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Abstracts of Recent Cases

assistance of his child. . . . Before any abridgment of the right, gross misconduct or almost total unfitness on the part of the parent, should be clearly proved. This power is an emanation from God, and every attempt to infringe upon it, except from dire necessity, should be resisted in all well governed States."[57]

There can be no doubt that curfew laws which proscribe the enjoyment of innocent nighttime juvenile activities which the parent may have expressly approved, or even encouraged, by outlawing the use of the public streets in their pursuit, take giant strides in the direction of state assumption of the parental role.

Communities that ignore the tightly drawn loitering laws upheld by a number of courts, and which are ideally suited for use against the lounging street gang, and at the same time enact curfew laws which mold the conduct of good and bad without discrimination, assume the heavy burden of unwarranted interference with the rights of the juvenile and his parents alike. No court has ever upheld this kind of interference, and, it is submitted, no court ever should.

[57] *Id.* at 284.

ABSTRACTS OF RECENT CASES

Robbery Conviction Reversed Where Force Used Was After Taking—The defendant smashed the display window of a television store, went inside, and was in the act of handing a portable television set to a comrade waiting on the sidewalk when the storeowner hit him from behind. The confederate made off with the set and the defendant turned, hurled a radio at the storeowner and then fired four shots as the storeowner retreated into the back of the building. Convicted of robbery, the defendant appealed, alleging that the evidence did not support the verdict. The Virginia Supreme Court reversed, holding that the crime of robbery was not made out where the only force used by by the defendant came after the taking was complete. *Mason v. Commonwealth*, 105 S.E.2d 149 (1958).

The court divided the occurrence into a series of "time sequences" and held that the evidence showed that no force or intimidation was used to effect the taking. Therefore, the court said, an essential element of the crime of robbery was not proved despite the violence which came after the defendant's accomplice left with the television set.

Prosecutor's Argument Prejudicial Error—The defendant was charged with the crime of rape, found guilty by a jury, and sentenced to 199 years in the penitentiary. He appealed, alleging that the summation to the jury by the prosecutor was so prejudicial that the conviction should be set aside. The prosecutor had said, "And that man is a rapist now. He was a rapist before and he will always be a rapist. . . . Let your verdict show these rapists that they cannot go about the streets of Chicago."

The only objection made in the trial court was to the last sentence. The Illinois Supreme Court, however, in reversing and remanding, held that the entire comment was "so seriously prejudicial as to prevent the defendant from receiving a fair trial" and that it would consider the entire statement on appeal even though it was not objected to in the trial court. *People v. Fort*, 153 N.E.2d 26 (Ill. 1958).

The court held that there was no evidence in the record to support the charge that "he was a rapist before and he will always be a rapist." A prosecutor may comment unfavorably on the defendant, denounce his wickedness, and urge a fearless administration of the law, said the court, *if* there is evidence in the record to support such tactics. Extreme care must be taken in cases such as this one, the court pointed out, and where a prosecutor's argument is inflammatory an appellate court will reverse a conviction regardless of its view of the innocence or guilt of the defendant.

The Mallory Rule and Exculpatory Statements—The defendant's exculpatory statement was introduced in evidence by the government to show his state of mind, alertness, and memory, and thereby show that he was sane at the time of the killing. The statement was obtained some nine hours after his arrest, and before he was presented to a committing magistrate. The de-