Spotlight
DEBTORS' HELL
PART 2: A COURT SYSTEM COMPROMISED
The Boston Globe | boston.com

Dignity faces a steamroller

Small-claims proceedings ignore rights, tilt to collectors

This story was reported by Spotlight team members Beth Healy, Michael Rezendes, Francie Latour, Heather Allen, and editor Walter V. Robinson. It was written by Healy.

Second of four parts | July 31, 2006

The line for the metal detector crept slowly at Brockton District Court on the morning of April 12, 2005. Peter Damon waited anxiously. He didn't want to be late.

Finally, he hoped to face down for good the debt collector who had been hounding him and his mother for more than two years over a $980 credit card bill. He'd had to miss his first scheduled hearing in small-claims court a year earlier, and a note in his file explained why: "Phone call from defendant - he is in the Walter Reed Army Medical Center in Washington, D.C., upon return from Iraq and losing both arms."

A lot of things could have gone Damon's way in the wake of that phone call. None did.

The clerk who took the call could have advised Damon that, under federal law, he could delay the case while he recovered.

The court could have challenged the debt collector, Norfolk Financial Corp., about the claim in its lawsuit that Damon was not a soldier - a claim made under penalties of perjury.

And a clerk should have simply dismissed the case when Damon, having recovered sufficiently to take a $400 flight home from the hospital, arrived for a hearing in September of 2004, only to find the collection lawyer unprepared.

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But such simple justice was denied Damon, as it is thousands of other debtors when they come up against the lowest level of the state court system.

The "people's court" has become the collectors' court, a Globe Spotlight Team investigation has found. It is a de facto arm of a fast-growing and aggressive industry that has swamped court dockets with lawsuits - cases that often lead to threats of jail for debtors.

Created to provide a low-cost, level playing field for citizens with disputes of $2,000 or less, the small-claims courts have mutated into a system that often ignores individual rights and shows favoritism toward collectors and their lawyers. On some days, indeed, collection lawyers appear to be in charge - with no oversight by judicial officials.

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Debtors often feel intimidated in this arena, and with reason. The system is tilted against them. And 150 years after the state's last debtors' prison was shuttered, some, even now, find themselves locked up for failing to pay. A Brockton man, for example, was imprisoned for four weeks over last Christmas.

More commonly, the threat of jail is a scare tactic, another way to force quick results in this rubber-stamp system, where the supreme priority in many courts is to move the flood of collection cases along - with little regard for the merits, or the dignity of individual defendants.

Peter Damon is one whose dignity took a considerable beating. **(Read court documents related to this case here.)**

As he reached the head of the security line that April day, Damon's new prosthetic arms, clearly visible in his Johnny Damon baseball shirt, set off the metal detector. By the time the 33-year-old veteran got to the hearing room, he was two minutes late. Tentatively, he approached the desk of the assistant clerk-magistrate.

"Yes?" said the clerk, William J. Martin 3d. Damon stammered out his name, at which Martin snapped, "This is not the time for that," and then scolded, "Have a seat. I don't know what possessed you to do that."

Damon ultimately won that day, when Norfolk's lawyer suddenly offered to dismiss the case. Martin obliged: "Dismissed," he said, never glancing up from his desk.

In his victory, Damon was one of the lucky ones. A Globe review of proceedings and records in 20 of the state's 70 small-claims courts found that court officials and collection lawyers routinely break court rules, almost always to the detriment of the defendant. Collectors are almost never asked to prove the debts they claim; defendants are rarely informed of their rights. And debtors, usually too strapped to afford a lawyer, must contend with this legal mismatch alone.

Russell Engler, a professor at the New England School of Law who studies the way people are treated in civil court, said unrepresented parties often get steamrolled. While it can be tricky for clerk-magistrates and judges when only one side has a lawyer, he said, those are precisely the cases in which court officials should act to redress the imbalance.

"You have a system that is supposed to be accessible to ordinary people," Engler said. "Instead, it's operating as a swift tool for corporations with power and with lawyers."

The chief justice of the district court system, Lynda M. Connolly, expressed surprise, during a February interview with the Globe, at the extent to which corporate debt collectors have come to dominate small-claims sessions. Some of the abuses described to her by the Globe were, she said later, "horrific."

Diane Albertson's experience in court was nothing short of humiliating.

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(Read court documents related to this case here.)

A 50-year-old mother and nursing student, Albertson stood before Judge Thomas Barrett in Brockton District Court on Feb. 7, called to account for a $438 oil bill that she believed, mistakenly, she had paid. She admits she had been sloppy about the matter, missing court dates twice, in the crush of family and school obligations. And after an initial court judgment against her, she sent a check to satisfy the debt, but stopped payment on it.

That made the plaintiff, Stanley Litchfield of Scudder Fuel, angry - and understandably so. The firm had waited more than a year to be paid. But even he was shocked at what the judge did that day.

"Take your rings off," Barrett said, according to the court's audio transcript of the hearing.

"All of my jewelry?" Albertson replied in dismay. "I can't give you my wedding ring."

"Let me see it," Barrett said, ordering her to approach the bench and splay her hands before him. He then told her sternly to remove the other rings, including her diamond and amethyst engagement ring, and her earrings.

"Are you serious?" Albertson asked, near tears.

"We'll hold them until the debt's paid," Barrett said. "Either that or I'll incarcerate you. Do you want me to incarcerate you?"

Albertson handed over her jewelry, keeping only the thin gold band on her left ring finger. A bailiff sealed them in a plastic bag, where they would stay for a month.

Engler, the law professor, called Barrett's behavior "outrageous."

"Litigants are supposed to be able to be heard and be treated with respect," Engler said. "The judge sets the tone for everything."

Barrett declined to be interviewed.

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Humbling experiences

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Humiliations large and small are an everyday reality in many Massachusetts small-claims courts. Often, debtors are treated with less courtesy than the accused felons in the criminal court across the hall, and their rights are less respected.

Examples abound:

- In Quincy District Court, a clerk-magistrate barks at defendants packed into a cramped room if they don't reply loudly enough to the call of their names. In New Bedford, collection lawyer Martin Odstrchel calls the name of an older woman who has been waiting in line for two hours; as she hobbled toward him, leaning on her cane, he admonishes, "Hurry up."
- In Worcester, more than 60 people summoned for civil debt collection cases sit in a large courtroom that says "Criminal" over the door. The noise from the adjacent lockup is so loud it drowns out the magistrate as she calls out the list of lawsuits. Angrily, she shouts for quiet, not realizing the noise is coming from the prisoners; the cowed debtors on the benches before her are silent.
- And in Lowell District Court, on the Tuesday before Christmas, an assistant clerk-magistrate calls debtors up to her desk, one by one, to review their promises to pay. She then warns every one: "If you don't pay, you could be found in contempt, and you could go to jail."

Connolly, the district court chief, said it's reasonable for court officials to inform debtors of the worst-case scenario. But pressed as to whether the courts ought to issue jail threats, Connolly said, "Let's be very clear: It is not appropriate for anybody to threaten anybody, in small claims or any place else."

Yet such threats are a common tool, both in small-claims court and in the district court civil sessions, which handle debt cases between $2,000 and $25,000.

Last year, Jack Fraioli, the owner of a small, struggling cleaning enterprise, was called before a judge in Dedham District Court after falling behind on payments he'd promised to make to a vendor. His $9,000 debt had ballooned to nearly $12,000, with interest and fees. Fraioli's wife was ill and the family's cars had been towed three times by debt collectors. After being badgered in the court corridor by a collection lawyer, Hindell S. Grossman, he agreed to pay $250 a month, even though he knew that would be a stretch.

In the courtroom, Judge Sarah B. Singer reviewed the agreement and warned Fraioli of the serious import of his promise to pay.

"It's not a promise to get this lady off your back," she said, referring to Grossman. "Pay the money or go to jail." She added, "That's a result no one in this room wants to see."

Judges regularly hear debt cases in civil court, but in 1993, the responsibility for small-claims cases was turned over to clerk-magistrates. Today, judges get involved in small claims mainly when people ignore judgments against them. That can make cases sent to judges more highly charged, observed Jason David Fregeau, a consumer lawyer in Longmeadow. Some judges, he said, "tend to treat people who owe debts like criminals."

The sheer volume of cases seems to encourage rough or dismissive treatment of defendants, the Globe found. There were nearly 122,000 small claims filed in 2005 in Massachusetts, marking an 11 percent rise over the past decade. Meanwhile, court budgets have been slashed and court staff reduced by 14 percent since 2000. Officials say there's barely time to get through the docket, much less attend to the considerations behind each claim.

"It is not unusual, given the extraordinary number of cases before our district courts, that the urgent overwhelms the important," Connolly said. "We can do better."

Connolly, after the February interview with the Globe, appointed a panel to review the small-claims courts, convened a training session for clerks and judges, and is studying ways to make defendants more aware of their rights and to curb the influence of collection lawyers. One early change: Court officials have been told to be sure debtors do not agree to make payments out of their government assistance checks.

'If we see areas that we can improve, then we will make those improvements," said Connolly, who became chief justice two years ago. "I am committed to doing that."

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A bargain for big collectors

The courts don't track the number of cases filed by debt collectors. But the Globe, after hand-counting cases in the state's computer system, interviewing numerous clerks and judges, and attending dozens of hearings, determined that at least 60 percent of all cases funneled through the civil courts are brought by professional collectors. One credit card firm, Capital One Financial Corp., filed more than 38,000 small-claims lawsuits against Massachusetts consumers in the last four years.

At Boston Municipal Court, the state's busiest small-claims court, roughly 85 percent of the lawsuits are brought by companies collecting old debts, according to Kevin F. Callahan, first assistant clerk-magistrate for the civil division. The downtown court has handled 40,000 small claims in five years; it gets so many suits from Norfolk Financial, Commonwealth Receivables Inc., Filene's, and NStar that it had ink stamps made for each one.

At a cost of just $40 to file a lawsuit for any amount up to $2,000, debt collectors find a bargain in Massachusetts small claims. A victory in court lets them pursue a debt for up to 20 years, and earn 12 percent annual interest on it - a rate that's matched or exceeded in only five states. The Legislature hasn't adjusted that rate since the 1980s.

''We're sophisticated collection agencies for these people,'' Callahan said. ''This is a lucrative business for some. ..... I hate it.''

It isn't just the indulgence of court officials that makes winning these cases so easy for debt collectors. The defendants also do their part: About 80 percent of people sued for debts in Massachusetts courts fail to show up at all, according to the estimates of clerks and lawyers and the Globe's observation.

There are many reasons for that. Some people ignore letters from collectors and the court, the sort of carelessness that got them in trouble in the first place. Others know they owe money, but can't easily get time off work.

Still others never receive notice of the court date. In Massachusetts, notices of lawsuits are sent by first-class mail to the address supplied by collectors. Often these addresses are out of date, yet the courts assume the defendant was notified unless the letter is returned. This is a flawed system, the Globe found in a test: Of 100 letters sent to the same person at incorrect addresses across the state, just 52 came back marked ''return to sender'' by the post office; the other 48 simply went missing. **(See some of the returned envelopes here.)** A backup requirement that debtors receive notice by certified mail was dropped two years ago as a cost-saving measure.

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Even when properly delivered, the notice sent to defendants would confuse almost anyone. The debtor's instructions are listed in tiny, faint type on the back of the form, and are in many ways misleading. For example, they say that plaintiffs must prove their claims - something that never occurred during the many hearings attended by the Globe. They also fail to warn defendants of the serious consequences of failing to appear: The collector automatically wins, gaining the right to seize property, garnish wages, put a lien on a home, or get a civil arrest warrant to have the defendant hauled into court. **(See the debtors' instructions with notes here.)**

Even defendants who do show up tend to lose most of the time, and for a simple reason - they owe the money, or at least part of it. But many cases that could be contested are not. With a little information, and pluck, lawyers say, many defendants could turn the tables against the collectors by demanding that they produce evidence of the debt.

''You have rights, too. It's not just the creditor,'' said Joseph B. McIntyre, a collection lawyer in New Bedford.''But you've got to be brave enough to vindicate your rights.''

Most people simply settle, he said, and the work flow of the court system is built on that assumption. ''They'd have a problem if everybody wanted a trial,'' he said.

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Margaret A. Donnelly, an 85-year-old widow from Duxbury, is one who fought back.

Living on Social Security and suffering from congestive heart disease, Donnelly was barely making ends meet in the summer of 2004. Struggling to cover the cost of her medications and her electric bills, she said she was stunned when a Plymouth County deputy sheriff appeared at her door with a warrant for her arrest. He said she had been sued for $1,471 and had missed her court date.

It was an old fight with Chase Manhattan Bank over a Visa card coming back to haunt her, one she thought had long since been resolved. Determined to set the matter straight, she went to Plymouth District Court on June 1, 2004, and, on her own, filed a motion to remove the judgment against her, despite pressure from court officials to get it over with and pay.

''It's absolutely appalling,'' Donnelly said. ''The people who tell you to 'Just pay it.'. ''

At a July hearing, the collection law firm Lustig, Glaser & Wilson asked the court for more time to gather evidence to support its claim -- a common request as debt collectors often start with limited information about the debt owed. In the meantime, the court allowed the firm to put a lien on Donnelly's condominium.

Nearly a year and two trips to court later, Donnelly was still demanding proof, and Lustig, Glaser could produce none. Finally, in June 2005 the law firm threw in the towel and the case was dismissed.

The managing partner of the law firm, Kenneth C. Wilson, said he could not comment on the Donnelly matter because federal and state laws bar discussion of debt cases with outside parties.

Clerks routinely give plaintiffs the benefit of the doubt. And basic questions of fact are rarely asked or answered: Might the plaintiff's claim be false or overstated? Might they be after the wrong person?

Yes, they might. George Rodrigues of New Bedford twice had to go to court over a $1,665 NStar bill that was not his. Both times, the DHL driver had to take time off work, costing him $200 a day, to convince the court it had the wrong guy.

The NStar debt belonged to a different George Rodriguez - ending with a z. The fellow NStar was after was 21; Rodrigues is twice his age. But in court, it was Rodrigues who faced the burden of proving he was innocent. ''How many times can I show them my information?'' Rodrigues asked.

The clerk would not accept Rodrigues's proof of his identity; he insisted on a hearing, at which NStar's lawyer finally dropped the case.

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A tipped scale

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This is the way it was meant to be in small-claims courts: two people without lawyers facing one another. But reality has outstripped that notion. Defendants hardly ever have lawyers, while the corporate plaintiffs always do.

And the collection lawyers sometimes seem to direct the sessions.

In Framingham District Court last Sept. 14, the clerk's chair sat empty for 15 minutes after the scheduled 1:30 start of the session. Two collection attorneys moved to fill the gap, starting at 1:20. With clipboards and stacks of paperwork, they stood at the front of the courtroom, calling out defendants' names and asking them to come forward. They negotiated some cases and scheduled others for future dates, with no clerk present.

One defendant, Loretta Jenkins, was there on her lunch break. She discussed her debt with a lawyer, whom she thought was a district attorney. The lawyer told her not to bother waiting for the magistrate, but to "get this over with and get back to work." So she signed a payment agreement and left.

By the time clerk-magistrate Thomas J. Begley entered the courtroom, the majority of the cases had been dispensed with. There was no one to ensure that the defendants had not been pressured into payments they could ill afford.

Judge Connolly, speaking generally, defended the right of litigants at any level of the court system to settle their differences without the supervision of a clerk or judge.

But Engler, the New England School of Law professor, said lawyers too often take advantage of debtors in such unsupervised conversations. It is, he said, ethically improper for plaintiff lawyers to advise debtors what to do. And it's up to the courts to monitor this behavior. "The court has to give it something other than a rubber stamp," he said.

Begley, in an interview, said he didn't know that defendants were confused about the role of the lawyers. Subsequently, on April 25, he posted a letter to attorneys in his court, telling them not to speak to defendants before the start of hearings and requiring all parties to stay until their payment deals are reviewed. "We won't accept any further agreements until we see both parties," he said.

But when it comes to specifically informing debtors of their rights, most clerks say they want to avoid any appearance of advocacy. They therefore feel it's not proper to tell debtors they can dispute a debt or demand documentation of it. Or that if they are on public assistance, they can't be forced to use that money to satisfy a judgment.

Only at the Boston Municipal Court did the Globe observe a clerk carefully questioning defendants about their ability to pay. At one session, assistant clerk-magistrate Patrick F. Mullaney asked each debtor whether he or she had a job and could truly afford the payments they were agreeing to make. He asked if they were on any kind of public assistance, and if so, told them the case would be dropped for a year.

"One part of the government is giving them something to get by," Mullaney said. "It doesn't seem to make sense that another part of the government is ordering them to pay money."

Even the plaintiffs' lawyers at Boston Municipal ask defendants if they have the means to pay, because Mullaney requires them to do so.

Connolly said the courts must rely on the "good faith" of the lawyers who appear before them to uphold the rules. But, with so many unrepresented debtors going up against lawyers, she acknowledged, "There's an imbalance there. There's no ifs, ands, or buts about it."

That imbalance is exacerbated by another widespread practice in debt cases - the use of "covering" attorneys.

These are legal practitioners who are paid small sums by collection firms to raise their hand and say "here" when a case is called. They appear at courts around the state, often representing as many as a dozen plaintiffs in a single session. And they typically know only the barebones facts of a given case, a name and the sum that's supposedly owed.

Covering lawyers usually don't need to know more; they're simply there to collect default judgments against people who don't show up. On a busy day last September in Lowell, for instance, a handful of covering lawyers had only to say "plaintiff" for the record 132 times. Their work was done in 90 of those cases, because the defendants did not appear.

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A tipped scale

In a system where defaults are rampant, and where debtors in many courts are presumed to owe the money, some clerks make it part of their job to assist plaintiffs - even those who skip hearings -- in ways that flout court rules.

It is a common scene in the windowless, basement room in New Bedford District Court, where assistant clerk-magistrate Thomas W. Alfonse often runs overflowing small-claims sessions. When a plaintiff fails to respond to the call of a lawsuit, Alfonse routinely prompts Joseph McIntyre, New Bedford's lead covering lawyer, to pick up the case - even though, under the rules, such cases should be dismissed.

During one busy session last fall, Alfonse asked, "Anyone want to answer for Mr. Bakst?" referring to a lawyer not present that day. McIntyre said he would pick up the case. When no one spoke up to cover a Sovereign Bank lawsuit, McIntyre jumped in: "I'll answer for them." Similarly, on a Bank of America case, Alfonse coached, "That's Daniels's office." Again, McIntyre obliged. And when a lesser-known firm, Natco, had its suit called, and no one responded, Alfonse asked McIntyre to represent the no-show plaintiff.

"My incentive is volume," said McIntyre, a former state legislator, in an interview. He answers for up to 10 plaintiffs a day and makes $15 to $20 per case.

The Natco case illustrates two common abuses of the system. First, the case should have been dismissed when the plaintiff did not appear. Second, Alfonse violated court rules when he granted McIntyre a postponement, because the lawyer was, not surprisingly, unprepared to try the case.

Clerks routinely grant these delays, called continuances, when plaintiff lawyers say they need time to prepare. Defendants are almost never shown such deference.

Kiriakos Stergiotis and his wife, Phyllis, owners of a pizza shop, who had been sued by Natco, were outraged that the case was postponed: "If they want to bring you to court and they expect you to be there, they should be here too," Phyllis Stergiotis said.

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Asked in an interview why he didn't dismiss cases when neither the plaintiff nor its lawyer appeared, Alfonse said, "It's more paper, more court dates. It's better if we work it out today, for everybody."

In the case of Damon, the Iraq veteran, the court allowed Norfolk's covering lawyer a continuance even after Damon had flown home from Washington for the 2004 hearing. When the Globe asked Martin, the clerk in the case, why he allowed the delay, he said, "If Peter Damon had no idea that he could object to a continuance, it's not the clerk's responsibility to tell him."

Judge Connolly, in a letter to the Globe, pointed to the text of the state standards for small-claims proceedings, which strongly discourage such continuances. It says: 'If the attorney isn't prepared to prove his or her case, the matter should be dismissed...unless there is a showing of good cause."

Martin also said it was not his job to question why Norfolk had, under oath, indicated to the court that Damon was not in military service.

Norfolk President Daniel W. Goldstone, in a letter to the Globe, said he did not know Damon was in the Army. But Damon and his mother say they told Norfolk debt collectors many times that he was deployed to Iraq and then in a military hospital.

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Paying with freedom

The ultimate threat in debt cases is jail time for failure to pay. It is a threat routinely used by court officials, lawyers, and constables to force compliance by defendants.

At New Bedford District court last November, a constable who had brought debtors in under threat of arrest was haranguing several of them in the hallway. One woman, Deborah Medeiros, owed $700 to an auto salvage company. The constable, Trent Roderick, told her to come up with the money, or he'd send her before a judge who might lock her up.

''I'm going to jail,'' Medeiros sobbed, tears flowing down her face. In a panic, she called her father, who came to court with the cash.

Paul A. Fournier, a covering lawyer in several western Massachusetts courts, warns debtors in the hallway in Springfield District Court that they'll be incarcerated if they lie on court forms. And, he said, jail threats can be effective. Some judges, if they have trouble with debtors, he said, ''will put the cuffs on them and make a big show of it, and the money comes out from everywhere. The relatives come out and everything.''

Marc Marcelin, a 53-year-old Haitian immigrant, didn't get to his relatives in time.

On the morning of Dec. 13, two constables arrived at Marcelin's home in Brockton. They handcuffed him and drove him to Quincy District Court, where he sat in the lock-up of one of the state's dingiest courthouses for nearly six hours. About 3 p.m., he was called before Judge Mark S. Coven.

''So, you haven't come up with the money?'' Coven asked.

Marcelin was being sued by Madeline Cordon of Randolph, for failing to do a contracting job. She had paid him $2,000 to put vinyl siding on her house. He did two days' work but then didn't return her calls for six days - facts that Marcelin, in an interview, did not dispute. Cordon sued him, and Marcelin twice failed to show up for court.

Marcelin was no stranger to the court system, having faced charges years earlier for using drugs. But that was not the matter before the court on this day. Indeed, he had no idea how high the stakes were when he left home that morning. Standing before Coven, Marcelin told the judge his sister was supposed to be coming to court with money.

''Is she coming today?'' Coven asked twice, according to an audiotape of the session. Marcelin was not sure.

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Coven told him he was being found in contempt of court and ordered, ''that you be held at the Dedham House of Correction to be released upon payment of $2,300,'' including fees and interest.

After a long silence, Coven asked, ''Do you understand that?''

Under the law, a judge can fine a debtor $200 for contempt, or put him in jail for up to 30 days. Coven did not give Marcelin a chance to contact a lawyer, as the Massachusetts court standards recommend. There is no constitutional right to a lawyer in civil cases.

When Marcelin's sister called the court that day to arrange payment to free him, she said, a clerk told her ''not to bother,'' because he also owed money in Brockton District Court. The clerk made the same comment about Marcelin's situation to a Globe reporter that day.

Marcelin was locked up for 28 days.

(Read court documents related to this case here.)

Coven defended his ruling. ''He had the keys to the jail cell,'' Coven said. ''All I was trying to do was get a court order satisfied.''

Part 3: Behind the badge

Contact us

The Spotlight Team would like to hear from readers who have first-hand information about debt collection abuses. The telephone number is (617) 929-3208. Confidential messages can also be left at (617) 929-7483. E-mail messages can be sent to **debt@globe.com**.

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