Imprisoned for debt in America

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People are being thrown in jail for failing to pay debts in the United States, despite the fact that federal imprisonment for debt was abolished in 1933.

The Minneapolis *Star-Tribune* has documented such arrests, essentially for poverty, increasing throughout the United States. During the last four years, the use of arrest warrants against debtors in Minnesota has jumped by 60 percent, to 845 cases in 2009. The exposé showed that sometimes the unpaid bills were as low as $85.

The mechanism used to extract payment from the impoverished is the bench warrant. Workers are not actually incarcerated for debt, but for failing to respond to the legal system. However, the perpetrators of the court filings, the debt buyers and their legal representatives, are transparently using the system to intimidate, harass and frighten individuals into payments, sometimes for debts they do not even owe.

"In Illinois and southwest Indiana, some judges jail debtors for missing court-ordered debt payments. In extreme cases," the *Star-Tribune* reports, "people stay in jail until they raise a minimum payment. In January, a judge sentenced a Kenney, Illinois, man to 'indefinite incarceration' until came up with $300 towards a lumber yard debt." The self-employed roofer had broken his neck and back and filed for disability. After three hours in a holding cell, his wife got him released by borrowing $300 on a credit card.

Joy Uhlmeyer was stopped and arrested in her car on her way home from spending Easter with her elderly mother. After a costly divorce in 2006, she defaulted on a $6,200 Chase credit card. She was arrested and spent a freezing night in a holding cell. Then, handcuffed in a squad car, she was taken to downtown Minneapolis for booking. After 16 hours, she was fingerprinted and learned why she was being held. She had missed a court hearing scheduled by Resurgence Financial, a company she had never heard of.

She said, "The really maddening part of the whole experience was the complete lack of information. I kept thinking 'If there was a warrant out for my arrest, then why in the world wasn't I told about it?'" she recounted to the *Star-Tribune*.

Behind these and countless other cases across the country stand collections firms and debt-buyers. But behind these middlemen stand the major banks—Chase, Citigroup, etcetera—who profit most from the collection industry. Tens of thousands of suits are routinely filed in state courts by the large debt-buying companies. Once a judgment is issued, a court date is set. However, if for any reason a consumer fails to appear for a court date, a bench warrant can be issued for "default."

In many cases, consumers are unaware of the case against them. The Legal Aid Society of New York's study showed that the debt buyers often had not notified the purported debtor, and in many cases had no proof of claim. Their study found that debt buyers filed over 450,000 lawsuits in New York alone, winning default judgments against many workers. When these cases came to court only 1 percent of the debtors were represented by legal counsel.

The *Star-Tribune* points out that no national statistics are kept on arrested debtors in the US. "My suspicion is the debt collection industry does not want the world to know these arrests are happening, because the practice would be widely condemned," said Robert Hobbs, deputy director of National Consumer Law Center in Boston.

"We have created a de facto debtors prison system in the United States that is largely unconstitutional," said Judith Fox, a law professor at Notre Dame Law School. "In some parts of the country, people are so fearful of arrest they are scrambling to pay money they might not even owe," she concluded.

Haekyung Nielsen, 27, of Bloomington, Minnesota, told the *Star-Tribune* that police arrived with a civil arrest at her home two weeks after giving birth through Caesarean section. A debt buyer had sent her court papers for an old credit card debt while she was in the hospital. “To send someone to arrest me two weeks after a massive surgery that takes most women eight weeks to recover from was just unbelievable,” she said.

The Minneapolis paper also noted the tendency for bail to be set at the judgment amount, the court-defined amount of debt. The *Star-Tribune* spoke to Judge Robert Blaeser, Hennepin County court civil division, who said that linking bail to debt streamlines the process. Creditors, in most cases credit card companies, are then able to petition the courts for the money.

They cite the case of Vee, a highway construction worker who was arrested one afternoon in February while driving his teenage daughter home from school. “As he was being cuffed, Vee said his daughter, who has severe asthma, started hyperventilating from the stress. ‘All I kept thinking about was whether she was all right, if she was using her inhaler,’ he said. From the jail, Vee made a collect call to his landlord who promised to make his bail. It was $1,875.06, the exact amount of a credit card debt.

The court system collected his debt on behalf of the credit card company, but Vee—like many others—continues to be traumatized by the experience. He still has unpaid medical and credit card bills and owes $40,000 on an old second mortgage. He told the *Star-Tribune* that the sight of a squad car in his rearview mirror fills him with anxiety, “Are the cops going to arrest me again...? So long as I’ve got unpaid bills, the threat is there,” he concluded.

The legal threat of a bench warrant against debtors is not new. What is new is the huge, highly capitalized and aggressive debt-buying and collection business. These middle men enable the credit card companies and the large banks that underwrite them to first “charge off” the debt, e.g., write it down as a business loss, then to sell the debt to the next tier of debt buyer.

According to the court data accessed by the *Star-Tribune*, three debt buyers—Unifund, CCR Partners Portfolio Recovery Associates and Debt Equities LLC—account for 15 percent of all debt-related arrest warrants issued in Minnesota since 2005.

The publicly-traded debt-buyers purchase old debt for pennies on the dollar (some of it past the statute of limitations) and then use teams of lawyers to collect the debt. In many cases the debt is impossible to verify. The National Consumer Law Center estimates that 1 in 10 debt-buyers’ lawsuits are based on inaccurate information.

The *Star-Tribune* reports that the top 10 debt-buyers in Minnesota obtained more than $223 million in court judgments from 2005 to 2009. This represents tens of thousands of individuals who are squeezed mercilessly for their last discretionary dollar. Jail is just the most extreme of the measures used to this end.

Meanwhile, debt-buyers are handsomely rewarded for their service to the financial industry, the large banks and the credit card companies. For debt-buyers profits have never been better. Portfolio Recovery Associates earned $44 million last year, an almost unheard-of 16 percent net profit margin.

In the first quarter of 2010 Portfolio’s profits skyrocketed even higher, with a net income increase of 47 percent. They are not alone. San Diego-based accounts receivable management company Encore Capital Group increased net income 21 percent or $.44 per share. These firms showed significant gains in all divisions—collection agency outsourcing, call centers, legal collections and bankruptcy servicing.