

## Toby Rachel Merrill

(b)(6)

### HARVARD LAW SCHOOL

*Director, Project on Predatory Student Lending (2012-present)*

*Lecturer on Law (2015-present)*

*Senior Clinical Instructor (2020-present); Clinical Instructor (2015-20); Skadden Fellow (2012-2014)*

- Created first-of-its-kind legal aid practice representing low-income students in affirmative litigation and arbitration against for-profit colleges, lenders, guarantors, schools, and related parties for violations of state and federal consumer protection laws.
  - Litigate significant cases that attack the legal and financial conditions allowing for-profit colleges to cheat low-income students. (See Selected Significant Cases.)
  - Collaborate with local and national organizers, community-based advocates, and policymakers. Co-counsel with and advise top public interest law firms. Partner with other organizations and law schools.
  - Advise state and federal agencies and policymakers, Attorneys General of numerous states, Senators and Representatives and their staff, among others, on issues related to for-profit colleges and student loan debt.
  - Testify before state and federal regulators on the regulation of for-profit and occupational schools and student debt.
  - Develop and execute communications strategy to ensure that policymakers, litigators, and advocates are aware of the law the Project develops.
- Co-founded expansion of the Project in 2016, raising over \$7 million to expand the Project from a single attorney to a team of twelve, leading litigation around the country.
  - Launch and maintain advisory council of Project supporters.
  - Hire and manage Project staff of 12.
- Serve on various formal and informal committees of the WilmerHale Legal Services Center (LSC) and HLS, including the LSC administrative committee and clinical anti-racism committee.

### *Classes & Clinical Supervision*

- **Consumer Protection and Predatory Lending Clinic** (2012-present). Students attorneys within the Project on Predatory Student Lending provide individual and class representation of borrowers cheated by predatory for-profit-schools, and learn about impact litigation on important policy issues. Students undertake written and oral advocacy with substantial supervision and extensive feedback. The clinic is consistently oversubscribed.
- **Consumer Protection Clinical Seminar** (2014-present). Co-teach clinical seminar on state and federal consumer protection law, covering federal and state statutory, regulatory, and decisional law of consumer protection, as well as ethics and practice skills.
- **Student Loan Law** (2014, 2016). Designed and taught first law school course in the nation on student loan law, which was subsequently approved by the Curriculum Committee as a permanent offering and taught again.

## SELECTED SIGNIFICANT CASES

*Calvillo Manriquez v. DeVos* (filed 2017) – Represent nation-wide class of 50,000 former students of Corinthian Colleges denied full cancellation of their student loans under U.S. Department of Education (“ED”)’s illegal “partial denial” rule.

- Obtained a [preliminary injunction](#) prohibiting ED from using the partial denial rule and enjoining ED from collecting on these debts. Appeal pending in Ninth Circuit.
- Class certification [order](#).
- **Obtained [ruling](#) that Secretary DeVos and the Department of Education violated the preliminary injunction and obtained contempt sanctions of \$100,000.**
- Moved for [partial reconsideration](#) of sanctions - seeking additional sanctions and citing evidence of harm to numerous class members.

*Villalba et al. v. ITT Tech* (filed 2017) – Represent 750,000-person class of former ITT Tech students in adversary proceeding against the estate of failed chain of for-profit colleges, seeking to cancel all outstanding debts of ITT students. **A 2018 court-approved settlement granted students a \$1.5 billion allowed claim, cancelled almost \$600 million in institutional debts, and returned \$3 million recently paid on those debts.** (Bankr. S.D. Ind.).

- Adversary [Complaint](#) & Attachments. Exhibits include over 1,000 pages of testimony from class members organized into [29 exhibits](#), each covering a different aspect of ITT's wrongdoing and the harm it caused.

*Sweet v. DeVos* (filed 2019) – Represent over 200,000 student loan borrowers across the country in a challenge to the unlawful withholding or unreasonable delay of borrower defense decisions. Won class certification in October 2019.

- Plaintiffs filed nearly 900 affidavits from putative class members across the country in support of their motion for class certification. [Part 1](#), [Part 2](#), [Part 3](#)
- [Order](#) granting class certification.
- [Motion to enforce](#) settlement & accompanying [declaration](#).
- Fairness hearing Zoom chat [transcript](#): On October 1, 2020, the court held a class fairness hearing via Zoom. Judge Alsup said that it was the most interesting fairness hearing he had ever held in his 21 years on the bench. Over 500 class members attended via zoom, and stayed for the entire two hours, as fourteen students chosen by the court from more than 200 class members who asked to speak.
- [Order](#) rejecting settlement and granting plaintiffs expedited depositions and written discovery against the Department of Education.

*Bauer v. DeVos* (filed 2017) – Invalidated ED’s illegal delay of the 2016 Borrower Defense Rule (81 FR 75926) under the Administrative Procedure Act, forcing the rule into effect on October 16, 2018. The rule bars schools participating in the federal student loan program from employing mandatory arbitration clauses, and required ED to cancel \$150 million in debt for 15,000 students who attended defunct for-profit schools. Case was joined by a coalition of attorneys general from 19 states and D.C. Numerous groups filed amicus briefs.

- [Ruling](#) on claims.
- [Ruling](#) on remedy.

*CAPPS v. DeVos* (filed 2017) – Successfully defended federal regulation conditioning participation in the federal student aid program on schools disavowing and abandoning enforcement of forced arbitration and class action waivers.

- [Ruling](#).

*Dieffenbacher v. DeVos* (filed 2017). “The Department’s request for remand appears to be an attempt to evade judicial review so that it can retain the ability to garnish Plaintiff’s wages without a conclusive ruling as to the enforceability of her loans. Under such circumstances, the remand request appears both frivolous and in bad faith.” [Order Denying Motion for Voluntary Remand](#).

*Britt v. Florida Career College* (filed 2020) – groundbreaking putative class action against for-profit school chain for unfair consumer practices and race discrimination by targeting Black students for enrollment. [Complaint](#).

*Williams v. King* (filed 2016) – Invalidated government’s unlawful seizure of earned income taxed credits (EITC) to repay debts incurred to attend Corinthian Colleges. Won declaratory judgment that the seizure was illegal, effectively barring the interception of tax refunds to pay any debts from Corinthian Colleges in Massachusetts.

- [Order](#) on motions for judgment.

*Vara v. DeVos* (filed 2019) – Following on students’ victory in *Williams*, *Vara* successfully challenged ED’s refusal to discharge the debts of all Mass. Corinthian borrowers despite a request from the Mass. Attorney general. Court ordered ED to discharge the debts of all 7,200 class members. **First court-ordered discharge of federal student loans based on borrower defense.**

- [Order](#) on motions for judgment.

*NYLAG v. DeVos* (filed 2020) – Nationwide challenge to 2019 Department of Education borrower defense regulation, which would eliminate meaningful access to loan cancellation for students of problematic for-profit colleges.

### SELECTED PRESENTATIONS AND TRAININGS

- Harvard Law School Covid-19 and the Law Colloquium, *Money, Finance, & Consumers*, Panelist, with Professors Rakoff, Jackson, & Desan (October 2020)
- Briefing for congressional staff on borrower defense litigation (August 2020)
- Training for bipartisan group of 25 state attorneys general on Project’s victory in *Vara v. DeVos* (July 2020)
- American Constitution Society Student Convention, *Creative Lawyering*, Speaker (online, April 2020)
- Lawyering for Justice in the United States, HLS J-Term Course, Guest Lecturer (Cambridge, MA, January 2020)
- Harvard Law School Library Book Talks, *When Should Law Forgive*, by Martha Minow, Panelist, with Professors Minow, Umunna, Steiker, Babbha (Cambridge, MA, October 2019)
- National Association of Attorneys General Public Information Officers (NAAG PIO) Seminar, Faculty, *What’s Coming in the AG World* (Boston, MA, September 2019)
- Convening of 27 state attorneys general at HLS to discuss the Project’s victory in *Williams v. King*, Organizer, Host, and Speaker (Cambridge, MA, June 2019)

- WilmerHale Legal Services Center of Harvard Law School 40<sup>th</sup> Anniversary, *Responding to Community Needs Through Partnerships*, Panelist (Boston, MA, April 2019)
- National Consumer Law Center Fair Debt Collection and Student Loan Litigation Conference, Panelist, *Litigating Against For-Profit Colleges* and *Litigating Against the Government About For-Profit Colleges* (Las Vegas, NV, March 2019)
- Massachusetts Continuing Legal Education (MCLE), Faculty, *Student Loan Law Primer and Update* (Boston, MA, March 2019)
- National Consumer Law Center Webinar, Speaker, *What the New Arbitration Rule Means for Litigation Against For-Profit Schools* (January 2019)
- Consumer Federation of America Financial Services Conference, Speaker, *Life Cycle of Student Loan Debt* (Washington, D.C., November 2018)
- Bipartisan Congressional Briefing, Speaker, *Higher Education and the Deregulatory Agenda* (Washington, D.C., October 2018)
- National Consumer Law Center Consumer Rights Litigation Conference, Panelist, *Student Debt Cancellation* (Denver, CO, October 2018)
- American Bar Association Tax Section Fall Tax Meeting, Panelist, *Tax Consequences of Student Loan Cancellation* (Atlanta, GA, October 2018)
- The Economic Case for Canceling All Student Loan Debt, a panel discussion at HLS moderated by Professor Howell Jackson, Panelist (Cambridge, MA, October 2018)
- Committee on Regional Training Consumer Law Training, Lecturer, *Private Student Loans Collection Litigation Defense* (Ann Arbor, MI, May 2018)
- State Center for Antitrust and Consumer Protection Enforcement Student Loan Enforcement Workshop, Speaker, *For-Profit School Practices and Regulation* (Washington, D.C., December 2017)
- Association of American Law Schools Clinical Legal Education Conference, Panelist, *Grow-Your-Own-Solutions* (Denver, CO, May 2017)
- Joint Meeting of HLS Dean's Advisory Board, Leadership Council, and Alumni Fund, Speaker (Cambridge, MA, October 2016)
- National Consumer Law Center Consumer Rights Litigation Conference, Panelist, *Predatory Education: Obtaining Relief for Students*, Moderator, *Introduction to Student Loans* (San Antonio, TX, October 2015)
- National Consumer Law Center Webinar Series on Student Loan Law, Presenter, *State Law Claims as Defenses to Repayment and Statutory Discharges* (May 2015)
- Practising Law Institute (PLI) 20<sup>th</sup> Annual Consumer Financial Services Summit, Speaker, *Student Loans* (Chicago, IL, April 2015)
- Boston Bar Association, Panelist, *Predatory Student Lending* (Boston, MA, April 2015)

## SELECTED PRESS AND PUBLICATIONS

- Danielle Douglas-Gabriel, [\*Judge Rejects Settlement Over Stalled Student Debt Relief Claims, Blames DeVos for Harming Borrowers\*](#), WASHINGTON POST, Oct. 20, 2020
- Matteo Wong, [\*Attacking the Concept of Debt\*](#), HARVARD MAGAZINE, Sept. 8, 2020
- Shelley Murphy, [\*Federal Judge Orders Department of Education to Cancel Loans for 7,200 Students\*](#), BOSTON GLOBE, June 26, 2020
- Michael Stratford, [\*New Lawsuit Over Devos' Partial Loan Forgiveness Policy\*](#), POLITICO, June 9, 2020
- Cory Turner, [\*Students Call College That Got Millions In Coronavirus Relief 'A Sham'\*](#), NPR May 9, 2020
- David Scharfenberg, [\*Toby Merrill & Eileen Connor: Taking on the For-Profit College Industry — and Fighting for the American Dream\*](#), BOSTON GLOBE, Jan. 28, 2020
- Danielle Douglas-Gabriel, [\*Defrauded College Students Will No Longer Be Taxed on Their Canceled Loans\*](#), WASHINGTON POST, Jan. 16, 2020
- Stacy Cowley, [\*DeVos Tries Again to Cut Debt Relief for Students Who Were Misled\*](#), NY TIMES, Dec. 10, 2019
- Cory Turner, [\*Devos Refuses to Forgive Student Debt for Those Defrauded by For-Profit Colleges\*](#), NPR, Nov. 14, 2019
- Edward Felsenthal, [\*100 Next Most Influential People\*](#), TIME, Nov. 13, 2019
- Danielle Douglas-Gabriel, [\*Trump Administration Reveals that Far More Corinthian Colleges Students Faced Debt Collection in Violation of a Court Order\*](#), WASHINGTON POST, Dec. 4, 2019
- Yvonne Abraham, [\*Judge Teaches Education Secretary Betsy DeVos a Lesson\*](#), BOSTON GLOBE, Oct. 26, 2019
- Collin Binkley, [\*DeVos Held in Contempt of Court in Loan Forgiveness Dispute\*](#), AP, Oct. 25, 2019
- Erica L. Green & Stacy Cowley, [\*Betsy DeVos Is Held in Contempt Over Judge's Order on Loan Collection\*](#), NY TIMES, Oct. 24, 2019
- Helaine Olen, [\*A Judge Calls Betsy DeVos to Account\*](#), WASHINGTON POST, Oct. 10, 2019
- Julia Hanna, [\*Collecting on Dreams\*](#), HARVARD LAW TODAY, Summer 2019
- Danielle Douglas-Gabriel, [\*The Courts Cleared the Way for DeVos to Grant Student Debt Relief. So Why Are 180,000 People Still Waiting for an Answer?\*](#), WASHINGTON POST, June 25, 2019
- Michael Stratford, [\*Betsy DeVos Strikes Out – In Court\*](#), POLITICO, Mar. 21, 2019
- Stacy Cowley, [\*Education Dept. Will Cancel \\$150 Million in Student Debt After Judge's Order\*](#), NY TIMES, Dec. 15, 2018
- Danielle Douglas-Gabriel, [\*ITT Tech Students Score Victory in Bankruptcy Settlement\*](#), WASHINGTON POST, Nov. 28, 2018
- Stacy Cowley, [\*Borrowers Face Hazy Path as Program to Forgive Student Loans Stalls Under Betsy DeVos\*](#), NY TIMES, Nov. 12, 2018
- Maria Danilova, [\*Students Defrauded by Colleges Score Win in Court Decision\*](#), ASSOCIATED PRESS, Oct. 16, 2018

- Michelle Hackman, [\*Students Defrauded by For-Profit Colleges Can Seek Loan Forgiveness, Judge Rules\*](#), WALL ST. J., Oct. 16, 2018
- Stacy Cowley, [\*Judge Rejects DeVos's Halt of Rule to Help Defrauded Students\*](#), NY TIMES, Sept. 13, 2018
- Anya Kamenetz, [\*Student Borrowers and Advocates Win Court Case Against DeVos\*](#), NPR, Sept. 13, 2018
- **Toby Merrill** et al., [\*For-Profit Schools' Predatory Practices and Students of Color: A Mission to Enroll Rather than Educate\*](#), HARV. L. REV. BLOG (July 30, 2018)
- Erica L. Green, [\*DeVos Halts Partial Debt Relief Policy After Judge Slams Procedures\*](#), NY TIMES, June 6, 2018
- Maria Danilova, [\*Court: Gov't Violated Law for Defrauded Students\*](#), ASSOCIATED PRESS, May 26, 2018
- Jillian Berman, [\*The 'Morally Suspect' Way the Government Collects Student Loans During Tax Season\*](#), MARKETWATCH, Mar. 31, 2018
- **Toby Merrill** & Eileen Connor, [\*On ITT and the Education Department, No More Excuses\*](#), WASHINGTON POST, Jan. 30, 2018
- Danielle Douglas-Gabriel, [\*Students from Defunct ITT Tech Get a Shot at Claiming School's Remaining Assets\*](#), WASHINGTON POST, Jan. 24, 2018
- Abigail Abrams, [\*Student-Loan Borrowers Await Debt Relief\*](#), TIME, Dec. 18, 2017
- Maria Danilova, [\*Lawsuit Seeks New Recourse on For-Profit College Fraud\*](#), ASSOCIATED PRESS, Nov. 12, 2017
- **Toby Merrill**, [\*Federal Financing of Predatory Higher Education\*](#), HARV. L. REV. BLOG (Nov. 6, 2017)
- Jillian Berman, [\*Court Smacks Down Feds' Attempt to Delay Ruling on Student Debt Relief for Single Mom\*](#), MARKETWATCH, June 13, 2017
- Danielle Douglas-Gabriel, [\*Harvard Law Clinic Sues DOJ Over For-Profit College Case Files\*](#), WASHINGTON POST, Feb. 21, 2017
- Gretchen Morgenson, [\*Student Victims Seek to Become Creditors in ITT's Bankruptcy\*](#), NY TIMES, Jan. 6, 2017
- Shahien Nasiripour, [\*The U.S. Government Is Collecting Student Loans It Promised to Forgive\*](#), BLOOMBERG, Dec. 19, 2016
- **Contributing Author**, National Consumer Law Center, *Student Loan Law Manual* (5th ed., 2015)
- Danielle Douglas-Gabriel, [\*This For-Profit College Failed, but its Students are Left with the Wreckage\*](#), WASHINGTON POST, May 1, 2015

## **PUBLIC SERVICE & APPOINTMENTS**

### **Biden-Harris Policy Committee Volunteer, 2020**

#### **Student Borrower Protection Center, Advisory Board, 2018-present**

Advise new organization founded by former top Consumer Financial Protection Bureau officials.

#### **Supreme Court Fellows Academic Advisory Board, 2018-19**

Advise current fellow on academic paper and career plans.

#### **Massachusetts Division of Professional Licensure, Advisory Council on Private Occupational Schools, 2013-2016**

Advised state body that licenses and regulates private occupational schools on new and existing regulations to protect students and potential students; provided testimony and written comments on proposed and final regulatory actions.

#### **U.S. Department of Education, Negotiated Rulemaking Committee, 2015**

Appointed by U.S. Department of Education upon nomination by national coalition of legal aid organizations to represent legal aid organizations and low-income borrowers in negotiating changes to federal policy on income-driven repayment programs.

#### **U.S. Department of Education, Negotiated Rulemaking Committee, 2014**

Appointed by U.S. Department of Education upon nomination by national coalition of legal aid organizations to represent legal aid and low-income borrowers in negotiating changes to federal policy on student loans to parents, states' role in authorizing providers of online education, and regulation of third-party corporations involved in the distribution of federal aid funds to students.

## **GRANTS, FELLOWSHIPS, & AWARDS**

- Arnold Ventures (formerly Laura and John Arnold Foundation) grants to expand the work of the Project on Predatory Student Lending, over \$7 million in funding awarded 2016-2021
- Harvard Law School Women's Law Association Women Inspiring Change honoree (2020)
- Time 100 Next: list of "100 rising stars who are shaping the future" (2019)
- American Constitution Society Carliner Public Interest Award Finalist for outstanding public interest lawyers (2019)
- Turnaround Management Association Pro Bono Case of the Year Award for ITT Tech bankruptcy (2018)
- Compass Working Capital Aspire Award (for an individual or organization who has made an extraordinary contribution to Compass's work) (2016)
- Massachusetts Lawyers Weekly, Excellence in the Law: Up & Coming Lawyer, Honoree (2016)
- Sears Consumer and Education Fund Grant (2014-15)
- Clinical Legal Education Association, Excellence in a Public Interest Case or Project, Honorable Mention (2014)
- Skadden Foundation Fellowship (2012-14)

## **EDUCATION & CLERKSHIP**

### **U.S. District Court, District of Connecticut, 2011-12**

*Law Clerk to the Honorable Janet Hall*

### **Harvard Law School, J.D. *cum laude* 2011**

Research and Teaching:

- Research assistant, Dean Martha Minow, *IN BROWN'S WAKE*
- Research assistant, Professor Michael Klarman, backlash to judicial rulings on abortion
- Teaching assistant, Professor Lani Guinier, *Law & Social Change*
- Teaching assistant, Professor Adrian Vermeule (*Legislation & Regulation*)

Internships:

- NAACP Legal Defense and Education Fund, New York, NY, Criminal Justice Group and Political Participation (Voting Rights), Summer 2010
- Advancement Project, Washington, D.C., Stopping the Schoolhouse to Jailhouse Pipeline Project, January 2010
- Law Office of Rob McDuff, Jackson, MS, anti-death penalty litigation, Summer 2009

Clinical experience:

- Employment Civil Rights Clinic
- Harvard Defenders
- Predatory Lending & Consumer Protection Clinic

Activities and Organizations: Harvard Defenders; Harvard University NAACP Vice President; Gary Bellow Public Service Award Committee Chair; Pro Bono Death Penalty Representation Project

### **Yale College, B.A. 2005**

Distinction in English, Distinction in Ethics, Politics & Economics

## **BAR ADMISSIONS**

States: New York (2012); Massachusetts (2013)

Federal Courts: Second Circuit (2015); Ninth Circuit (2018); District of Massachusetts (2014); District of D.C. (2017); Southern District of New York (2018); First Circuit (2020)