COLLECTION TACTICS OF ILLEGAL LENDERS

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Every usury investigation calls attention to loan sharks' reprehensible collection methods. Newspapers report the more brutal cases: of a recalcitrant borrower beaten by thugs, or a victim committing robbery to get money to pay the loan shark whom he fears more than he does the law. Welfare workers tell of debt-ridden families going without necessities in order to meet the lenders' harsh and ceaseless demands. But these are the extremes. The run-of-the-mill collection methods are bad enough. Collection efforts of illegal lenders are most frequently aimed at the borrower's fear of losing his job. The wage earner who lives from one payday to the next, depending on each day's earnings to support his family, dreads the insecurity and poverty that closely follows unemployment. That victim keeps paying the loan shark because he is afraid of being sued or having his employer notified that he is delinquent on a debt; through fear of garnishment and possibly losing his job because of the trouble garnishment proceedings would bring to his employer.

Delinquent borrowers may be intimidated in other ways and kept in virtual bondage long after the original loan and lawful interest have been repaid. They may be afraid their credit will be jeopardized or that neighbors and friends will learn of their financial difficulties. On occasion, they may be frightened by threats of physical injury, or even of imprisonment for alleged criminal acts in connection with their borrowing. Many borrowers keep paying simply because they are ignorant of their rights. They believe the lenders' demands are legal. This belief is strengthened where lenders are known to use freely the lower courts. Borrowers may not know of tie-ups between some justice courts and loan sharks. They do not realize some justices will, for the fees involved, turn their courts into little more than collection agencies preying upon the wage earner.

Use of the Justice Courts

Several years ago, magistrate courts in Kentucky cities were severely criticized for abetting loan sharks. A grand jury at Louisville in 1930 reported instances where these courts appointed loan shark collectors as deputy constables "for the sole purpose

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of giving them an official status in collecting unjust debts."[1] The report said if a borrower tried to go into some courts to defend himself, the court would continue the case repeatedly, requiring the defendant to lose further time from work, "so tiring the defendant that he finally gave up in disgust and abandoned all hope of preventing Shylock from obtaining judgment for his 'pound of flesh'."

At a Kentucky legislative hearing in 1932, a Covington attorney representing a group of borrowers declared, "The loan sharks brag that they always get judgments in certain magistrate courts." But those were the days when Kentucky was a loan shark paradise, before enactment of a model small loan law. Usually the outlaw lenders avoid courts in states where adequate small loan laws are conscientiously enforced. Yet as late as 1939, one Stanley Zalewski, a notorious loan shark, was filing numerous cases in Kentucky magistrate courts. Zalewski was vicious and relentless in collecting. He often acted as his own attorney although he was not licensed. In Louisville in March, 1939, a Covington, Ky., justice of the peace testified[2] that he had helped Zalewski in about 85 "mail order" prosecutions against persons who did not live in the county and never appeared in court. The justice said he issued orders at Zalewski's behest, tying up the wages of persons in Louisville, St. Louis, and elsewhere, and gave Zalewski summonses signed in blank. This magistrate was not a lawyer and had served in office only 14 months. He admitted he had exceeded his jurisdiction "through ignorance."

A county grand jury in Kansas City, Kansas, found a justice of the peace working hand-in-hand with a collection agency which handled usurious accounts for lenders in both Kansas City, Kansas, and Kansas City, Missouri. A son of the collection agency operator was a deputy of the court. The wages of workingmen had been garnished unlawfully, the grand jury charged. And, in the preceding 11 months, only 50 cases had been docketed in the court, yet in that time some 600 of the collector's cases were filed but not docketed. The grand jury discovered some 300 so-called stipulations and confessions of judgment secured by the collection agency, and average court costs of $5 per case had been collected. An extraordinary aspect of this investigation was that the collection agency operator was a member of the grand jury. Eleven of the jurors exposed and condemned the twelfth juror's racket. The justice of the peace later resigned under threat of ouster proceedings by state officials.

From the lenders' standpoint, a friendly justice court located in an outlying town-

[1] Under the heading, *Urge Reforms of Squires' Courts,* the Louisville Times, Oct. 31, 1930, printed the full text of the grand jury report.

[2] This testimony was given at a hearing before Police Judge John B. Brachey on March 6, 1939, at the conclusion of which Zalewski was held for county grand jury action.

A year later, in March, 1940, Zalewski was convicted of mail fraud and sentenced to a year and a day in federal prison. The case was based on Zalewski's efforts to collect legitimate notes a second time. Zalewski had bought the notes Kansas City railroad men gave an attorney for legal services. The makers paid the notes in full to Zalewski when he was operating in Kansas City. Later, when Zalewski moved to Kentucky, he began dunning the railroad men by mail, threatening to garnish their wages, and wrote their employers about the old notes. Evidence of this use of the mails in an effort to collect again on notes which had already been paid was submitted to postal authorities, resulting in the federal prosecution. U. S. v. Zalewski, 29 Fed. Supp. 755 (W. D. Ky. 1939).

ship is the ideal situation. When this set-up can be arranged, any jurisdictional limitations will somehow be circumvented. For instance, in Missouri counties with a population between 300,000 and 600,000, one of the restrictions in the state law concerning justice of the peace jurisdiction requires that the action must be brought in the justice court of the township where one of the defendants resides. In a metropolitan area where this restriction applies, illegal lenders have been known to arrange with a justice in an outlying district, 15 or 20 miles from the city, where there are no public conveyances or where a workingman could not conveniently appear. The lenders would have an accomplice who lived in the outlying township "endorse" the notes of borrowers. If the borrower defaulted, the lender would sue both the "endorser" and the borrower in the court of the outlying township. Of course the "endorser" never came to court, and many borrowers did not or could not appear to defend themselves. Usually judgment was obtained by default against both defendants. Garnishment would only be run against the borrower; the loan sharks would not bother their accomplice.

Some years ago in Kentucky, outlying magistrates would also issue "bills of discovery" summoning delinquent borrowers for examination of what money, property, or securities they might possess. Defendants who failed to submit to this humiliation, or were unable to make the trip to the outlying court, would be liable to arrest and jail sentence for supposed contempt of court.

In 1938, the small loans committee of the St. Louis Bar Association found the loan sharks of that city filing almost all their suits in three of the twenty-eight justice courts.[3] In suits against borrowers, the committee reported, these three courts "have seen fit to render judgments on behalf of the salary buyers in most instances. These judgments are rendered in complete disregard of the substantive law applicable and often without regard to the sufficiency of the cases made by the plaintiff in his proof."[4] When bar committee members appealed adverse justice decisions to the circuit court, the lenders permitted the cases to go by default.

In a 22-month period, prior to enactment of the Minnesota small loan law in 1939, 1,845 suits were instituted against borrowers in the Municipal Court of the City of Minneapolis.[5] The Minneapolis Better Business Bureau found more than half of these were victims of garnishment, and said in a special report[6] that "in a great per-

[3] The jurisdiction of a St. Louis justice of the peace is coextensive with the city limits. Justices are paid an adequate salary, but their constables, who are often their political teammates, work for fees.

[4] This report of the small loans committee dated October 24, 1938, and submitted to The St. Louis Bar Association, did not charge collusion between illegal lenders and the three justices in question. The committee said it would continue "its efforts to educate these Justices of the Peace in the true principles of the law." However, the salary buying problem was ended in 1939 with the passage of a remedial amendment to the Missouri small loan law.

[5] In an article concerning the small loan business in Minnesota prior to regulation, Richard H. Bachelder of the Legal Aid Society of Minneapolis pointed out that in Minnesota a man's wages may be successively attached and kept impounded six months or more before courts could afford relief by determining the loan was usurious. Hence, a worker who could not subsist more than a few days without his current paycheck had to meet the lender's demands. See Bachelder, *The Small Loan Business Unregulated* (Sept. 1939) 205 ANNALS 35.

[6] The Bureau report on an investigation of high rate loan companies in Minneapolis covered the period

centage of these cases the loan sharks did not comply with the statutory requirements in instituting their actions. In almost every instance where a default judgment had been entered, the borrower-defendant claimed he had not been served with a summons and complaint."

When a city is ruled by a corrupt political machine, illegal lenders may curry the boss's favor and even attempt to influence the courts by claiming they are "protected." The attorney for a salary buyer in Kansas City tried to secure a contested continuance in a justice court by telling the court that the city's political boss was back of the loan company. The justice wanted the borrowers treated fairly and not kept away from their work more than was necessary, but he was also conscious of his elective position. The judge granted one continuance, made inquiry, and found that loan sharkery was one racket not condoned by the political machine. When the cases came up again, the judge and the loan attorney had heated words. The judge forcibly ejected the lawyer from the courtroom.

The practices described above as examples are not confined to the localities specified. Anywhere that loan sharkery is prevalent, some lenders will try to find justices of the peace who will render them favorable decisions.

It should be said, in fairness, that many justices conscientiously follow the law to protect the borrowers' rights. The writer has known a number of courts which would not tolerate the lenders' usual dilatory tactics, and consistently ruled against the usurers.[7]

Pretense of Legitimacy

Even where lenders do not dare use the courts, borrowers still may not realize the loan company is doing an outlaw business. The loan office may prominently display a city occupation license. When a borrower protests that the interest "lug" is outrageous, the lender will point to his occupation license as proof that he is doing a legitimate business.[8] There was a time when illegal lenders frequented back streets and did business from dingy offices. But the modern loan shark is likely to have quarters in better office buildings which house many reputable businesses. There is nothing furtive about the lender's advertising,[9] nothing hesitant about his pursuit of

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between July 1, 1938 and July 1, 1939. It was prepared by Charles W. Root, formerly assistant counsel for the Legal Aid Society of Minneapolis.

[7] In recent years, this has been true of justice courts in Kansas City, Mo. The two fee justices of that city refused to grant unwarranted continuances and in their decisions followed the law by holding usurious transactions unenforceable. Both justices were lawyers, and one, J. Frank Flynn, was formerly Commissioner of Legal Aid and had in that capacity defended borrowers and understood the problem. One time Flynn ruled against a high-rate lender in several cases, knowing that his decisions lost for him some 300 additional fees in cases the lender had announced he intended to file.

[8] A special loan shark report of the San Antonio Bar Association dated Nov. 1, 1939, listed among the false statements made by lenders to borrowers: "We have paid a fee to the City of San Antonio and that allows us to charge more than 10 per cent a year (legal maximum in Texas)." In various cities, borrowers who objected to the loan sharks' interest rates and threatened to see a lawyer about it, have been told that the law did not prohibit the lenders' rates, and consulting a lawyer would do the borrower no good.

[9] Some lenders operating in Oklahoma have been known to publish their illegal rates in newspaper advertising.

delinquents. The bold front deceives many people who reason, as victims have often said, "I thought that loan company must be all right or the law wouldn't allow them to stay in business."

Threats of Legal Action

Just the threat of suing, with no intention of taking the case to court, will frighten many borrowers—people who had never been in court and feel that "being in trouble" in court is a disgrace. Attorneys who have helped victims of usurers know how hard it is to convince a man that he should quit paying, and that if the case is taken to court the trial will not be a disgraceful ordeal for him but an opportunity to assert his rights.

One operator of a chain of high-rate money lending offices once told the writer how he used the threat of garnishment. He would not risk attracting the attention of public officials by filing many suits. He garnished a select few of his borrowers. For instance, after lending money to many workers in a particular packing house, he would sue two or three borrowers the day after they became delinquent. The word would soon get around the plant that this lender meant business and all the borrowers would keep up their payments to avoid having their checks attached.

Faked printed matter simulating legal process is not unusual in loan shark collecting. A folded paper can be dated and numbered to resemble a court summons, and bear a headline in red ink, "Garnishee Demand and Supplementary Notice." Legal verbiage and bold type may threaten:

"Take Notice: That your FAILURE to PAY the foregoing Debt Within 5 Days or Make SATISFACTORY SETTLEMENT DIRECT WITH YOUR CREDITOR will cause SUIT to be PROSECUTED and LEVY to be made on aforesaid Earnings, Wages, Incomes, Credits, Chattels and Property to SATISFY said DEBTS AND COST OF SUIT."

Bar association committees have known borrowers who, when handed such documents, thought their wages had been garnished.

When lenders demand payment by mail, some of their collection letterheads are designed to break down the borrowers' resistance. The collection department of a Missouri lender used the impressive name, "International Creditors Collection Association." Printed alongside was the statement:

"We Garnishee Salaries and Wages. We Execute Judgments. We force the Debtor Into Court on Supplementary Proceedings. It Costs Less to Pay Honest Debts Than to Avoid Them. Ignorance of the Law Excuses No One. We Report Credit Standing of Individuals to Merchants in General."

There is the usual threat of legal proceedings and advice about the folly of dodging "honest debts" (referring, probably, to a loan at 240% interest per annum). The signatures on such letters often appear over the words, "attorney" or "legal depart-

ment." It is also suggested that the borrower's credit standing with merchants may be impaired.[10]

Direct Appeal to Employers

A collection letter may threaten to jeopardize the borrower's job by enclosing a copy of a postdated letter addressed to the victim's employer. The borrower is warned that if he does not pay, the original of the enclosed letter will be sent to his employer. When a lender does write to a company official about an employee's delinquency, nothing is said of the nature of the obligation. The appeal is to the employer's fairness in helping to collect a just debt. The lender will write:

"If it is not an intrusion upon you we would greatly appreciate it if you take this matter up with this party relative to effecting a settlement. . . . It is only because this man has failed to comply with the terms of his contract that we appeal to you."

The employer does not know that this creditor's "grievance" is based on a loan at 240% interest or more. The company wants its employees to meet their obligations. The lenders know that many wage earners are reluctant to discuss personal affairs with their superiors and will not burden company officials with stories of their troubles.

A public utility company official who received a lender's appeal for assistance took the very action the lender wanted. The official wrote the employee, telling him about the letter received, and concluded, "You appreciate that the officials of this company do not want such matters to reach them and it will be to your interest to settle the matter in some manner without having it reach the company officials again." Few employers, however, will knowingly aid an outlaw lender. When an anti-loan shark campaign exposes the money-lending racket preying on working people, almost all companies give whole-hearted support to the drive and help the oppressed employees every way they can.

Collection Tricks and "Chasing"

Subtle collection methods can be effective. One lender hired a very attractive young woman, decidedly blond, to visit borrowers at their jobs. She talked to the men in a low, confidential tone, nicely asking them to pay their debt. She was not at all the typical bill collector. Co-workers of the borrower saw only a pretty girl calling on the man at his office or plant. After one or two visits, co-workers became curious and asked the borrower about his new girl friend. The embarrassment of a married man and the difficulty of explaining the secretive visitor to friends can well be imagined. A borrower might pay as quickly to prevent further visits from the

[10] In some cities, illegal lenders subscribe to credit reporting services and use the credit bureau's collection department. In this situation, a borrower's general credit standing may be affected if he fails to pay a loan shark. In other cities, credit bureaus will not accept loan shark memberships, and in some cities they have publicly announced that defaults on usurious loans would not affect credit standing. But in the absence of such announcement, most borrowers would assume the lender was able to execute his threat to damage credit.

pretty girl as he would to avoid the loud or belligerent collector who bothered him on the job.

Collections may be continued by a trick as simple as that of "switching" used by chain loan-shark offices which have two or more branches in one city. When a delinquent borrower protested that he had already paid back too much on his loan, a manager could suggest, "Go to the XYZ loan office and borrow enough to pay off this debt. They'll let you have the money right away. I'll even call up the XYZ and recommend you to them." Thus borrowers unknowingly go from one branch to another of the same loan outfit. They are not so reluctant to continue the weekly renewals on the "new" debt, feeling obliged to return at least the principal borrowed from the second office.

Almost all illegal lenders "chase" delinquent borrowers relentlessly. They telephone a man at any hour at his work or at home. They call at his house. They may interview his neighbors. They may telephone a neighbor and ask that the borrower be called to that phone on the pretext that the borrower's line is out of order. They often send collect telegrams and special delivery letters late at night to awaken the borrower with a demand for payment.

The owner of a loan-shark chain with headquarters in Atlanta once wrote a lengthy letter of detailed instructions to a new branch manager. He offered this advice under the title, "Delinquents and Chasing":

> "You should endeavor to collect old accounts by conscientious and systematic chasing. . . . Appeal to the better part of the delinquent customer. . . . Get a clientele that wants to pay just because it is right to pay."

The loan operator wrote that he did not believe in "forcing" (suing) collections,

> "but could always do very well in my personal manner in handling the delinquent customers. . . . I would not wait for two days before seeing them. Telephone them the evening of the day they fail to come in. Your collector should be diplomatic enough to visit the home of a delinquent customer as many times as it is necessary to collect the account without having any trouble. Your collector should always be a gentleman. . . ."

Duress by Garnishment

The wisdom of being a gentleman comes to many outlaw lenders by bitter experience. Even when they have had a workable usury subterfuge and some pretense of legitimacy, they often extorted payment with collection tactics so oppressive they were enjoined as public nuisances. In various places they have been charged with third-degree robbery, banding to commit a felony, mail fraud, extortion, and obtaining money under false pretenses. Loan sharks invoke criminal charges and the wrath of public officials on themselves by inhuman persecution of delinquent borrowers.

Several years ago in Kansas, outlaw lenders so often ran garnishments that many borrowers were discharged from their jobs. Such objectionable collection methods resulted in the attorney general's intervention to suppress the loan sharks by injunc-

tion.[11] The attorney general alleged the lenders charged interest of from 240 to 520% per annum and that "wage earners are in almost every instance compelled, through fear of losing their jobs as a result of possible garnishment proceedings threatened or so brought by defendants, to pay and continue to pay such usurious interest." Demurrers to the petitions were sustained, and the attorney general appealed to the Kansas Supreme Court. That court held the unlawful practice of usury may, upon "sufficient aggravation," be suppressed by the state by injunction.

"Polite" Methods Objectionable

Kansas loan sharks evidently took the "sufficient aggravation" phrase in the court's opinion to mean their former wholesale garnishments which caused borrowers to lose their jobs. After that decision, most of the Kansas lenders became quite gentlemanly. Seldom were victims sued or openly threatened with legal proceedings.

In 1936, however, another attorney general of Kansas sought to enjoin a "polite" loan shark, the Public Finance Company of Wichita,[12] which admitted charging rates upward of 150%, but contended the state did not establish "sufficient aggravation" for injunctive relief. The lender asserted borrowers were not harassed or garnished, and the business was not conducted in a manner offensive enough to amount to a nuisance.[13] The trial court denied the attorney general's application, but the Kansas Supreme Court in 1937 reversed the trial court and granted the injunction. The Supreme Court commented on the practice of requiring the borrower to sign documents purportedly waiving his legal rights, and that pressure was applied to the delinquent borrower by veiled threats. Such collection tactics, said the court, "may be as effective upon him and as disastrous as though the effort to force him to pay had been proceeded with in a ruder manner."

After this decision, the rude manner came back in vogue with some Kansas lenders. L. R. Polan, Wichita branch manager for a high-rate chain, was convicted in 1939 of disturbing the peace[14] when his collection tactics resulted in a borrower losing his job. Polan telephoned at frequent intervals to a grocery store where the borrower worked. The grocer had to discharge the employee so the store phones would not be tied-up. In another case in 1940, Polan was fined for assault and disturbing the peace.[15]

[11] State *ex rel.* Smith v. McMahon, 128 Kan. 722, 280 Pac. 906 (1929).

[12] State *ex rel.* Beck v. Basham, doing business as Public Finance Co., 146 Kan. 181, 70 P. (2) 24 (1937).

[13] The Kansas Supreme Court observed caustically that this argument "appears to be predicated upon the view that statutes of this state designed for the public good and evidencing long-continued public policy may be openly and notoriously violated with impunity so long as the violator is pleasant and gracious in his manner of violating the statutes." 70 P. (2d) 24, 26.

[14] In the complaint filed in the Police Court of the City of Wichita on October 2, 1939, the complainant charged that Polan "did disturb the peace and quiet of C. A. Trissal by repeatedly calling and threatening to call him by telephone." After conviction in police court, Polan appealed to the district court where a jury found him guilty.

[15] In this police court complaint, sworn to on June 27, 1940, Edwin Smith, a credit union secretary who was attempting to aid a member in settling an alleged indebtedness to Polan, charged that Polan "did assault, and disturb the peace of, and drew a deadly weapon, to wit: a black jack on Edwin Smith."

Strong-Arm Collectors

Many lurid stories of violence to borrowers were published when Thomas E. Dewey, as special prosecutor, made a loan-shark drive in New York in 1935. Newspapers declared the underworld had moved into the profitable field of "6 for 5" loan sharkery. For a loan until next pay day, whether it was two days or two weeks away, working people paid back $6 per $5 borrowed.

Organized gangdom used its thugs to force collections by beatings, kidnapping, and threats of mayhem. "Collection mobs" of two or more strong-arm men promptly visited borrowers who missed a payment. A transit motorman, delinquent to loan sharks, was accompanied to the end of his car line by four collectors, who beat him severely.[16] A technical engineer in a Radio City broadcasting studio was slugged by loan-shark collectors who called on him at the radio station.[17] A Negro testified he was afraid to go home because loan-shark collectors might be waiting for him. In fear of gangster collectors, another victim left the city, abandoning his family and his job.[18] A number of known racketeers were convicted in the Dewey campaign, but the sporadic unlicensed loan racket continues in New York. Newspapers say that since 1936 money sharks have been responsible for some 17 murders in New York City, either from violence done to borrowers or internecine squabbles among the racketeers themselves.[19]

Threats of Criminal Prosecution

Although violent and murderous collection tactics are isolated, lenders can be almost as ruthless in threatening to prosecute and imprison a debtor. Provisions in some of the salary buying instruments give lenders this club. When the loan shark purports to buy wages at a discount, the borrower may sign an agreement to collect his wages not for himself, but acting as an agent for the lender. If a man fails to bring in his wages and renew his loan, the lender may accuse him of converting money belonging to the lender, and threatens to have the borrower arrested for embezzlement.

Another criminal prosecution scheme is to have the borrower sign a bank check when he receives a loan. The check covers principal and interest. It is drawn on a bank in which the borrower knows he has no account, but the lender says the check is merely "security," will not be cashed, and will be returned to the borrower when the loan is paid. But if the borrower defaults, the lender may endorse the check and present it to the bank. The bank, of course, refuses payment. Then the lender, holding the borrower's check marked "no account," can threaten to prosecute on bad check charges if the victim does not pay.

A lender in Kansas City who used this check device was foolish enough to send some of his collection threats by mail. Evidence of the racket was presented to postal authorities. The lender who had intimidated so many with bogus check prosecutions

[16] N. Y. American, Nov. 7, 1935.
[17] N. Y. American, Dec. 6, 1935.
[18] N. Y. Bronx Home News, Dec. 3, 1935.
[19] N. Y. Journal and American, Feb. 19, 1940.

grovelled when he was threatened with extortion charges under the federal laws. He told the inspectors he would kill himself before he would stand trial. He quit the loan shark business, and the authorities closed the investigation without charges being filed.

Investigation of auto loan usurers of New York uncovered instances where borrowers were threatened with prosecution. Borrowers had been induced to sign false affidavits to get money, and later were threatened with prosecution for swearing to untrue statements in these documents. Some "gorilla" collection tactics were also reported. Sometimes the motor cars pledged by delinquent borrowers were seized unlawfully.[20]

Leo Ritter, president of the Pacific Finance Corporation, a New York auto loan company, pleaded guilty of usury in May, 1940. When the Ritter case was being publicized, Attorney General John J. Bennett, Jr., of New York said his office was deluged with persons hard pressed by collection tactics of the loan company.[21] This happens many times in large cities. An outlaw lender may do business for some time without borrowers knowing it is a racket, until the publicity accompanying a prosecution or anti-loan-shark campaign educates the victims. And, conversely, a number of campaigns to relieve loan-shark victims and suppress outlaw lenders are directly attributable to the public indignation aroused by the lenders' brutal and oppressive collection tactics.

Collection tactics of illegal lenders are found to be fairly standardized all over the country. This may be partly due to the chain companies which operate in many states, but chain office managers are allowed considerable latitude in adapting their practices to local conditions. Yet their methods differ more in degree of oppression than in variety of schemes to enforce collections.

[20] See *The Campaign Against Auto Loan Usurers in New York State* by John J. Bennett, Jr., Attorney General of the State of New York, and Benjamin Heffner, Assistant Attorney General (Conference On Personal Finance Law, 1940).

[21] N. Y. Herald-Tribune, May 3, 1940.