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power to make provision for the proper care and treatment of persons who become *temporarily* insane while in custody of the United States awaiting trial upon criminal charges. . . .²¹ [Emphasis added.]

Doubtless, the intention of Congress in enacting this legislation was to provide an effective and practical means for dealing with mentally incompetent prisoners. Reluctance by some states to adequately provide facilities for such persons and the infeasibility of outright release manifest the need for reform measures. But by holding the incarceration of the permanently incompetent to be unconstitutional, the courts properly place the responsibility for such reform at the state level. The recognition of problems, however urgent, and the formulation of curative expedients cannot create federal power where none, in fact, exists. Mindful of this, the dissenting judge in the *Greenwood* case stated that:

“. . . as a practical matter much can be said in favor of the result arrived at by the majority. However, as I am convinced that the United States has no jurisdiction over permanently insane persons for an indefinite period, this conclusion cannot be altered by practical considerations.”²²

—William Donald Piercy.

CRIMINAL LAW: SOLICITATION IN CALIFORNIA TO DO AN ACT OUTSIDE THE STATE.

“*C'est la générale loi des loix, que chacun observe celle du lieu où il est.*” (It is the general law of laws that everyone should observe that of the place where he is.)¹

It was Montaigne, the celebrated French author, who first made that statement back in the year 1580. In 1955, some 375 years later, the same basic idea was used by the California Supreme Court to sustain the conviction of one John James Burt, prospective extortionist, of solicitation—solicitation in California aimed at the commission of an act in the Republic of Mexico. *People v. Burt*² thus raised a question not previously settled by the California courts: May a person be punished for solicitation in this state when he solicits the doing of an act outside the state which, though such act is criminal in California, is not shown to be criminal outside of that state, and which act is never performed nor any steps taken toward its performance in either place? The answer is, “Yes.”

People v. Chase,³ decided in 1931, was a somewhat similar case, but it included an element not found in the *Burt* case. Defendants in the *Chase* case were charged with violation of a California statute⁴ which prohibited any person from *prevailing* upon another to visit a gambling ship. In that case, however, the persons prevailed upon did actually thereafter visit the ship, whereas in the *Burt* case there was no action beyond the mere solicitation. The court said in the *Chase* case that no crime would have been committed by the mere passing of the invitation, because the word “prevails”

²¹ *Higgins v. United States*, 205 F.2d 650, 653 (9th Cir. 1953).

²² *Greenwood v. United States*, 219 F.2d 376, 388 (8th Cir. 1955).

¹ 1 MONTAIGNE, *ESSAYS* (1580).

² 45 Cal.2d —, 288 P.2d 503 (1955).

³ 117 Cal.App. 775, 1 P.2d 60 (1931).

⁴ CALIF. PEN. CODE, § 318 (1949).

was said to have been used in the sense of bringing "persuasion, inducement or urgency to bear *successfully*,"⁵ [emphasis added] and the offense was not completed until the person subjected to such invitation actually went to the gambling place. The court in *People v. Burt*, however, did not require "success" on the part of the defendant in his solicitation—on the contrary, the mere solicitation was held sufficient to render him criminally liable.

Section 653f of the California Penal Code deals with solicitation, and reads as follows:

"Every person who solicits another to offer or join in the offer or acceptance of a bribe, or to commit or join in the commission of murder, robbery, burglary, grand theft, receiving stolen property, *extortion*, rape by force and violence, perjury, subornation of perjury, forgery, or kidnapping, is punishable by imprisonment . . . or by a fine. . . ."⁶ [Emphasis added.]

At the trial of *People v. Burt*, it was shown that the defendant had solicited the prosecutrix in Los Angeles to become acquainted with men at hotels in Los Angeles and to persuade them to accompany her to Tijuana, Mexico, there to engage in sexual intercourse with them, and then to join with Burt's associate in Mexico in the commission of acts which, under the California Penal Code section 518, would constitute extortion:

"Extortion is the obtaining of property from another, with his consent . . . induced by a wrongful use of force or fear, or under color of official right."⁷

The prosecutrix, however, proved uncooperative and reported the matter to the police, thus discouraging the scheme before it could be put into operation.

The state offered no evidence showing that the acts solicited constituted a crime under Mexican law, so Burt, on appeal, advanced the suggestion that the state had failed to sustain its burden of proof in this matter, and that he could not be properly convicted and punished for soliciting in California acts to be done outside of that state and thus without the jurisdiction of the California courts. It is, of course, a well-settled axiom of law that the courts of one jurisdiction ordinarily will not attempt to enforce the criminal law of another jurisdiction.⁸ Besides, explained Burt, he hadn't intended to carry out the extortion plan, but had only used it as an excuse to become acquainted with the prosecutrix "socially." But the court, just as the prosecutrix had done, sorely disappointed Burt. Justice Traynor, in a clear and informative opinion, stated that:

"Since it is the solicitation in this state alone that is punishable, and since it is immaterial where the acts solicited are to be performed, the law of other states governing such acts is likewise immaterial."⁹

The court, therefore, was not enforcing the criminal law of Mexico, but only the law of California. In *People v. Buffum*,¹⁰ where a conspiracy was charged under section 182, California Penal Code, it was said that:

". . . [W]e must assume that the Legislature did not intend to regulate conduct taking place outside the borders of the state. [Citations.] Similarly, section 182 of the Penal Code . . . should not be read as applying to a conspiracy to commit a crime in another jurisdiction."¹¹

⁵ See note 3 *supra* at 779, 1 P.2d at 61.

⁶ CALIF. PEN. CODE, § 653f (1949).

⁷ CALIF. PEN. CODE, § 518 (1949).

⁸ 2 BEALE, CONFLICT OF LAWS, § 425.1 *et seq.* (1935); CLARK & MARSHALL, CRIMES, § 504 *et seq.* (5th ed. 1952).

⁹ *People v. Burt*, 45 Cal.2d —, 288 P.2d 503, 506 (1955).

¹⁰ 40 Cal.2d 709, 256 P.2d 317 (1953).

¹¹ See note 10 *supra* at 715, 256 P.2d at 320.

Conspiracy occurs when "two or more persons conspire to commit any crime."¹² If this is the law in regard to conspiracy, then why should not the same be true in the case of solicitation? The court answered this query by declaring that merely because section 182 of the Penal Code, dealing with conspiracy to commit "any crime,"¹³ however petty, could reasonably be interpreted as limited to conspiracies to commit crimes within the state, it did not necessarily follow that section 653f of the Penal Code, which prohibits solicitation of only twelve of the most serious crimes, should also be applied only when the crimes solicited were to be committed within the state. It is submitted that this analysis is a valid one. The Legislature appears to have been interested in protecting the citizens of California not only from the doing of the criminal acts enumerated in the Penal Code, but also from being exposed to the insidious influences of those persons who would solicit the doing of such acts. The danger to the citizens arises at the very moment of the solicitation—and it is this evil which the Legislature must have intended to prevent or, failing that, to punish.¹⁴

To further bolster this view, the court pointed out that the Legislature must have been gravely concerned with the problem of solicitation, because not only were the crimes specified of the utmost gravity, but also, in order to prove solicitation it was not made necessary under the Penal Code to show an overt act toward the commission of the crime solicited;¹⁵ such an act is, however, a requisite to show conspiracy.¹⁶ The Legislature was obviously concerned with the gravity of the crimes listed—so much so that even the mere asking of the performance of one was enough to punish, and from that it follows that regardless of the place where the act is to be done or even if it is never done, the People have been harmed by the asking.¹⁷ In conspiracy, on the other hand, the Legislature is concerned with the power of the combination and with the likelihood that the co-conspirators will take heart from one another and will be thus more likely to carry out their design. Since a conspiracy can be inferred from conduct that is in itself equivocal,¹⁸ the Legislature has included the additional requirement in the form of a safeguard.

But defendant Burt was not to be discounted quite yet. He brought into the discussion the "Gambling Ship Regulation Law,"¹⁹ passed by the California Legislature at a time when the state was plagued by certain gambling ship operators who anchored their floating "halls of chance" outside the territorial waters of the state and derived a lucrative return from "sports-minded" citizens of the coastal cities. This involved the very problem of solicitation of acts to be committed outside the state, and the Legislature passed a statute making it unlawful for any person within the state to solicit another to visit a gambling ship "whether such gambling be within or without the jurisdiction of the state of California."²⁰ And so, said Burt, if the Legislature had intended that section 653f of the Penal Code (dealing with solicitation generally) was to apply to solicitation of acts to be done outside the state, it would have expressly so stated as it did in the gambling ship statute. The court

¹² CALIF. PEN. CODE, § 182 (1949).

¹³ See note 12 *supra*.

¹⁴ HALL, CRIMINAL LAW, ch. 4 *et seq.* (1947).

¹⁵ CALIF. PEN. CODE, § 653f (1949).

¹⁶ CALIF. PEN. CODE, § 182 (1949).

¹⁷ See note 14 *supra*.

¹⁸ *People v. Keller*, 124 Cal.App. 673, 12 P.2d 1066 (1932); *People v. Moran*, 144 Cal. 48, 77 Pac. 777 (1908).

¹⁹ CALIF. STATS. 1929, p. 703, now in CALIF. PEN. CODE [Stats. 1953, ch. 35].

²⁰ See note 19 *supra*.