

# Outlook

Fall 2004  
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NATIONAL CONSUMER LAW CENTER

Protecting  
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Justice

## \$47 Million Settlement for Consumers from Subprime Mortgage Servicer

Homeowners across the country scored a major victory earlier this year in the \$47 million class action settlement with Fairbanks Capital Corporation for its unfair, deceptive, and illegal practices in servicing subprime mortgage loans.

"Most of Fairbanks' customers

were financially struggling low to moderate-income homeowners with few assets besides their homes," said John Rao, an NCLC attorney who participated in the litigation. "Tens of millions of dollars were allegedly taken out of these communities unlawfully, and we are very pleased that this

settlement offers them much-needed relief," said Rao.

Faced with numerous individual and class action lawsuits and enforcement actions by government regulators, Fairbanks settled 37 private  
Continued on page 4

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## NCLC and NLADA Announce Consumer Law Fellowship Program

To promote the practice of consumer law in legal services programs, NCLC and the National Legal Aid and Defender Association recently announced the creation of a Consumer Law Fellowship Program. The Fellowships were made possible by a court settlement in a national class action against General Motors Acceptance Corporation where NCLC, acting as co-counsel, challenged widespread racial discrimination in car financing transactions.

"Consumer law directly challenges economic forces that push families into poverty, prey on families already in poverty, and make escaping poverty so difficult," said Willard P. Ogburn, the

Center's executive director. "The NLADA grants will expand the capacity of the legal services community to promote the welfare of our client communities through the practice of consumer law," said Ogburn.

programs that can demonstrate a permanent commitment to new or expanded consumer law advocacy serving a substantial number of African-American and/or Latino low-income consumers. Long-term

"Consumer law directly challenges economic forces that push families into poverty, prey on families already in poverty, and make escaping poverty so difficult."  
Willard P. Ogburn, NCLC Executive Director

NLADA will award a limited number of two-year grants to legal service programs that pledge to expand or create quality consumer law units. Priority will be given to

viability, even after the fellowship ends, will be valued highly. Applicants must be non-profit legal services organizations. (Both LSC-  
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Dear Friends and Colleagues:

As you look through this issue of OUTLOOK, I think one of the things you may notice is NCLC's expanding collaboration with other organizations and attorneys working for social justice.

We've always believed that when working for good, more is better, but it's only in the last few years that the combination of a talented, growing NCLC staff and expanded advocacy funding has given us flexibility to collaborate to such a degree.

We increase our effectiveness, our ability to make change for the better, by working together. To borrow a phrase: the whole is greater than the sum of its parts. (I must add, however, we have some pretty impressive 'parts' working on consumer and social justice issues - NLADA, NACA, TLPJ, AARP, and CFA among many others. We're proud to be in their company.)

Much as we'd like to help wherever and whenever our expertise is needed, we can't. Money *does* matter. Indeed, it gives us the budgetary flexibility to respond to opportunities to work with other organizations and individuals on concerns we share.

Each of you who makes a financial contribution to NCLC has contributed to our growing advocacy, our ability to join with others in working for consumer justice. Thank you - together we are doing even more.

Willard P. Ogburn, Executive Director

Together,  
 we can make a difference  
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# Outlook

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# CFA Presents Consumer Award to NCLC

At its 34th Annual Awards Dinner in June, the Consumer Federation of America honored NCLC with its *Esther Peterson Consumer Service Award* for distinguished service to consumers over many years.

Willard P. Ogburn, NCLC executive director, accepted the award on behalf of NCLC. "We work largely where our market economy does not, where competitive pressures and greed work too well without the decency and fairness that should define a business culture," said Ogburn.

"It is our task and privilege to challenge this status quo, to make things better, often against great odds, but with enough success to know we - all of us - can make a difference.

"It's no accident that this award is going to NCLC as an organization," added Ogburn. "The Center's successes and

its outsized impact derive from the expertise and immeasurable talent of its staff. It is a staff dedicated to advocating for the poor and vulnerable and we wouldn't have been honored with this award without their hard work.

"We are privileged and honored to receive the Esther Peterson Award from the CFA."

Jean Ann Fox of CFA, Rosemary Shahan of Consumers for Auto Reliability and Safety, and Willard P. Ogburn of NCLC at CFA's 34th Annual Awards Dinner. Shahan, who also received an award, and Fox are well known for their own highly effective consumer advocacy.

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vulnerable consumers.

## CFA's Brobeck Applauds NCLC

Stephen Brobeck, CFA executive director, presented the Peterson award to NCLC for its distinguished service to consumers over many years. Excerpts from his speech follow:

"... [NCLC] has become not only the most effective advocate in the country for lower-income consumers but also a mainstay of the consumer movement.

"...NCLC is exceptional in four important respects.

"First, it deals with exceptionally critical issues. Lower income consumers arguably have the greatest unmet consumer needs...And, they are the least well-organized to ensure that they are effectively represented in the public policy arena. NCLC, more than any other consumer group, provides

this representation.

"Second, the NCLC staff is exceptionally dedicated... Senior staffers...have made longtime - often lifetime commitments - to serving the public interest...

"Third, NCLC is exceptionally effective while probably getting less public credit than any other consumer group for their contributions... they played a key role: in persuading courts to recognize due process in consumer cases, in establishing the Low-Income Home Energy Assistance Program and the Home Ownership and Equity Protection Act of 1994, in improving the FTC's Holder in Due Course Rule and its Credit Practice Rules, in developing the influential Model Consumer Credit

Code, and recently in winning important new protections against auto loan markups.

"Moreover...Through employment, training, and inspiration, they have persuaded many private attorneys to practice consumer law, and then helped create an advocacy association for these attorneys - the National Association of Consumer Advocates.

"Fourth, NCLC is exceptional for its leaderships - from founders Father Robert Drinan and Professor William Willier, to current executive director Will Ogburn... [who] has successfully led the expansion and strengthening of NCLC both as an organization and as an advocate."

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# Fairbanks Settlement Directs \$47 Million to Homeowners

Continued from Page 1

lawsuits and agreed to a consent order with the Federal Trade Commission.

Fairbanks was charged with violating several federal laws, including the FTC, Fair Debt Collection Practices, Fair Credit Reporting, and Real Estate Settlement Procedures Acts. As asserted in court filings and media reports, Fairbanks routinely misapplied mortgage payments, hit customers with bogus late fees and charges, and prematurely launched foreclosure proceedings against homeowners. It also allegedly would routinely “force place” high-cost homeowners insurance on borrowers despite receiving evidence that the borrowers already had insurance.

“In many cases, abusive servicing practices go undetected by consumers who unknowingly pay improper late fees and other charges,” said Rao. “When homeowners realize something’s wrong and make an effort to resolve the dispute, servicers often ignore them and go forward with legal action.”

Headquartered in Salt Lake City, Fairbanks is one of the country’s largest servicers of subprime mortgage loans. It does not originate loans, but collects and processes loan payments from borrowers on behalf of the owner of the mortgage notes.

The \$47 million settlement can be divided into three sections. First, Fairbanks will fund a \$35 million redress account that will be administered by the

FTC. Each consumer’s payment will be calibrated to the amount of fees and charges paid by or assessed to that borrower. The entire redress fund will be paid out to consumers on a pro rata basis based upon the number of claims filed; no part of the fund will revert to Fairbanks.

“Most of Fairbanks customers were financially struggling low to moderate-income homeowners with few assets besides their homes. Tens of millions of dollars were allegedly taken out of these communities unlawfully, and...this settlement offers them much-needed relief.”

John Rao, NCLC Attorney

Second, Fairbanks will fund a \$5 million redress account devoted to consumers who allege they lost their homes to foreclosure. The amount received will depend on the number of claims submitted.

Third, Fairbanks will reimburse in full or reverse certain charges outstanding on a borrower’s account. It estimates the refunds and credits under this ‘reverse or reimburse’ program at \$7 million, but there is no cap on payments. Reimbursement will be in cash whether or not the loan is still serviced by Fairbanks and whether the account is open, paid off, charged off, or is in bankruptcy.

In addition, the class settlement and FTC order require Fairbanks to make significant changes to its business practices.

Among many other requirements, Fairbanks will send a letter to delinquent borrowers at 45 days of delinquency with specified information; will make certain efforts to publicize its loan resolution programs; and will respond in writing within 30 days to all requests for loan resolution.

Customers can raise Fairbanks’ failure to comply with these and other obligations under the settlement as a defense to foreclosure.

Rao, who writes and trains extensively on abusive mortgage servicing practices, spearheaded NCLC’s participation as co-counsel to the plaintiffs in Curry v. Fairbanks Capital Corp. The case was filed in the District of Massachusetts by the Boston law firm of Roddy, Klein & Ryan. Final approval of the settlement, which was granted in May 2004, is being appealed by intervenors.

In July of this year, Fairbanks changed its name to Select Portfolio Servicing, Inc.

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## Indian Justice Wadhwa Meets with NCLC Staff

Justice D. P. Wadhwa of the Indian National Consumer Disputes Redressal Commission is shown here at a meeting with NCLC staff to discuss telecommunications issues.

# NCLC and NLADA Announce Consumer Law Fellowship

Continued from page 1

funded and non-LSC funded programs are eligible.)

"We expect the Consumer Law Fellows to engage in a broad array of advocacy," said Ogburn. "Their work could include direct client representation, litigation, and administrative or legislative advocacy on key issues like predatory lending, debt collection harassment, home energy assistance, or car financing, among many other problems affecting the poor," he said.

A review panel will evaluate all

applications against criteria consistent with the program's stated goals and the ability of the applicant to provide necessary monetary, administrative, and supervisory support to the fellowship program and future consumer law work. The panel may request additional information from applicants during the review process.

Funding for the fellowships will be available as of April 1, 2005. The grants will be \$30,000 each in both the first and second years. Grant awards will be announced in November

2004, and the programs that are selected will be expected to have designated their Consumer Law Fellows by April 1, 2005. The grant may be used either to hire new staff or to enable an experienced staff member to transfer to consumer law work.

Programs will be required to provide or obtain funds to meet the expenses that the grant does not cover. Fellowships will be funded for two years, but the second year of funding will be contingent on a review of the program's use of the grant

and the activities of the fellow. Programs may provide a name for their awarded fellowship to honor a donor or other person, or to enhance a fundraising or public relations effort.

For more fellowship details, visit NCLC's website at [www.nclc.org](http://www.nclc.org). Completed applications must be received, electronically or via mail, on or before September 15, 2004 at the offices of NLADA, 1140 Connecticut Avenue NW, Suite 900, Washington, DC 20036. Applications may be sent electronically to Don Saunders at [d.saunders@nlada.org](mailto:d.saunders@nlada.org).

## TLPJ Honors Top Litigators

At a moving awards ceremony in July, Trial Lawyers for Public Justice honored the trial lawyer or lawyers who made the greatest contribution to the public interest by trying or settling a precedent-setting case.

We congratulate this year's winners who represented the descendants of Mexican farmers who were unfairly driven from their Colorado land: Jeffrey A. Goldstein, William Schoeberlein, Watson Galleher, Robert Maes, David A. Martinez, Julia T. Waggener, Rebecca Fischer, Norman Haglund, and Elisabeth Arenales.

Other finalists for the award included co-counsels Stuart



Co-counsels in the GMAC case: Gil Gilmore, NCLC's Stuart Rossman, Clint Watkins, Darnley Stewart, Gary Klein, and Michael Terry.

Rossman (NCLC's director of litigation), Clint Watkins, Michael Terry, Gil Gilmore, Darnley Stewart, and Gary Klein who successfully brought a groundbreaking class action suit against General Motors Acceptance Corp. for its discriminatory auto financing practices.

The lawsuit, which exposed

practices that had operated secretly for over 75 years and had resulted in higher-interest rate car loans for minorities, transformed car financing practices across the industry.

In remarks from the bench at the final settlement hearing, Judge Aleta Trauger praised the litigation team's "cutting edge" and "brilliant" litigation

strategy. She expressed her admiration for the lawyers' efforts, saying, "there is no question in my mind that plaintiff's counsel in this case have performed an extraordinary...service to the African-American and Hispanic communities and really to all car purchasers through their work on these cases."

"...plaintiff's counsel in this case have performed an extraordinary ... service to the African-American and Hispanic communities and really to all car purchasers through their work on these cases."

Judge Aleta Trauger

Also honored with nominations were several law firms well known to consumer lawyers: The Sturdevant Law Firm (James C. Sturdevant and Mark T. Johnson) and co-counsel The Brandi Law Firm (Thomas J. Brandi), for a case battling bank fraud against Bank of America.

## Protecting the Consumer Rights of Service Members

In testimony before the House Committee on Veterans' Affairs in June 2004, NCLC's Margot Saunders offered support for the Service Members Civil Relief Act and recommended several improvements to the bill.

Her testimony, which was co-drafted by Carolyn Carter, suggested extending certain credit reporting protections to a service member's dependents; clarifying that enlisted personnel are entitled to the same financial protections as those called up from the reserves or National Guard; and tightening up the protection against waiver of the right to cancel a residential or vehicle lease.

## Curbing Abuses by Private Child Support Collectors

In testimony submitted to the Illinois legislature, NCLC's Stuart Rossman called on lawmakers to support a bill regulating private, for-profit child support collection agencies. The legislation prohibits such agencies from attaching fees to child support

paid on time and, pending the outcome of a rate setting procedure, caps at 29 percent the amount charged for collecting child support arrearages.

The Illinois proposal also explicitly bans collection agencies charging fees on support collected through government action; for example, the interception of tax refunds to satisfy unpaid support. Some agencies charge fees as high as 50 percent of collections, and they take fees out of on-time support payments and government initiated collections. Both houses of the Illinois legislature have approved the measure and it is awaiting signature by the governor.

NCLC is currently co-counsel for the plaintiff in a putative class action in Wisconsin, challenging the deceptive business practices of Supportkids, a for-profit collection agency.

## Monitoring Key Regulations Under the Truth in Lending Act

In late 2003, NCLC submitted detailed comments on the Federal Reserve Board's proposed changes to Regulation Z and commentary under the Truth in Lending Act. Many of the changes related to

a spate of appellate court decisions that incorrectly interpreted the Act and thus increased the likelihood that victimized homeowners would lose their homes to foreclosure.

On behalf of low-income consumers and other consumer organizations, NCLC's Elizabeth Renuart, with assistance from Carolyn Carter, filed comments that addressed a number of issues, including the standards by which consumers receive noticeable and understandable information in certain loan documents; the procedures by which a consumer can rescind a mortgage loan; and the way numerical amounts are disclosed to consumers.

In March 2004, the FRB's final rules were issued, many of which reflected NCLC's recommendations.

## Boosting Enrollment for Telephone Discount Program

Frequently citing comments submitted by NCLC, the Federal Communications Commission recently issued a ruling that expanded eligibility for the federal Lifeline program.

Lifeline helps support telephone service to millions of low-income consumers around the nation by providing significant discounts on

Continued from page 6  
household monthly phone bills  
(the amount varies by state).

Previously, in order to be eligible for the program, federal criteria required the consumer to certify that he or she participated in at least one of several government assistance programs. Pointing to program enrollment rates of only 33 percent, the FCC expanded Lifeline eligibility to all households earning up to 135 percent of the federal poverty guidelines, whether or not the household receives government assistance.

The FCC also added the National School Lunch's free lunch program to the federal default eligibility criteria. It agreed with NCLC's position that low-income households are more likely to participate in the school lunch program than other public-assistance programs, due to a perceived difference in social stigma.

## Protecting the Rights of Student Loan Borrowers

In joint testimony submitted to the U.S. House Committee on Education and the Workforce, NCLC, the Center for Law and Social Policy, and the Workforce Alliance urged lawmakers to protect student loan borrowers against for-profit vocational school fraud and abuse. The testimony, which was co-authored by NCLC's Deanne Loonin, cited on-going abuses such as schools closing

without warning, routine fabrication of financial aid documents, and misrepresentation of the value of educational programs and job prospects.

Instead of eliminating key protections in current law, as proposed in H.R. 4283, the College Access and Opportunity Act, the three organizations recommended that Congress immediately undertake a nonpartisan study of current fraud and abuse and the effectiveness of current protections.

In addition, the testimony urged lawmakers to allow borrowers to submit evidence of a disability determination by the Social Security Administration or the Veteran's Administration when applying for a cancellation of their student loans due to disability.

## New Massachusetts Law Strengthens Protections Against Home Loan Abuses

Homeowners in Massachusetts scored a major victory in August when the state enacted some of the nation's strongest protections against predatory home mortgage loans. The new law places a number of restrictions on high-cost mortgages that are predominantly sold in the subprime market to low-income and financially strapped

homeowners.

"We applaud the tough provisions in this law that will help families safeguard their

**"This law should curb many of the outrageous practices that have driven thousands of homeowners over the financial brink and into foreclosure."**

Elizabeth Renuart, NCLC Attorney

precious home equity," said Elizabeth Renuart, an NCLC attorney who joined forces with a coalition of advocates that urged passage of the legislation. "This law should curb many of the outrageous practices that have driven thousands of homeowners over the financial brink and into foreclosure," she said.

The law is, on the whole, stronger than regulations previously in effect that governed high-cost mortgage loans made in the Commonwealth and broader than the federal Homeownership and Equity Protection Act.

Renuart explained that a loan qualifies as high cost if the annual percentage rate is 8 percent higher than the US Treasury rate on first loans and 9 percent higher on subsequent loans. High-cost loans are also defined as those whose fees exceed the greater of 5 percent of the total loan amount or \$400. These fees include any prepayment penalty that the lender may include in the new loan, as well as yield spread premium payments to brokers.

The statute forbids prepayment fees or penalties on these loans, mandates credit counseling for

the consumer before closing, and requires lenders to have a reasonable belief that borrowers can repay the loan (taking into account the consumer's debt-to-income ratio and income remaining after paying certain debts each month). Notably, violations of the high-cost provisions are also considered violations of the state's unfair and deceptive practices (UDAP) act.

NCLC attorneys Odette Williamson and Stuart Rossman joined Renuart in analyzing drafts of the legislation and meeting with state policymakers. Other members of the coalition included the Association of Community Organizations for Reform Now (ACORN), Center for Responsible Lending, National Organization for Women (Mass. Chapter), Massachusetts Affordable Housing Alliance, Citizens Housing and Planning Association, Massachusetts Association of Community Development Corporations, and Lawyers' Committee for Civil Rights.

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If you would like information on how to fashion a *cypress* for NCLC, please contact Robert Hobbs or Rich DuBois at 617-542-8010.

## Murray Recommends Gifts of Stock to Support NCLC

"I hope more people will think about giving the Center stock," said Murray. "It's good for both the donor and NCLC." With appreciated stock the donor benefits NCLC with a financial contribution and at the same time avoids paying capital gains on the stock's appreciated value.

"I hope more people will think about giving the Center stock. It's good for both the donor and NCLC."

John Murray

John T. Murray

"I give to NCLC because I'm a strong believer in its mission of consumer justice," says John T. Murray, a member of NCLC's Partners' Council and an attorney in private practice with his family's firm of Murray & Murray in Sandusky, Ohio.

Although over the years Murray has made many generous gifts to NCLC, his most recent gift was his first in the form of appreciated stock.

"NCLC is working hard - and effectively - in advocating for the rights of low-income consumers and for that they deserve our support," said Murray. "But they've also earned my support because they've helped my consumer law practice. I've often relied on their manuals and their trainings and conferences. They're a real resource for consumer lawyers."

For information on making a gift of stock to NCLC, contact Suzanne Cutler at 617 542-8010.

## Bravo on NACA's 10th

Congratulations to the National Association of Consumer Advocates which will be celebrating its tenth anniversary this fall at NCLC's annual Consumer Litigation Conference in Boston.

It was at another NCLC conference ten years ago in Chicago that NACA was founded by a group of some 14 attendees who, looking to the future, understood the value and potential of a membership organization that would support and encourage the practice of consumer law.

Since then we have enjoyed

and encouraged NACA's growth from a few handfuls of attorneys into an effective national organization of close to 1000 consumer lawyers.

Although NCLC and NACA are entirely separate organizations, we have worked often and well with NACA members who share with NCLC a zeal for protecting low-income consumers from the predatory practices of today's marketplace.

We look forward to many more years of collaboration.

***Go, NACA!***

# NEW GRANTS for NCLC ADVOCACY

## Grants Fund New Resource for Consumers in Debt

To fund the publication and dissemination of a workbook for consumers overwhelmed by debt, NCLC has received new grants from the **Fund for Consumer Protection and Education of**

“Given the number of disreputable credit counseling companies in the marketplace today, consumers need help sorting through their options.”

Deanne Loonin, NCLC Attorney

the **State Attorneys General** and from the **Endowment for Education of the National Conference of Bankruptcy Judges**. Additional funding for the workbook will also be provided by an existing grant from the **Administration on Aging**.

“Given the number of disreputable credit counseling companies in the marketplace today, consumers need help sorting through their options,” said NCLC’s Deanne Loonin, principal author of the workbook and co-author of the investigative report “Credit Counseling in Crisis,” which exposed widespread abuses in the burgeoning credit counseling industry. “The guide will help consumers understand the nature of their financial problems, offer tips for finding an appropriate counselor, and help develop a plan for getting back on their feet,” said Loonin.

The workbook will include a series of straightforward financial worksheets to be filled out by consumers themselves or their advocates. It is expected to be published during the fall of 2004.

## Helping Low-Income Households Maintain Utility Services

The Center has received a grant from the **John H. and H. Naomi Tomfohrde Foundation** for “Project Stay Connected,” an initiative of community outreach and state advocacy designed to help low-income residents in Massachusetts receive their utility discounts and maintain essential gas, electricity, and telephone services.

At present, the vast majority of eligible consumers in Massachusetts do not receive the utility discounts to which they are entitled. Of the almost 500,000 households that are eligible for low-income discounts, only about 150,000 actually receive those rates. Furthermore, thousands of low-income families in the state who might be eligible for the program are cut off from utility service because they cannot pay their bills.

## Understanding the Explosion in Elder Debt

According to recent reports,

people over 65 have the fastest growing level of home mortgage debt, the fastest-growing share of personal bankruptcy filings, and the largest growth in demand for credit counseling. More and more elders are forced to tap into their home equity to pay off other debts and cover uninsured medical expenses.

To investigate the root causes of this disturbing trend, NCLC has received a grant from the **Borchard Foundation Center on Law and Aging**.

Deanne Loonin and Elizabeth Renuart, staff attorneys, will publish an article examining the forces driving up elder debt burdens, including predatory lending practices and lax government oversight of the consumer credit industry. Loonin and Renuart’s article will recommend public policy reforms that bring fairness to the credit marketplace and curb predatory practices against elders.

## NCLC to Create Repository for Home Mortgage Data

The **Ford Foundation** has awarded the Center a grant to establish a database repository for valuable information on predatory home mortgage loans. The Center will collect hundreds of loan documents from attorneys, housing counselors, and attorneys general across the nation,

record the most relevant loan information, and make the database available to researchers, advocates, and others. The project will be conducted in collaboration with Professor Patricia McCoy of the University of Connecticut School of Law and Professor Stephen Ross of the University of Connecticut Department of Economics.

“A lack of publicly available data on the nature and extent of lending abuses against

“We believe this repository will give researchers access to a rich sample of data from which they can quantify the impact of predatory lending.”

Elizabeth Renuart, NCLC Attorney

lower-income and minority borrowers in the subprime mortgage market has held back progress on the problem,” said Elizabeth Renuart. “We believe this repository will give researchers access to a rich sample of data from which they can quantify the impact of predatory lending.”

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# Hello, Staff

Nathan Day, Megan Harrington

The Center is pleased to welcome a number of new staff to its Boston office:

**Nathan Day** brings extensive manuscript editing skills to his new position at NCLC as editorial assistant. Day received his M.A. in Divinity from the University of Chicago and a B.A. from Rice University.

**Megan Harrington** helps with order fulfillment as our new publications assistant, making sure that those who order our books and manuals get what they want in a timely, hassle-free manner. Harrington is a 2004 graduate of Emmanuel College.

## NCLC's Legal Services Roots

NCLC's roots go back to 1969 when it was founded as one of the Office of Economic Opportunity's legal services support centers. Although in the mid-1990s we lost federal funding as a support center, we continue to support legal services programs and our staff reflects the fact that we've never lost our dedication to justice for low-income consumers.

The Massachusetts Legal Assistance Corporation recently honored longtime legal services staff. NCLC

staff members who were recognized at the ceremonies:

**30 Plus Years:** Robert Hobbs and Willard P. Ogburn.

**20-29 Years:** Charles Harak, John Rao, Elizabeth Renuart, and Jonathan Sheldon.

**10-19 Years:** Denise Lisio, Deanne Loonin, and Deborah Parziale.

Not included in the above lists are Carolyn Carter, of counsel, and Margot Saunders of our Washington office.

Di Lu, Sarah van Daalen Wetters, Heather Packard

NCLC recently reorganized its administrative staff and with that change we welcome three new employees to the Center:

**Heather Packard**, our new research assistant, is a former volunteer coordinator and research assistant at The Progressive Government Institute. Prior to that she worked at Planned Parenthood as a health educator and education scheduler. She's a 2002 graduate of Harvard University.

That friendly, efficient voice you hear on the phone when you call NCLC more than likely belongs to **Sarah van Daalen Wetters**. She started with us as a temporary employee this summer and was so good we invited her on as administrative assistant. Although from California, she's a 2003 graduate of Boston University.

**Di Lu** comes to us from China, by way of Canada where she was a data analyst in an oil and gas technical support company. She's NCLC's administrative/technical assistant and as such calms the techno-phobes on NCLC's staff.

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## NCLC Interns Make A Difference

Each summer NCLC expands its resources with the addition of interns who ably assist us in many important tasks that might otherwise be delayed or go undone. This year we were well served by Tanya Both and Steve Boyajian.

**Steve Boyajian**, who'll go on to his final year of law school at Boston College, worked as a legal intern on a variety of research tasks.

**Tanya Both** interned in our development office where we're pleased she'll continue longterm.

Tanya Both

Steve Boyajian

The one consumer law  
conference that has it all!

# CONSUMER RIGHTS LITIGATION CONFERENCE

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**BOSTON**

NOVEMBER 5-8, 2004

Informative  
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**WRAPPING UP PREDATORY MORTGAGES CASES:** Settlement and trial issues (Advanced) - Friday, November 5

**EASING THE DEBT STRUGGLE:** Practical strategies to help clients drowning in debt - Friday, November 5

**INTRODUCTION TO CONSUMER BANKRUPTCY** - Monday, November 8

**WINNING IN STATE LEGISLATURES:** Reining in the bad guys in lending - Monday, November 8

AND

**CLASS ACTION SYMPOSIUM** - Sunday- Monday, November 7-8

## Too good to miss!

Sessions on auto fraud, FDCPA, predatory lending, FCRA, student loans, credit counseling, credit scoring, arbitration, medical debt, property flipping, UDAP, and much more

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Professor Elizabeth Warren  
Former Governor Roy Barnes

## Register today!

Download a brochure and registration forms from our website, [www.NCLC.org](http://www.NCLC.org) or call 617 542-8010 and we'll fax you a copy.

## Class Action Symposium

The Fourth Annual Consumer Class Action Symposium will be held Sunday and Monday, November 7-8, following NCLC's Consumer Rights Litigation Conference in Boston.

The Symposium will open with a Sunday evening cocktail party and presentation at Harvard Law School.

The program on Monday will include sessions of current interest, presented by expert speakers:

- ▶ Class Actions in UDAP and Representative Capacity Claims
- ▶ Coordination of Multi-State Cases— Choice of Law Issues
- ▶ Rigorous Analysis or Rigor Mortis? Class Action Standards of Review
- ▶ Is the Civil Jury Trial an Endangered Species?
- ▶ The Nexus Between Consumer Law and Civil Rights Class Actions
- ▶ Class Action Reform Legislation / Rules Changes
- ▶ Key Ethical Issues in Class Action Settlements and Attorneys Fees Awards

Useful course materials will be provided on a CD-ROM.

More information on the Symposium will be available on our website, [www.nclc.org](http://www.nclc.org).

We're open 24/7  
at  
[www.nclc.org](http://www.nclc.org)

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# Raphael *Cy Pres* Helps Fight Mandatory Arbitration Clauses

Citing its expertise and history of effective advocacy, attorney Lance Raphael recently directed his second *cypres* award to NCLC. “For years I’ve relied on the Center’s resources in my practice and know its work is always first rate,” said Raphael. “No organization has achieved more for low-income consumer rights than NCLC.”

Raphael’s most recent *cypres* of \$39,000 will help the Center fight the proliferation of mandatory arbitration clauses in consumer contracts. According to Raphael, “Mandatory arbitration insidiously undermines a stunningly broad range of protections that NCLC and others have spent decades trying to safeguard.

“At stake, I’m afraid, are two of the three branches of our government.”

In recent years, businesses have quietly slipped mandatory arbitration clauses into all types of consumer contracts - home mortgages, credit card agreements, phone bills, home construction and repair contracts, bank depositors’

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“Because arbitration can be a kangaroo type hearing performed in secret, not even the media can penetrate the cloak of confidentiality to see what corporate America is up to.” Lance Raphael

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agreements, and countless other contracts. They prohibit the consumer from taking a dispute to court and force them to seek binding arbitration.

Contrary to the assumption that such proceedings would be even-handed, Raphael warned

that consumer arbitration is astonishingly unfair and undemocratic. One party (the business) gets to pick the judge, write the rules, limit the evidence, and demand that all testimony and outcomes remain a secret.

“Unlike the judiciary, there is no public review of arbitrators, and they cannot be impeached or voted off the bench for bad decisions. More frightening is the fact that an arbitrator’s ruling cannot be appealed for making a decision contrary to the law — in essence, the arbitrator can ignore the law,” he explained. “Because arbitration can be a kangaroo type hearing performed in secret, not even the media can penetrate the cloak of confidentiality to see what corporate America is up to.”

NCLC’s executive director, Will Ogburn, expressed his appreciation to Raphael and other consumer attorneys for directing *cypres* to NCLC, often over fierce opposition from industry defendants. “In most public forums, the consumer’s story is rarely told,” said Ogburn. “Policymakers need to understand the hardships suffered by families who get ensnared by these deceitful arbitration agreements and other outrageous practices.”

Raphael is the founder of the Consumer Advocacy Center, a private law firm with offices in Chicago and Seattle. His practice helps consumers vindicate their rights against deceptive or abusive businesses that attempt to take advantage of them.

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