

## NOTE

## THE PHILADELPHIA CONSTABLE \*

In colonial times, the constable was primarily a preserver of the peace of the community.<sup>1</sup> With the passage of years his functions have been vastly changed. Today, the constable is a public officer somewhat comparable to a sheriff. His major statutory functions are the service of process for the minor judiciary and the levy and execution of judgments. In addition, constables frequently aid in the collection of small claims too minor to interest an attorney and in the enforcement of landlords' remedies against delinquent tenants. This work brings the constable into close contact with large numbers of citizens, but accurate knowledge of the precise nature and extent of the constable's powers and duties is rare. Consequently, the constabulary operates outside the area of enlightened public opinion and unhindered by the forces which such an opinion can focus on better known government offices. Abuses that may arise are perpetuated since an uninformed public is not likely to protest misuse of power. Occasionally, some aspect of the constable's practice is brought to public attention, as occurred in Philadelphia recently when the District Attorney attempted to correct various abuses by constables of the Collection Code, which regulates the manner of collecting debts. This Note is based on a study of the statutory outlines of constabulary activity and the relationship of the observed activities to the legislative mandate as construed by the courts.

The study was concentrated on the Philadelphia constable because much of the information is available only through personal interviews with numerous constables. However, most of the constable's duties and powers are derived from statutes which are applicable throughout Pennsylvania, and there are, of course, other states which have similar offices.<sup>2</sup>

The Philadelphia study was made during the summer of 1955. There is a striking lack of records with respect to the constable's activities;<sup>3</sup> therefore, reliance had to be placed on personal interviews and observa-

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1. See *Preno Petition*, 77 Pa. D. & C. 193, 195-96 (Philadelphia County Q.S. 1951).

2. DEL. CODE ANN. tit. 10, §§ 2701 to 30 (1953); MICH. STAT. ANN. § 5.74 (1936); N.J. STAT. ANN. § 40:41-34 (1949); OHIO REV. CODE § 509.05 (Anderson 1953); VT. REV. STAT. § 1530 (1947).

3. Despite a statute which provides that the magistrate is to furnish the City Controller with an account of fees paid to constables during the preceding month, PA. STAT. ANN. tit. 42, § 1107 (Purdon Supp. 1954), magistrates often do not report

tions in a majority of the constable offices of Philadelphia. The accuracy of this Note is largely dependent upon the reliability of the testimony of these people. However, statements were checked against one another for consistency; magistrates and other officials of various kinds, attorneys, plaintiffs and defendants, as well as most available records, were also used as sources of information.

The result was the discovery, in various instances, of questionable practices and abuses of statutory authority. Among these are the election of constables who never qualify to carry out their legal duties, the collection of excessive fees for services, and the existence of a deputy system whereby the prospective deputy may pay the constable for his appointment and then carry on his business with no constable supervision at all. These specific abuses are discussed throughout the text and suggestions are made to alleviate particular evils. However, it becomes apparent that the constable system needs a re-examination and re-evaluation beyond consideration of remedying more obvious evils. An evaluation of the *raison d'être* of the system in light of the public need for the type of service which constables are expected to provide is far more appropriate. The first steps toward such an analysis will be attempted at the conclusion of this Note.

## PERSONNEL

### *Number and Distribution*

There are 106 constables in Philadelphia.<sup>4</sup> With several exceptions, they are allocated equally according to wards, thereby continuing a practice begun in 1794.<sup>5</sup> Generally, there are two constables for each of the 52 wards. This distribution is unrelated, however, to the number or jurisdiction of minor judiciary. At one time the state legislature provided that there should be as many constables as aldermen,<sup>6</sup> but this correspondence was destroyed by the abolition of the aldermen<sup>7</sup> and the substitution of 28 magistrates.<sup>8</sup>

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the fees paid to each constable or the number of summons and warrants served. Even when reports are made, they are of questionable accuracy. See discussion on the lack of records in ERVIN, *THE MAGISTRATES' COURT OF PHILADELPHIA* 67-80 (1931). Aside from this, many activities of the constable, chiefly those in collecting overdue rent for landlords, have no connection with the magistrates' courts so there is no requirement for the keeping of any type of record.

4. This is the number of constables shown by the Philadelphia City Commissioner's records in June, 1955.

5. An early statute provided for one constable per ward. Act of Jan. 30, 1810, Pa. Laws 1809-10, c. XI, § 1, at 10. The number was increased to two constables per ward with several exceptions. Act of Feb. 2, 1854, Pa. Laws 1854, No. 16, § 26, at 36. A later statute provides for the number of constables in a new ward to be as "directed by law." PA. STAT. ANN. tit. 53, § 3431 (Purdon 1931).

6. Act of March 30, 1858, Pa. Laws 1858, No. 221, § 1, at 185.

7. The office of alderman in Philadelphia was abolished by the Pennsylvania Constitution. PA. CONST. art. 5, § 12. His powers were given to the magistrate who took his place. *Ibid.* Because of the disrepute of the alderman, it was thought that a major item of reform would be a change of name. ERVIN, *op. cit. supra* note 3, at 8.

8. PA. STAT. ANN. tit. 42, § 1042 (Purdon 1930).

The policy of allocating constables on the basis of wards has no functional purpose since constables can serve process anywhere in the city.<sup>9</sup> Although the constable apparently is required to be a resident of the ward he represents,<sup>10</sup> there is no requirement for location of a constable's place of business within the ward, and very often a constable's office is located outside of his ward. There is a tendency for the offices to be congregated in a few sections of the city which leaves great masses of population without a nearby constable office.<sup>11</sup> The lack of any rational distribution plan for constables is further evidenced by the fact that one of the two wards which are permitted to have three constables is not among the most populous wards.<sup>12</sup>

### Selection

#### Election

The primary method of selection of constables is through election by the voters of each ward. Most of the Philadelphia constables practicing today obtained their offices in this manner. Constables are elected in odd-numbered years for a six-year term.<sup>13</sup> There is no statutory provision requiring the staggering of elections; hence the terms are spaced in a haphazard fashion. In some wards, both constables are chosen the same year<sup>14</sup> while in others the elections are spaced.<sup>15</sup>

#### Appointment

In addition to election, the legislature has provided for selection of constables by judicial appointment to complete unexpired terms of elected constables whose offices become vacant. Nineteen of the 106 constables

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9. *Id.* § 1077; *Commonwealth v. Lentz*, 106 Pa. 643, 645 (1884) (dictum); *Preno Petition*, 77 Pa. D. & C. 193, 204 (Philadelphia County Q.S. 1951). While it once may have been believed that constables could help keep order in their own ward, they cannot, nor are they expected to, perform this function today. See text at pp. 530-31 *infra*.

10. No specific statutory ward residency requirement has been found. However, the County Commissioner's office reports that the candidate for the constable office must certify in his petition that he is a resident of the ward in which he hopes to be elected.

11. This does not necessarily indicate lack of constable services in this area since an individual need only go to a magistrate with his civil suit or his complaint, and the magistrate will designate a constable to make necessary service.

12. The 22nd and 27th wards have three constables each. See PAXTON, PHILADELPHIA'S GOVERNMENT 10 (1926). At the 1950 census, there were 32 wards in Philadelphia with greater populations than the 27th ward. The 35th ward which has 144 times the number of people of the 6th ward has the same number of constables as the smaller ward. COMMITTEE OF SEVENTY, ELECTION CALENDAR.

13. PA. STAT. ANN. tit. 13, § 14 (Purdon Supp. 1954) (6 yr. term for second and third class cities, boroughs and townships); *id.* tit. 53, § 3431 (Purdon 1931) (5 yr. term for Philadelphia constables); PA. CONST. art. XVIII; Sch. to amend. of 1909, § 1 (changed to 6 yr. term).

14. *E.g.*, the 2nd, 9th, 13th and 24th wards. This information was obtained from the records of the Philadelphia City Commissioner's office.

15. *E.g.*, the 1st, 10th, 11th and 12th wards. *Ibid.*

were thus appointed by the Court of Quarter Sessions. The applicable statute requires appointment of a "suitable" person upon petition of ten voters in order to fill a vacancy in the office of constable by reason of failure to elect, failure to qualify, incompetency, death, resignation, removal or for any other cause.<sup>16</sup> Neither the statute nor case law provides a definition of "suitable" person. In practice, the appointment of the constable for whom the petition has been proffered is usually made automatically unless there is opposition by the District Attorney or other prospective appointees. In fact, it has been reported that an elected constable who wishes to transfer his constable title to another can resign and have the "heir" installed through the perfunctory selection process.

It is patent that this procedure does not provide an adequate screening of the qualifications and character of the applicant. Unfortunately, the election process does little better. The constable is ordinarily placed on the party ticket in a campaign where the major issues center about the top candidates and the constable of either party is swept along with the result. In either case, the job is likely to be filled by a person who has some connection with the local political leader.<sup>17</sup>

#### *Time Devoted to Constable Work*

One of the paramount observations which the study disclosed was the great variance in the amount of time spent by different constables on their constabulary duties and functions. Most striking is the fact that a little less than a third of the elected constables never appeared after their election to take the oath of office, file a bond and receive the commission.<sup>18</sup> Since these acts are prerequisites to practice as a constable,<sup>19</sup> this means that 32 elected constables are unqualified to do any constabulary practice at all.

Apparently, many constables run for election without any intention of practicing. They may run merely for the satisfaction of winning in a public election, for the prestige of holding the title of constable, or because they just happen to be available when a ward leader needs someone to fill out the long ballot. Ward leaders may sponsor them so that a hostile candidate is not elected.

One aged constable did not take out a bond and receive his commission for several years after his election. He had no clients and knew little about the constable business, but he finally obtained his commission so that he could reappoint the deputies of a constable who had recently passed away.

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16. PA. STAT. ANN. tit. 13, § 11 (Purdon 1938).

17. See text following note 129 *infra*.

18. A comparison of the District Attorney's record of bonded constables with the record of elected constables showed that 32 had not filed bonds.

19. PA. STAT. ANN. tit. 13, § 9 (Purdon 1938) (bond); PA. CONST. art. VII, § 1 (oath).

Even among commissioned constables, there is no standard for minimum time required to be devoted to constable work. Constables are paid on the fee system,<sup>20</sup> so that their remuneration is proportionate to the amount of work done. Some constables hold full time jobs in other areas. Among those interviewed there were a state employee, an employee of the Philadelphia Transportation Company, a painting contractor, a furniture salesman and a plumber. Some of these men indicated a willingness to do full time constable work, but complained that this was impossible because they could not obtain enough business. One man explained it thus: "You have to be one of a clique to get a job, to make a living out of it. We're the only elected position that can't make a living."

The size of the constable's practice varies even among those who may be categorized as full time constables—those who do only constable work. Some of them barely make a living; others head fairly large business establishments that are apparently quite lucrative. One constable has an office in which he employs at least two stenographers and two managers for office work, and he claims to have seven men working for him outside the office. He said he collects over a million dollars a year for his clients. Other constables receive very little work and operate, as one constable contemptuously phrased it, "from offices in their cars." These constables are likely to use their homes as their base of operations and keep scanty records. They have no employees to answer the phone, and sometimes not even a phone.

Some method of distributing the constable work more equitably seems to be desirable. From the size of their practices it would appear that there are more constables elected than necessary to perform the available work. This number could be diminished by the number of non-commissioned constables since the services of the latter are apparently not necessary. It is anomalous to elect an official to an office for which he never qualifies to serve. However, the elimination of these constables will not resolve the unequal work load distribution among practicing constables. While an even further reduction in the number of practicing constables may aid in accomplishing this, since the work presently done by the eliminated constables may be divided among the remainder, the problems of concentration of constable work is aggravated by the use of deputies who, either independently or under the constable's control, perform a large amount of the constable work.

### *The Deputy System*

Many constables perform their work through, or are aided by, deputies. Deputies become such through appointment by one of the constables. There is no statutory limit on the number of deputies which each constable may appoint, and several constables have three or four. Since there is no

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20. See p. 532 *infra*.

requirement for registering the appointment of all the deputies, the total number of such officials in Philadelphia is unknown.<sup>21</sup> Language in several opinions indicated the deputies have the same authority as constables.<sup>22</sup> Nevertheless, their appointment is often subject to even less public scrutiny than that of the constables.

### Appointment With Court Approval

An 1834 statute permits the constable to appoint a deputy subject to the approval of the Court of Quarter Sessions.<sup>23</sup> Neither the statute nor appellate decisions have shaped standards for court approval, and this generally has been forthcoming if no evidence of criminal record or bad character of the proposed deputy is produced at the hearing.<sup>24</sup> Certain lower court opinions, however, have required the constable to show good reason for the appointment before granting approval.<sup>25</sup> In *Preno Petition*, for example, the court recognized that the appointment of excessive deputies would deprive elected constables of the honors and franchises of their offices, and that the economic pressure upon deputies and constables may lead them to improprieties.<sup>26</sup> The court, therefore, enunciated the rule that the appointment of a deputy should be permitted only when the elected constables in the petitioner's ward have more business in the ward than they are able to perform.<sup>27</sup> In light of the city-wide operations of constables,<sup>28</sup> a standard for appointment based on ward business is questionable.

### Appointment Without Court Approval

The same statute which permits a deputy's appointment with court approval also provides that:

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21. The number of court-appointed deputies is ascertainable and at last count there were 60 working for 39 constables.

22. See *McCormick v. Miller*, 3 Pen. & W. 230, 236 (Pa. 1831); *National Cash Register Co. v. Berg*, 99 Pa. Super. 34, 37 (1930); *National Cash Register Co. v. Kline*, 99 Pa. Super. 299, 301 (1930). However, the statute which authorizes appointment of deputies provides that the deputy must be a resident of the ward to which he is appointed. PA. STAT. ANN. tit. 13, § 22 (Purdon 1938). This led the court in *Preno Petition*, 77 Pa. D. & C. 193, 204 (Philadelphia County Q.S. 1951) to question whether a deputy can exercise his functions beyond the limits of the ward. Nevertheless, in practice, the Philadelphia deputy operates over the entire city. It was also stated in *Preno* that the deputy could not perform any of the official duties for the magistrates. *Ibid.* See also *Re Application for the Appointment of Deputy Constables*, 11 Phila. Rep. 391 (Philadelphia County, Pa., Q.S. 1875).

23. PA. STAT. ANN. tit. 13, §§ 21, 22 (Purdon 1938).

24. See *Preno Petition*, 77 Pa. D. & C. 193, 194 (Philadelphia County Q.S. 1951).

25. *Id.* at 194; *In re Townsend's Application*, 15 Washington Rep. 1 (Washington County, Pa., Q.S. 1934); *Huber's Application*, 30 Pa. Dist. 759 (North. County Q.S. 1920); *Deputy Constables*, 4 Pa. Dist. 217 (Philadelphia County Q.S. 1895); *Appointment of Deputy Constable*, 11 Phila. Rep. 391 (Philadelphia County, Pa., Q.S. 1875); *In re Jacob Horivitz*, 27 Pa. Dist. 578 (Philadelphia County Q.S. 1918) (dictum); *Newton v. Luzerne County*, 12 Pa. Dist. 695 (Luzerne County C.P. 1903) (dictum).

26. 77 Pa. D. & C. at 204-05.

27. *Id.* at 204.

28. See text at note 9 and note 9 *supra*.

"no deputy shall be appointed . . . without court approval except the same shall be made specially in some civil suit or proceeding at the request and risk of the plaintiff or his agent . . . ." <sup>29</sup>

The practices of Philadelphia constables indicate that this provision has been interpreted broadly to permit appointment of deputies without court approval. This may be accomplished by considering the constable as acting as the agent of the plaintiff in the suit in question. Therefore, the statutory requirement for appointment of the deputy at the request of the plaintiff or his agent is met.

However, many deputies in Philadelphia are not appointed only for one suit or proceeding, but instead they operate on a continuous basis. It is difficult to find the statutory authority for this procedure. Since the "civil suit or proceeding" for which the statute permits appointment without judicial approval is expressed in the singular, it would appear that a special deputy could be appointed only for a particular job.

In *Newton v. Luzerne County*,<sup>30</sup> the court, while holding the deputy must collect his fees from the constable, not the county, stated by way of dictum that there could be a continuing deputy only as a substitute for the constable, that is, if a constable does not qualify or neglects to fill the office. The court reasoned:

" . . . I find no authority whereby a man who has qualified and entered upon the duties of his office as constable may *generally depute* the performance of those duties to another, and, if I am correct, no implication of such authority may be derived from the language of the acts of 1820 and 1834, which is properly and solely referable to quite another situation. Such authority is against the policy of the common law and the statutes. The effect of this construction would require *constables to depute their ministerial duties specially, for causes then existing, and of such character as to meet with the approval of the Court of Quarter Sessions.*" <sup>31</sup>

While the court's prohibition of general deputation is consistent with the foregoing statutory analysis in the case of appointments not judicially approved, the assertion that all deputies must be approved by the court and that only a substitute for the constable is contemplated overlooks the language of the statute. The provision states that special appointments are an exception to the rule that deputies need court approval, the obvious intent being to save the court the time of approving deputation for every little task. Moreover, another procedure is provided to fill a vacancy, *i.e.*, court appointment of a new constable.<sup>32</sup> The picture of the deputy

29. PA. STAT. ANN. tit. 13, § 22 (Purdon 1938).

30. 12 Pa. Dist. 695 (Luzerne County C.P. 1903).

31. *Id.* at 697 (Emphasis added.)

32. PA. STAT. ANN. tit. 13, § 11 (Purdon 1938).

as a substitute for the constable is inconsistent with his status as contemplated in cases on other questions involving deputies. In one case, it was stated that the office of deputy ceases to exist when there is a vacancy in the office of constable.<sup>33</sup> Cases requiring a showing of necessity to justify deputy appointments also treat the deputy as working with his constable, not in his stead.<sup>34</sup> Although the practice of appointing deputies is standardized today, the clumsy wording, negative approach and lack of definition of key terms of the statute present room for varied interpretation.

### The Independent Deputy

The deputy system is put to its most deleterious use in those instances where the deputies operate independently of any constable and are compensated by fees and commissions in contrast to the controlled deputies who work for a constable's office as his salaried employee. These independent deputies may have their own constable businesses or be employees of collection agencies. While there seems to be no specific prohibition of an independent deputy in statutes or in cases,<sup>35</sup> the ordinary conception of a deputy is one who assists the appointing officer,<sup>36</sup> and the deputy's certificate says that he is deputized to "do and to act for the [constable] . . . ."

The independent deputy system is characterized by a complete lack of supervision. One constable confided that it was only by chance that he ever became apprised of the operations of his deputy. However, he did claim that when he heard the deputy had acted illegally in a particular transaction, he would ask him to stop the practice.

Since an appointing constable may get none of his own work done by an independent deputy and may be liable for the deputy's misdeeds,<sup>37</sup> it would seem that the constable would be reluctant to make such appointments. There are various reasons why this type of appointment is made. A constable who has built up his business and good will over his term of office is always considering the possibility that he may lose his constable commission in the next election. One constable tried to protect himself by agreeing with another constable, who was also up for reelection, that if either lost his election, he would appoint the other as his deputy and permit him to carry on his own business.

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33. *National Cash Register Co. v. Berg*, 99 Pa. Super. 34, 37 (1930).

34. See cases cited in note 25 *supra*.

35. *But see* discussion of the court's approach in *Newton v. Luzerne County*, text at notes 30 to 32 *supra*.

36. See WEBSTER, *NEW INTERNATIONAL DICTIONARY* 704 (2d ed.): "Many administrative officials . . . have or may have deputies to assist them in their duties. . . ."

37. *Sheriff's deputies*: *Overholtzer v. McMichael*, 10 Pa. 139 (1848); *Wilbur v. Strickland*, 1 Rawle 458 (Pa. 1829); *Hazard v. Israel*, 1 Binn. 240 (Pa. 1808). *Deputy constable*: *Miller v. Heck*, 9 Watts 439, 440 (Pa. 1840) (dictum).



Another reason for the appointment of an independent deputy may be the promise of the prospective deputy to refer business to his appointing constable. At least one case was noted where a constable, pursuant to an agreement arranged by his ward leader, deputized a committeeman of another party because he had promised to shift votes from his own party in an important election. Sometimes constables deputize members of their families so that these relatives may use the prestige and power of the office in their own businesses. This has been apparent in the business of repossession of financed automobiles where the deputy may be using his commission to threaten arrest of the delinquent debtor. In addition to the above methods, several constables, ward leaders and a magistrate said that they knew of instances in which appointments to deputyships were bought with cash.<sup>38</sup>

It should be noted that some of these irregular reasons for appointments of independent deputies apply in lesser degree to the appointments of controlled deputies as well. However, they are most significant in the case of the independent deputy where the pressure to secure a deputy appointment is greater because there is more opportunity for financial remuneration.

The above description of the deputy system indicates that some existing practices are violations of the criminal law as well as outside the legitimate bounds of constable activity. A deputy is guilty of bribery if he gives "money, goods or other thing" to the constable in exchange for his favor;<sup>39</sup> the corrupt solicitation statute prohibits the giving of "money, office, appointment, employment, testimonial or other thing of value."<sup>40</sup> In addition, a deputy might commit perjury in taking the standard oath after appointment that:

" . . . I have not paid or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing, to procure my . . . appointment. . . ." <sup>41</sup>

Clearly the purchase of deputyships with money or goods violates these provisions. There is some question whether the referral of business to the appointing constable, or the swaying of votes in his favor, are also violations. Such may be said to be "other valuable thing" under the oath, "other thing" under the bribery provision, or "other thing of value" under the corrupt solicitation provision. There seems to be no valid reason to

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38. The rate probably varies considerably. One constable mentioned \$200 as the going rate for deputy appointments, but a ward leader told of a case where the constable turned down an offer of \$600.

39. PA. STAT. ANN. tit. 18, § 4303 (Purdon 1945).

40. *Id.* § 4304. The bribery and corrupt solicitation provisions overlap in many respects, and since the maximum penalty is greater in the former, the District Attorney may exercise his discretion in bringing suit. See *Commonwealth v. O'Brien*, 107 Pa. Super. 569, 574, 164 Atl. 360, 362 (1933).

41. PA. CONST. art. VII, § 1; see PA. STAT. ANN. tit. 16, § 2151-403 (Purdon Supp. 1954).

distinguish obtaining appointments with money or goods from these more intangible benefits, and the statutory language is broad enough to support this policy. While there are no cases on point in Pennsylvania, other states have given a broad interpretation to "valuable thing" in similar statutes.<sup>42</sup> Moreover, the bribery provision does not even specify that the "thing" be of value; hence the argument that votes are not financially of value is not apposite to a bribery charge. Under the corrupt solicitation statute, "employment" is specifically enumerated as a "thing of value," and it can be argued by analogy that referral of business to the appointing constable should be treated the same.

In addition to the deputy, the constable making the appointment may also be guilty of a breach of the criminal code. The extortion statute provides:

"Whoever . . . wilfully and fraudulently receives or takes any reward or fee to execute and do his duty and office . . . is guilty of extortion. . . ." <sup>43</sup>

Deputizing can be considered one of the elements of a constable's "duty and office." <sup>44</sup> The word "reward" might be read broadly, as is done with "valuable thing," so that the prohibited reward includes not only cash but also referred business and swaying votes. There are, however, no cases interpreting the statute in this manner.

In evaluating the deputy system, it is apparent that the deputy can serve a useful function for the overworked or temporarily incapacitated constable. However, the deputy is not necessary to a part-time constable, and the independent deputy should be abolished since, by definition, he is subject to no control. The appointing constable exercises little supervision, and the public, even if informed enough to do so, does not have the opportunity to vote the appointed deputy out of office. Moreover, the District Attorney and the Chief Magistrate have complained that the unnecessary number of deputies and the competition among them have led to abuses.<sup>45</sup>

A rule of court which would approve appointments only if the constable needed the deputy's aid in the execution of his statutory functions would be a partial solution to the deputy problem.<sup>46</sup> If a detailed affidavit of necessity and the deputy's qualifications were required before the deputy's ap-

42. *Caruthers v. State*, 74 Ala. 406 (1883) (promise to chop cotton for a week); *Scott v. State*, 107 Ohio St. 475, 141 N.E. 19 (1923) (a woman's virtue). *But cf.* *Wigton's Return*, 151 Pa. Super. 337, 30 A.2d 352 (1943) (right to free game on a pinball machine under a gambling statute).

43. PA. STAT. ANN. tit. 18, § 4318 (Purdon 1945).

44. *Cf.* *Commonwealth v. Dietrich*, 7 Pa. Super. 515 (1898) (sale of appointments by officials at county almshouse).

45. See *Preno Petition*, 77 Pa. D. & C. 193, 194 (Philadelphia County Q.S. 1951).

46. *Cf.* *Appointment of Dapp*, 98 Pittsburgh L.J. 335 (Allegheny County, Pa., Q.S. 1950) where the court interpreted a Quarter Sessions Rule of Court requiring the alderman or justice of the peace to confirm the necessity of a deputy before the deputy's appointment would be approved by the court.

pointment were considered and the court were to make an independent judgment on the facts therein stated, the number of deputies would be reduced considerably and, perhaps more important, the character and ability of prospective deputies could be carefully reviewed. Since the work given to deputies diminishes the available work for the elected constables, there should be some limitation of the number of deputies each constable may use. Perhaps one method to effect this is an arbitrary ceiling on the number of deputies any one constable may have. This might alleviate the inequity of a system in which one constable's work may have grown to such proportion that he requires several deputies although a constable in an adjoining neighborhood does not have sufficient work to keep him occupied full time.

#### OPERATIONS OF CONSTABLES

The operations of constables can be classified into four principal categories: assistance to the magistrate, especially service of process; small debt collection; landlord-tenant work, including collection of overdue rent or eviction; and miscellaneous and often anachronistic statutory functions encrusted upon the office of the constable by years of legislative activity. The historical function of the constable as a peace officer has virtually disappeared in Philadelphia; more and more the constable's chief function has become commercial in nature.

Although constable operations can be divided into categories, it was found that in most cases any one constable will specialize in one type of work. Constable after constable said that 95, 99 or 100 per cent of his business is on various phases of landlord-tenant relationships. Conversely, many constables in collection work said that they never handle a landlord-tenant case; if they get one they refer it to another constable. Some constables have never served a summons or executed a warrant for a magistrate. This may be because they do not have or do not wish to have enough influence to be called upon for such type of work. Specialization has reached such a point that very often constables active in one field look upon those in another somewhat contemptuously.<sup>47</sup> One constable with a large debt collection practice, who had informed a magistrate that he did not want to execute any warrants, stated that he did not like to "play cops and robbers" like some other constables. Collection men sometimes say that the landlord-tenant business is a "rough one." One such constable

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47. An interesting parallel lies in a study of some of the nineteenth-century metropolitan constables or Bow Street Runners who amassed wealth working for royalty, aristocracy, governments and commercial establishments, thus becoming scornful of less spectacular duties. It is reported that one constable, when told by his Chief Magistrate to execute a warrant, exclaimed, "I beg leave to tell you that I think it would lessen me a great deal if I were to execute a warrant upon a barber . . . after forty-six years' service during which period I have had the honour of taking Earls, Marquises, and Dukes. No, no, Sir Richard . . . don't let me be degraded by executing the warrant." Radzinowicz, *Trading in Police Services: An Aspect of the Early 19th Century Police in England*, 102 U. PA. L. REV. 1, 29 (1953).

observed that he was too kind-hearted to evict people and sell their belongings. On the other hand, landlord-tenant constables express the view that they dislike the collection of "petty sums."

Even within categories, there may be further specialization. For example, certain landlord-tenant constables handle primarily evictions and distrains arising out of the non-payment of rent by residential tenants; others concentrate on offices and business establishments. There were even some constables who have a specialty of distraining automobiles to collect for rental or storage charges.

### *Activities in Conjunction with the Magistrates' Courts*

#### "Official Constables"

Although most constables specialize in the commercial type of activities, there are some whose work is concentrated on the magistrate's court. The opportunity to do so is dependent upon securing the favor of a magistrate. Each magistrate is permitted to select three constables to serve process.<sup>48</sup> These men are referred to as "official constables" although their selection by the magistrate does not give them any authority greater than that of any other constable.<sup>49</sup>

In practice, some of the "official constables" perform various tasks at the court which are not delineated in the statutes or the cases.<sup>50</sup> A very active "official constable" may list the order of cases, announce the magistrate's entrance, examine witnesses, aid in settling details after disposition has been made of the cases and arrange for bail with a friendly bondsman. It was noted that, at times, the constable even suggested what the disposition of a case should be; in one instance, the constable's recommendation that bail be set at a higher amount than originally determined was followed by the magistrate. While in some courts the active participation of the constable makes it appear that he, and not the magistrate, exercises the dominant influence, the extent of activity varies, and generally the constable serves only as an aide to the magistrate.

Some of the "official constables" have the added advantage of receiving what may be called "city work." Cases in which the city charges violations of ordinances regulating weights and measures, housing and sanitation, zoning, city trash, plumbing and fire protection are usually con-

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48. PA. STAT. ANN. tit. 42, § 1062 (Purdon 1930). This section provides that these chosen constables "... shall hold their office at the pleasure of the magistrate. . . ." Because constables are either appointed by the Court of Quarter Sessions or elected, this can mean only that their attachment to the particular court, not their position as constable, is at the pleasure of the magistrate. ERVIN, *op. cit. supra* note 3, at 16.

In at least one instance, a magistrate's "official constable" is an independent deputy. This apparently violates the statutory mandate that the magistrate choose a "constable." PA. STAT. ANN. tit. 42, § 1062 (Purdon 1930).

49. *Ibid.*

50. Many of the functions the constable performs might be expected of the magistrate's clerk. ERVIN, *op. cit. supra* note 3, at 17.

centrated in the courts of several favored magistrates. Therefore, the official constables affiliated with these courts serve the numerous summons and warrants which are required.

Many of the "official constables" attempt to capitalize on their connection. Some even keep their offices in the magistrates' courts.<sup>51</sup> The danger in this arrangement is that the power and title of the magistrate may be used indirectly to coerce payment in cases where the constable acts as agent for the collecting plaintiff before any legal action has been taken.

The "official constables" who have offices apart from the magistrates' courts often have signs or lettering in the windows which publicize their magistrate "connections" or "affiliations." In fact, some constables use this sign even though they have no active official connection with the magistrate.<sup>52</sup> This caption is misleading for any constable since the observer is led to believe the constable has more power than other constables without such connections.

#### Criminal Proceedings: Warrants of Arrest

The present day constable retains many of the common-law duties which constables performed in England, including the execution of criminal warrants.<sup>53</sup> Most of the arrests in criminal cases, and especially on charges of more serious crimes, are made by the police either as a result of their own investigation or at the instance of the District Attorney's office. However, in many minor criminal cases, and in an occasional serious offense, prosecution is initiated by a private party. Ordinarily, the complaining witness will go directly to the magistrate who will issue a warrant directed to the constable to arrest the defendant.<sup>54</sup> In some instances, the complainant initially may contact the constable who will ask him to fill out an affidavit, which the constable then takes to the magistrate.

Many constables indicated that execution of warrants of arrest was their most unpleasant task. Usually, the work must be done at night, when the accused person is most likely to be at home, and in neighborhoods generally hostile to constables and other law enforcement officials. Often the constable must return several times before he can locate the defendant,

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51. Although no official order was found, several constables mentioned that a former District Attorney strongly protested against this procedure and many constables removed their offices.

52. Some constables who are not "official constables" may habitually bring their cases to one court. This practice results in a friendly relationship between the constable and the magistrate and may influence the decision of the court in the cases where the constable represents a private party. The practice of choosing a friendly magistrate has also been observed in the prosecution of criminal cases. *ERVIN, op. cit. supra* note 3, at 45-46.

53. DILL, *THE LAW OF CONSTABLES IN PENNSYLVANIA* 2-3 (4th ed. 1937).

54. If no constable is available, the warrant will be directed to any other peace officer. *CARRINGER, PROCEDURE BEFORE COMMITTING MAGISTRATES IN PENNSYLVANIA* 57 (1947); *Keech v. County of York*, 90 Pa. Super. 486, 489 (1927) (dictum).

or he may hold a warrant for months while trying to find him. In some instances, the task becomes so dangerous that a constable may find it is not sufficient merely to carry a gun and blackjack, and he will bring along the police for aid and protection.

On occasion, the constable will arrest the defendant named in the warrant of arrest and commit him to jail. This is done when the charges allege a serious crime or when the defendant's actions, either by an attempt to evade arrest or an antagonistic approach, arouse the constable's suspicion or anger. In other cases, the constable may not arrest the accused, but rather trust him to appear at the hearing. If a local committeeman vouches for the attendance of the defendant, some constables will permit the defendant to remain at large. It was reported that several constables used this discretion to jail as a lever to extort funds from the defendant. Another practice that results in the accused remaining at large pending a hearing is the use of the mails to notify a defendant that a warrant has been issued. The notice provides that failure of the defendant to appear at the hearing will result in his arrest. These practices indicate that the determination of whether or not the defendant should be held in custody pending a hearing of the charges has been lodged with the constable. There is no legal basis for such a procedure. Once a warrant of arrest has been issued by a judicial officer the constable's duty is nothing more than the mechanical execution of the court's order. If the accused is to be permitted to remain free until his hearing, the proper procedure is release on bail or a copy of the charge.<sup>55</sup> This requires a judicial officer to act and fixes responsibility for abuse of power, whereas the existing practice allows the constable to exercise power over men's freedom without any limitation.

### Civil Proceedings

#### *Summons*

The constable is empowered by statute to serve summons for the magistrate courts.<sup>56</sup> Magistrates have jurisdiction in civil actions involving sums of \$100 or less.<sup>57</sup> A summons is a notice to the defendant to appear at the designated time and place for the hearing of the complaint. As is the case with warrants, the constable may obtain summons to serve by referral from the magistrate or as a result of requests from his own clients. Doctors, attorneys and businessmen who have many small debts to collect may become the regular clients of a particular constable.

The typical procedure followed in the service of the summons begins with form letters from the constable informing the defendant that the account is in his hands. The statute refers to summons "issued" by the

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55. PA. STAT. ANN. tit. 42, § 1113 (Purdon Supp. 1954).

56. *Id.* § 421 (Purdon 1930).

57. PA. CONST. art. V, § 12.

magistrate<sup>58</sup> but sometimes the constable takes from the magistrate's summons book a number of summons forms which are in blank and stamped with the magistrate's signature. The constable records the parties' names and hearing date in the book. Although service of summons must be made to the defendant directly or by handing a copy for the defendant to specified individuals,<sup>59</sup> in practice constables often mail the summons. The constable's return must also follow a specified statutory procedure.<sup>60</sup> If the return is defective on its face, a default judgment at a subsequent hearing may be stricken from the record,<sup>61</sup> although a court may allow an amendment of the return to conform to the facts.<sup>62</sup> If a return is proper on its face, it is conclusive in the absence of fraud even though the summons may never have been served.<sup>63</sup> The defendant's only remedy for loss resulting from a default judgment is to sue the constable.<sup>64</sup>

58. PA. STAT. ANN. tit. 42, § 421 (Purdon 1930).

59. There is some confusion as to the applicable authority. A constable manual reports that PA. STAT. ANN. tit. 12, § 291 (Purdon 1953) is controlling. PENTZ, *MANUAL FOR POLICE AND CONSTABLES IN PENNSYLVANIA* 93-94 (1952). However, the statute by its terms refers only to service by a sheriff. If applicable to constables at all, it becomes so through another statutory provision that a constable shall effect service in the same manner as a sheriff. PA. STAT. ANN. tit. 12, § 318 (Purdon 1953). Further confusion arises from the fact that § 291 of the statute is suspended by the rules of civil procedure. PA. R. CIV. P. 1451. As a result sheriffs' service is governed by *id.* 1009, which differs from § 291 in respect to those persons who can be served in lieu of the defendant. If the constables' service is the same as the sheriffs', according to § 318, then the constables follow rule 1009.

To complete the picture, the rules of civil procedure apparently do not apply to the magistrates' courts. *Pennington v. Klopp*, 54 Lancaster L. Rev. 24 (Lancaster County, Pa., C.P. 1954); *Isaacson v. Parrish*, 81 Pa. D. & C. 591 (Cambria County C.P. 1953). See PA. R. CIV. P. 1001. In direct effect, this could mean simply that rule 1009 is not to be followed. Indirectly, it could mean that the suspension of the statute does not apply with regard to constables' service. In either case § 291 would be the proper authority.

60. PA. STAT. ANN. tit. 12, § 355 (1953) provides: "The sheriff or other officer serving any writ of summons, shall in all cases state in his return the time, both the day and the hour, the place, and manner in which service thereof was made; which statement shall include the name of the individual on whom service was made, if other than the defendant personally, and the relationship which such person bears to the defendant." A magistrate and several constables explained that this information is usually not included in the return. This section has apparently not been suspended by PA. R. CIV. P. 1451 with respect to summons issued by magistrates. *Pennington v. Klopp*, *supra* note 59; *Isaacson v. Parrish*, *supra* note 59; see PA. R. CIV. P. 1001.

61. *Isaacson v. Parrish*, *supra* note 60; *Garski v. DeMarco*, 33 Erie 283 (Erie County, Pa., C.P. 1951); *Noldy v. White*, 51 Lackawanna Jur. 158 (Lackawanna County, Pa., C.P. 1949); *Pennetti v. Reynolds*, 88 Pittsburgh L.J. 476 (Allegheny County, Pa., C.P. 1941). *But cf.* *Weinhardt v. Dunlap*, 34 Delaware County 112, 113-14 (Delaware County, Pa., C. P. 1946).

62. *Clinger v. Patterson*, 140 Pa. Super. 443, 14 A.2d 371 (1940); *Pennington v. Klopp*, 54 Lancaster L. Rev. 23 (Lancaster County, Pa., C.P. 1954); *Margalski v. Yankauskas*, 78 Pa. D. & C. 421 (Luzerne County C.P. 1951).

63. *Kane v. Travis*, 172 Pa. Super. 220, 92 A.2d 902 (1952); *Polis v. Raphael*, 160 Pa. Super. 544, 52 A.2d 355 (1947); *Reading Bone Fertilizer Co. v. Lehman*, 59 Dauphin County Rep. 192 (Dauphin County, Pa., C.P. 1948). See *ERVIN, op. cit. supra* note 3, at 30-31.

64. *Frank P. Miller Paper Co. v. Keystone C. & C. Co.*, 267 Pa. 180, 182, 110 Atl. 79, 80 (1920) (dictum); *Kane v. Travis*, 172 Pa. Super. 220, 222, 92 A.2d 902, 903 (1952) (dictum); *Rittenberg v. Stein & Specht*, 97 Pa. Super. 554, 556 (1930) (dictum).

Although the constable's official duty with regard to the summons ends once it has been served, the constable often appears with the plaintiff at the hearing, sometimes even instead of the plaintiff. Judgment for the plaintiff is given automatically in a contract action if an affidavit of claim is filed and properly served upon the defendant, unless the defendant filed an affidavit of defense.<sup>65</sup> Since there is no requirement to notify the defendant of the effect of failure to file the affidavit of defense, constables frequently use the affidavits of claim to foreclose any defenses and save the plaintiff the time and effort of attending the hearing.<sup>66</sup>

The activity of the constables in behalf of the plaintiffs at these hearings has no statutory basis. In fact, such activity is apparently a violation of those statutes which prohibit unauthorized practice of law<sup>67</sup> and forbid collection agencies from furnishing legal service, directly or indirectly.<sup>68</sup>

### *Procedure After Judgment*

After the magistrate has entered judgment in favor of the plaintiff, the constable may be called upon further to perform official functions. If the judgment is not paid promptly, a writ of execution is issued by the magistrate which authorizes the constable to levy upon personalty of the judgment debtor.<sup>69</sup> In most levies on personalty in private homes, instead of taking possession of the goods, the constable merely leaves a form, known as the "levy copy," with the judgment debtor.<sup>70</sup> This levy copy lists in general terms the property levied upon. Frequently it is prepared before the constable arrives on the premises on the basis of the type of property

65. PA. STAT. ANN. tit. 42, § 1059 (Purdon 1930). Very often the constable himself makes out the affidavit of claim, presumably under the clause permitting the affidavit to be made by the agent of the party if the agent is cognizant of the facts.

66. Even in cases where no affidavit of claim is filed, the plaintiffs generally get their judgment. The offices of some of the magistrates have been said to give the impression of collection agencies, and J.P. (justice of the peace) has been popularly referred to as signifying "judgment for plaintiff." ERVIN, *op. cit. supra* note 3, at 84, 97. A survey of principal counties in Tennessee showed 98.3% of judgments of the justice of the peace were rendered for the plaintiff. *The Justice of Peace System—Suggested Reform*, 1939 Wis. L. Rev. 414, 418.

67. PA. STAT. ANN. tit. 17, § 1610 (Purdon Supp. 1954); *cf.* Shortz v. Farrell, 327 Pa. 81, 193 Atl. 20 (1937) (claim adjuster enjoined from appearing before Workmen's Compensation Board); Blair v. Motor Carriers Service Bureau, Inc., 40 Pa. D. & C. 413 (Philadelphia County C.P. 1939) (laymen enjoined from appearing before Public Utility Commission).

The problem of unauthorized practice of law by constables is not new. John Adams wrote: "Looking about me in the country I found the practice of law grasped into the hands of deputy sheriffs, pettifoggers and even constables who filled all the writs upon bonds, promissory notes, and accounts, received the fees established for lawyers, and stirred up many unnecessary suits." 2 WORKS OF JOHN ADAMS 58 as quoted in POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES* 143 (1953).

68. PA. STAT. ANN. tit. 18, § 4895(d) (Purdon 1945). "Collection agency" is defined as a person other than an attorney at law "... who as a business, enforces, collects, settles, adjusts or compromises claims. . . ." *Id.* § 4895(a).

69. *Id.* tit. 42, § 831 (Purdon 1930).

70. The constable is not bound to take possession of property when he levies. If the officer with the goods in view and within his power asserts that he makes a levy, his acts are equivalent to a levy. McGinnis v. Prieson, 85 Pa. 111 (1877); C. I. T. Corp. v. Shakespeare, 95 Pa. Super. 491 (1928).



that the constable expects to find. After the levy, three public notices of the forthcoming sale of these goods must be made before they can be sold to satisfy the judgment.<sup>71</sup>

Often the constable will use additional tactics to exact payment without a sale. He may visit the defendant personally, post additional notices of sale on the debtor's premises in the hope this will embarrass him, or send the debtor a copy of a newspaper clipping advertising the sale in a last effort to force payment. However, if the debtor refuses to pay, further action by the constable is rare.

A delinquent debtor generally has little valuable property remaining after the statutory exemptions of property worth \$300 and family wearing apparel, Bibles and school books.<sup>72</sup> It is not unusual for the debtor to have a friend or relative claim any property of value, such as a television set or refrigerator, to avoid the levy. In the last extremity, a debtor may remove the property despite the levy.<sup>73</sup> Whatever the reason, very few sales are actually made.<sup>74</sup>

### *Activities of Constables as Collection Agents*

Many constables spend the major part of their time and efforts in a type of work nowhere prescribed as within the powers and duties of a constable. This work involves the collection of small debts. Many of these cases are never brought to a magistrate's court, and the constable is compensated by commissions received from creditors rather than according to the fixed fees specified by statute.<sup>75</sup> In their efforts to make collections, constables frequently exceed the bounds of legal activity. They use a variety of tactics to elicit payment from the debtor including repeated letters or visits, and in general, either subtly or boldly, they attempt to capitalize on their positions as constables.

A constable whose practice involves collection work may be violating the Collection Code, which prohibits certain types of activity related to the collection of debts by constables or collection agencies. It provides in part:

"It is unlawful for a collection agency to coerce or intimidate any debtor by delivering or mailing any paper or document simulating, or

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71. PA. STAT. ANN. tit. 42, § 831 (Purdon 1930).

72. *Id.* tit. 12, § 2161. The debtor must claim this exemption. *Harlan v. Haines & Co.*, 125 Pa. 48, 17 Atl. 248 (1889); *Hild Floor Machine Co. v. Rudolph*, 156 Pa. Super. 102, 39 A.2d 457 (1944).

73. Removing property with the intention of preventing it ". . . from being made liable for the payment of debts" is a misdemeanor. PA. STAT. ANN. tit. 18, § 4886 (Purdon 1945); *Commonwealth v. Blaney*, 66 Pa. D. & C. 401 (Westmoreland County Q.S. 1949). The infrequency of prosecution under this provision gives it little deterrent effect.

74. If the constable cannot collect, the plaintiff can either abandon the judgment, refer the claim to a collection agency, or have a lien placed on any of the defendant's real estate. PA. STAT. ANN. tit. 42, §§ 763, 765 (Purdon 1930).

75. Some constables reported that they charge 50% of the amount collected on "difficult" accounts and 25% on "good" ones. However, there was evidence of a variety of rates with lower rates for favored customers.

intending to simulate, a summons, warrant, writ, or court process as a means for the collection of a claim, or to threaten legal proceedings, against any debtor; but nothing contained herein shall prohibit a collection agency from informing a debtor that if a claim is not paid, it will be referred to any attorney or attorneys at law for such action as he or they may deem necessary, without naming a specific attorney or attorneys; and nothing herein contained shall be construed to prohibit a magistrate from sending out notices to debtors before the institution of suit." <sup>76</sup>

Common violations of the code are the simulation of legal process and the threat of legal proceedings in correspondence from the constable to the debtor. One form letter has large red letters printed at the top saying "constable notice." There is an official looking seal beneath this, below which is inscribed in old English lettering: "Commonwealth of Pennsylvania, County of Philadelphia." The text has "take notice" written in similar lettering and threatens legal proceedings unless payment is made immediately. In contrast to the large red lettering is the small print at the bottom: "In compliance with Act of 1935, P.L. 251, Sec. No. 7. This is no Summons-Warrant-Writ or Court Process." <sup>77</sup> It is doubtful whether this quotation makes an otherwise illegal letter legitimate. There are similar forms that do not contain even this nominal notification.

Other deceptive devices incorporated into dunning form letters include the word "legal demand" in bold letters at the top and a large red seal at the bottom. Another constable sometimes attaches a separate sheet of paper to the form letter which purportedly quotes a Pennsylvania criminal statute prohibiting making false statements to obtain property or credit <sup>78</sup> but omits the statutory requirement that the false statement must be made "knowingly." Words in the statute such as "guilty" are made to stand out by use of red ink. The quotation may have an unfair psychological impact when it is sent in a case where there is no question of criminal liability. A similar effect is obtained when the caption "constable" is followed by the phrase "commissioned to make arrests in Pennsylvania." Other constables make the notice of overdue debt appear like the caption of a court case; the letter will be headed Creditor vs. Debtor, although no legal action has been taken.

An even more objectionable practice than the constable's use of misleading letters is the use of such letters by persons having no connection with the constable. It was not unusual for the constable, in return for an agreed sum of money, to permit collection agencies to use stationery bearing his name. The District Attorney's office vehemently opposed this and ordered the constables to cease the practice and retake all forms and

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76. PA. STAT. ANN. tit. 18, § 4895(g) (Purdon 1945).

77. The provision referred to is from the Collection Code, quoted in text at note 76 *supra*.

78. PA. STAT. ANN. tit. 18, § 4838 (Purdon 1945).

stationery.<sup>79</sup> As a result of the District Attorney's position, this seems to be largely discontinued. A constable selling his official stationery to a collection agency exposes himself to double criminal liability: as a conspirator and accessory to violation of the Collection Code and as an extortionist for accepting by color of his office a reward or fee not permitted by law.<sup>80</sup> The District Attorney's office believes that the recent attempts to halt the practices have resulted in their decrease, but investigation disclosed that, in a number of instances, these abuses have continued.<sup>81</sup>

Constables engaged in collection work seem to prefer to operate without invoking official legal pressure, but many times they will use formal service of process in order to have a hearing before the magistrate and obtain a judgment which they can execute. Sometimes, the client wishes to have a judgment entered on the record and requests that such a procedure be followed. If, on the other hand, the client is satisfied to receive payment without judgment or specifies no method of collection, the constable will often try to collect without the necessity of process and hearing. If this fails, he will attempt to collect the debt through the statutory processes of judgment and levy.

### *Activities of Constables in Landlord-Tenant Work*

A third specialty in the activities of constables deals with landlord-tenant work. The constable is employed by the landlord when the tenant is overdue in his rent, has breached conditions of the lease, or has overstayed his lease to effect either or both of two remedies: distraint of property to satisfy the back rent or eviction of the defaulting tenant.

### Distrain Procedure

Under the Pennsylvania Landlord and Tenant Act, the landlord, without any judicial proceedings, may authorize an agent to distrain the tenant's personal property located on the premises in order to collect overdue rent.<sup>82</sup> Customarily, the agent chosen is a constable.<sup>83</sup> The statute requires that the agent's authorization be in writing,<sup>84</sup> probably to provide the tenant

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79. PHILADELPHIA DISTRICT ATTORNEY'S STATEMENT OF POLICY ON CONSTABLES 2 (1955).

80. *Ibid.*

81. Some effort to explain these practices was made by constables criticizing the Collection Code which makes criminal liability turn on insignificant differences. For example, the code prohibits threatening legal proceedings but permits threatening to turn the matter over to an attorney. PA. STAT. ANN. tit. 18, § 4895(g) (Purdon 1945).

82. *Id.* tit. 68, § 250.302 (Purdon Supp. 1954).

83. Distrain by a non-constable as the landlord's agent is also authorized. *Pickering Co. v. Lutz*, 67 Pa. Super. 479 (1917).

Since a constable or sheriff must be used for the subsequent appraisal and sale, PA. STAT. ANN. tit. 68, §§ 250.308, 250.309 (Purdon Supp. 1954), the constable is probably selected as the distraining agent so there will be continuity in the procedure.

84. *Id.* § 250.302.

with evidence of the landlord's liability in the event of a wrongful levy, but often the real estate agent or the landlord merely telephones the order to distrain. Some real estate agents give all their distraint work to a particular constable who becomes familiar with the habits, salaries, pay days and other pertinent information of the tenants who are habitually overdue in rent payments. If the constable has been authorized to distrain, a tenant who is habitually overdue may be paying his rent to the constable each month and, as a result, may be paying constables fees in addition.

Much of some constables' landlord-tenant work comes from the Philadelphia Housing Authority, a public body providing for the construction and operation of low rental housing projects.<sup>85</sup> The Authority distributes its distraint and eviction work among a few chosen constables. Although the fees paid by the Authority are generally lower than those for private cases, there is a sufficient volume of work so that the constables receive a substantial income from this source.<sup>86</sup>

After a distraint is authorized, the constable will attempt to make the levy. In the case of a lease for residential purposes, the constable usually will levy by going to the leased premises and preparing a list of the tenant's personal property. The statute does not require that he impound the property, but he must be able to take possession of it when the levy is made.<sup>87</sup> Constables occasionally save time by making out a purported inventory before arriving at the residence and then slipping notice of the levy under the door.<sup>88</sup> This does not constitute a valid levy since the constable, who was not inside, was never able to take possession of the property of the tenant. Some constables followed the proper levy procedure only if the tenant was wealthy. One explained this "double standard" of conduct on the theory that wealthier people are more likely to have lawyers to contest the distraint.

In contrast to the procedure used with residential tenants, constables will often take possession of the property when dealing with commercial establishments such as stores and offices. Since there is more assurance that they will be able to cover their expenses in a sale of business property as compared with residential personalty, they may padlock the establishment and even provide a watchman.<sup>89</sup> Commercial levies are often for

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85. *Id.* tit. 35, § 1550.

86. No complete statistics of constable income from this source were available. One constable reported that he receives approximately 40 distraints a month. Since the Authority pays \$5 for distraints on one month's rent and \$7.50 on more than one month's rent, it may be estimated that this constable receives a minimum income of \$200 a month from this source before any compensation from the Authority for appraisements and sales.

87. See *Dixon v. White Sewing Mach. Co.*, 128 Pa. 397, 18 Atl. 502 (1889); *Commonwealth v. Weglein*, 147 Pa. Super. 257, 24 A.2d 633 (1942).

88. The constable must give the tenant written notice stating the cause of the levy, the date, the property levied upon and the amount of rent in arrears. Notice must be given to the tenant personally, by mail, or by posting on the premises. PA. STAT. ANN. tit. 68, § 250.302 (Purdon Supp. 1954).

89. The costs for making the distress may be taken from the proceeds of sale before the overdue rent. *Id.* § 250.309.

large amounts of overdue rent and are profitable for the constable whose payment is partially computed on a commission basis.<sup>90</sup>

The tenant who does not acquiesce in the loss of his property must replevy it within five days after service of notice of the levy;<sup>91</sup> if he fails to replevy or pay the overdue rent within this time, the constable may proceed with an appraisal and sale.<sup>92</sup> The sale must be advertised by posted handbills.<sup>93</sup> As with the levies in execution of judgment cases, many sales are advertised although very few take place because the small value of the debtor's property and the practice of having articles removed or claimed by another person often defeat the levy.<sup>94</sup> The constable's primary purpose in advertising and posting bills is to "pressure" the tenant into paying. If the landlord, nevertheless, wishes to consummate the sale, the numerous statutory exemptions<sup>95</sup> usually do not provide as much of an obstacle as they do in execution of judgment cases<sup>96</sup> since the standard lease contains a waiver of statutory exemptions.<sup>97</sup>

The sale may be held either on the rented premises or at a storage establishment. Very few people attend the sale at the debtor's premises. A constable may have an arrangement with a group of used furniture dealers to notify them of pending sales but these men are notoriously low bidders. The sale at the storage establishment is usually attended by more bidders, and some constables, therefore, believe the extra costs involved in having the property removed and stored are worthwhile.

### Possessory Proceedings

The landlord may choose to institute possessory proceedings in cases where there is insufficient property to distrain for overdue rent, or where there has been a breach of lease conditions or for termination of the tenant's term.<sup>98</sup> In contrast to the distraint procedure, evictions must be approved by a magistrate's court.<sup>99</sup> If, after receiving the required statutory notice,<sup>100</sup> the tenant fails to relinquish possession within the prescribed time, the constable, operating again as the landlord's agent, may present a complaint to the magistrate<sup>101</sup> who will issue a summons directing the tenant to

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90. See text at p. 534 *infra*.

91. PA. STAT. ANN. tit. 68, § 250.306 (Purdon Supp. 1954).

92. *Id.* §§ 250.308, 250.309.

93. *Id.* § 250.309. Additional advertisement is often inserted in the newspapers.

94. See text at note 73 *supra*.

95. PA. STAT. ANN. tit. 68, §§ 250.401, 250.402, 250.404 (Purdon Supp. 1954).

96. See text at note 72 *supra*.

97. The statute permits a written waiver of a tenant's right of exemption. PA. STAT. ANN. tit. 68, § 250.401 (Purdon Supp. 1954). See TRICKETT, *THE LAW OF LANDLORD AND TENANT IN PENNSYLVANIA* 710 (3d ed., Stern 1950) for a sample of this provision in the type of uniform lease generally used in Philadelphia.

98. PA. STAT. ANN. tit. 68, § 250.501 (Purdon Supp. 1954).

99. *Id.* § 250.504.

100. *Id.* § 250.501.

101. *Id.* § 250.502.

appear.<sup>102</sup> If the allegations in the complaint are proven at the hearing, the magistrate will enter judgment against the tenant, and five days later the constable may obtain a writ of possession which permits him to take possession of the real property.<sup>103</sup> Initially, the constable may not use force if resisted, but five days after the issuance of the writ of possession, he may begin the procedure necessary to obtain an alias writ, which allows him to break in and use any force necessary to eject the tenant.<sup>104</sup> The tenant must be given notice that the alias writ will be issued;<sup>105</sup> if he fails to surrender possession within ten days of the service of the notice, the magistrate will issue the writ.<sup>106</sup>

In addition to this statutory procedure, the Philadelphia ordinance governing rent control imposes other requirements upon eviction proceedings.<sup>107</sup> A tenant can be evicted for grounds other than non-payment of rent only pursuant to a certificate issued by the Rent Commission on petition of the landlord.<sup>108</sup> If the eviction is for non-payment of rent, the tenant must be given written notice five days prior to the date specified for surrender of the premises and a copy of such notice must be filed with the City Housing Rent Commission.<sup>109</sup> The notice must set forth the amount of rent due and the rental period or periods for which it is due.<sup>110</sup> Notice to the Rent Commission is apparently required to permit it to determine whether the landlord is charging higher rent than the legal maximum. If the constable, acting as the landlord's agent, finds such evidence, he often will try to avoid the statutory requirement of notice to the Commission. Such evasion may be attempted by threatening sale of whatever furniture the tenant has without any effort otherwise to evict. Although the resale value of this property may be insufficient to warrant distraint, it may have sufficient value to the tenant that he will move from the premises rather than give up his furniture. However, this practice apparently violates the intent of the Rent Regulations, if not the language itself, which provides that no removal may be made by court process or "otherwise" unless notice is given to the tenant and the commission.<sup>111</sup>

*Miscellaneous Duties: Herein of Canadian Thistles  
and Summer Oysters*

The fourth category of constable activity is really a collection of constable inactivity. A compilation of present laws with respect to constables would reveal that this office has been entrusted with many varied, some-

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102. *Id.* § 250.503.

103. *Id.* § 250.504.

104. *Id.* §§ 250.509-510.

105. *Id.* § 250.509.

106. *Id.* § 250.510.

107. 1955 PHILADELPHIA RENT CONTROL ORDINANCE, as amended, Jan. 30, 1956.

108. *Id.* § 5(a).

109. PHILADELPHIA HOUSING RENT COMMISSION, RENT REGULATIONS § 31.

110. *Ibid.*

111. *Ibid.*

times colorful, duties. Most of these are described in the constables' manuals,<sup>112</sup> but they are virtually never carried out. Their character is generally described in relation to the community's police power, and some demonstrate that a constable was historically empowered to maintain the peace. The following paragraphs indicate the various miscellaneous duties.

When complaint is made to the Quarter Sessions Court of violations of laws in the constable's district, the court may summon him and require that he make an investigation and report.<sup>113</sup> The constable is also charged with the duty of reporting to the Quarter Sessions Court all persons failing to abide by the law regulating "Renovated butter" and include in the report the names of witnesses to prove the violation.<sup>114</sup> On notice of riot in Philadelphia, the constable is directed to protect property from damage.<sup>115</sup> He must also maintain order around the election polls on election days and keep a path clear for voters to enter.<sup>116</sup>

By statute, the constable must arrest on view for violation of the Cruelty to Animals Law,<sup>117</sup> violation of the Railroad Act of 1878,<sup>118</sup> or for vagrancy.<sup>119</sup> He has the authority to arrest for breach of any municipal ordinance,<sup>120</sup> for polluting of drinking water supply,<sup>121</sup> or for injuring trees or shrubs on state forest reserve lands.<sup>122</sup> He must confiscate all stocks of fireworks held in violation of the law.<sup>123</sup> Constables are directed to enforce the laws regulating fishing, including the destruction of illegal devices for catching fish as well as arrest of those who fish on Sunday.<sup>124</sup> The law orders the constable to seize all rockfish under a foot in length which are offered for sale, and all oysters offered for sale between the 10th of May and the 1st of September.<sup>125</sup> Upon notice, the constable must direct the owner of lands, upon which Canadian thistle, marihuana or other specified weeds are growing, to destroy them, and if the owner fails to act, the constable must do so.<sup>126</sup>

As mentioned earlier, these duties of the constable are rarely, if ever, carried out. There is really no need for a constable to serve as a peace officer in a large, modern city with its organized and uniformed police

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112. See DILL, *op. cit. supra* note 53, at 205; PENTZ, *MANUAL FOR POLICE AND CONSTABLES IN PENNSYLVANIA* 35 (1952).

113. PA. STAT. ANN. tit. 13, § 44 (Purdon 1938).

114. *Id.* tit. 31, § 194 (Purdon 1930).

115. *Id.* tit. 16, § 3922.

116. *Id.* tit. 25, § 3521 (Purdon 1938); see also *id.* §§ 623 to 45.

117. *Id.* tit. 18, § 4948 (Purdon 1945).

118. *Id.* tit. 67, § 475 (Purdon 1930).

119. *Id.* tit. 18, § 2033 (Purdon 1945).

120. *Id.* tit. 53, § 3452 (Purdon 1931).

121. *Id.* tit. 18, § 4640 (Purdon 1945).

122. *Id.* § 4933.

123. *Id.* tit. 35, § 1276 (Purdon Supp. 1954).

124. *Id.* tit. 30, § 270 (Purdon 1930); *id.* § 265 (Purdon Supp. 1954).

125. *Id.* tit. 31, § 871 (Purdon 1930).

126. *Id.* tit. 3, § 242 (Purdon Supp. 1954).

force.<sup>127</sup> In the *Preno* case it was pointed out that as early as 1780, constables were inefficient as preservers of the peace in English municipalities. During the Lord George Gordon riots in London, only five of eighty sworn constables could be found to stand against the mobs; while the constables and their deputies remained away or in hiding, the city of London including the House of Commons was pillaged.<sup>128</sup>

The fact that today the constable is not carrying out his mandate as a peace officer does not lead to the conclusion that constables should begin to do so. There are many questionable aspects of a system that would develop. In the first place, the idea of a policeman being compensated on a fee basis is not desirable. The more arrests he makes, the greater his pay check. This is hardly the best way to obtain uniform enforcement of the law. An additional question is the propriety of a police officer whose job is dependent upon election. This could raise particularly difficult problems where the constable's job involves election duties.<sup>129</sup> At least one-third of the present Philadelphia constables were or are party committeemen. Aside from this, there are constables who have committeemen in their immediate families. Even the non-committeemen are often active political workers. There would obviously be a strong tendency to have political influence weigh in the manner the constables perform their duties. One former committeeman complained that in one election a committeeman from the opposing party, without legal cause, "grabbed" the ballot box in his capacity as a constable enforcing the election laws.

Not only is it inapposite to have the constable serve as a peace officer, but also many of the laws which they are directed to enforce are no longer justifiable in a modern society. For example, the 1771 statute giving constables and other officers the power to confiscate oysters offered for sale in the summer months<sup>130</sup> is not necessary in an age of high speed transportation and refrigeration.

The roster of duties of the constable that have been described in this section was not meant to be comprehensive. With the exception of the last part dealing with anachronistic functions, emphasis has been placed upon those activities of the constable that are actually being carried on. A survey of the statutes would give a distorted picture of the existing pattern of a constable's daily work. In general, the constable is authorized to perform the same type of acts as the sheriff. The breadth of the statutory duties can be seen by resort to one of the constable manuals<sup>131</sup> or to the fee bill in which the legislature has established what the constables shall charge for these services.<sup>132</sup>

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127. See *Preno* Petition, 77 Pa. D. & C. 193, 196 (Philadelphia County Q.S. 1951).

128. *Id.* at 195.

129. See text at note 116 and note 116 *supra*.

130. See note 125 *supra*.

131. DILL, *op. cit.* *supra* note 53; PENTZ, *op. cit.* *supra* note 112.

132. PA. STAT. ANN. tit. 13, § 61 (Purdon Supp. 1954).



## COMPENSATION

The legislature has provided by statute for specified fees which a constable shall charge for practically every service he performs. The most recent enactment was the fee bill of 1951.<sup>133</sup> Nevertheless, the manner and the extent to which constables are compensated presents one of the major abuses of the system.

*Summons and Warrants*

The general statutory pattern for fees paid to the constable to serve summons or execute warrants is a base charge plus an allowance for mileage travelled in accomplishing the particular task. These fees are ordinarily collected by the magistrate as part of the costs paid by the complaining witness in a criminal case or by the plaintiff in a civil suit.<sup>134</sup> The magistrate passes the constable's fees to him in such cases.<sup>135</sup> When, however, the constable initiates the suit,<sup>136</sup> he collects the entire charge and remits the statutory cost to the magistrate to be forwarded to the city.

The applicable statutes provide that a complainant desirous of procuring the issuance of a warrant of arrest should be charged \$5.00 plus 10 cents per mile if the warrant is for a summary offense other than a motor vehicle case;<sup>137</sup> if the warrant is for a misdemeanor, felony or vehicle case, the base charge is apparently increased to \$7.50.<sup>138</sup> In either event, the constable is entitled to receive the amount assessed for mileage plus \$2.50 of the base charge.<sup>139</sup>

For civil proceedings, the plaintiff should be charged \$4.00 plus 10 cents per mile for a summons in assumpsit, of which amount the constable receives \$1.50 plus the mileage for serving it.<sup>140</sup>

The actual charges made upon complainants are in striking contrast to the statutory authorization. Some magistrates charge a flat rate of \$10.00 for any warrant. Others vary the charge, but not in accordance with the statutory provisions. Thus some magistrates collect \$7.50 for warrants for summary offenses, but \$10.00 for all others. Another charges \$7.00 and \$9.00 respectively. For summons, costs ranging from \$5.00 to \$7.50 have been noted in different courts in contrast to the authorized \$4.00 plus mileage.

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133. PA. STAT. ANN. tit. 13, § 61 (Purdon Supp. 1954).

134. If the plaintiff is successful, the cost of the summons is added to the judgment.

135. PA. STAT. ANN. tit. 42, § 1107 (Purdon Supp. 1954).

136. See text at p. 520 *supra*.

137. PA. STAT. ANN. tit. 42, § 232 (Purdon Supp. 1954) (\$2.50 to the city); *id.* tit. 13, § 61 (\$2.50 plus mileage to the constable).

Section 232 applies only to cities of the first class. The fees for other subdivisions are in *id.* tit. 42, §§ 216 to 21 (Purdon Supp. 1954).

138. *Id.* § 232 (\$5.00 to the city).

139. *Id.* tit. 13, § 61.

140. *Id.* tit. 42, § 233 (Purdon Supp. 1954) (\$2.50 to the city); *id.* tit. 13, § 61 (\$1.50 plus mileage to constable).

Magistrates' records, in which the receipt and disbursement of funds are listed, indicate that constables are receiving more than their legal fees out of these excessive charges.<sup>141</sup> Some fees were noted as high as \$7.50 for criminal warrants which entitled the constable only to \$2.50 plus mileage. Records indicate that, in some magistrates' courts, the same fee is listed for every warrant, while in others the amounts vary. For service of summons, records show payment of fees ranging up to \$5.00, well above the statutory amount of \$1.50 plus mileage.

In those instances where the constable merely mails a notice of warrant of arrest, the constable often collects the full fee for execution of the warrant, including whatever portion was allocable to mileage. One court, when presented with a similar practice, expressed the opinion that the constable's duty was performed when the witness was produced at the hearing, and therefore approved the constable's fee for serving a subpoena though no technical service was made.<sup>142</sup> However, a charge for mileage is unquestionably illegal if no mileage is travelled.<sup>143</sup>

Excessive charges by the magistrate for the issuance of a summons or a warrant and magistrates' records of illegal constable fees are not conclusive indications that the constable has received more than the prescribed amount. Part or all of the excesses may be going, illegally of course, to the magistrate<sup>144</sup> or his clerk.<sup>145</sup> However, many constables verified the fact that excessive fees for constables are a common practice.

Part of the explanation for the failure to limit the charge to the statutory fees is that the mileage allowance of 10 cents per mile is never computed. In some courts, no matter how far a constable has to travel to serve a summons or execute a warrant, he receives no mileage fee. Other magistrates have established a standard fee apparently intended to include mileage, but which often is greater than the permissible limit.

Since mileage is not computed in fact, several problems which might otherwise have arisen become merely academic. For example, should a constable be allowed to charge mileage for an unsuccessful trip? The statute provides that he shall be remunerated for each mile travelled "in the performance of any duty."<sup>146</sup> Two rather old common pleas decisions

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Section 233 applies only to cities of the first class. The fees for other subdivisions are in *id.* tit. 42, § 219 (Purdon Supp. 1954).

141. Some magistrates keep no record of fees paid to constables. This seems to violate the statute which provides that they ". . . shall . . . furnish to the controller . . . an accurate account of all moneys so paid either into the city treasury or to the constables. . . ." *Id.* § 1107.

142. *Commonwealth v. Mateer*, 46 Pa. D. & C. 79 (Cumberland County Q.S. 1942).

143. *Commonwealth v. Nash*, 4 Pa. Dist. 470 (Chester County Q.S. 1895).

144. It has been suggested that since the magistrate pays the constable his fees, it is easy for the magistrate to demand that the constable share fees as a condition of being retained in the court. *ERVIN, op. cit. supra* note 3, at 16.

145. Various constables admitted tipping the magistrate's clerk.

146. PA. STAT. ANN. tit. 13, § 61 (Purdon Supp. 1954). A minor problem arises if less than a mile is travelled. One case indicates that the constable is not entitled to any mileage when the total travelled distance is less than a mile. *Commonwealth v. Mateer*, 46 Pa. D. & C. 79 (Cumberland County Q.S. 1942).

denied a claim for travel expenses incurred in an unsuccessful effort to execute a warrant.<sup>147</sup> The obvious danger in allowing such charges is the possibility of padding the fees with expenses for trips never made. On the other hand, the success or failure of any trip is largely fortuitous. Consequently many trips may be necessary in the service of process. Where they are necessary, there should be compensation for the performance of duty.

Another problem that would arise if mileage fees were in fact computed stems from the statutory provision that they shall not exceed what the travel allowance would have been if the summons had been served by the constable from the defendant's ward or by the "next constable most convenient" to the defendant.<sup>148</sup> Under this limitation, the practice of Philadelphia constables to work throughout the city should result in some cases in the constable's receiving less in fees than his actual miles travelled would authorize.

### *Levies and Procedure Incident to Sale of Property*

The legislative scheme for assessment of constable fees for services performed in the levy and sale of property are analogous to that for summons and warrants. Levy and sale are the basic elements of the procedure for execution of a judgment which constables carry out for judgments rendered by the magistrate. The charge for levying on the property is set at \$2.50 plus a mileage allowance of 10 cents per mile.<sup>148a</sup> In addition, the statute authorizes a charge of 2 cents an item for taking inventory and reasonable expenses for arranging the sale, including costs of storage and a watchman.<sup>149</sup>

In distraints, the above charges and other assessments connected with the particular procedure are allowed. A fee of \$2.50 which is comparable to the levy fee is authorized for the distraint and an additional \$2.00 is provided for executing a landlord's warrant.<sup>150</sup> The term "landlord warrant" is not used in the Pennsylvania Landlord-Tenant Act; its inclusion in the fee bill may be a reference to the landlord's written authorization to distrain, a copy of which is served upon the tenant notifying him of his right to prevent sale of the property either by paying the rent or replevying the property. This authorization is necessary before every distraint;

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147. *Commonwealth v. Leshner*, 2 Pa. Dist. 859 (Berks County Q.S. 1893); *Shrope v. Northampton County*, 3 Lancaster L. Rev. 123 (Northampton County, Pa., C.P. 1886).

148. PA. STAT. ANN. tit. 42, § 421 (Purdon 1930).

148a. *Id.* tit. 13, § 61 (Purdon Supp. 1954).

149. *Ibid.* There is also \$1.50 provided for ". . . paying over money paid after a levy, without sale." *Ibid.* A question arises whether this is applicable to paying over money after a distraint because, while the terms "distraint" and "levy" are often used interchangeably, § 61 at other places specifies when there is to be a fee as a result of a distraint. See, e.g., \$2.50 fee provided for "levying or distraining goods." *Ibid.* (Emphasis added.)

150. *Ibid.*

hence when a proper distraint is accomplished, it appears that a fee of \$4.50 is allowed. Aside from these fees, the constable is authorized by the legislature to charge a fee of 50 cents for giving notice of the distress.<sup>151</sup> A commission of 5 per cent of the proceeds of the sale is provided in most leases. This presumably goes to the constable as his compensation for serving as the agent of the landlord.

The total charges for execution of judgment or distraint are often excessive. The reasonable expense allowance for handling the sale may be subject to abuse; similarly, the per item charge is subject to varying interpretation reflected in higher or lower fees, and in fact there is disagreement among the constables interviewed as to what constitutes an item. Another practice resulting in excessive fees is the inclusion by many constables of a 3 per cent commission charge, which they add to their other costs and for which there seems to be no legal authority. Still another source of illegally high fees is found in the practice of standardization of the variable fees similar to that found under summons and warrants. There is a definite tendency for a constable to have a fixed charge for mileage or items handled. Each constable, however, may have a different set of standardized figures; for example, item charges were noted at 50 cents, \$1.00 and \$2.00.

### *Statutory Eviction*

For effectuating a statutory eviction, the statute provides that the constable shall receive a base charge for the service of the various papers involved plus an allowance for the mileage travelled in accomplishing that service. Thus the constable should receive \$1.50 for serving the summons for the eviction hearing, \$5.00 for the writ of possession, and \$5.00 for the alias writ.<sup>152</sup> The mileage allowance is 10 cents per mile.<sup>153</sup> Presumably the cost to the lessor should be the sum of these fees plus amounts paid to the city for the issuance of the summons and the writs, each of which should cost \$5.00.<sup>154</sup> This would be a total of \$26.50 plus the mileage allowance.

In practice, the standardized fee is as prevalent for eviction proceedings as it was in the functions discussed earlier. Many constables reported that their charge for this service is \$50.00. Out of this money which they collect from the lessor, they must pay amounts due to the city. Partially in justification for the seemingly quite excessive charge, they indicate that the actual cost of the writs required is often as high as \$10.00, whereas the specified cost is only \$5.00. However, it was also noted that the standard

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151. *Ibid.*

152. *Ibid.*

153. *Ibid.*

154. *Id.* tit. 42, § 233. The statute is equivocal on whether the \$5.00 fee is to be collected for the issuance of each writ or for the entire group. It specifies the \$5.00 is to be paid for a landlord and tenant "proceeding."

fee also works to the benefit of the constable who frequently maximizes his profit by avoiding the expense entailed in obtaining the alias writ.

### *Applicability of Fee Bills to Constables in Office*

A complicating factor in the determination of the proper and legal fees that a constable should be receiving is the possible applicability of a fee bill other than that enacted in 1951. The Pennsylvania Constitution stipulates that no law shall increase the salary or emoluments of a public officer after his election or appointment.<sup>155</sup> Numerous cases have interpreted this limitation to mean that a constable may not charge fees authorized by the legislature during his term of office but after his election.<sup>156</sup> It has been held that this rule must be applied even if it results in the constable being uncompensated for certain duties under the fee bill in effect at the time of his election.<sup>157</sup> However, all of the constables who were asked about the legislative basis for the charges they were using said that they were guided by the 1951 fee bill.<sup>158</sup> The constable manuals, on which many constables seem to rely, set forth the 1951 fees.<sup>159</sup> Inasmuch as the fees specified by that act are at least the same as, and in many instances higher than, those of the prior act,<sup>160</sup> and since many of the constables now practicing in Philadelphia were elected before the passage of the 1951 act,<sup>161</sup> it is apparent that many excessive fees are being collected through application of the wrong law.

### *Legal Effect of Excessive Fees*

The state legislature has made it a crime for public officers to charge more than the legal fees for their services. Wilfully charging a greater fee than is authorized, or a fee not allowed at all, is criminal extortion, punishable by a fine not exceeding \$500, imprisonment for one year, or both.<sup>162</sup> One constable observed that just about every constable in Philadelphia has been guilty of extortion.

Aside from prosecution for extortion, a constable is subject to a fine of \$50 for charging excessive fees, if, after notice of the over-charge, he

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155. PA. CONST. art. III, § 13.

156. *Commonwealth v. McQuiston*, 29 Pa. County 81 (Crawford County C.P. 1903); *Evans v. Lloyd*, 12 Pa. Dist. 380 (Luzerne County C.P. 1902); *Hancox v. Venango County*, 20 Pa. County 508 (Venango County C.P. 1898); *Cornell v. Beaver County*, 3 Pa. Dist. 783 (Beaver County C.P. 1894); *Rupert v. Chester County*, 2 Pa. Dist. 688 (Chester County C.P. 1893).

157. *Evans v. Lloyd*, *supra* note 156; *Hancox v. Venango County*, *supra* note 156.

158. PA. STAT. ANN. tit. 13, § 61 (Purdon Supp. 1954).

159. See PENTZ, *MANUAL FOR POLICE AND CONSTABLES IN PENNSYLVANIA* 181-83 (1952). This manual does point out that the fees of a constable must be governed by the law in force at the time of his election. *Id.* at 186. However, this caveat is easily overlooked.

160. PA. STAT. ANN. tit. 13, § 61 (Purdon 1938).

161. See text following note 13 *supra*.

162. PA. STAT. ANN. tit. 18, § 4318 (Purdon 1945).

refuses to refund the excess to the person from whom he received it.<sup>163</sup> A further consequence arising from the excess fees is the possibility that the judgment may be stricken from the record.<sup>164</sup>

It should be noted, however, that the widespread failure to comply with the fee system prescribed by the legislature may be partially the responsibility of the statute itself. It is quite likely that the specified fees are not commensurate with the services performed. An example is the \$2.50 plus mileage to which the constable is entitled for execution of a warrant of arrest. This is insufficient payment in light of the large amount of work and physical danger involved in effecting an arrest.<sup>165</sup> Some constables turn down warrants, even at the extra-legal rates prevailing, because they feel that they do not receive enough compensation. Another difficulty with the existing statutory system stems from the failure of the legislature to adjust the prescribed fees with the passage of time and the inflationary trend of the economy. For example, the mileage allowance standard is the same as that permitted in 1917<sup>166</sup> when the value of the dollar was a great deal higher than it is today. An additional difficulty can be traced to the simple administrative burden of a system of compensation based in part on the number of miles travelled.

#### CONTROL OF CONSTABLE ABUSES

There are a number of potential or actual sources of control over the activities of the constables in Philadelphia. As long as the present constabulary system remains in effect, these sources must initiate any movement to correct or eliminate abuses that may be found under prevailing conditions. Included among those who are in a position to exercise some degree of control are the District Attorney, the magistrates, the City Controller and an aggrieved citizenry. There is also the power of removal in the Court of Quarter Sessions. In practice, action by any of these groups is rare, with the result that effective supervision is but an illusion.

The most influential power in the eyes of the constables is in the hands of the District Attorney. He is the official who would prosecute criminal actions for extortion or Collection Code violations, probably the principal disciplinary sanction available. Despite the infrequency of criminal prosecutions, many constables spoke with pride of their good records with the District Attorney's office, thus evidencing some concern about their standing with that office. A force of detectives is provided to the District Attorney to investigate and report to him on the conduct of constables as well as other public officials connected with the administration of criminal justice.<sup>167</sup> While this confers upon the District Attorney no greater power or duty than he already had to prosecute such officers for violations of the criminal law, it does give him a means to investigate crim-

163. *Id.* tit. 65, § 134 (Purdon 1941).

164. *Grahamer v. Fadden*, 86 Pa. D. & C. 591 (Lackawanna County C.P. 1953).

165. See pp. 520-21 *supra*.

166. Act of July 20, Pa. Laws 1917, No. 401, § 1, at 1158.

167. PA. STAT. ANN. tit. 16, § 1741 (Purdon 1930).

inal conduct among such officials and indicates an intent that the force be used, among other things, to keep constables within some bounds. There is a "grim humor" in the fact that judicial officers need to be watched and kept under the surveillance of a corps of detectives.<sup>168</sup>

Perhaps the most logical place to look for a source of control of the constabulary is the magistrate, the officer presiding over the court for which much of a constable's work is done. If the magistrate were diligent, he could prevent overcharging of the public in many cases, since he collects the money from the complainant and pays out the constable's share to him. In addition, the magistrate can exercise leverage by virtue of his power to discharge the "official constable" from his court functions.<sup>169</sup> However, many aspects of a constable's work do not involve direct connection with the magistrate. Such is the case in distraint work and the collection of debts prior to a judgment. These practices are characteristic of the majority of the constables. Even in the case of constables subject to magisterial control, there is likely to be a general air of leniency toward misconduct since the parties frequently are personal friends or fellow politicians.<sup>170</sup>

The City Controller has an indirect power of control over the constables and constable fees from his power to refuse to allow payment of a magistrate's salary until satisfied that the amount of money paid to the constable is correct.<sup>171</sup>

A residuum of control can be found in citizens of the city. As a group they have the power not to elect or re-elect one who abuses his position. The force of public opinion, when marshalled, is undoubtedly effective, not only in instigating action by those officials with the power to invoke the sanctions of law, but also in developing among those in the public eye a sense of self-restraint. As noted earlier, however, the functions of the constable rarely attract the attention of any sizeable segment of the city's population. Apart from concerted action, a private citizen can act to control abuses by bringing them to the attention of the District Attorney by way of a complaint or simple notification. Such complaints by individuals are very infrequent, probably because the public generally is not apprised of its legal rights with respect to constables. When the District Attorney's efforts to halt violations of the Collection Code were being widely publicized, it was noted that the number of complaints to his office increased.

There is a further sanction available to control misconduct by a constable in the power of the Court of Quarter Sessions to remove a constable from his office.<sup>172</sup> Such action is taken upon the petition of a private citizen or the constable's surety. However, neither is likely to know of mis-

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168. ERVIN, *op. cit. supra* note 3, at 51.

169. See note 48 *supra*.

170. It has been said that even in nineteenth-century England, the magistrates' tolerant attitude towards constables made the established fees meaningless. Radzinowicz, *supra* note 47, at 17-18.

171. PA. STAT. ANN. tit. 42, § 1107 (Purdon Supp. 1954).

172. *Id.* tit. 13, § 31 (Purdon 1938).

conduct serious enough to warrant removal, and it is quite unlikely that any private citizen would be willing to expend the time and money necessary to support such a petition.

#### EVALUATION OF THE PHILADELPHIA CONSTABLE SYSTEM

Any evaluation in a study such as this Note must begin with a caveat. A great deal of the information set forth in the preceding pages is derived from conversations with constables in Philadelphia and other people familiar with the working of the constable system. It is important to repeat that the validity of any evaluation is dependent upon the completeness and accuracy of the information on which it is based.

A second caveat should also be mentioned. The principal emphasis in the research and writing of this Note was placed upon the City of Philadelphia. Basically this was the result of the fact that much of the research necessitated recourse to primary sources, and there was not sufficient time or funds to carry out that type of survey of the law in action throughout the Commonwealth of Pennsylvania or in other states. Nevertheless, it appears that the observations of practices in Philadelphia are illustrative of the constable system in larger municipal centers elsewhere.

Throughout the discussion various abuses extant in the established system in Philadelphia have been pointed out. It would serve no purpose to catalogue them again here. A more basic question is whether or not the existing system needs re-examination of fundamentals. The particular ills of present practice are symptoms of the larger problem of relating this office of minor officialdom to a public service requirement and fashioning a system geared to fulfilling this recognized need. The constable today is the product of historical evolution rather than a public servant created by the legislature for a specified purpose.

It is impossible to justify the existence of an elected public official who devotes all or nearly all of his time to collecting debts or landlord distraints. These are essentially private functions. There are collection agencies operating without the aid of any constable engaged in precisely the same kind of work. Why should some of these collection agents be given the added influence through the use of the title of constable? The official position is used as a lever to exact payment from debtors who fear the consequence of disobedience to a request from a public officer. This psychological phenomenon is demonstrated by the willingness of collection agents to buy stationery from a constable with his official title on it. Nowhere is there any legislative direction that debt collection agencies are a proper business for a constable. The same is true of the landlord-tenant activity.

The underlying cause of the situation is the over-abundance of constables and deputies in light of the need for persons to serve process for the magistrates' courts and to levy and execute judgments of these minor courts. An elected constable who cannot make a living on these activities turns to others, and it is natural for him to enter fields in which his title



can be of influence. Similarly, persons engaged in collection or landlord-tenant work find it to their advantage to become constables. The obvious remedy is reduction of the number of authorized constables and abolition of deputies. This need not cause any particular hardship to constables presently doing collection or landlord-tenant work. If they lose their official title, they would not be precluded from continuing in the same line of business inasmuch as the position is not a prerequisite.

The whole answer is not to be found simply in reduction of the number of authorized constables. This would not correct many of the abuses in the present system. Too often there is a tendency to treat malfunctioning by lesser public officials as a matter of slight importance since any one official cannot become involved in big enough problems. Comparatively, their abuses are classed as rather petty. Nevertheless, it is at this level that most citizens have direct contact with legal processes, and it is from these representatives that most people receive their impressions of our judicial system. Therefore, it is important to avoid fostering disrespect for the law by eliminating abusive practices wherever found. To accomplish this the activities of the constables must be subjected to greater supervision and control.

One answer might be to attach every constable to a specific magistrate's court to perform constable service arising out of the business of that magistrate. Some constables interviewed suggested this as a desirable modification. There is an immediate practical objection due to the inequality of the volume of business among magistrates' courts in the city.<sup>173</sup> Furthermore, under the present system magistrates have proven ineffective to supervise that part of constable activity over which they can exert power. This is particularly evident in the failure to require that the fee bill be recognized in charges assessed from the public. Equally important is the fact that assignment of constables to a particular court necessitates sacrificing the advantages available if constables are organized on a pool basis and assigned to tasks as needed to minimize personnel requirements, travel expenses and time.

A better solution might be to establish a central office with power to direct the activities of the constables, and with concomitant responsibility to account for their actions. The constable's functions correspond quite closely to those of the sheriff's office, but unlike the sheriff's office there is

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173. Some people are of the opinion that the unequal volume of business among the magistrates' courts is caused by the fact that constables are compensated on the fee basis. The magistrates with the most business can pass out constable work and the resulting fees to favored persons. Theoretically then, if the constable were a salaried official, the magistrate's work load would be distributed more evenly if the magistrate no longer had this power to control the flow of financial reward. However, there seem to be other factors operating to preserve the inequality. The magistrate with the most business can confer the most favors, possibly for political reasons, in the exercise of his discretionary handling of cases. In addition, many busy magistrates' courts are quite active as a result of an advantageous location in terms of the type of person most frequently using the facilities of the courts. Also it appears that some large collection businesses favor taking all their work to one magistrate or one constable.

not one elected official with assistants, but rather a multitude of elected officials uncoordinated by anyone. This policy might be implemented by turning over the constables' duties to the office of the sheriff and complete abolition of the office of constable, as one state has done.<sup>174</sup> However, it must be recognized that by so doing a problem is raised as to the relationship of the sheriff and the magistrates, since the latter undoubtedly would have to be given some control over the manner in which their process is served. An alternative is to have one public officer, not necessarily known as a constable, who will be comparable to the sheriff and have as many assistants as the volume of work justifies. The advantages of such a change are better organization, more efficient utilization of personnel, accumulation of experienced public servants, and consequently better service for the public.

Other collateral improvements might be made if the basic system were overhauled. The personnel doing the constables' work could be placed upon a salaried basis of compensation, thus removing any need for supplementation of income from outside businesses and justifying a prohibition against their continuing any practice of debt collection or landlord-tenant work. This need not add any financial burden to the city since fees collected for constable service would be turned over to the city treasury, thus reimbursing it for salaries paid. It might be argued in opposition that the regularity of the pay-check could have a deleterious effect in that the fee system served as an incentive to the constable to complete the task as soon as possible. The validity of this argument is dependent clearly upon the calibre of personnel in the office. The job could be placed under the civil service administration in order to insure that those best qualified for the position are placed in it, in contrast to the present situation whereby the office is often merely a minor political plum filled by election by an uninformed public using a long-form ballot.

Another change that might be desirable is to remove the execution of warrants of arrest from the roster of the constable's duties. This function could be made the responsibility of the uniformed police force. They are the ones who make most of the arrests executed without prior issuance of a warrant, and they have regular detention facilities where persons apprehended can be held pending hearing. It seems feasible to charge them further with the execution of arrests made pursuant to a warrant issued by a magistrate. This would eliminate one of the last important vestigial remnants of the peace officer role which the constable once played.

One of the chief advantages of divorcing the constable from execution of criminal process is the resulting abolition of the situation whereby a constable might use his power to control the freedom of the accused to his own personal gain. On the other hand, it seems valid to assume that after a

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174. VA. CODE ANN. § 2818(a) (1942). See Sunderland, *A Study of Justices of the Peace and Other Minor Courts—Requisites for an Adequate State-Wide Minor Court System*, in JUDICIAL COUNCIL OF MICH., 15TH ANN. REP. 111-113 (1944).

beneficial reorganization, with controlled personnel doing the work, the danger of extortion would be greatly diminished. Furthermore, it may prove unwise to burden the police with this chore.<sup>175</sup> Most of the warrants served by the constables deal with quite petty crimes. They do not necessitate the entry of the District Attorney's office to prosecute; rather the case is presented by the private prosecutor. This may justify leaving this duty with the constable or his replacement.

The precise reform of the Philadelphia constable system which would be most desirable cannot be suggested with certainty in a Note of this type. That conditions meriting reform exist should be obvious from the information collected, but the existence of abuses does not necessarily point the way to change. Any suggestion that might be made carries ramifications weighing against its adoption. This should not prevent review of the problem and adoption of remedial legislation either along the lines suggested or other alternatives designed to effect the desired beneficial result.

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175. It has been proposed recently that the service of traffic warrants be taken out of the hands of the police and turned over to constables. *Philadelphia Inquirer*, Feb. 12, 1956, p. 8, cols. 5-6; *Philadelphia Bulletin*, Feb. 2, 1956, p. 3, col. 2.