

# Berkeley Law

Center for  
Consumer Law &  
Economic Justice



Annual report  
**2021**



## **Ted Mermin**

---

Executive Director,  
*Center for Consumer  
Law and Economic Justice*

The past year was one of extraordinary challenge – and remarkable resilience. The pandemic forced us to live and work in two dimensions. It caused tremendous loss; it laid bare racial inequities; it exacerbated economic injustice.

In these circumstances, it would have been easy to despair, to hunker down and just wait.

But that is not what happened. Before the lockdown was a month old, the extraordinary students of CAPS had organized a Scamhunters Project that pointed the FTC and the California Attorney General's Office to online merchants peddling fake coronavirus treatments or selling phantom PPE. The Center released a series of COVID-19 Consumer Protection Guides on topics ranging from pauses in student loan payments to imposition of eviction moratoria to garnishment of economic impact payments. The principal architect of the Guides, Justice Catalyst Fellow Eliza Duggan – who has yet to set foot in the Center's office – also spearheaded the Center's new Published Justice Project. Thanks to Eliza's efforts over the past year finding worthy unpublished judicial opinions, there are now eight cases in the official California Reports that would not otherwise be there.

The shift online did not stop remarkable policy victories like the transformation of California's state banking regulator into a consumer-protection-focused agency, an idea that originated with the Center – along with a number of other bill ideas that are now statutes. It did not prevent the filing of amicus briefs in the U.S. Supreme Court, the California Supreme Court, and the U.S. Courts of Appeals. It did not stand in the way of truly significant steps that changed the law for the better.

Meanwhile, through the work of CAO and Event Czar Ben Hiebert, the Center somehow managed not only to maintain but to expand (a better word might be “triple”) its core work as convener of scholars, teachers, practitioners, advocates and students from around the Bay Area, the state, the nation, and the world. Thus, with our partners we launched the Economic Justice Policy Advocates Conference, which will bring together twice a year the policy experts who advocate for consumer legislation in Congress and in state legislatures around the country. And we inaugurated the Consumer Law Students Summit, which will annually gather law and policy students committed to economic justice. Regular quarterly meetings of consumer law stakeholders in, respectively, the Bay Area, Los Angeles, and San Diego continued – but accelerated to monthly meetings to meet the exigencies of the pandemic. And special gatherings continue as well: we look with excitement to the Coerced Debt Summit to be held in late September 2021.

So, yes, it was an annus horribilis. And yet from that very horribilisness arose the most wide-ranging and profoundly impactful work that the Center has yet done.

Here's to a year well past. And to all of you who, in spite of all, made it an extraordinary one.

# By the Numbers

422



Conference Attendees

2

New Conferences

NEW

30

California Consumer  
Protection  
Roundtables

7



Lunch Talks

8

Successful Case Publication Requests  
through Published Justice Project

5



Amicus Briefs Filed



7

COVID-19 Consumer Protection Guides



# New Conferences

## Convening Advocates

In November 2020, consumer protection advocates from across the nation who work in state legislatures gathered for the first-ever Economic Justice Policy Advocates Conference (EJPAC). The Center organized and hosted the event, along with partners the National Consumer Law Center, the Center for Responsible Lending, Texas Appleseed, the Maryland Consumer Rights Coalition, and the National Association of Consumer Advocates. The gathering also featured a rousing keynote from Bill Bynum of HOPE.

Policy advocates from over 30 states – many of whom are the only (or nearly only) consumer policy advocates working with their respective state legislatures – had the chance to share ideas and discuss common problems with their counterparts from other states. This first convening of a broad-based national consumer advocacy community allowed advocates to swap stories, trade knowledge, and develop new plans for collaboration. Tackling topics such as medical debt, criminal fines and fees, and COVID-19 and racial equity, the participants created plans for policy change in their home states and in Congress.

Participants resolved at the end to make the conference a semi-annual event. And so in June 2021 the Center hosted a second EJPAC that allowed states with common opportunities and challenges to share ideas in a more regionally focused format. Keynotes featured legislative champions State Senator Jackie Collins of Illinois and State Representative Tram Nguyen of Massachusetts. That gathering ended with a sense of the creation of a new and important institution.



“I walked away  
inspired and  
empowered.”

Economic Justice Policy Advocates  
Conference Attendee



State Representative Tram  
Nguyen of Massachusetts



Inaugural CFPB  
Director Richard  
Cordray

“ I am amazed that after two days on Zoom I  
feel more energized than when I started. ”

Economic Justice Policy Advocates Conference Attendee



Ted Lee '21



Bill Bynum, HOPE  
CEO

---

## Gathering Students – and Building CLASS

In March 2021, the Center, Berkeley Law’s Consumer Advocacy and Protection Society (CAPS), and the National Association of Consumer Advocates (NACA) hosted the first-ever Consumer Law Students Summit. The Summit marked the culmination of the first two years of the CLASS (Consumer Law Advocates, Students, and Scholars) Network, which supports consumer law and economic justice programs in law schools around the United States. Students from more than twenty law schools gathered to hear from experts in the field, to learn from prominent attorney mentors, and to discuss how to expand activities at their schools.

The convening gave students the opportunity to engage in “mentorship pods” with practicing attorneys in the nonprofit, government, or private (plaintiff) sectors, depending on students’ individual preferences. It was a chance for students to meet seasoned attorneys and ask the questions they’ve always wanted to ask. As one student put it, “The mentor breakout room was very cool. It was exciting to speak with two attorneys, each doing a type of consumer law that I’m potentially interested in.”

The gathering included keynote conversations with guest stars Richard Cordray, the first director of the Consumer Financial Protection Bureau, and Elizabeth Cabraser, the preeminent plaintiff-side class-action litigator. Both keynoters offered wisdom to the students, answering questions about pressing topics in economic justice and the practice of consumer law. Prof. Vijay Raghavan of Brooklyn Law School and Monica Vaca from the FTC also offered insight into what the next five years of consumer law and economic justice will look like, giving students a taste of what substantive issues they might encounter when they start their work in the field.

When we planned the summit (a year into the pandemic), the most common question from students was “Why would I voluntarily spend another five hours on Zoom?” By the end of the gathering, it was “When can we do this again?”



**“The breakout rooms allowed students and attorneys to get to know one another in a small setting. It was a very well-organized summit.”**

**Consumer Law Students Summit Attendee**



“Really cutting edge ideas and an incredible diversity nationwide.”

Consumer Law Scholars Conference Attendee

U.S. Representative Katie Porter (CA)



## “Old” Conferences

### **The Third Annual (And First Virtual) Consumer Law Scholars Conference**

This past March, the Center welcomed over a hundred consumer law experts and enthusiasts from across the country and the world to the third annual (and hopefully only totally virtual) convening of the Consumer Law Scholars Conference. Over the course of the two days, participants delved into sixteen papers exploring topics as varied as transgender patient access to healthcare, the quality of algorithm-based customer care, the social inequalities embedded in and exacerbated by the uneven enforcement of contracts, and the effects of geographic concentration of payday lenders on debt traps — to name but a few.

The gathering also featured keynote conversations with U.S. Representatives Katie Porter and Barney Frank, two powerhouse champions of consumer justice. Rep. Porter challenged conference participants to look beyond the halls of academe and to transform their papers into policy briefs for lawmakers. Former Rep. Frank advised attendees to remember the power of grassroots organizing and not to underestimate their own potential influence.

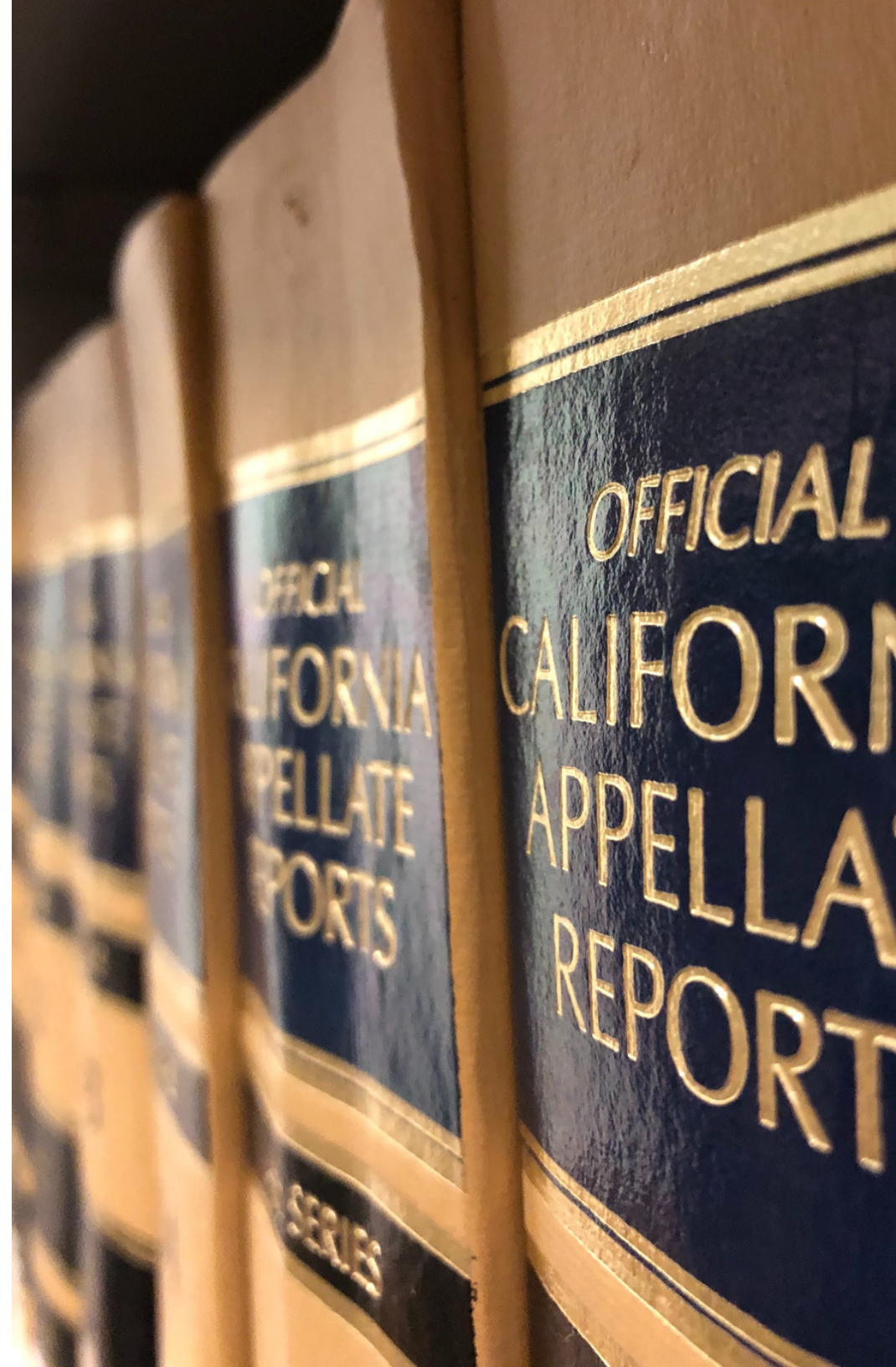
Enormous thanks are due to conference organizers Kathleen Engel, Manisha Padi, Rory Van Loo, & Lauren Willis – and to everyone else who participated and made this pandemic-year conference such an energizing and thought-provoking gathering.

# Projects and Highlights

## Published Justice Project

Every day, California's appellate courts issue dozens of "unpublished" opinions that are destined to be lost to posterity – unless, that is, someone discovers one of those opinions in time and convinces the court of appeal that it should be published after all. For the past year, the Center's Published Justice Project has been combing through those thousands of opinions to find decisions worthy of becoming part of the official record. Successfully getting the court to change its mind means these opinions become precedential, control the outcome of future cases, and may be cited by future litigants. Led by staff attorney and Justice Catalyst Fellow Eliza Duggan, and joined in various cases by a raft of interested nonprofit organizations, the Center has helped guide the development of consumer law in California by seeking publication of significant opinions. Eleven times in the past year the Center has requested publication; courts have granted eight of those requests, for a .727 batting average. That is eight decisions – ranging from consumers' right not to be compelled to give up their day in court, to car buyers' ability to return cars that are "lemons," to homeowners' being able to hold Homeowners Associations accountable for malfeasance – that would not otherwise be an official part of California law. The decisions include one notable case in which tenants successfully joined together to sue a landlord over unlivable conditions in an apartment complex – a rare instance of a tenants' class action being certified.

For the Published Justice Project, it was quite a first year.





## COVID-19 Consumer Protection Guides



I. Tenants' Rights



II. Student Loans



III. Stimulus Checks



IV. Auto Insurance



V. Scams



VI. Travel



VII. The Vaccine

## Student Projects: C-3PO

This year the Center initiated the Consumer Protection Public Policy Order (C-3PO), a new student-initiated legal services project that provides the opportunity for first-year law students to work on important consumer protection policy initiatives. Staff from the Center and EBCLC's Consumer Justice Clinic (including now-Judge Sharon Djemal of the Alameda Superior Court), along with founding student chairs Susie Chen and D.H. Nam, supervised a dozen students who made up the inaugural cohort. Students submitted administrative comments to the CFPB (on the pitfalls of using AI to determine creditworthiness and the importance of increasing access to limited-English speakers), to the FTC (on proposed changes to the Fair Credit Reporting Act), and to the DFPI (on banning the collection of debts that are past the statute of limitations). One team did such an impressive job on its research memo for the Student Borrower Protection Center – on whether the Dodd-Frank Act confers jurisdiction over for-profit colleges with respect to student loans – that they were asked to stay on and produce an issue brief on the subject. Another team completed research projects for EBCLC, including a memo analyzing what rights consumers have when an ATM eats their cash. After a terrific initial year, students are looking forward to the next installment of C-3PO. And we are, too.

## COVID-19 Consumer Protection Guides

The COVID-19 pandemic and the response to it have raised many questions involving consumer law and economic justice. In response, the Center has published (and kept updated) a special series of guides over the past year, each addressing a salient issue, in order to provide some answers. The guides, touching on issues ranging from tenant's rights to travel restrictions, are available on the Center's website.

# C-3PO

Consumer Protection Public Policy Order

## Shielding California Consumers from Financial Predation and Encouraging Responsible Innovation

This year the Center celebrated the birth of a revamped and refocused consumer protection agency in California. The newly renamed Department of Financial Protection and Innovation (DFPI) will not only continue to supervise California's financial institutions, but will do so with an explicit consumer protection charge.

Based on a proposal put forward several years ago by Center Director Ted Mermin, Berkeley Law lecturer and new Senior Deputy Commissioner of the DFPI Suzanne Martindale '10, and California Policy Lab Executive Director Evan White '12, the transformed agency has new authority and new resources to protect Californians from predatory providers of financial products and services; to provide guardrails and guidance to financial technology innovators; and to conduct outreach and education to particularly vulnerable groups including veterans, students, seniors, and immigrants.

The Center was involved in helping to generate more than a dozen policy ideas that became law this past year. Two of those laws, developed in special collaboration with EBCLC's Consumer Justice Clinic, are particularly noteworthy. Senate Bill 616, which went into effect on September 1, 2020, sets aside a quantum of money in a person's bank account when a creditor levies the account. The law requires debt collectors to leave at least the "minimum basic standard of adequate care" – now \$1788, and adjusted every year for inflation – in a consumer's account. SB 616 will provide a measure of much-needed security as the pandemic continues to impact economically vulnerable Californians, and has been particularly celebrated by legal service providers throughout the state after a hotly contested three-year legislative battle.

Finally, this past year witnessed passage of Assembly Bill 2463, which prevents the recent, pernicious practice of debt buyers using foreclosure as a tool to collect on dubious credit card debt. The law, concocted at EBCLC with the assistance of the Center and Berkeley Law Professor Prasad Krishnamurthy,

prohibits foreclosures for consumer debts — like credit card debts, student loan debts, and medical debts — that weren't secured by the home when they were incurred. In the middle of an economic upheaval, a pandemic, and a housing crisis – and as foreclosure moratoria expire – the law will help to keep people in their homes at a time when that is most urgently needed.

## Congressional Testimony on the "Consumer Protection and Recovery Act"

This spring, Ted Mermin provided testimony to the U.S. House Subcommittee on Consumer Protection and Commerce on the "Consumer Protection and Recovery Act." The proposed legislation, which as of this writing has passed the full House – would restore core regulatory authority to the FTC, including the ability to return money to consumers from whom it was illegally taken. In April 2021, the Supreme Court held in *AMG Capital Mgmt v. FTC* that the FTC Act did not explicitly provide that authority to the FTC. The Center helped organize an amicus brief in that case and has advocated for swift action to allow the FTC to continue its core function: protecting consumers.

### HOUSE COMMITTEE ON ENERGY & COMMERCE

CHAIRMAN FRANK PALLONE, JR.

[ABOUT E&C](#)

[SUBCOMMITTEES](#)

[COMMITTEE ACTIVITY](#)

[NEWSROOM](#)

[SUBSCRIBE](#)

Livestream





---

## Events

In partnership with other organizations at the law school, the Center hosted a remarkable lineup of guest speakers for virtual events this past year. To list just those guests who traveled virtually from Washington, D.C. to join us this past spring: In February, U.S. Representative Katie Porter joined us to talk about consumer protection opportunities (and challenges) in the current Congress. In March, Richard Cordray stopped by to discuss his time as founding director of the CFPB, as well as the future of the Bureau. In April, U.S. Senator Sheldon Whitehouse arrived to provide a wide-ranging view of his experiences on the Senate Judiciary Committee, and then-acting FTC Chair Rebecca Kelly Slaughter came to discuss the possibilities for promoting social change through the Commission's regulatory work. Stay tuned...

---

## Welcome, Professor Glater!



We are delighted to announce that Professor Jonathan Glater will be joining the Berkeley Law faculty this fall, and look forward to a fruitful collaboration with one of the nation's leading scholars of (among many other things) student loan law. Professor Glater comes to Berkeley from the UCLA School of Law and, prior to that, the UC Irvine School of Law. He has published articles in many prominent legal journals, included the California Law Review, and – before turning to academia – served as a reporter for both the New York Times and the

Washington Post. Professor Glater's recent scholarship has focused on accessibility to higher education and in particular on the implications of student debt. We are tremendously excited to have him join us.

---

## Ted Mermin Named Center's Executive Director

Finally, this past year marked the removal of the word “interim” from the title of the Center's director. In January, Ted Mermin was officially made the Executive Director of the Center for Consumer Law & Economic Justice. Setting aside the merits of the personnel decision, the moment represents a capstone to a more than decade-long effort to build the consumer law and economic justice program at Berkeley Law. Until 2008, the law school had never offered a course in consumer law. The past dozen years have witnessed the law school's first-ever course in consumer law, followed by three successive doublings of the number of course offerings in the field; the birth of CAPS, the consumer alumni network, the CLASS Network, and C-3PO; the inauguration of four regular regional and state convenings of practitioners and the initiation of four new regular national and international conferences; and ultimately, thanks to a flash of inspiration and generosity from Elizabeth Cabraser, the launch of a Center at Berkeley Law devoted to – of all things – consumer law and economic justice. That's a pretty impressive record, and we're honored to have the chance to carry it forward.

To all who have had a hand in this remarkable journey – and if you've read this far, that's you – thank you.

[DONATE](#)

Center for Consumer Law & Economic Justice  
University of California, Berkeley

School of Law  
308 Law Building  
Berkeley, CA 94720-7200

Tel 510-393-8254

[consumer@law.berkeley.edu](mailto:consumer@law.berkeley.edu)

Berkeley  
Law

---

Center for  
Consumer Law &  
Economic Justice