OCI cycle may involve over 1,500 applications. This staggering number only includes those who apply to the firm directly, and doesn't include all available talent. The "network effect" Suited provides allows firms to see candidates who might be a good fit for the firm that might not have applied directly through the OCI process or been interviewed. This expands the "playing field" and also helps level it. Firms get to meet people who otherwise wouldn't have been considered. This especially speaks to how different law schools get a disproportionate amount of attention, but that that doesn't mean they have a disproportionate amount of talent. Talent is equally shared across all law schools. Thus, Suited helps Orrick and other firms find that talent where it is in actuality.

Mr. Dee finished by discussing how Suited has assisted Orrick in its DEI goals. The adverse impact analysis goes a long way in showing the intentionality behind the platform to address this issue. By having measurable outcomes, Suited was able to show Orrick how to diversify the legal profession through its hiring.

Orrick wants to be an innovative firm that does hiring better and smarter. Any law firm that brings in associates invests significant amounts of resources and time into that hiring, just as candidates invest significant time and effort into developing their career in the formative years of their first employment opportunities. Suited helps both firms and candidates get a better employment match. That's a win-win. Orrick does consider platforms like Suited to be the future of the legal hiring process and is excited to continue to be a part of that change.

Professor Bender then invited Georgia Woodruff to provide her commentary as someone who hasn't used AI during her time working at law firms and academic institutions that conduct OCIs. Ms. Woodruff started her commentary by joking that she needed to set up a Zoom call with Mr. Spencer to hear more about Suited, because she thinks it's a fantastic idea. Ms. Woodruff is interested in how many law schools Suited works with and how universal the tool is, and whether it is deployed through school's career development offices or adopted by students independently. She said she hoped Mr. Spencer could address some of those questions in the later Q&A portion of the session.

Ms.. Woodruff confirmed that law firms are resistant to change. They tend to be well behind other professions in terms of using technology or having a more holistic approach in their hiring. However, in her time working at law schools from 2008 to 2021 before returning to the practice of law, Ms. Woodruff has seen a shift towards more holistic approaches to assessing candidates. She also confirmed that there is a lot of bias baked into the resume review process. Law firms are interested in looking beyond these traditional metrics and developing more progressive ways of reviewing candidates. However, these efforts

can be hit-or-miss and many firms are slow to change. In her current role at Foster Garvey, which she described as one of those progressive firms, there is an attempt to look at the entire candidate in considering who to invite for an interview. Having a tool like Suited would be incredibly helpful in continuing to eliminate bias that still exists even within these progressive efforts.

Ms. Woodruff was interested to know more about how a tool like Suited could be used in lateral recruiting. Implementing a tool like Suited into the OCI process could be beneficial, but it needs to be done in a universal way. Students at all law schools would need to have access to it and there needs to be buy-in by more firms. The same issues that Mr. Spencer claims Suited helps address also appear in the lateral hiring process. Lateral hiring is a more complicated process because it's not done within an OCI process, but is instead driven by a hiring need and by a Practice Group. How can a tool like this be used when it's not in a prescribed program, and when applications are coming in over time rather than as a batch?

Ms. Woodruff reiterated that even before knowing about a tool like Suited, she has been pleased with how law firms are moving in the right direction. However, the hiring process is still difficult. She acknowledged what Mr. Dee had stated about the average seven seconds of looking at a resume. When there are 1,500 applications and only one person assessing them, it's hard to determine what can be realistically done in terms of committing time to each resume. As such, she is excited about new approaches to this issue. She also is excited to see a tool like Suited being developed at a time when the legal community is embracing technology in areas where they might have been resistant to doing so before, especially as a result of the COVID-19 pandemic.

Ms. Woodruff summarized her commentary by reiterating that she was excited to be a part of this conversation and looks forward to seeing how these tools and other technologies impact the legal profession in the future.

Mr. Spencer then responded to Ms. Woodruff's commentary. Addressing how Suited engages with schools and candidates, Mr. Spencer highlighted that Suited is not trying to sell anything – there's no revenue earned off of the relationship with schools or candidates. Suited really believes that they are creating opportunities for those schools and students. As such, any student at any time can go through Suited's assessment process and make themselves a visible candidate to all firms on the Suited platform (or the firms that that candidate selects for themselves). Mr. Spencer notes that the Suited team didn't want to have a gateway that only allowed certain student candidates to gain access to the platform, or at certain times; it's universal and open at any time to any student that wants to participate. In partnership with law schools, it's more around creating awareness and giving schools information so that they can answer student questions and inform students about the platform's availability. In working with student groups, Suited does webinars, especially with demographics-based groups such as the Black Law Student Association and the Latinx Law Student Association. Mr. Spencer acknowledged that change requires adoption, and people won't adopt something that they don't understand or aren't comfortable with due to lack of information. Thus, awareness is a big component of what Suited does in terms of direct outreach.

Turning to Ms. Woodruff's second question about lateral hiring, Mr. Spencer explained that Suited has been launched on the campus-side first because of the large volume of data this generates. However, Suited is working to put together a group of "alpha partners" that will help co-develop the tool on the lateral hiring side. This will complement the existing platform and use the same theory, data, and information but developed to be most relevant laterally. He agreed with Ms. Woodruff that lateral hiring is an important part of the hiring process and that involves the same underlying issues that Suited seeks to address. Mr. Spencer relayed a metaphor made by a partner firm that was struggling with lateral hiring: they referred to lateral hiring as an organ transplant, where a healthy organ that's functioning fine in one host body might struggle in a new host body after transplant. That's because it's a misfit. The host rejects

the organ or vice versa. This analogy, Mr. Spencer said, is interesting because it illuminates how lateral hiring is not just about skillset but about cultural fit within an organization. Mr. Spencer is excited to impact that conversation as the tool develops.

Professor Bender than relayed a question from a symposium attendee that was sent to him via Zoom Chat. The student referenced how Amazon had created an AI for its hiring process, but then later retracted it as it was replicating bias, specifically around gender. The student asked what Mr. Spencer's experience was in light of those fledgling rollouts. Mr. Spencer was glad that this issue was raised. He said there are interesting case studies regarding failure in this field and that the question remains of how to incorporate AI into hiring processes correctly. Referencing his presentation, Mr. Spencer said that these models have to be tested for bias rather than relying on the assumption that AI is accounting for it, and that testing the model needs to occur repeatedly during the hiring process and against the actual population of candidates. Mr. Spencer spoke directly to the Amazon example in that they were using AI to read resumes. The result was that the AI taught itself to discriminate against women because the data of the company itself was that they weren't hiring enough women; the training data set was skewed. Mr. Spencer sees this as a good teaching example. One take away is that the specific kind of AI used was unsupervised learning. That is, they plugged data into the AI, let it teach itself, and then deployed it. Hence, if biased data goes into the AI, it will have biased results. Suited's technology uses supervised learning. ML engineers do the hands-on building of e hiring models using AI technology to understand the complex connections of the data. That means there's actually human beings leveraging the data insights. Mr. Spencer said that there is a very detailed article published on the Suited website that goes into extensive detail about the different technical ways in which the platform and team identify bias throughout their process. There is an assumption of bias in all data collected, especially from firms, until proven otherwise. Suited has mechanisms in place to test for and mitigate the risk of exacerbating any of those existing biases.

Mr. Spencer had had a direct question submitted to him via Zoom Chat that was around this same topic. It asked about the specific competencies and characteristics that Suited assesses candidates for. He explained that all the assessed competencies and characteristics have been well-studied and documented in the IO psychology field as not showing differences across demographic groups. Simply put, the platform is not measuring traits which one might expect men and women to answer differently, or members of various demographics to answer differently. These studies are the core of Suited's assessments.

Professor Bender then relayed a question that had been submitted for Ms. Woodruff. The attendee asked her to elaborate with an additional example about bias in the lawyer hiring process. Ms. Woodruff stated that she was echoing what Mr. Spencer had said regarding how human beings bring their own biases into the hiring process. There are assumptions about a candidate's ability to do certain things based on what's included in their resume. Having a tool like Suited helps well-intentioned humans identify additional traits outside of a resume and mitigate biases. It helps them look at competencies that are much more indicative of whether a candidate will come into a firm and be successful. Traits like flexibility or adaptability, for example, can be much clearer signs of a candidate's ability to succeed within a given firm or role. Ms. Woodruff noted the irony of her own bias showing here, in that she assumes that those traits are indicators of success. When working in the OCI space, Ms. Woodruff encouraged and pushed firms to look beyond traditional resume metrics as a means of shrinking their candidacy pool so that they don't miss candidates that could be an incredible add to a firm. Yet these firms creating a hiring committee that identifies which traits to measure may also not be the right approach because it incorporates biases. Hence, using a technological tool is a great idea because it could be more equitable and accurate.

Mr. Spencer appended Ms. Woodruff's explanation with an example. Two of the values assessed by Suited are the values of conformity and tradition. Two different firms that use Suited have opposite

alignments to those traits. So for one firm, someone who scores high on tradition and conformity could indicate a high performer; for the other firm, it would indicate that that candidate would be less likely to succeed within their culture. Instead, high performers at that firm might score higher on creativity and non-traditional thinking. Neither of those things are better or worse traits. It's just a matter of the underlying structure of that firm and what drives success there. Candidates who are more naturally aligned to what's being incentivized there are going to be more successful. There are many types of firms with different profiles.

Professor Steve Tapia then asked the panelists his question, which he prefaced by saying might be more of an observation. He mentioned that some of his students read a book called *Automating Inequality* that speaks to how there is no neutral introduction of technology. The book speaks to how technology implementations are only successful in the eyes of those that have value systems reinforced by the technology. Where the technology does not reinforce the implementers' desires, it gets unplugged – plain and simple. Professor Tapia said he spent time at Microsoft as a lawyer and saw great lawyers that had failed as big law firm lawyers. He also noted student attendees' crestfallen reaction to hearing that a twenty-minute interview was not as accurate in predicting success as algorithms at predicting success because, frankly, that's often the best that they have available to them. Professor Tapia teaches students to do "Shark Tank" style pitches, primarily because it is the legal industry is such a people business" and because lawyering, sales skills, and presentation skills seem to go hand-in-hand. Professor Tapia's observation is that law firm success does not indicate great lawyers. In teaching guitar, Professor Tapia reminds his students that many of their favorite guitarists, such as Jimi Hendricks or Eric Clapton, knew how to read sheet music. Many did not even take music lessons. This is an allegory for how being an amazingly good law firm lawyer doesn't necessarily equate to being a great lawyer. Professor Tapia wants the students, more than anybody else, not to lose sight of the fact that there's various skill sets.

Professor Tapia made a second observation, as someone who teaches technology law and with great appreciation for how technology is impacting the legal industry, about the importance of work like Mr. Spencer's and the Suited team. Professor Tapia felt comforted by Mr. Spencer's explanations of aspects of the platform that would otherwise be points of concern for those in the technology and computer science industry. But Professor Tapia noted that when hiring lawyers, he never did so via algorithmic reach of the firm. He always did it by virtue of talking with them and seeing whether or not he trusted them. He doesn't believe that an algorithm can do is determine trustability. From that standpoint, his observation is that there are important things that are still left to humans even after moving to an algorithmic, automated world.

Mr. Spencer thanked Professor Tapia for raising these concerns. He clarified that Suited doesn't view itself as a replacement for any part of the hiring process, or even for the interview. It's meant to assist humans in making less biased decisions by introducing new data into the process that may undermine the historic metrics that have been relied on. Suited provides alternative metrics meant to be used in conjunction with existing hiring processes.

V. Conclusion

Disruption in the legal services space is actively occurring. The use of data to inform decision making processes, including in regulatory reform and in recruiting, is a fundamental change that challenges traditional methods, but that provides substantial benefits. While changes in deeply ingrained processes take time, there has been movement in both regulatory reform and hiring reform that show the success of data-driven disruption in each sector. Panelists and attendees alike are excited for data-driven reformations that are still yet to come.