

EXECUTIVE SUMMARY

INNOVATION ROUNDTABLE:

SOCIAL ENTREPRENEURSHIP IN THE FOOD
SECTOR: IS THE LAW A BARRIER TO INNOVATION?

MARCH 8, 2016

RESNICK PROGRAM
FOR FOOD LAW AND POLICY



UCLA | SCHOOL OF LAW

ABOUT THE RESNICK PROGRAM FOR FOOD LAW AND POLICY

The Resnick Program for Food Law and Policy studies and advances breakthrough solutions for improving the modern food system. Based at UCLA Law, the Resnick Program is a think tank focused on developing key legal and policy strategies, timely research, and practical tools to foster a food system that benefits both consumers and the environment. Covering a wide range of local, national, and global food policy topics and issues, the program seeks solutions in support of a food system that embodies the values of equity, transparency, and good governance.

INNOVATION INITIATIVE

The Resnick Program promotes opportunities for law and public policy to contribute to the innovative food sector. Often represented by healthy, equitable, and sustainable food start-ups and inventions, this new market and its entrepreneurs is generally mission-driven and socially-oriented. In 2016 the Resnick Program convened a number of roundtable discussions with entrepreneurs, policymakers, and stakeholders to identify the legal and policy hurdles that can hinder commercial growth. Based on those discussions, the Resnick Program and the Food Law and Policy Clinic are developing legal tools and strategies to assist and advise food innovators as they navigate the US food system.

BACKGROUND

In recent years, the food landscape in the United States has witnessed a rapid growth of food related start-ups, direct marketing to consumers, and new food inventions. From mayonnaise made without eggs to home cooked meals delivered to your door, socially-minded food businesses are increasingly, to borrow a word from the technology start up sphere, 'disrupting' the way people eat. At the same time, consumers are helping push open the market for new foods by making food purchases that are increasingly motivated by concerns related to sustainability, health, animal welfare, and local economic development. While many of the businesses that have been developed in this new food space have been successful in terms of expanding market share and securing funding and customer support, it is evident that at least some of them are running up against a regulatory and legal structure that was not designed to accommodate them.

UCLA's Roundtable Series on Food Innovation and the Law

With the aim of better understanding these law and policy hurdles, the Resnick Program for Food Law and Policy at UCLA Law and George Abe, Faculty Director of the Strategic Management Research Program at UCLA Anderson School of Management, hosted a roundtable discussion on March 8, 2016, titled, **Social Entrepreneurship in the Food Sector: Is the Law a Barrier to Innovation?** The discussion is the first in a series hosted by UCLA Law and the UCLA Anderson School of Management on food entrepreneurship. The goal of the collaboration is to facilitate food entrepreneurship by identifying opportunities for law and public policy to contribute to the development of a more dynamic and

innovative food sector. opportunities for law and public policy to contribute to the development of a more dynamic and innovative food sector.

This first roundtable convened a group of 13 individuals engaged in diverse food-related business ventures, academic scholarship, and the law.

The attendees were:

- **George Abe**, Lecturer and Faculty Director, UCLA Anderson School of Management
- **Angela Agrusa**, Partner, Liner LLP
- **Emilie Aguirre**, Academic Fellow, Resnick Program
- **Taimie Bryant**, Professor of Law, UCLA Law
- **Tiana Carriedo**, Research Assistant, Resnick Program
- **Joe Dobrow**, Author, Natural Prophets
- **Christina Erickson**, Attorney and Activist
- **James Jerlecki**, CEO and Founder, Mytable
- **Kim Kessler**, Policy and Special Programs Director, Resnick Program
- **Lucas Mann**, Acre Venture Partners
- **Michael Roberts**, Executive Director, Resnick Program
- **Greg Sewitz**, Co-Founder, Exo
- **Mott Smith**, Co-Founder, L.A. Prep

ROUNDTABLE DISCUSSION

The diversity and breadth of the roundtable captured a full spectrum of concerns facing new food entrepreneurs, as well as potential solutions and unanswered questions. Age-old problems of distribution, thin profit margins, and labeling in the food industry were all discussed. Some participants also shared their experiences navigating a regulatory environment that spans local, state, and federal jurisdictions, finding at times that not only are there no well-defined answers to the novel questions their food businesses have created but also no clear path toward compliance with existing law.

UCLA School of Law Professor Taimie Bryant offered the example of the Cultured Kitchen, a vegan food producer that was involved in a labelling dispute with the California Department of Food and Agriculture (CDFA), to illustrate how the existing regulatory structure may not work for some food innovators. Under CDFA's current regulatory framework there are no regulations or guidelines for the production of vegan foods. As the Cultured Kitchen discovered, the lack of regulations or guidelines for its products meant that the company would have to change its label for its non-dairy cheeses or heavily invest in a kitchen that would meet the department's requirements for dairy food operations. While the regulations were unnecessary for the production of its non-dairy products, because they related to dairy products, the company, after protracted negotiations with the CDFA, decided it had to change its label or face enforcement action by the department. As Bryant noted in an article she wrote on the incident, the label change likely caused the Cultured Kitchen to lose out on many potential and existing customers.¹



Photo courtesy of Resnick Program.

Other participants described how sustained engagement and partnership building with relevant government stakeholders allowed them to overcome barriers in their path to launching or growing their food businesses. For example, Greg Sewitz, CEO of Exo, a New York based insect protein company, found that the help of legal counsel along with the engagement of USDA and FDA officials interested in edible insects enabled his company to successfully grapple with the new frontier of insect food production and labelling. As Sewitz explained, at the outset of his venture, his company faced a number of unclear regulatory issues, including whether insects would be considered livestock or a food ingredient. It was also not evident how to address the allergenic potential that the consumption of insects raised.² With legal assistance, Exo was able to navigate these unknowns, and the company continues to thrive. The challenges and uncertainties that Exo faced are not unique to the startup—a number of companies interested in producing and marketing new foods

have encountered similar hurdles, as Taimie Bryant noted in her discussion about vegan foods. With regard to insects, part of the problem is that the country's regulatory agencies have not provided a comprehensive set of regulations and guidelines on the production and marketing of edible insects. The incomplete nature of federal oversight has led to uncertainty among entrepreneurs and, in some cases, resistance by local regulators to the sale of insects for human consumption.³ As innovation in the food sector continues, regulators and policy makers are likely to continue to face questions regarding how new or novel food items will be treated under the law.

Here in Los Angeles, real-estate developer Mott Smith has been hard at work on another problem in the food sector: how to assist small food producers expand their businesses. What Smith and his partner found was that many new and small food producers—in the quest to scale up and establish their operations—encountered discouraging



Cashew Reserve. Photo courtesy of The Cultured Kitchen.

regulatory and investment roadblocks.⁴ Smith's solution was to create L.A. Prep, a large-scale shared facility where each business leases its own kitchen space. While the shared facility addressed the financial aspect of small food producers' expansion conundrum, Smith knew that he had to address another piece: compliance with public health codes. To tackle this issue, Smith partnered with the Los Angeles County Department of Public Health to help re-write the County's wholesale regulations to better accommodate small food producers. Smith and County officials ultimately created a new class of wholesale licensing that allows small food producers to operate in limited shared food facilities, such as L.A. Prep.

Other participants also offered observations about the nature of innovation as it applied to food. For example, both Angela Agrusa, a lawyer at Liner LLP, and Joe Dobrow, an author, remarked that labelling has been a particular and enduring challenge for food businesses. The group also discussed the fundamental culture clash between technology and

law, with technology about being ground breaking and ahead of the curve and the law often following and adapting to business, cultural, and technological shifts.

One clear takeaway from the discussion was that notwithstanding the policy paradigms that favor the status quo in the food system, innovation in food is accelerating and more dialogue will be needed to help the legal system address changes in our food culture. Food related laws and regulations play an extremely important function in ensuring that we have access to food that is safe, nutritious, and not labeled in a deceptive and misleading manner. As social entrepreneurs and food innovators work to develop an alternative food economy to today's system—which is characterized by large scale production, many highly processed items featuring commodity ingredients, and industrial animal agriculture—the legal system will need to adapt to ensure a safe, nutritious, and more transparent food system. While examples like the success of L.A. Prep demonstrate that policy changes can be made to facilitate food entrepreneurialism and innovation, it is clear that the rapid development of social entrepreneurship in the food sector will continue to present additional questions for both food producers and regulators to address.

The March 8th Roundtable discussion succeeded in illuminating the types of legal and regulatory issues that many mission driven food start-ups are likely to encounter, in particular in the areas of labeling and food safety. This initial gathering suggests that access to legal guidance, technical assistance, and representation will be a need for many socially oriented food innovators who are developing food products and distribution mechanisms that break from the mainstream and aren't anticipated in the currently applicable legal frameworks.

¹ Taimie L. Bryant, Social Psychology and the Value of Vegan Business Representation for Animal Law Reform, 2015 MICH. ST. L. REV. 1521, 1537-1544 (2015).

² The allergenic as well as toxic and pathogenic potential of insects is a developing area. For a discussion of some of the unknowns associated with eating insects, see Emily Anthes, *Could Insects Be the Wonder Food of the Future?* BBC, Oct. 14, 2014, <http://www.bbc.com/future/story/20141014-time-to-put-bugs-on-the-menu>.

³ Kyle Ligman, Weak Oversight Is Holding Back Edible Insects, NEWSWEEK, March 28, 2016, <http://www.newsweek.com/2015/04/10/weak-oversight-holding-back-edible-insects-317518.html>.

⁴ Marni Usheroff, Hot Property, LOS ANGELES BUSINESS JOURNAL, Nov. 9, 2014.