

NCLC Project Uses Consumer Law Expertise To Address Criminal Justice Debt Problems

Throughout our nation's history, the U.S. criminal justice system has disproportionately targeted and burdened people, families and communities of color, as well as those with low incomes.

NCLC's work to right these wrongs was infused with a new sense of urgency following the 2014 shooting of Michael Brown in Ferguson, Missouri. Research there showed that criminal justice fees and fines were one of the "simmering" issues underlying tensions in that community; *The New York Times* reported that "young black men in Ferguson and surrounding cities routinely find themselves passed from jail to jail as they are picked up on warrants for unpaid fines."

Criminal justice debt warrants the attention of consumer advocates as a significant source of unaffordable debt for low-income people; financial obligations which are doubly damaging because of the draconian

consequences – including reliance on predatory financial products, abusive debt collection practices, and even imprisonment – for those who cannot afford to pay them.

Although criminal justice debt has typically been analyzed from the perspective of criminal justice reform and civil and constitutional rights, many

"NCLC brings our expertise to this problem to identify and challenge harmful criminal justice debt laws and practices, and develop reforms that address the full spectrum of problems that arise from criminal justice debt."

of the consequences of excessive fees and fines are a core focus of consumer law. NCLC brings our expertise to this problem to identify and challenge harmful criminal justice debt laws and practices, and develop reforms that address the full spectrum of problems that arise from criminal justice debt.

In 2016, NCLC launched a Confronting Criminal Justice Debt Project with

the release of an extensive, three-part report produced in collaboration with Harvard Law School's Criminal Justice Policy Program (CJPP), including an NCLC-authored *Guide to Litigation*. Following that report, we created a free webinar series bringing together leading attorneys, academics, and other advocates to identify problems with criminal justice fees and fines practices, including their disproportionate impact on the poor and people of color, and to discuss litigation and policy solutions and educate participants about

resources to support their advocacy. Over 700 advocates have participated in the ongoing webinar series, and thousands have visited NCLC's website to make use of the resources we have produced and made available.

NCLC's work on these issues was recently given a significant infusion of

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John Oliver Opposes Robocalls, Like NCLC (But Funnier)

John Oliver squarely placed the ball in the FCC's court and blasted major companies making robocalls to pursue debt collection during a segment on HBO's March 10 episode of *Last Week Tonight with John Oliver*. NCLC staff worked closely with the show's producers and the segment



addressed two of NCLC's key advocacy positions: 1) consumers need to retain their right to revoke consent and 2) if an autodialer is defined too narrowly, it

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Consumer Impact

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NCLC Executive Director
Rich Dubois speaks at the
2018 Consumer Rights Litigation
Conference Awards Luncheon

A Message from the Executive Director

Dear Friends, Allies, and Supporters:

These are busy days for consumer attorneys, advocates, and activists. We continue to fight against a wide range of threats to critical consumer laws and regulations, while seeking new opportunities – many at the state level – to advance new protections for vulnerable people and communities.

In this edition of *Consumer Impact* you'll read about NCLC's work to demand accountability from credit reporting agencies, address the student loan debt crisis, urge policymakers to proceed with caution on "fintech" lending, and train lawyers representing homeowners on foreclosure, mortgage servicing and loan modification issues. You'll learn about our efforts to help consumers get out of debt, avoid the scourge of robocalls, and maintain access to affordable voice, wireless, and broadband internet service.

You'll also note, I hope, some reasons for growing optimism. Recent appearances by NCLC advocates before Congressional committees suggest that the tide is turning in Washington, D.C. Important court victories are making a difference for those most in need. New NCLC board and staff members are injecting new perspectives and expertise into our work. And the financial support provided by readers like you, though personal giving as well as cy pres awards, is fueling our advocacy for economic fairness, security, and justice.

This November 14-17, our community will gather together in Boston at the Consumer Rights Litigation Conference to learn from one another, as we do every year – and this year, to celebrate the work we do together and the extraordinary impact we've made over the last five decades at **NCLC's 50th Anniversary Celebration**, to be held on Friday, November 15, the second night of the conference. We're working to make it a night to remember!

We have much to be proud of – and much to be thankful for – including your support. Thank you for reading, learning, and striving for consumer justice with us.

Sincerely,

Rich Dubois
Executive Director

Attacks on Consumers Continue, but Signs of a Turning Tide Provide Optimism

Those who have been in the fight for consumer rights for a long time have learned that progress ebbs and flows. There are steps forward, and back; we hope for – and work to bring about – more of the former than the latter.

The last two years have been one of the most challenging periods for consumers and consumer advocates in recent American history. We've seen – and fought against – attempts to slow down the implementation of new regulations, reverse existing consumer protections, abandon the executive branch's responsibility to enforce the law, and more bad news, much of it documented in these pages and on NCLC's website.

There are still a great number of active anti-consumer threats we need to counter, fighting with everything we have because millions of consumers can be negatively impacted by every step back our government takes. The CFPB has proposed to eviscerate protections against predatory lending by cutting out the heart of the payday rule. Its proposed "fintech sandbox" would allow CFPB employees to grant companies immunity from consumer, state or



NCLC Staff Attorney Chi Chi Wu (center in red next to U.S. House Financial Services Chair Maxine Waters) was a key expert testifying before the U.S. House Financial Services Committee on the need for repairing the broken credit reporting system on Feb. 26. Wu's testimony came as NCLC released *Automated Injustice Redux*, a new report showing that despite some progress in the ten years after NCLC's original *Automated Injustice* report, the credit bureaus still have serious problems in ensuring the accuracy of credit reports, and that the dispute process meant to fix errors remains biased and ineffective.

federal enforcement of critical laws and regulations governing fair lending, truth in lending, electronic payments, and possibly even unfair, deceptive, or abusive practices. A proposed Debt Collection rule was released in May, and it is as bad as expected. The CFPB proposal would permit excessive collection phone calls, grant broad safe harbors to debt collectors, and provide inadequate protections to consumers with time-barred debts. This is no time to take a break!

But over the last few months, we have begun to see unmistakable signs of a turning tide. Scenes like U.S. Rep. Katie Porter, a longtime NCLC friend and ally, confronting and challenging the CEO of Equifax about why its lawyers argued in federal court that its data breach caused no harm to consumers.

NCLC advocates, including Chi Chi Wu testifying on credit reporting before the U.S. House Financial Services Committee, and Joanna Darcus testifying on student loan servicing before a U.S. House Appropriations Subcommittee, received warm welcomes and smart questions from the majority, rather than blank stares and weak excuses for corporate wrongdoing.

The tide is indeed turning – but there's much work to be done to build on and strengthen that positive momentum. Please visit nclc.org/issues/take-action.html to learn how you can help support a consumer-friendly debt collection rule, end forced arbitration, defend legal services funding, stop robocalls, and more. Change doesn't happen on its own; together we make it happen!



On April 11 NCLC attorney Margot Saunders testified before the U.S. Senate Commerce, Science and Transportation Committee's hearing: "Illegal Robocalls: Calling All to Stop the Scourge" on behalf of NCLC's low-income clients, Consumer Action, Consumer Federation of America, NACA, Public Citizen and U.S. Pirg, urging the FCC to strengthen key federal privacy law. Read the full written testimony at: bit.ly/robo-scourge

Debt, Degrees and Democracy

NCLC and the Rappaport Center for Law and Public Policy at Boston College Law School hold Symposium on College Completion and Student Loan Debt

Top experts including academics, researchers, borrower and consumer advocates, journalists, private attorneys, industry representatives, and government officials convened on November 30 in a day-long symposium held by NCLC's Student Loan Borrower Assistance Project and the



(Left to right) Jonathan Glater, professor, University of California Irvine School of Law; Patricia McCoy, Liberty Mutual Insurance professor, Boston College Law School; Julie Margetta Morgan, Fellow at the Roosevelt Institute; Vincent Rougeau, Dean, Boston College Law School; Seth Frotman, Student Borrower Protection Center (former Assistant Director & Student Loan Ombudsman, Consumer Financial Protection Bureau)

Rappaport Center for Law and Public Policy at Boston College Law School. The symposium examined post-secondary education non-completion, student loan debt, and the impact of these issues on communities of color. Symposium panels included: Defining the Problem; Promoting Success &

Persistence in Higher Education; Transforming Collection Practices to Reduce Barriers to Re-Enrollment; and Debt, Degrees, and Democracy: Reshaping the Conversation on College Completion. Panelists shared insights and analysis and offered recommendations for policy changes.



Aryn Bussey, symposium panel moderator and Master's candidate at the Harvard Graduate School of Education (former staff member Consumer Financial Protection Bureau Student Loan Team)



Darrick Hamilton, keynote speaker and professor of Economics & Policy, director of Doctoral Program in Policy, The New School



Joanna Darcus, Massachusetts Legal Assistance Corporation Racial Justice Fellow at the National Consumer Law Center

NCLC's FDCPA Conference Introduces Student Loans Track

NCLC's Fair Debt Collection Practices Act Conference, held March 11-12 in Las Vegas, introduced a Student Loans Track this year, coordinated by NCLC's Student Loans Borrower Assistance Project (SLBAP). SLBAP attorneys developed this track to "put money back in the pockets of struggling student loan borrowers who have been harmed by companies that make big money off of their suffering."

Sessions included: a Student Loan Primer; FDCPA and Student Loans; Litigating Against Student Loan Servicers; Litigating Against For-Profit Schools; and Litigating Against the U.S. Department of Education. A wide range of panels participated in these sessions including attorneys and representatives from the Student Borrower Protection Program; Selendy & Gay PLLC; Illinois Attorney

General Office; Justice Catalyst; National Student Legal Defense Network; Langer Grogan & Diver, PC; California Attorney General's Office; Public Resource; Project on Predatory Student Lending at the Legal Services Center of Harvard Law School; National Consumer Law Center; Public Citizen; and the Massachusetts Attorney General's Office.

Appeals Court Victory for Tribal Lifeline Program Members

The US Court of Appeals for the DC Circuit vacated a terrible Federal Communications Commission (FCC) Tribal Lifeline order and remanded it back to the for a new rulemaking, finding the FCC was arbitrary and capricious in its decision to limit the additional Tribal Lifeline support to facilities-based telecom providers, such as AT&T, and to limit the Tribal Lifeline support to “rural” areas.

NCLC and other consumer advocates, alongside tribal, civil rights, and faith-based groups, voiced their support for efforts by the Crow Creek Sioux Tribe, the Oceti Sakowin Tribal Utility Authority, and wireless service providers, to delay implementation of expansive changes to the Tribal Lifeline Program (federal telecom discount program). The groups sent a letter to the FCC in July 2018 urging it to delay rule changes in which “residents of Tribal lands will be put at risk of consumer confusion, at best, and loss of phone and broadband service, at worst,” if the Commission’s Tribal Lifeline Order were to take effect while the court appeal was pending.

The FCC’s Tribal Order makes substantial changes to the Tribal Lifeline program by prohibiting Lifeline carriers without their own network infrastructure (non-facilities based providers like Petitioners Assist Wireless, enTouch Wireless and Easy Wireless) from receiving the enhanced Tribal benefit. The Tribal Order also limits the availability of the enhanced Tribal benefit geographically to those living in rural Tribal areas. Taken together, the impact of these changes could be profound.

Approximately two-thirds of the more than 418,000 low-income Tribal Lifeline subscribers purchase voice and broadband internet services from non-facilities based providers. The FCC’s plans to boot a majority of providers from the Tribal Lifeline Program could impact more than a quarter of a million low-income Tribal residents, who had insufficient notice of these changes.

“The FCC’s plans to boot a majority of providers from the Tribal Lifeline Program could impact more than a quarter of a million low-income Tribal residents, who had insufficient notice of these changes.”

Podcasts Featuring NCLC Experts

Listen to in-depth interviews with NCLC experts in recent podcasts covering medical debt, payday loans and robocalls:

2/18/19 NPR “Rx For Medical Debt” with Chris Arnold featured an in-depth conversation with NCLC Attorney Jen Bosco. This episode is the third in NPR’s three-part guide on Getting out of Debt. npr.org/2019/02/14/694670747/rx-for-medical-debt



2/13/19 Center for American Progress Off-Kilter Podcast hosted by Rebecca Vallas interviews NCLC Attorney Lauren Saunders on the episode #StopTheDebtTrap about the repeal of the CFPB payday loan rule. itunes.apple.com/us/podcast/off-kilter-with-rebecca-vallas/id994153765?mt=2

1/31/19 Gimlet Media Reply All podcast (runtime: 46:22) The hosts interview Margot Saunders in “Robocall: Bang Bang.” gimletmedia.com/shows/reply-all/awhk76/135-robocall-bang-bang

SHANNON WRIGHT FOR NPR



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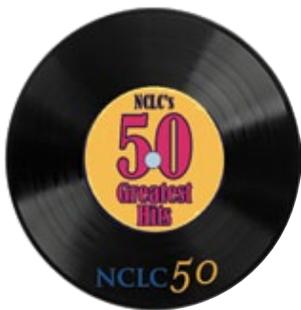
VOICES OF NCLC
NCLC50



VOICES OF NCLC
NCLC50

Voices of NCLC

As part of NCLC's 50th Anniversary year, we're highlighting some of the people at the heart of our network of consumer champions. You can read about all of the Voices of NCLC at nclc.org/home/fifty.



FDCPA! HOEPA! We're highlighting some of our most important accomplishments over the last five decades through "NCLC's 50 Greatest Hits" available at nclc.org/home/fifty. NCLC is grateful to all of the supporters and consumer champions who have played a role in our first 50 years!

Save the Date! November 14-17

The 2019 Consumer Rights Litigation Conference and Class Action Symposium and NCLC's 50th Anniversary Celebration

NCLC's annual Consumer Rights Litigation Conference is the most important event of the year for attorneys and advocates representing American consumers. This year's CRLC may be our biggest yet! This year the Conference will include the Women's Networking Suite, yoga sessions, and a special 50th Anniversary Evening Event Celebration! **Registration goes live on June 12 – and when you register be sure to purchase tickets for NCLC's 50th Anniversary Celebration**, an evening of food, fun and inspiration where we'll celebrate the organization's past, present and future. Don't miss it!

6 Consumer Impact SPRING 2019

Consumer Rights Litigation Conference November 14-17, 2019 • Boston

The biggest and most important consumer law conference of the year!

Join us for our
50th Anniversary
Celebration!



NCLC Releases Two Essential New Treatises for Representing Homeowners

NCLC has just introduced two new titles to the NCLC Digital Library. *Mortgage Servicing and Loan Modifications* (1st ed. February 2019) and *Home Foreclosures* (1st ed. February 2019), are each now available, either as a Print + Digital subscription or as a Digital-only subscription.

Mortgage Servicing and Loan Modifications focuses on mortgage servicers' legal obligations and the latest homeowner loan modification programs, including using RESPA discovery and dispute rights to resolve servicing problems, new RESPA and CFPB servicing rules, the latest Fannie Mae, Freddie Mac, FHA, VA, and RHS loan modification programs, and much more.

Home Foreclosures examines a wide variety of foreclosures involving: Fannie Mae, Freddie Mac, FHA, VA, RHS, and reverse mortgages; land installment sales; manufactured home loans; and unpaid property taxes and condominium fees.

To read the first chapters, to see their tables of contents, and to order, go to nclc.org/bookstore.

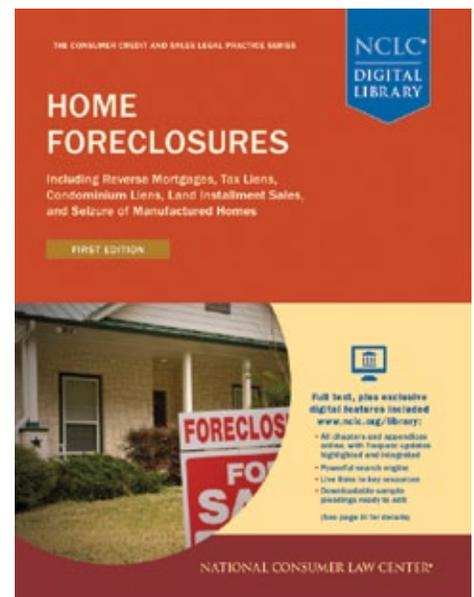
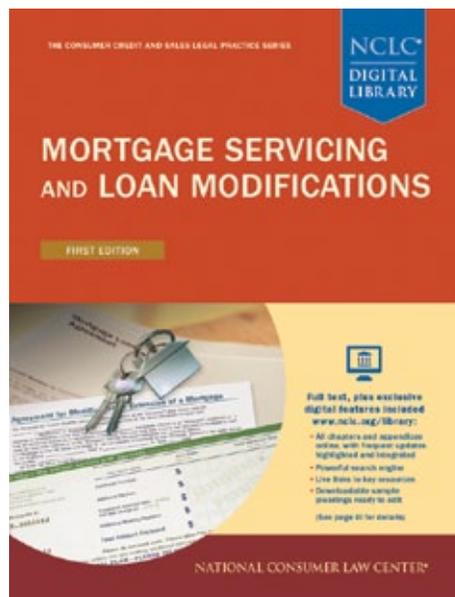
Martha Tamayo Joins NCLC Board of Directors

Community Advocate Martha Tamayo joined the NCLC Board of Directors in April. A member of the Board of Directors for Central California Legal Services, Martha has worked with the Kings Community Action Organization since 2012 to help residents and communities achieve self-sufficiency. She has also worked with the humanitarian program Palomas Mensajeras to arrange visits in the U.S. between elderly residents of Mexico and their family members now living in the U.S.



NCLC Board Member Martha Tamayo

"I am honored to join the NCLC Board of Directors as a voice for low-income communities and families"



NCLC is proud to have received a coveted 4-star rating from Charity Navigator, the leading charity evaluator in America. Approximately only a quarter of rated charities have achieved the distinction of their highest possible rating, which indicates that NCLC "adheres to sector best practices and executes its mission in a financially efficient way." Attaining a 4-star rating verifies that NCLC "exceeds industry standards and outperforms most charities in our area of work"... and "sets National Consumer Law Center apart from its peers and demonstrates to the public its trustworthiness."

Thank You!

NCLC depends on the support of attorneys, activists and allies who help us protect and defend consumer rights and advance economic justice in our society. On behalf of the millions of low-income families, students, elders, veterans and others whose lives are impacted by NCLC's work, we express our gratitude to all who have contributed to NCLC, including the following 2018-2019 leadership donors:

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Philip Zuzolo

NCLC is also grateful for the partnership of the following foundations, corporations and government agencies over the past year:

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Justice in Aging
W. K. Kellogg Foundation
Klarman Family Foundation
Massachusetts Legal Assistance Corporation
New Venture Fund
Open Society Foundations
Retirement Research Foundation
U.S. Department of Justice

If you believe you have been mistakenly excluded from this list, please contact Paul Laurent, NCLC Director of Leadership Giving and Engagement, at pl Laurent@nclc.org or (617) 542-8010. Thank you for your support!

Collaborating Attorneys Support Consumers Through Cy Pres Awards to NCLC

In many of their joint cases over the years, Matthew McCue, Ted Broderick, Anthony Paronich, John Barrett, Jon Marshall, Alex Burke, and Dan Marovich have directed cy pres funds to the National Consumer Law Center.

According to McCue, “when approving cy pres beneficiaries, courts frequently want to see a nexus between the harms alleged in the complaint and the beneficiary. For many years, NCLC has advocated for consumers on a wide host of issues including issues relating to consumer privacy, so they easily satisfy this nexus. NCLC stands ready to assist with declarations as to NCLC’s suitability and experience concerning its work.”

“One of the reasons we wish to make sure NCLC receives cy pres, is that over the past few years, the telemarketing industry and its partners have amassed massive resources in an effort to redefine the telemarketing regulations in a manner that will make it easier for telemarketers and debt collectors to harass consumers. Margot Saunders, Senior Counsel at NCLC, has been instrumental in countering these efforts and her work is much appreciated. This is why we support NCLC with cy pres designations and will continue to do so.”

Two recent cases which provided valuable cy pres awards to NCLC include:

Patriot Payment In a TCPA class action brought against a credit card processor called Patriot Payment, the lead plaintiff was Diana Mey, who is herself a consumer telemarketing activist from West Virginia. Ms. Mey was the lead or co-lead plaintiff on

other TCPA class action in which the defendants have attempted to buy her off including one case, where Ms. Mey rejected a “pick off” of over \$100,000. Without consumers like Ms. Mey, we would not be able to pursue these cases. Patriot Payment ultimately settled after two years of litigation for \$3.7 million. The team on this case was Matthew McCue, Ted Broderick, Anthony Paronich, John Barrett, and Jon Marshall of Bailey & Glasser.



Attorney
John Barnett



Attorney
Ted Broderick



Attorney
Alex Burke



Attorney
Matthew McCue



Attorney
Anthony Paronich

TCPA class actions that have resulted in the recovery of over \$100 million for consumers nationwide. In this particular case, Ms. Mey received multiple telemarketing calls from Patriot Payment although her number had long been listed on the Do Not Call Registry. The calls sought to sell Ms. Mey credit card processing services. The defendant initially sought to “pick off” Ms. Mey by making her a large individual offer of judgment. To her credit, because the class would receive nothing, Ms. Mey rejected the offer. Ms. Mey has done the same in every

Sempris and Quality Resources was a TCPA class action brought against several entities who jointly participated in a somewhat unique scheme. Sempris sold goods over the internet, including of all things - slippers. Sempris then hired Quality Resources to call Sempris’ customers after they made an online purchase to purportedly “confirm” their purchase. The defendants jointly claimed that because the purpose of the call was to confirm the details of a prior purchase, the calls were not telemarketing calls subject to the

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Cy Pres Awards Advance Justice for Consumers

Nominating NCLC for a cy pres award is one of the most effective ways to help promote and advance consumer rights, and NCLC is generally seen by courts as a fair and viable recipient for residual monies. NCLC is prepared to provide any information needed by courts, and is always willing to work with and provide assistance to attorneys on the cy pres nomination process. If you would like to nominate NCLC for a cy pres award, please contact Paul Laurent at pl Laurent@nclc.org or call 617-542-8010. Thank you for your generous support!

Legal Awards: NCLC is grateful to all attorneys who have advocated for cy pres and other legal awards to support our consumer education and advocacy efforts.

Rafey S. Balabanian
John Barrett
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L. Stephens Tilghman
Janet Varnell
Brian Warwick
Jennifer Weller
Shimshon Wexler
Benjamin Wolf

NCLC Debt Collection Report Highlights Consumer Concerns

Consumer Complaints about Debt Collection: Analysis of Unpublished Data from the FTC

National Consumer Law Center Report Analyzes Nearly 700,000 Consumer Complaints from 2017 for 50 States, District of Columbia, and Puerto Rico

Every year the Federal Trade Commission (FTC) collects consumer complaints through its Consumer Sentinel Network (CSN). In 2017, there were 620,800 complaints about debt collection – making it the most common type of consumer complaint compiled in the FTC’s *CSN Data Book*. Yet, relatively little data about these debt collection complaints is published.

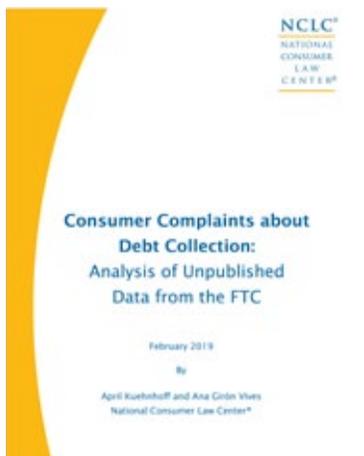
Complaints can help regulators understand what types of problems consumers are experiencing with debt collectors and identify actors who may be violating the law. They can also identify the states and regions where consumers

report more abusive debt collection practices, and help researchers identify factors that lead to these problems. Additionally, with the Consumer Financial Protection Bureau’s (CFPB) ongoing debt collection rulemaking, CSN complaint data offers another opportunity to learn about consumer experiences with debt collection.

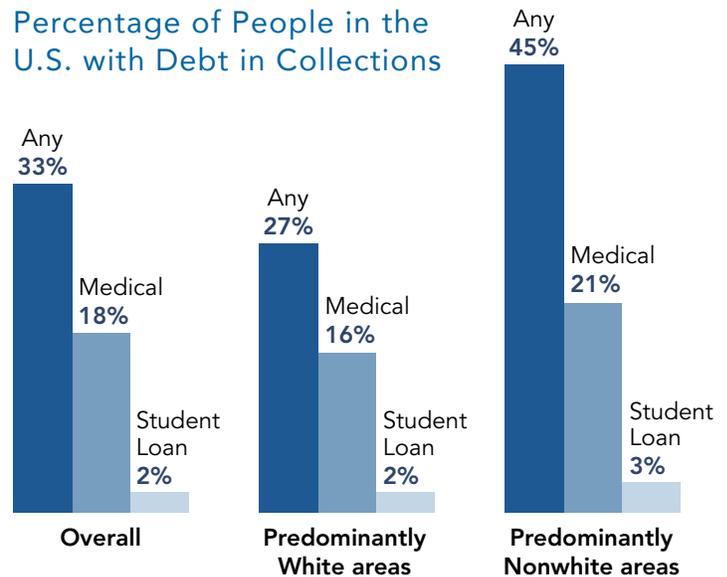
This National Consumer Law Center report analyzes complaints about debt

collection practices collected by the FTC in 2017. It contains some information that was never published, which was obtained through Freedom of Information Act (FOIA) requests. Download the full report and access debt

collection fact sheets (national, state, and District of Columbia) a map of the number of complaints per capita in each state, and information about the companies that received the most complaints: bit.ly/a-dc-ftc



Percentage of People in the U.S. with Debt in Collections



Source: Urban Institute, *Debt in America: An Interactive Map* (Dec. 6, 2017).

“With the Consumer Financial Protection Bureau’s proposed rules regarding debt collection expected this spring, the FTC’s complaint data offers another opportunity to learn about consumer experiences with debt collection and help inform regulation to rein in bad actors.” – April Kuehnhoff, co-author

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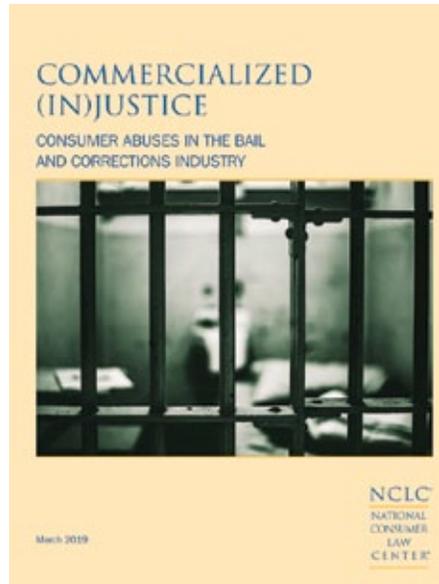
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Criminal Justice... *continued from page 1*

adrenaline in 2018 through a multi-year commitment of support from the Arnold Ventures foundation, a philanthropy dedicated to tackling some of the most pressing problems in the United States. We are also supported by and work closely with the Annie E. Casey Foundation's Southern Partnership to Reduce Debt and its national, state and local partners to advocate for equitable criminal justice reform. And we've partnered with Lief Cabraser Heimann & Bernstein LLP, Justice Catalyst Law, Public Counsel, Towards Justice and others to challenge consumer abuses that arise in the criminal legal system through impact litigation.

To learn more and access NCLC reports and resources on criminal justice debt issues – including the recently-released reports on *Commercialized (In)Justice: The Growing Problem of Consumer Abuses Perpetuated by Companies Profiting from Mass Incarceration*



(March 2019) and *The Rent-to-Own Racket: Using Criminal Courts to Coerce Payments from Vulnerable Families* (February 2019), visit nclc.org/issues/criminal-justice.

Collaborating Attorneys...

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TCPA. During the confirmation call, however, Quality Resources also sought to “up sell” the consumer as to additional goods sold by Sempris. Accordingly, the court ultimately ruled these calls were telemarketing calls subject to the TCPA. After three years of litigation, Sempris agreed to settle with the class for \$2.15 million. Rather than settle, Quality Resources closed its doors. After noticing that a Manhattan penthouse owned by its principal was being promoted for sale on “Million Dollar Listing,” an amended complaint was filed seeking to hold the principal personally liable for the illegal telemarketing practices of Quality Resources. After another two years of litigation, this second half of the case settled for \$3.3 million. The team on this case was Matthew McCue, Anthony Paronich, Ted Broderick, Alex Burke, and Dan Marovich.

Robocalls Featured on Last Week Tonight... *continued from page 1*

will mean that consumers will receive even more robocalls.

The segment closed with Oliver stating that he was going to robocall all five FCC commissioners (their office landline phones) every 90 minutes, to urge them to end unwanted robocalls, with the following message: “Hi FCC. This is John from Customer Service. Congratulations! You’ve just won a chance to lower robocalls in America today. (Laughs) Sorry, but I am a live person! Robocalls are incredibly annoying, and the person who can stop them is you! Talk to you again in ninety minutes. Here’s some bagpipe music: (bagpipe music)”

As of press time, the segment had garnered over 7 million views on YouTube.

“The point is everybody is annoyed by robocalls. Hatred of them might be the only thing that everyone in America agrees on now” – John Oliver

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