

# Interviews with Influencers: Toby Merrill & Eileen Connor



## INTERVIEWS WITH INFLUENCERS



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Secretary of Education Betsy DeVos wants to make the road to erasing student debt even more challenging for the nearly 150,000 students who have filed borrower defense claims by requiring them to both prove their claims individually and demonstrate that their college knew they were participating in predatory behavior.

Sound like *mission impossible*? Enter Toby Merrill and Eileen Connor, lawyers running [The Project on Predatory Student Lending](#) housed in the Legal Services Center of Harvard Law School. They are fiercely strong women representing the hundreds of thousands of students nationwide that have been preyed upon by their institutions in landmark cases designed to prove that when it comes to higher education, it's not always the students' fault.

So, when they accepted our offer to fly from Boston to D.C. to speak at a recent Third Way happy hour, we couldn't pass up the opportunity to sit down with them over a glass of wine and learn more about their incredible work.

## **Q: How did your own experiences in higher education influence where you are today?**

A: Toby Merrill (TM) – I have a really direct story. When I was in law school I was a clinical student in The Legal Services Center where we now currently teach. I was working on predatory subprime mortgage litigation. And in this work we were representing individuals who had been cheated and lied to and ended up facing foreclosure on homes they couldn't afford. Sometimes these were homes they'd grown up in, and as part of the subprime mortgage boom, had been sold under false pretenses. Similarly, predatory colleges target the same low-income populations that the subprime mortgage boom targeted by offering a similar promise of white picket fences and higher education as part of the American middle class dream. It was a really great demonstration to me that litigation can be an incredibly effective tool in attacking some of the most predatory and unfair practices that were creating serious and long-term economic injustice nationwide. This was the mindset I brought with me into this work.

Eileen Connor (EC) – I actually started my legal career focused on anti-death penalty work and I always knew when I went to law school that I wanted to use the law as a tool to help people. My start was on death penalty work because I had the most inspiring human on the planet as a professor, Bryan Stevenson (Founder and Executive Director of the Equal Justice Initiative), and his passion really drew me into that work. When you look at a death penalty case, you're charged with asking: "Did something horrible happen? Did something irrevocable happen?" The answer is "yes", but who is ultimately responsible for what happened and does the state really have the right to put that person to death? It was time to flip the question around. I transferred into civil rights work at a New York City legal aid office, and my clients had a range of legal problems. But something that was holding many of them back in their lives was student debt. I started hearing from other service providers that they were trying to help formerly incarcerated women get their GED and go to college,

but were really struggling to support them. A real turning point for me was speaking with a client through an interpreter because she didn't speak any English at all, and yet she had graduated from a program where the language of instruction was English. She was subjected to having her Earned Income Tax Credit seized and her wages garnished. This made me realize there was something really wrong with the system. And the more I learned, the more outrageous it became, and the more inspired I got.

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**#InterviewsWithInfluencers**



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### **Q: What was the impetus for launching the Project on Predatory Student Lending?**

A: TM: Eileen and I started working on this issue around the same time but we were in different places. Pretty soon after we started, we were in touch. There's a pretty small universe of people working on this issue – although it's growing, which is something we're really proud of. We were handling cases related to one another but not the same cases and we were both thinking about how to attack the problem more broadly. I think the answer changes every day, but we have a billion new ideas all the time, and the opportunity to work together and bring on a team gave us the chance to put our beliefs about what we could do to stop this incredible harm to the test – and that's where we are now!

EC: I think it was just really fortunate that Toby and I connected professionally at a time when there is a lot of focus

on what's happening in postsecondary education, what's happening on student loan debt, and a lot of attention to bad outcomes and the human cost of that. To be able to work with someone who wants to think big and be experimental is really lucky. So it was great to join forces and also really lucky to be doing it at Harvard Law School. We have clinical students who we introduce to the work for the first time. Many are shocked to learn that predatory student lending is an issue in the first place. They come in with fresh eyes. It's a great environment for being reflective and also for thinking big, plus we have support. And now we have a staff of ten people!

**A real turning point for me was speaking with a client through an interpreter because she didn't speak any English at all, and yet she had graduated from a program where the language of instruction was English. —@Ei\_Conn**



**Q: Is there one particular moment/case/anecdote in this work that stands out to you the most? Recognizing that the work you're doing is much bigger than a job.**

A: TM: One thing that I think about a lot is ITT Tech – which is an enormous chain of for-profit schools that filed for bankruptcy in 2016. When any company files for bankruptcy, all of its creditors can file claims and say they are owed money. And in this case, the creditors were people who had been employees or landlords of the different campuses. And the thing that was so evident the minute you looked at any of the filings, was that pretty much all of the billions and billions of dollars that had passed through this corporation were federal dollars. And not just that, but that those dollars still exist in the form of debt. Just in the last ten years of its

operation, ITT created more than \$7 billion dollars in student loan debt and I would guess that more than that is outstanding. Those numbers boggle my mind.

In the last ten years at ITT about 750,000 students attended and accrued \$7 billion in student loan debt and they were about to be treated as at best a casualty, and at worst, people who benefitted from the long tenure of this corporation – which of course is totally untrue. We heard from thousands and thousands of students who not only told us they were laughed at because they have ITT on their resume, but told us their affiliation with ITT Tech ruined their families, their marriages, and their lives. Getting ready to file that case, it was really difficult to read what students had to tell us day in and day out. And I think making clear in court that students are the true creditors of ITT tech is a really important flag to plant.

EC: I think in the course of this work there have been so many frustrations and so many really poignant stories of our clients that it's hard to pick just one. One of the more dramatic things I've ever witnessed (actually it sounds sort of funny because it happened at a negotiated rulemaking session with the Department of Education), was at the rulemaking that resulted in the 2016 borrower defense rule. It was an incredibly charged atmosphere. There were a lot of students in the room that had attended Corinthian College or ITT or one of The Art Institutes, and they were coming to provide public comments. One of the student negotiators ended up sharing her story from when she was a student at a Corinthian school. She was an older student that had enrolled in school in an attempt to acquire new skills and return to the workforce. While attending school, her teenage son committed suicide. Her academic advisor informed her she was unable to take a leave of absence and that if she failed to complete her education, she'd be dishonoring the memory of her son.

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**TWEET THIS**

The negotiations continued. We were debating the balance of the rule and the ins and outs of it, and at the end, it was time to see if we could reach consensus among negotiators and the representative of the for-profit schools indicated that he couldn't consent. At that point in time, the officials from the Department of Education all stood up, as did the for-profit college negotiator and the for-profit lobbyists. They all walked out and went into another room to see if they could make a deal. It was the clearest example of "Oh, this is what this is really about."

**Q: What accomplishment to date are you most proud of?**

A: TM: One thing that we feel proud of is how many of our clinical students have gone on to become obsessed with the issue of predatory student lending. To grow the field of people attacking predatory actors in higher education is incredibly exciting, especially because it was such a small field for a long time. To think our students are having a good experience in clinic is one thing, but to see them go off and really adjust their life plans to focus on this issue is incredibly rewarding.

EC: And to build on that, I think the single biggest victory our project has had so far was in a case where we were co-counsel with one of the clinic's former students, who now works at a legal services office in the Bay Area. We were able to win a

preliminary injunction against the Department of Education that prevented them from collecting on student loans from former Corinthian students. While the litigation is still ongoing, this felt like a really big win, and we are hopeful for an even bigger victory in the future.

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**Q: Defending students that have been defrauded by bad acting institutions is no doubt emotionally taxing work. How do you decompress at the end of a long day?**

A: EC: When we were preparing our ITT complaint, we had all of these testimonials to go through from ITT students, and I was seven months pregnant at the time. I spent so many nights watching every single holiday movie on the Hallmark channel at least five times. I found it incredibly comforting.

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TM: This isn't quite an after work pursuit, but we try to find ways to make the days fun as well as interesting and important. I have a really sweet dog and Eileen has a really

sweet daughter, and they both come to the office about once a week. It's really relaxing, and also really motivating. (*We agree! Puppies and babies make everything better.*)

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