Journal of Criminal Law and Criminology

Volume 49 | Issue 6 Article 5

1959

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CRIMINAL LAW COMMENTS AND ABSTRACTS

POLICE CONTROLS OVER CITIZEN USE OF THE PUBLIC STREETS

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This Comment will examine the operation and validity of several types of laws, most often passed by municipal legislatures, which regulate the citizen's use of the public streets. To be considered, also, is the often asserted "right" of the police to stop and question persons on the street in the absence of circumstances justifying arrest and detention.

In varying degrees, many municipalities have on the books curfew,[1] loitering,[2] dress,[3] and association[4] laws. The penalties attached to the violation of these laws are usually slight, and usually they are never enforced, or at most, sporadically enforced, and even then only against those persons such as juveniles and vagrants who would not be expected to appeal from the decisions of the magistrate type of court which most often has jurisdiction in these cases. It is not unusual, therefore, that there are few cases in the reports dealing with such laws. Nevertheless, because freedom of movement, dress, and association are, no doubt, activities having constitutional implications, and because such laws have been widely enacted, it is important that these restrictions be closely scrutinized.

We may first consider general principles. Unquestionably, the citizen's personal liberty, guaranteed him by the various state constitutions and the fourteenth amendment, includes the right to "go where one pleases, and when, and to do that which may lead to one's business or pleasure, only so far restrained as the rights of others may make it necessary for the welfare of all other citizens."[5]

[1] A typical curfew is that of Evanston, Illinois which provides that it is unlawful for persons under 16 to be on any public street between the hours of 10:00 P.M. and 6:00 A.M. unless accompanied by and in charge of a parent, guardian or other proper companion of the age of 21 years or more, or engaged in any occupation or business which may be lawfully engaged in under state statutes.

[2] *E.g.*, No person shall lounge, idle or loiter on any public street or way. A variation on this type of ordinance is the "wandering" law, apparently coming between a curfew and loitering law. This type commonly prohibits wandering or strolling aimlessly on the public streets after certain hours.

[3] *E.g.*, No person shall appear on any public street or in any public place dressed in anything other than customary attire.

[4] *E.g.*, No person shall associate, escort, loiter, or converse with any felon, prostitute, thief or drunkard on any public street or in any public place.

[5] Pinkerton v. Verberg, 78 Mich. 573, 44 N.W. 579 (1889). And see Kent v. Dulles, 357 U.S. 116 (1958), where Justice Douglas said "The right to travel is a part of the liberty of which the citizen cannot be deprived without due process of law. . . ."

Equally unquestioned is the right of the state, in the exercise of its police power, to restrict such liberty by legislation which protects or promotes the health or welfare of the people, subject to the demand of due process that such legislation bear a reasonable relation to ends which the state may legitimately seek to achieve.[6] Neither liberty nor restraint, therefore, is absolute.

Public Dress Laws

Only one appellate case has been found in the books which deals with restrictions on the type of clothing that may be worn in public. In *People v. O'Gorman*,[7] the New York Court of Appeals held unconstitutional a municipal ordinance which prohibited appearance on the public street by anyone dressed in "other than customary street attire." The ordinance was void, said the court, because the terms of the law were too vague to satisfy due process and because "No man or woman is obliged to wear the 'ordinary street attire.' People can dress as they please, wear anything, so long as they do not offend public order and decency."[8] Other cities have similar ordinances, most often dealing with bathing attire; their validity, however, would seem to be in doubt under the *O'Gorman* decision.[9]

Association Laws

Laws which forbid persons to associate with undesirable elements of society, e.g., thieves, felons, drunkards, and prostitutes, have been uniformly voided by the courts. In *City of St. Louis v. Fitz*,[10] the court reversed a conviction under an ordinance which forbade association with thieves and prostitutes. The majority hinted, however, that an ordinance might properly be drawn which forbade *knowing* association with those persons, while a concurring justice would have held such laws to be absolutely void. The ordinance was amended in accordance with the intimations of the court. When a later case, *City of St. Louis v. Roche*,[11] arose, however, the court overruled the *Fitz* case and held that all such laws were beyond the constitutional power of the legislature. The court reasoned that if the legislature could *forbid* persons to associate with certain people, it might equally be able to *compel* association with others —a prospect which the court found repugnant to individual freedom.[12] The only departure from this otherwise uniform reaction by the courts seems to have come in *People v. Pieri*,[13] which upheld an ordinance forbidding association with criminals *for an unlawful purpose*. Because of the heavy burden of proof this requirement imposes on the state, it is doubtful whether the law reaches any conduct which an ordinary conspiracy statute might not reach.[14]

The Police Right to Question "Suspicious" Persons

The police generally have the authority to arrest and detain, without warrant, (1) those persons who

[6] See generally, Freund, The Police Power (1904); Roettinger, The Supreme Court and State Police Power (1957).

[7] 274 N.Y. 284, 8 N.E. 2d 862 (1937).

[8] "The Constitution still leaves some opportunity for people to be foolish if they so desire." 274 N.Y. at 287. Followed in People v. Savarese, 167 N.Y.S.2d 312 (Magis. Ct. 1957).

[9] § 192–14 of the Chicago Municipal Code provides that "No person shall swim or bathe in the waters of Lake Michigan adjacent to the city . . . unless such person is clothed in a *suitable* bathing dress." (". . . without a *proper* bathing suit.") (Evanston, Illinois.) It is reasonable to assume that such standards as "suitable" and "proper" are as subject to the vice of vagueness as that of "customary" in the *O'Gorman* case. Illustrative of the fact that these laws are taken seriously by some municipal authorities is the report in the Chicago newspapers several years ago that a group of German boy scouts touring Chicago in the summertime wearing their traditional leather shorts were given an unofficial "pass" by the Chicago Police Department to appear on the streets in such costumes.

[10] 53 Mo. 582 (1873).

[11] 128 Mo. 541, 31 S.W. 915 (1895).

[12] "We deny the power of any legislative body in this country to choose for our citizens whom their associates shall be." *Ex parte* Smith, 135 Mo. 223, 36 S.W. 628, 629 (1896); (Ordinance which forbade anyone except male relative to associate, converse, escort or loiter with any prostitute, by day or night, upon any street is invalid), Hechinger v. City of Maysville, 22 Ky. L. Rep. 486, 57 S.W. 619 (1900); (ordinance prohibiting association, walking, riding, or visiting with prostitutes invalid as invasion of personal liberties), *Ex parte* Cannon, 94 Tex. Crim. 257, 250 S.W. 429 (1923). Query whether an ordinance which forbade undesirable elements to associate with *other undesirables* might be a more reasonable exercise of the police power? § 192-6 of the Chicago Municipal Code, for example, makes it unlawful for drunks, prostitutes or felons to assemble or congregate with other such persons in or upon the public ways or other public places or to loaf or loiter in or about or frequent the premises of any place where intoxicating liquors are sold. In City of Grand Rapids v. Newton, 111 Mich. 48, 69 N.W. 84 (1896), the court voided a similar ordinance on the ground that it was so broad as to be unreasonable.

[13] 269 N.Y. 315, 199 N.E. 495 (1936).

[14] "Here then is the crime. If a person of bad reputation, with intent to provoke a breach of the peace, keeps company with criminals, makes them his associates, for an unlawful purpose, he is guilty of disorderly conduct. Nothing unconstitutional about such a statute." 199 N.E. at 497.

commit a crime in the presence of the officer or, (2) when a specific crime, which is within the policeman's knowledge, has been committed and there is reasonable cause for believing the arrested person committed it.[15] Absent these circumstances, do the police have a right to stop and question, without resorting to arrest, persons going about their business on the public streets?[16]

In *People v. Tinston*,[17] the defendant, who had stopped several persons on the street and talked with them briefly, turned around and walked quickly away when he saw the police sitting in a car at the curb. The police, suspicious of his conduct and on the lookout for persons in the "numbers" game caught up with him and, when he refused to identify himself, arrested him for disorderly conduct. The disorderly conduct charge was dismissed by the magistrate who declared, in a written opinion, "This court knows of no legal mandate obligating the citizen to reveal his identity in circumstances such as are here related."[18] In *Commonwealth v. Doe*,[19] a Pennsylvania court dismissed an assault and battery charge against a defendant who had pushed a constable out of his way when the latter stopped him on the street for questioning. The court held that the citizen "was not required to remain and submit to the inquiries of the officer."[20] *Gisske v. Sanders*,[21] a decision of a California appellate court, went the other way. Here the plaintiff was walking on the street at night under ordinary circumstances. A policeman answering a robbery call stopped him and asked for his name and destination. Plaintiff refused to give it and he was arrested. The reviewing court reversed a jury verdict against the police for false arrest, and held that "a police officer has a right to make inquiry in a proper manner of anyone upon the public streets at a late hour as to his identity and the occasion of his presence, if the surroundings are such as to indicate to a reasonable man that the public safety demands such identification."[22] Dicta may be found in other cases in support of this view.[23]

Loitering and Curfew Laws

The ordinances examined above may reflect, somewhat, the American penchant for disposing of a supposed problem by passing a law.[24] Hardly anyone would dispute the right of the citizen to wear what he wants, short of public indecency; or to associate with whom he pleases, when nothing illegitimate is involved. The nearly universal invalidation by the courts of laws restricting these right supports the view that the legislatures have passed the bounds of legitimate state interference in the affairs of the citizen in these instances. Loitering and curfew laws, however, present much more serious problems. Here the interest of the state may be more easily identified. Proponents of these measures find a legitimate societal interest in laws which are ostensibly aimed at tramps and vagrants who prowl the streets at night; sex perverts who idle near schools, playgrounds and public toilets; juvenile gangs which, in our modern society, having money and cars at their disposal and seemingly free of parental control, account for half of the major crimes com-

[15] Generally, see Perkins, Elements of Police Science (1942).

[16] It might be more realistic, instead of talking about the "right" of the police, to inquire as to the consequences of the citizen's refusal to answer questions concerning his name, address, destination, etc. Is his refusal grounds for arrest or is the conduct of the police lawful only up to the point where the person being questioned refuses any more voluntary answers?

[17] 163 N.Y.S.2d 554 (Magis. Ct. 1957).

[18] *Id.* at 558.

[19] 167 Atl. 241 (Pa. Super. 1933).

[20] *Id.* at 242. *But see* Hargus v. State, 54 P. 2d 211, 214 (Okla. Crim. 1935), (murder conviction upheld where defendant shot and killed policeman who stopped him on the street). "It is not unlawful for a police officer, nor for a private citizen, to make a reasonable inquiry of strangers or others. . . ."

[21] 9 Cal. App. 13, 98 Pac. 43 (1908).

[22] "The fact that crimes had recently been committed in that neighborhood, that plaintiff in a late hour was found in the locality, that he refused to answer proper questions establishing his identity, were circumstances which should lead a reasonable officer to require his presence at the station. . . ." 98 Pac. at 45. The reasoning of the court seems weak. It would be hard to find an area in a large city (in this case, Los Angeles, California) in which crimes had not been committed. It certainly is not unusual for people to be on the street at late hours and the plaintiff's refusal to answer could hardly have been *original* justification for the policeman's questions.

[23] "There is, of course, nothing unreasonable in an officer's questioning persons outdoors at night . . . and it is possible that in some circumstances even a refusal to answer would, in the light of other evidence, justify an arrest . . . and in some circumstances an officer making such an inquiry might be justified in running his hands over a person's clothing to protect himself from an attack with a hidden weapon. . . ." People v. Simon, 45 Cal.2d 645, 290 P.2d 531, 534 (1955); "That the officers had a right to stop and question plaintiff in error and his companion cannot be doubted. . . ." People v. Henneman, 367 Ill. 151, 10 N.E.2d 649 (1937). Some states have conferred this power to questo into upon the police by statute.

[24] Justice Jackson once remarked that issues which bring the mobs out into the streets in other countries bring the lawyers into the courts in this country.

mitted in this country today.[25] However, if the interests of society may be more legitimate in this area, the rights of the citizen weigh more heavily against restrictions here. The freedom to travel from place to place is a constitutional right.[26] Tramps and teen-agers are citizens, too,[27] and it would seem to be hard to draw legislation which would ensnare the pervert but ignore the spectator at a children's baseball game, control the prowling vagrant but exempt the respectable citizen out for an evening stroll, catch the nighttime juvenile thief but leave untouched the student coming home from the library. In short, the courts have been hard put when liberty conflicts with well-meant restrictions enacted by the legislature in this area.

We may start with the dictum of Judge Ross in *Norristown v. Moyer*.[28] "... [T]he infamous habit of corner lounging," the judge declared, "is illegal." This case, and a later Pennsylvania decision,[29] mark the outer limits of a line of cases which declare that while citizens possess the right to move from place to place on the public highway, no stoppage, other than that required by business or necessity, is to be tolerated.

The ordinance involved in *City of St. Louis v. Gloner*[30] forbade standing, loafing, or lounging on street corners or other public places. Its application to peaceful picketing was rejected as "unreasonable and oppressive"—the court declaring broadly that one had the right to "stop and remain upon the corner of any street that he might desire, so long as he conducted himself in a decent and orderly manner, disturbing no one, nor interfering with anyone's right to the use of the streets."[31] *Ex Parte Strittmatter*,[32] upheld an ordinance which prohibited "able-bodied" persons from "habitually" loafing "for the larger portion of their time" without any regular employment, while the court in *Territory of Hawaii v. Anduha*,[33] took "judicial cognizance" of the fact that "the majority of mankind spend a goodly part of their waking hours in whiling or idling the time away" and voided a loitering statute.[34]

This conflict in the cases is by no means limited to the pronouncements of courts of different jurisdictions. A lawyer talking quietly with a group of friends outside a restaurant was convicted of disorderly conduct when he refused to "move on" after being warned by the police in *People v. Galpern*.[35] But twenty-six years later the same court voided the conviction of a Puerto Rican laborer who refused to "move on" while talking, along with thirteen other persons, to a social worker on a public street. Even though the words "lounge" and "loiter" were held by the court to have a common and accepted meaning, in *People v. Diaz*,[36] a statute which did not further detail the unlawful conduct was held to be unconstitutionally vague.

If the foregoing decisions furnish little or no guidance for the legislature, another line of cases may point the way. *State v. Starr*[37] upheld an ordinance branding as a vagrant any person who loitered on the grounds or within 300 feet of a school "without legitimate reason therefore". Since the school grounds were not free to anyone "like a public street or highway or public park" the legislature might constitutionally draw the line about such institutions. Since the burden would be on the state to prove that a legitimate reason was lacking, there would be little possibility

[25] FBI, 28 UNIFORM CRIME REPORTS 113 (1957).

[26] *Kent v. Dulles*, *supra* note 5.

[27] "... the boy or girl ... have the same rights of ingress or egress that citizens of mature years enjoy." *Ex parte* McCarver, 39 Tex. Crim. 448, 46 S.W. 936, 937 (1898). Edwards v. California, 314 U.S. 160 (1941).

[28] 67 Pa. 355 (1871).

[29] Commonwealth v. Challis, 8 Pa. Super. 130 (1898).

[30] 210 Mo. 502, 109 S.W. 30 (1908).

[31] *Id.* at 109 S.W. 32. City of Olathe v. Lauck, 156 Kan. 637, 135 P.2d 549 (1943). (Jehovah's Witnesses who were busily passing out literature on a street corner were not violating ordinance prohibiting persons from "loitering on any public street ... who shall fail or refuse promptly to move on when notified so to do.")

[32] 58 Tex. Crim. 156, 124 S.W. 906 (1910).

[33] 48 F.2d 171 (9th Cir. 1931).

[34] People v. Walton, 70 Cal. App.2d 862, 161 P.2d 498 (1945), upheld an ordinance which prohibited loitering on the streets after 9:00 P.M. by persons under 18 years of age. Loosely drawn statutes often ban "wandering" on the streets after certain hours. For example, Ch. 38, § 103 ILL. REV. STAT. (1957), defines a delinquent child as one who, among other things, "wanders about the streets in the nightime without being on any lawful business or occupation." The cases indicate, however, that such statutes may be easily avoided by persons pursuing reasonably definite paths between two certain points, and it seems highly unlikely that the state could ever prove that the defendant was headed for other than a specific destination. Rainbolt v. State, 97 Okla. Crim. 164, 260 P.2d 426 (1953); State v. Grenz, 26 Wash.2d 764, 175 P.2d 633 (1946); Guidoni v. Wheeler, 230 Fed. 93 (9th Cir. 1916). The last case upheld an ordinance which forbade "those who are without occupation or property" to wander about the streets of the city after 11:00 P.M. The ordinance could be avoided by pursuing a straight and certain path between certain points, the court seems to indicate, but it is also very doubtful that it could constitutionally apply only to persons "without occupation or property" in the light of Edwards v. California, 314 U.S. 160 (1941).

[35] 259 N.Y. 279, 181 N.E. 572 (1932).

[36] 4 N.Y.2d 469, 151 N.E.2d 871 (1958).

[37] 57 Ariz. 270, 113 P.2d 356 (1941).

of abuse in practice. Similarly, the New York courts upheld an ordinance prohibiting loitering about any toilet, station or station platform of a subway or elevated railway or railroad without a satisfactory explanation of the person's presence.[38] The court's construction of the ordinance excluded those who came to the station to take trains, buy tickets or magazines, see persons off, use the bathrooms, "those who are guilty of mere lassitude or indolence, those overcome by a normal weariness and . . . students of human nature who use station waiting rooms as their laboratory." It was aimed, instead, at "dirty, besotted people," "furtive homosexuals or degenerates" or the "boisterous noisy cut-ups." Moreover, the burden of proof placed on the state meant that all legitimate reasons had to be excluded by the state's evidence or the prosecution would fail.

Recent legal commentaries have indicated that curfew laws have been upheld in a variety of circumstances,[39] but a search of the reports discloses only one case in which a curfew law[40] has been held to be constitutionally permissible. This is *Hirabayashi v. United States*,[41] in which the United States Supreme Court held that a curfew imposed immediately after Pearl Harbor on the large group of Japanese people living in a military area on the west coast was a vital and necessary exercise of the war power. But even as to this the court did some hedging.[42]

In *Mayor of Memphis v. Winfield*,[43] apparently the first judicial consideration of the validity of a curfew ordinance by an American appellate court, a curfew which provided that "free Negroes" could not be on the streets of the city after 10:00 P.M. was held unconstitutional, not on the ground of a denial of equal protection, but because curfew laws were "high handed and oppressive"—an attempt to "impair the liberty of a free person."

Portland, Oregon had what was apparently a straight curfew ordinance. It provided that: "Between the hours of 1:00 and 5:00 o'clock A.M., Pacific Standard time, it shall be unlawful for any person to roam *or be upon any street, alley or public place* without having and disclosing a lawful purpose." When the ordinance was challenged, in *City of Portland v. Goodwin*,[44] the court adopted a construction which virtually eliminated all conduct from its reach. The court was unable to conceive of a situation where a "sane" person could be upon the street without "some purpose."[45] Secondly, the court declared that the words "without having . . . a lawful purpose" were the exact equivalent of "having an unlawful purpose"; and that a person who went upon the street "as an innocent man" was not required to take "affirmative action to demonstrate his innocence," unless "his voluntary *conduct* overcomes the apparent and presumed innocence of his movements by disclosing a purpose *to violate some law other than the ordinance in question.*" (Emphasis added.) It is submitted that the court's construction of the law virtually demolishes it and that the case is no authority for the principle that a valid curfew law may be enacted.

Juvenile curfew laws have been adopted by a great many municipalities in an effort to control juvenile crime;[46] but *no juvenile curfew law has successfully withstood a constitutional challenge in an American appellate court.*[47]

The ordinance in *Ex Parte McCarver*,[48] prohibited persons under 21 years of age from being on the street after 9:00 P.M. unless (1) accompanied by a parent or guardian, or (2) in search of a doctor. Such legislation, declared the court, was paternalistic, an invasion of the minor's personal liberty

[38] People v. Bell, 125 N.Y.S.2d 117, *affirmed*, 306 N.Y. 110, 115 N.E.2d 821 (1953).

[39] See Note, 12 U. MIAMI L. REV. 257 (1957). Cases cited in this Note in support of the view that *curfews* have been upheld are mostly *loitering, wandering* or *unlawful purpose* cases.

[40] As distinguished from a loitering, wandering, or unlawful purpose law.

[41] 320 U.S. 81 (1943). There is also Dunn v. Commonwealth, 105 Ky. 834, 49 S.W. 813 (1899), which upheld a curfew aimed at *prostitutes* who could not be on the streets after 7:00 P.M. except in cases of "reasonable necessity." The reasoning of the case is weak and its validity seems doubtful.

[42] ". . . [W]e decide only that the curfew order *as applied, and at the time it was applied*, was within the boundaries of the war power." 320 U.S. at 102 (Emphasis added.) ". . . I think that the military arm, confronted with *the peril of imminent enemy attack* and acting under the authority conferred by the Congress made an allowable judgment *at the time* the curfew restriction was imposed. Whether such a restriction is valid today (the war was still in progress) is another matter." 320 U.S. at 113 (concurring opinion) (Emphasis added.)

[43] 27 Tenn. 707 (1848).

[44] 187 Ore. 409, 210 P.2d 577 (1949).

[45] A sleepwalker might come within the prohibition of the ordinance. In any event, the court refused to speculate on who might qualify—"we will not pass upon that question until some purposeless person raises it." 187 Ore. at 419.

[46] Note, 107 U. PA. L. REV. 66, 68-9 (1958).

[47] People v. Walton, 70 Cal. App.2d 862, 161 P. 2d 498, 501 (1945), is often cited as a case in which a juvenile curfew was upheld, but it is apparent that only a "loitering" law was in issue there.

[48] 39 Tex. Crim. 448, 46 S.W. 936 (1898).

which made "the tolling of the curfew bell equivalent to the drum taps of the camp."

Fifty-nine years elapsed before another appellate court had occasion to consider the validity of a juvenile curfew ordinance. In *Alves v. Justice Court of Chico Judicial District*,[49] the appellant sought a writ of prohibition to prevent his prosecution under a curfew ordinance.[50] He was charged with aiding a minor who, though married and emancipated from the control of his parents, fell within the curfew's prohibitions. The court conceded that the purpose of the ordinance was quite clearly the control of nocturnal juvenile crime. But because the strictures of the act went beyond the juvenile criminal, and virtually proscribed all other nighttime juvenile activity, which would be, in the absence of the curfew, innocent or perhaps even laudable, it was held unconstitutional as an arbitrary invasion of the personal liberties of the citizen.[51]

The juvenile curfew laws, perhaps more than any of the others which have been discussed in this Comment, bring the conflict between law and individual rights more sharply into focus. It seems entirely logical to assume that juveniles who are under a legal compulsion to stay off the streets after certain hours will not be able to commit crimes at that time, and that the law's sanction will be effective where the parent's sanction is not. If the legislature may reasonably make these policy judgments, courts will be hard put to void their implementation in the form of curfew laws. There is little evidence, however, to support the view that such policy presumptions are valid. Philadelphia, Pennsylvania has a juvenile curfew ordinance which is relatively well enforced.[52] A comprehensive survey which undertook to establish the effect of the ordinance on the juvenile crime rate reported "an accurate determination of the effectiveness of the curfew in achieving its objective is, as a practical matter, impossible to ascertain" and that "the only reasonable conclusion is that there is no certainty that curfew enforcement reduces juvenile crime."[53] Moreover, police and juvenile officials who are in perhaps the best position to gauge the effectiveness of juvenile curfews are by no means agreed on their efficacy.[54]

Opponents of juvenile curfew laws mount their heaviest attack on the constitutional validity of such regulations. They have been characterized by the case law as arbitrary and unreasonable restrictions which, while seeking to control the juvenile criminal, actually ensnare only the juvenile whose otherwise innocent nighttime activities, committed openly, bring him to the attention of the police. And various commentators have rejected the enactment of curfew laws as "panaceas" and as "shotgun" approachs which have been utilized as a last resort by a community bankrupt in constructive juvenile legislation.

Too little has been said by those concerned with this problem[55] about another equally serious constitutional objection—that the curfew laws unreasonably usurp the parental function. Many years ago, the Illinois Supreme Court struck down a juvenile delinquency statute on this ground. The statute in *People ex rel O'Connell v. Turner*[56] authorized the commitment to a reform school of any juveniles between the ages of six and sixteen "who are destitute of proper parental care, and growing up in mendicancy, ignorance, idleness or vice." The court, writing in absolute terms, held that: "The parent has the right to the care, custody and

[49] 148 Cal. App.2d 419, 306 P.2d 601 (1957).

[50] (a) It shall be unlawful for any minor under the age of seventeen years of age to be in or on any public street, park, square or any public place between the hours of 10:00 o'clock P.M. and 5:00 o'clock A.M. of the following day, except when and where said minor is accompanied by a parent or legal guardian having the care and custody of said minor, or where the presence of said minor in said place or places is connected with, and required by, some legitimate business, trade, profession or occupation in which said minor is engaged. (b) Any person assisting, aiding . . . any minor . . . to violate . . . shall be guilty of a misdemeanor. . . ."

[51] ". . . [T]he general right of every person to engage in lawful and innocent activity while subject to reasonable restriction cannot be taken away under the guise of police regulation." 306 P.2d at 605. Note, 107 U. PA. L. REV. 66 (1958), reports that a juvenile curfew was voided in Riley v. City of Miami, Chancery No. 198087, Cir. Ct. of 11th Cir. of Fla., April 5, 1957.

[52] Note, *Curfew Ordinances And The Control Of Juvenile Nocturnal Crime*, 107 U. PA. L. REV. 66, 83–86 (1958). The ordinance is of the "loitering" type, but it appears that the police and the courts enforce it as a curfew.

[53] *Id.* at 96.

[54] The University of Pennsylvania Law Review survey notes that police officials in Portland, Oregon and Duluth, Minnesota took opposite stands on this question. Questioned by this author, the Hon. Joseph Lohman, former sheriff of Cook County, of Cook County, Illinois (which includes Chicago and suburban towns having juvenile curfews) and an expert in the field of juvenile delinquency, characterized juvenile curfews as "silly" and pointed out that they only served to create resentment of police conduct in teen-agers.

[55] Recent Decisions, 55 MICH. L. REV. 1026 (1957); Note, 12 U. MIAMI L. REV. 257 (1957); Note, 32 TUL. L. REV. 117 (1957); Note, 37 NEB. L. REV. 479 (1958); Note, 6 KAN. L. REV. 377 (1958).

[56] 55 Ill. 280 (1870).