

Students Play Key Role in Proposed Consumer Protection Bill

By Andrew Cohen

Rachel Baum '13 spent her winter break feverishly preparing fact sheets on the Fair Debt Buyers Practices Act for senators, staffers, and journalists. She was supposed to start working on the vital project in January at the [East Bay Community Law Center](#) (EBCLC). But the urgency of the project—convincing the California Senate to pass the Act—couldn't wait.

“I knew they were under a big time crunch,” said Baum. “I'd taken a consumer protection law class in the fall and knew how egregious some of these debt collection tactics were.”

The bill (SB 890) passed the Senate on Jan. 31, and now moves to the Assembly. It would mandate that debt buyers provide consumers with documentary evidence to ensure that their collection efforts are aimed at the right person, among other requirements.

In recent years, debt buyers have increasingly used the courts to gain default judgments against debtors. The tactic works in their favor, said EBCLC Faculty Director [Jeff Selbin](#), because at least 80 to 90 percent of defendants don't respond to such lawsuits. “Often defendants have already paid off the debt or are mistakenly targeted because of faulty record-keeping,” he said. “Or they simply don't recognize the collection agency's name because it bought the debt from a prior creditor.”

Some predatory debt buyers routinely file suit after the statute of limitations has expired. But judges still grant them default judgments because defendants typically fail to appear in court.

“This is part of a larger trend the last few years where a cottage industry has sprung up to purchase junk debt in high volume from the original creditors,” Selbin said. “They have limited information about whom they're pursuing, which leads to all kinds of mistakes.”

The Clinic Jumps In

Baum's class was taught by adjunct professor Ted Mermin '96, longtime EBCLC adviser and executive director of the Public Good Law Center in Berkeley. The staff at EBCLC's Neighborhood Justice Clinic—including director Elisa Della-Piana '02—were seeing hundreds of clients every year who had been harassed or sued by debt collectors. The clinic helped clients defend those cases individually, but Mermin and his colleagues also wanted to find a broader solution.

“We knew we were seeing only the tip of the iceberg and that it was just a small percentage of people who sought legal help for their debt collection problems,” Mermin said. “And even then the problem was so large that it made up almost half the cases that came in through the clinic's doors. With hundreds of thousands of these cases filed in California's courts every year, we

decided to do something more systematic to help the clients we were seeing, and especially those we weren't seeing.”

Rachel Terp '12 began the effort by researching how other states handled the problem and found helpful legislation in North Carolina. Later that summer, the Federal Trade Commission issued a report chronicling sketchy debt collection practices and potential ways states could counteract them.

Terp prepared a preliminary report and later, while taking Mermin's class, drafted a California debt collection reform bill for her policy paper. EBCLC brought in partners to help push the effort forward, working closely with Berkeley Law alumni and consumer protection experts Gail Hillebrand '81 and Suzanne Martindale '10.

Terp and Martindale drafted a white paper with EBCLC and Consumers Union staff. Hillebrand and Mermin reshaped the bill in early 2011. They found an author in state senator Mark Leno and a sponsor in the California Attorney General's Office. A few months later, the effort got a jolt when State Senator Lou Correa was mistakenly sued for a \$4,000 debt owed by a debtor with the same last name. Correa learned of the suit only after his wages had been garnished.

To further promote the legislation, Dan Dwyer '12 developed a website about the proposed bill. Selbin and Anne Hilby '14—former communications director for the Arizona Attorney General's Office—drafted an op-ed that ran in the *Daily Journal*. Along the way, Charles Carriere '12 and then-student Colin Hector '11—who founded Berkeley Law's Consumer Advocacy and Protection Society—provided valuable research.

“The students have been invaluable in helping to push this bill through the Senate and now they're gearing up to do the same in the Assembly,” Mermin said. “Their work matters, and this bill matters. It would provide safeguards for hundreds of thousands of California consumers every year. It would ensure a level playing field for the collections industry. And it would help ease the heavy burden these cases place on our courts.”

If SB 890 becomes law “none of it would have happened without the students,” said Mermin. “They've been involved every step of the way.”

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