

NAPABA 2015 Convention: NAPABA Rising

***Rising to the Challenge:  
Making International Social  
Entrepreneurship  
Part of Your Practice***

November 5, 2015

Moderated by  
Gordon Endow  
Gordon & Rees LLP

a Christine Han and Scarlett Freeman Production



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## Rising to the Challenge: Making International Social Entrepreneurship Part of Your Practice

**“Social Enterprise is not only about doing good, but doing good through the application of sound business principles.”**

Marc J. Lane, Social Enterprise  
Empowering Mission-Driven Entrepreneurs



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**“Entrepreneurship creates new jobs and new businesses, new ways to deliver basic services, new ways of seeing the world -- it’s the spark of prosperity.”**

President Obama, remarks at  
Global Entrepreneurship Summit,  
Nairobi, Kenya (July 25, 2015)

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**“[T]here’s a recognition that through these technological platforms, what might have previously required huge investments of capital, and as a consequence, big barriers to entry, now can get a startup moving, and if it's the right idea, it can travel with the speed of how fast you can text.”**

President Obama, remarks at Global Entrepreneurship Summit, Nairobi, Kenya (7/25/15)



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**“[T] this makes a place like Africa, or Croatia, or other countries that historically may not have been viewed as right at the center of the global economy, suddenly they can compete on a level playing field.”**

President Obama, remarks at Global Entrepreneurship Summit, Nairobi, Kenya (7/25/15)

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## **Rising to the Challenge: Making International Social Entrepreneurship Part of Your Practice**

- **INTERNATIONAL SOCIAL ENTREPRENEURSHIP:**
  - **Innovative. Disruptive. Game changing. Massively scalable.**
- **Audience Demographics?**
  - Litigation v. Transaction (v. Both)
  - Millennials v. Gen X v. Baby Boomers
  - Students v. Practitioners
  - Already Familiar w/ 21<sup>st</sup>-Century Social Entrepreneurship

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- Welcome and Introduction
  - ★ Gordon I. Endow
    - Partner, Gordon & Rees LLP
- Honored and fortunate to have as speakers:
  - ★ Andrea Chen
    - CEO, Propeller
  - ★ Carrie Siegrist
    - Associate, Venable; Adjunct Professor, American University
  - ★ Jeff Hom
    - Associate General Counsel, Ashoka

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### ★ Andrea Chen

- **Executive Director, Propeller: A Force for Social Innovation.**
- Founded in 2009, Propeller incubates social entrepreneurs in New Orleans, providing work space, mentoring and networking.
- Before Propeller, Ms. Chen oversaw grant making at the Louisiana Association of Public Charter Schools, responsible for > \$5 million in charter school startup funds, and launched a \$1.5 million below-market rate Bridge Loan Fund.
- Education incl.: Stanford; Harvard Graduate School of Education; University of New Orleans; Dartmouth Tuck School of Business



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### ★ Carrie Siegrist

- **Attorney, Venable LLP**, practicing in its Nonprofit Organizations and Political Law Practice Groups in Washington, DC
- Adjunct Professor, American University Washington College of Law
- Before Venable, Ms. Siegrist was a Senior Program Officer with the Lex Mundi Pro Bono Foundation
- Co-founder, Cambodia's Children Education Fund, a non-profit providing educational opportunities for impoverished and orphaned Cambodian students
- Education incl.: Washington College of Law at American University, Bank Street College of Education, and Bates College



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### ★ Jeff Hom

- **General Counsel, Omidyar Network**, a philanthropic investment firm for market-based efforts that catalyze economic and social change, where he structures and negotiates agreements for Omidyar's for-profit investments and nonprofit grants, with deep experience in emerging market impact investing.
- Before Omidyar Network, Mr. Hom was corporate and technology attorney at Morrison & Foerster LLP, where he also provided *pro bono* legal services to small businesses and nonprofits.
- Education incl.: Georgetown; Stanford Law School.
- Fulbright Scholar.

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### ★ Gordon Endow

- Partner, Gordon & Rees LLP.
- Past Chair of Business Transactions Practice Group. Specializes in corporate transactions and litigation that involve IP, including venture capital financing, M&A, technology development and licensing, privacy, e-commerce, and IP protection.
- Before G&R, in-house counsel at a national telecom company.
- Education includes: Stanford University, Georgetown Law School

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### • WHAT IS “SOCIAL ENTERPRISE”?

- Evolving definition
- *Socially-driven – directly do some social good*
- *May also include sustainability / environment*
- *Market-driven, but mission  $\geq$  profit*
  - E.g., Prof. Muhammad Yunus and Grameen Bank, 2006
  - Compare regular for-profit corporations: shareholders > other stakeholders (employees, customers, environment, etc.)

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- **WHY IS THE DEFINITION IMPORTANT?**

- Measuring success is critical to reaching goals, comparing alternatives
  - Double bottom line accounting: Profits and Social
  - Triple bottom line: Profits, People and Planet
  - Big data?
- Determining director's / manager's fiduciary duties
- Economic efficiency → defining success
- Attorneys—transactional and litigation—needed to help refine the definition (e.g., statutory interpretation; changes)

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### • OLD SCHOOL SOCIAL ENTREPRENEURS

- Traditional Non-Profits (charitable org. under IRC §501)
- Cooperatives
- ESOPs
- Foundations
- Corporate Social Responsibility (CSR) policies / initiatives of for-profit corporations
- (But these are evolving slightly)

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### • NEW SCHOOL SOCIAL ENTREPRENEURS

- Rejects maximizing shareholder wealth as *sole* driver of management decisions
- Instead, *directly addresses intractable social need / environment*
- Uses double or triple bottom line accounting
- Draws new types of investors and other stakeholders (e.g., impact investors, Millennials and other consumers)
- Often *uses technology* to work toward mission and to scale

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- **NEW TYPES OF LEGAL ENTITIES:**

- **Benefit Corporation (Public Benefit Corporation in Del.)**

- Corporate purpose in business charter—i.e., its DNA, e.g., Certificate of Incorporation—must include creating material positive impact on society and environment; difficult to change.
- Managers must consider impact of their decisions not only on shareholders but also workers, community, and environment;
- Must make available to the public an annual benefit report assessing overall social and environmental performance against 3<sup>rd</sup>-party standard (except in Delaware)



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- **NEW TYPES OF LEGAL ENTITIES (cont..):**

- **Benefit Corporation (cont..)**

- 30 states + D.C. have adopted benefit corporation laws as of August 2015
- Recent development: Maryland was first state in 2010; also passed Benefit LLC legislation in 2011
- Model Benefit Corporation Legislation published
- Delaware adopted Public Benefit Corporation law, July 2013

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- **NEW TYPES OF LEGAL ENTITIES (cont..):**

- **Social Purpose Corporation**

- Limited to specific “social purpose(s)” as stated in its Articles of Incorporation
- Requires D&Os to consider non-shareholder stakeholders
- Generally req. annual report with Management Discussion & Analysis (not req. to measure against 3<sup>rd</sup>-party standard)
- Four states: CA, WA, FL, TX (as of 8/2015)

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- **NEW TYPES OF LEGAL ENTITIES (cont..):**
  - **Low-Profit Limited Liability Company (L<sup>3</sup>C)**
    - Purpose in charter must mirror requirements for program-related investments (PRIs) of charitable foundations:
      - must significantly further one or more charitable or educational purposes;
      - cannot generate significant income; and
      - no political or legislative purpose
    - Vermont passed first L<sup>3</sup>C legislation in 2008; since then, 7 other states have passed similar laws, 1 (NC) repealed

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- **Compare (not new legal entities)**
  - Tandem structures → nonprofit + for-profit or new entity type
    - Often incl. overlapping ownership or governance. E.g., Salesforce.com and Salesforce Foundation (1-1-1 model).
  - Certified companies (not a separate legal entity)
    - “B” Corp, a 501(c)(3) non-profit certifying business
  - Growing Corporate Social Responsibility (CSR), esp. “sustainability”

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- **WHY LAWYERS?**

- Quest for Justice – naturally socially-driven
  - Why did *YOU* go to law school?
- Bring Needed Skills; *Empower others* – lawyers' *raison d'être*
- Agents for Change:

“A lawyer is either a social engineer or a parasite on society.”

— Charles Hamilton Houston

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### •WHAT CAN LAWYERS DO?

- **Be** a Social Entrepreneur
  - Be a Founder. E.g., Bill Drayton, founder and CEO of Ashoka; Emily Arnold-Fernandez, founder & Ex. Dir., Asylum Access; Professors Ron and Elizabeth Gard at Tulane Law School co-founders of Durationator; Matt Mitro, co-founder of Indego Africa
  - General Counsel; staff counsel; intern → internal legal affairs; external legal relationships; compliance; privacy; IP
  - Non-legal positions → creative; managerial; finance; marketing and public relations; technology; etc.

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### •WHAT CAN LAWYERS DO (cont..)?

- **Outside Counsel**

- Social entrepreneurs have same legal needs as for-profit cos.

- Transactional attorneys: tax, finance, corporate, privacy, contracting, IP (incl. open source and sharing economy); regulatory compliance, immigration, real estate, etc.

- Litigation attorneys: corporate, commercial, securities, IP, employment, data security breaches, etc.

- Special Practice Groups: esp. finance. E.g., Orrick; Reed Smith; Linklaters; Hogan Lovells; *et al.*



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### •WHAT CAN LAWYERS DO (cont..)?

#### • Outside Counsel (cont..)

- Pro bono and “low bono”:
  - Lex Mundi Pro Bono Law Foundation, pairs law firms with international and domestic social entrepreneurs for specific legal matters.
  - Work with Propeller, Ashoka, Omidyar, and others.
- Establish new pro bono and professional development programs at your firm: e.g., Arent Fox LLP and DLA Piper LLP (US), with Georgetown Law Center, launched the D.C. Affordable Law Firm, a nonprofit low bono law firm; Hogan Lovell's [Business and Social Enterprise](#) (BaSE) training on social innovation for lawyers





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### •WHAT CAN LAWYERS DO (cont..)?

#### • In-House Counsel

- Strengthen CSR initiatives, including corporate sponsorships of social enterprises. E.g., <http://social-innovation.hitachi.com/>.
- See *also* Pres. Obama's National Action Plan for Responsible Business Conduct, announced last year and grounded in UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.
- Establish pro bono programs. E.g., Goldman Sachs' 10,000 Women Global Initiative, and Bank of New York Mellon's program on global microfinance training, microenterprise assistance, and access to capital for women entrepreneurs.



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- **WHAT CAN LAWYERS DO (cont..)?**
  - **Classes, Clinics, and Symposiums** → Univ. of Michigan Law School's International Transactions Clinic; Georgetown Law's Social Enterprise & Nonprofit Law Clinic; Univ. of Washington; Duke; George Washington; Stanford course: "Intro to Legal Design;" etc.
  - **Law Student Groups** → Columbia, Yale, Duke, New York University, etc.
  - **Law Journals** → Duke's Forum for Law & Social Change, NYU, Univ. of Michigan, Univ. of Pennsylvania, Univ. of Virginia, Northwestern, etc.

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### •WHAT CAN LAWYERS DO (cont..)?

#### • Board Member; Investor

- Join a board, but be prepared to also network / contribute (invest)
- Join the crowd: Crowdfunding opportunities abound, incl. Kickstarter (non-equity crowdfunding), as well as JOBS Act crowdfunding (new and developing). E.g., [www.rockethub.com](http://www.rockethub.com) (N.B. this is not a solicitation to invest); [www.kiva.org](http://www.kiva.org); <http://startsomegood.com/>; <http://www2.guidestar.org/>; etc.
- Learn more about impact investing, including measuring performance, scalability, and ROI. See, e.g., Echoing Green (<http://www.echoinggreen.org/>)



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### •WHAT CAN LAWYERS DO (cont..)?

- **Scholar; Write; Blog; Network**

- Law school professor, full-time or adjunct

- Write books and articles. E.g., Dr. Zachary Kaufman, Social Entrepreneurship in the Age of Atrocities: Changing Our World; Marc Lane, Social Enterprise, *infra*; Alicia E. Plerhoples, “Representing Social Enterprise” (2/11/13; see [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2214954](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2214954)); etc.

- Get the word out! Blog; use Periscope; Network!



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### •WHAT CAN LAWYERS DO (cont..)?

- See generally, Zachary D. Kaufman, “Making Social and Environmental Impact through Legal Careers: The Top 10 Roles for Attorneys in Social Entrepreneurship” (Aug. 2013) (<http://www.lawforchange.org/NewsBot.asp?MODE=VIEW&ID=6095>)

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- **Resources (Small Sampling)**
  - **Foundations and Impact Investors**
    - Ashoka (<https://www.ashoka.org/>); see esp. Ashoka's Law for All Initiative (<https://www.ashoka.org/lawforall4>)
    - Skoll Foundation (<http://skollworldforum.org/about/what-is-social-entrepreneurship/>)
    - Omidyar Network (<http://www.omidyar.com/>)
    - Give2Asia (<http://search.give2asia.org/give2asiasearch/>)
    - Acumen Fund (<http://acumen.org/>)
    - Social Venture Partners ([www.socialventurepartners.org](http://www.socialventurepartners.org))

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- **Resources (Small Sampling cont..)**
  - **Law Student Organizations, Legal Clinics, and Courses**
    - NYU: <http://www.law.nyu.edu/LawSocialEntrepreneurship>
    - Columbia: Law Students for Social Enterprise: also Community Enterprise Clinic (see <http://web.law.columbia.edu/courses/sections/19238#.VeT8AU2FMdU>)
    - Duke: LL.M. in Law and Entrepreneurship, which can incl. social entrepreneurship
    - Northwestern University: seminars on social entrepreneurship, taught by author Marc Lane
    - American University offers Carrie Siegrist's course on social entrepreneurship law
    - Etc.

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- **Resources (Small Sampling cont..)**

- **Incubators and Accelerators**

- Propeller ([www.gopropeller.org](http://www.gopropeller.org)) (New Orleans, LA) - “Tackling the tough challenges in New Orleans by launching socially-minded ventures since 2009.”
- Center for Social Innovation (<http://nyc.socialinnovation.org/>) (NY) – “A co-working space, community and launch pad for people who are changing the world.”
- Hatch Innovation Lab (<http://www.hatchthefuture.org/>) (Portland, OR) – “A space for visionaries and realists working for a better world.”
- Jolkona Foundation’s Catalyst (<http://www.jolkona.org/jolkonacatalyst/>) “JOL KONA means “drop of water” in Bengali. It represents our belief that small donations can create a ripple effect of change.”
- StartX (<http://startx.stanford.edu/>) (Palo Alto, CA) – “a non-profit organization whose mission is to accelerate the development of Stanford's top entrepreneurs through experiential education.”