SOLICITATION: A SUBSTANTIVE CRIME

By John W. Curran*

It should be realized that criminal solicitation involves no physical harm and that it relates only to cases in which a crime was projected but never completed. If a person solicited to commit a crime undertakes the criminal design, the solicitor becomes a party to the crime, either as accessory or principal and the case is not within the scope of this subject. The only cases falling within the purview of this article are those in which the solicited party (solicitant) has ignored the request of the solicitor. Hence solicitation cases of the type of State v. Dumas' in which the parties were caught flagrante delicto are excluded.

A better understanding of the proposition results if the framework of the subject is observed. Many of the solicitation cases are bipartite while others are tripartite, but in both classes the corpus delicti of the crime is the evil intent of the solicitor coupled with the act of solicitation. If A solicits B to commit adultery or if A solicits B to murder C, the basic nature of the crime of solicitation is the same in both instances, although there are two parties involved in the first case and three in the second.

In the following survey the substantive crime of solicitation and some aspects of solicitation in reference to criminal attempts will be considered.

The crime of solicitation has not been exhaustively considered in the treatises, and the line of demarcation between the criminal solicitation and the criminal attempt has not been clearly drawn. An analysis will be made of some of the problems in this branch of the law for the purpose of ascertaining the cause of present inconsistencies. Why does one court hold that a solicitation is a substantive crime and another court deny that doctrine? Why does a third court rule a solicitation to commit arson is indictable as an attempt to commit arson and a fourth court decide contrariwise? Why on the same set of facts does one court conclude a criminal solicitation is involved and another court hold that a criminal attempt is involved and a third court state no crime is

*Professor of Law, De Paul University, Chicago, Ill.

1(1912) 118 Minn. 77, 136 N. W. 311.
involved? Before concluding this introduction some incidents showing different aspects of solicitation will be mentioned.

Recently in Chicago a detective posed as a professional murderer and was solicited to commit murder. When the plot unfolded and the arrest was made a long debate ensued between those responsible for drawing up the indictments in the office of state's attorney. The question was whether the indictment should be for the substantive crime of solicitation or for the specific crime of an attempt to commit murder as proved by the act of solicitation. Another angle of this matter comes under the espionage, sabotage, and syndicalism Acts. An indictment was sustained in Connecticut against a speaker for the substantive crime of solicitation for soliciting an audience to commit acts of violence. During the past year a well known French author was sentenced to five years in prison for soliciting and inciting to murder by means of an article in a revolutionary magazine in which the assassination of a number of statesmen was advocated. Mahatma Gandhi was arrested for soliciting and inciting his followers to "revolt without violence." Another phase of this problem arises where the accused is charged with soliciting violation of the prohibition laws. Is a bootlegger soliciting orders indictable for the solicitation or for an attempt to sell intoxicating liquor? On account of newspaper publicity national attention was directed to a Chicago case in which a tenant was arrested for soliciting his janitor to make a batch of home-brew for him. In a recent case it was contended that the solicitation of claims disqualified the solicitor to act as a trustee in bankruptcy. Disbarment proceedings against an attorney hinged upon acts of solicitation on his part. In New York the promoters of a suicide club were arrested for soliciting members. A foreign corporation was charged with failing to pay a business tax and its alleged criminal liability turned on the question of whether solicitation of business constituted "doing business" within the meaning of the taxing

2See (1931) 72 L. J. 269, Incitement to Mutiny.
3State v. Schleifer, (1923) 99 Conn. 432, 121 Atl. 805. Also noted in (1923) 33 Yale L. J. 98.
The proprietor of a bookstore was arrested for soliciting customers to buy obscene books. A corporation was indicted for improperly soliciting its employees to vote for a named candidate for public office. At common law it was a crime to solicit or invoke evil spirits to cast a spell or give the evil eye. A newspaper item states that the Ubangi savages travelling with a circus in the United States quarrelled with their manager and with the aid of their witch-doctor solicited the evil spirit to kill him. A student said the tribe should be held for the evil solicitation on account of its criminal mind. It was further contended since it was criminal for A to solicit B to murder C it should be criminal for A to solicit an evil spirit to murder C. Recent cases in California and Pennsylvania involving witchcraft make an apparent obsolete matter of more practical importance than it would seem at first blush. Further discussion will be concerned with the treatises and the decided cases. As this article primarily deals with solicitation as a substantive crime, its scope does not include cases of libel and slander holding that it is actionable per se to infer by speaking or writing that a person solicited another to commit a crime. For the same reason the cases holding that solicitation of sexual crimes does not constitute an assault will be omitted.

AN ANALYSIS OF THE TREATISES

In Bishop's treatise it is stated that a solicitation is an indictable attempt. After a long debate with Wharton on the soundness of that statement Bishop made the following concession:

"And looking at a note in the American Reports, I am prompted to say that possibly there may be legal persons who distinguish between a 'solicitation' and an 'attempt,' deeming both indictable. Such is not the ordinary language of our books, and I know of no reason for refusing the name 'attempt' to an indictable solicitation."10

After fifty years of writing Bishop retained his original view and cited seven cases to support it. An examination of those cases indicates that the first held that soliciting a servant to steal his master's goods was a misdemeanor;11 the second by way of

---

7See Peebles v. Chrysler Corporation, (D.C. Mo. 1932) 57 F. (2d) 867.
925 L. R. A. 434.
10Bishop, New Criminal Law, 8th ed., par. 768c and 9th ed., par. 768c.
11Rex v. Higgins, (1801) 2 East 5.
dicta that solicitation was a substantive crime; the third held that solicitation of a person to burn a barn and furnishing a match for that purpose constituted an attempt to commit arson; in the fourth it was ruled a misdemeanor for one to write a letter soliciting the commission of adultery; the fifth decided that it was a misdemeanor knowingly to rent a house for purposes of prostitution; the sixth reiterated the rule of the first case that solicitation was a misdemeanor although it was decided sixty years later; and the seventh, contrary to the third, held that solicitation of arson was a misdemeanor. A recapitulation of Bishop's cases shows that only one case out of seven supported his view that a solicitation was an attempt. The case supporting the view of Bishop was decided in New York in 1843 and held under a general attempt statute that a solicitation to commit arson was indictable as an attempt to commit arson. Since the case primarily involved a solicitation, it should never have been considered as falling within the general attempt statute as that statute had not been passed with the intention of including the crime of solicitation within its scope. As the court was interpreting an attempt statute, it was not necessary to go beyond what had been the settled legal meaning of the word attempt in relation to the completed crime and by torture include a solicitation within the statute because it is one species of the genus attempt. An eminent authority on statutory law states:

"Indeed, any construction or interpretation of a statute which goes beyond any of the possible meanings of the language in view of the case at hand is spurious, and is disapproved generally by courts and writers in common law jurisdictions." If the accepted common meaning in general usage at the time the attempt statute was enacted had been considered by the New York court, a solicitation to commit arson would not have been held as an attempt to commit that crime. By accepting the unsound Bush Case as the backbone of his statement that a solicitation is an attempt Bishop misinterpreted the law. The latest

---

SOLICITATION: A SUBSTANTIVE CRIME

dition published posthumously contains some statements opposed
to the original view of Bishop. A 1932 edition of Wharton con-
tains the same questionable statements about the crime of solici-
tation that were in the previous editions. Wharton states:

"And the better opinion is that, where the solicitation is not in
itself a substantive offense, or where there has been no progress
made toward the consummation of the independent offense at-
ttempted, the question whether the solicitation is by itself the sub-
ject of penal prosecution must be answered in the negative.\(^1\)

Wharton's view of the law is to be further gleaned from the
following statement in his discussion of arson: "That a bare
solicitation is indictable when there is no overt act may well be
questioned . . . ."\(^2\) Bishop does not agree with Wharton as
Bishop states a solicitation to commit arson is indictable as an at-
tempt to commit arson. In this debate the writer neither agrees
with Bishop nor Wharton. Take a specific example:

Bishop states that a solicitation to commit arson is indictable
as an attempt to commit arson.\(^2\)

Wharton states that it may well be questioned whether a solici-
tation to commit arson is indictable.

The present writer states that a solicitation to commit arson is
a substantive crime and as such indictable.

In the above example it is to be noted that Wharton\(^2\) changes
his view and holds that there is no question about the indictability
if the solicitation is accompanied by other conduct, such as the
payment of money or furnishing the machinery of destruction.\(^3\)

Since the corpus delicti of the crime is the act of solicitation and
the additional conduct is merely collateral evidence, it is difficult
to understand why Wharton considered it as a substantive element
of the crime. If the elements of murder are present the con-
comitant facts are collateral to it; if the crime of solicitation has
been committed the additional conduct should be considered like-

\(^1\) Wharton, Criminal Law, 12th ed., par. 218, p. 289.
\(^3\) Bishop, New Criminal Law, 8th ed., par. 768c and 9th ed., par. 768c.
wise. But the giving of a match or the payment of money by the solicitor should not cause the crime to be classified as an attempt to commit arson instead of solicitation as this would be a joining together of inconsistencies. Yet another author states:

"There is probably no real difference in criminality between a solicitation and an attempt."24

A close examination of the problem indicates there is a vast difference between the criminality of these crimes. It is one thing for A to solicit B to shoot C and another matter to have A shoot at C and miss him. A system of law based upon Christianity could hardly be said to recognize the same degree of heinousness in acts basically different. Each crime is composed of different elements. How could they be said to be the same for the purpose of punishment? A casual glance at the statutory penalties explodes the view that the criminality of the two crimes is considered the same. The penalty for the attempt is often fixed at one-half of that for the completed crime whereas the penalty for solicitation is usually less.25

An examination of the works of May26, Clark,27 Clark & Marshall,28 and Russell29 on criminal law shows a uniformity of opinion that solicitation is a substantive crime distinct from the criminal attempt. May does not include the solicitation of a small crime within the class of indictable solicitations, but the others do. Enough has been gleaned from the treatises to permit a conclusion to the effect that considerable difference of opinion exists about the scope of the crime of solicitation although the majority of writers isolated it as a substantive crime at common law. As a further means of ascertaining the true principle applicable to this question some of the illuminating cases will be considered.

Common-law Development

In early times some instances of solicitation were said to be within the jurisdiction of the ecclesiastical court.30 A bare solicitation was not thought sufficient to generate a substantive crime as

241 McClain, Criminal Law, par. 220.
25New York Penal Law, ch. 41, art. 22, par. 261 is typical of the provision found in many statutes.
it was said the solicited crime should have been committed. A case in 1704 seems clear on that point, but nevertheless there were contrary opinions favoring the view that a bare solicitation was a substantive crime at common law. All uncertainty on this question was put to rest in 1801 when it was held that bare solicitation was a common law misdemeanor. The 1704 decision expressing a contrary view was repudiated and ignored as a misstatement of the law. In passing it is noted that the crime of solicitation paralleled in some respects the historical development of conspiracy. At one time it was contended that a bare conspiracy was not indictable but a conspiracy accompanied by overt acts was indictable. Finally it came to be held that the gist of the crime of conspiracy was the agreement of the conspirators, and that doctrine became the settled law. Today Russell states that the gist of the crime of solicitation is that the person solicited or incited has not committed the crime. A Massachusetts case interprets solicitation at common law as follows: "It is an indictable offense at common law for one to counsel and solicit another to commit a felony or other aggravated offense, although the solicitation is of no effect." Referring once again to the landmark decision in 1801, which is the crux of the question whether solicitation is a substantive crime distinct from the attempt, Rex v. Higgins held that soliciting a servant to steal goods from his master was a misdemeanor. The counsel for the defendant reverted to a case previously mentioned that was decided in 1704 and contended that a bare solicitation without other overt acts was merely a fruitless temptation and not a crime. LaBlanc, J. said: "A solicitation or inciting of another, by whatever means it is attempted, is an act done, and that such an act done with a criminal intent, is punishable by indictment has been clearly established by the several cases referred to." All that the case involved was a bare solicitation, and although the judges' reasons differed it was agreed by all that solicitation was a common law misdemeanor. It is important to note that the decision did not proceed upon the theory that the defendant was charged with an attempt to steal.

---

32 Rex v. Higgins, (1801) 2 East 5.
33 Russell, Crimes and Misdemeanors, 8th ed., p. 201.
34 Commonwealth v. Flagg, (1883) 135 Mass. 545.
35 Rex v. Higgins, (1801) 2 East 5, 23.
36 Rex v. Higgins, (1801) 2 East 5. It is only by distorting the decision that the minority can interpret it as an attempt.
The doctrine that solicitation is a substantive crime has been uniformly upheld by the English courts since the landmark decision in 1801. In that case a letter soliciting murder was sent to Johannesburg, but the solicitant never received it. Although the absence of the element of communication precluded the generation of solicitation, it did not prevent the defendant from being convicted of an attempt to commit the crime of solicitation. This decision merits approval as it properly differentiates between solicitation and attempt and recognizes the individuality of each crime. In a recent article Professor Arnold criticizes the orthodox method of approaching the problem in attempt cases and suggests a new technique for the courts in both attempt and solicitation cases. Professor Arnold states: "Nor does the distinction between solicitation and attempt rest on any such body of respectable authority that courts are compelled to continue it if they prefer a more realistic treatment." If you concede that each crime must be kept in its own compartment, how can you justify ignoring the distinction between them? Throughout the development of the cases solicitation has properly been isolated from the attempt. Often what is relative to one is immaterial to the other. In Stephen's Digest of Criminal Law the matter is summarized as follows: "Everyone who incites [solicits] any person to commit any crime commits a misdemeanor whether the crime is or is not committed."

United States

The development of the crime of solicitation in the United States differed in some respects from that of England. The following discussion will center around the point of departure and

---

37 Regina v. Gregory, (1867) L. R. 1 C. C. R. 77, upheld that doctrine after a severe attack.  
38 (1902) 66 J. P. 121, 18 T. L. R. 238. See note on case in (1902) 15 Harv. L. Rev. 672.  
39 (1902) 66 J. P. 121, 18 T. L. R. 238. See note on case in (1902) 15 Harv. L. Rev. 672.  
40 (1902) 15 Harv. L. Rev. 672 in referring to the case states: "The decision that the solicitation was incomplete seems correct."  
41 (1930) 40 Yale L. J. 53. See page 74 for explanation in detail.  
42 (1930) 40 Yale L. J. 53, 79.  
45 Art. 65, 7th ed.
contrast the principles underlying the conflicting views. In 1843 a New York court went off on a tangent and held under a general attempt statute that a solicitation to commit arson was indictable as an attempt to commit arson.\textsuperscript{46} This was revolutionary doctrine as it merged the solicitation into an attempt and ignored the separate identity of those crimes. As a result of that decision there arose what is known today as the minority rule. Further impetus was given to this anomalous doctrine by Bishop's treatise and the influence of the New York code in other jurisdictions. It should be observed that in the \textit{Bush Case} A solicited B to commit arson and furnished B with a match and promised him a reward. B ignored A's diabolical scheme and exposed the arsonous plot. It is well to note that such facts are typical of the crime of solicitation, but due to an erroneous analysis it was considered an attempt case. It is an example of a conviction for one crime on facts showing another. Nevertheless the \textit{Bush Case} has been cited favorably by some courts. Strange as it may seem one court uses the \textit{Bush Case} to uphold the doctrine that a bare solicitation is an attempt, while another court cites it as denying that doctrine. The latter court points out that in the \textit{Bush Case} the solicitor promised the solicitant a reward and furnished him with a match, and hence it is not a bare solicitation case. A third court says the case was decided incorrectly originally and that both courts relying on it are wrong in their interpretation as their conclusions rest upon a false premise. The third court presents the sound view in the opinion of the writer as it keeps the two crimes distinct, and if a solicitation situation is involved it treats the case as one of solicitation even though additional conduct such as an offer of reward and the furnishing of the machinery of destruction accompany the solicitation. The additional conduct is considered incidental to the basic crime. If the facts in the \textit{Bush Case} had been that A solicited B to commit arson, the opinion seems to indicate that it would not have been held an attempt as it was the offering of the reward and the giving of the match that caused the court to shift the solicitation into the attempt category. If A solicits B to commit arson the factual situation is basically different from that where A intending to commit arson lights a torch that is extinguished before any damage results. The solicitation is less likely than the attempt to result in the crime of arson as the solicitation involves the contingency of the solicitant being unwilling to

\textsuperscript{46}People v. Bush, (1843) 4 Hill (N.Y.) 133.
become a party to the crime. An authoritative treatise explains the difference as follows:

"From one point of view it may be said that the term attempt applies to a person who tries to commit the crime himself, and the terms solicitation or incitement to the person who tries to get another to commit the crime, who, if the crime were committed, would be an accessory before the fact."  

In the solicitation there is not that dangerous proximity to success that is found in the attempt. The inherent weakness of the Bush Case was its failure properly to observe the relation of the attempt to the completed crime and the difference between solicitation and attempt. As a contrast to the Bush Case one arising in Minnesota will be mentioned. It involved a charge of an attempt to commit extortion based upon a solicitation. The facts showed that A solicited B to commit extortion and paid B expense money for that purpose. Brown, C. J., said:

"Mere acts of preparation are not sufficient, nor does the naked solicitation of another to commit a crime, unaccompanied by acts and preparation of the character stated, constitute an attempt with the meaning of the law."  

The other angle of the question is likewise shown in a recent Missouri case in which the defendant was charged with an attempt to commit murder. The defendant had solicited another to commit the crime and paid $600 in advance and furnished a picture of the intended victim. The indictment for the attempt to commit murder was not upheld. White, J., said:

"Of course the defendant was guilty of soliciting another to commit the murder: a serious crime. but he was not charged with that, nor convicted of that offense. We must determine cases upon the law as it is written, and as it has been adjudged for generations."  

Wharton states:

"An attempt is such an intentional preliminary guilty act as will apparently result in the usual course of natural events, if not hindered by extraneous causes, in the commission of a deliberate crime. But this cannot be affirmed of advice given to another, which such other person is at full liberty to accept or reject."  

Wharton's interpretation is supported by a large number of decisions. The following statement is typical of many to be found in the cases: "Merely soliciting one to do an act is not an attempt to do that act."  

A few years after New York's faux pas Michigan

---

48 State v. Lampe, (1915) 105 Minn. 65, 154 N. W. 737.  
49 State v. Davis, (1928) 319 Mo. 1222, 6 S. W. (2d) 609.  
50 State v. Davis, (1928) 319 Mo. 1222, 1236, 6 S. W. (2d) 609, 616.  
had the opportunity of either following the merger theory promulgated by New York or walking in the trodden path, and it refused to adopt the New York rule. The clearness of the analysis makes it worth quoting as a final answer to the adherents of the opposite view. The court said:

"The charge in the information is made to rest entirely at last upon McDade's conduct in soliciting Blaney to burn the warehouse. The additional circumstance introduced, that he also furnished oil and matches, is not such a one as can be considered an essential ingredient of the substantive offense intended to be set forth. The addition of this fact in no manner helps to fill up the measure required by the statute, and the charge would be as valid without it as with it. If the provision relied on will support such a charge as that actually made, it would equally well support one based on solicitation, and not attended by the incidents introduced as to the furnishing of oil and matches."

The principle stated by the Michigan court in 1872 was a reiteration of the common law rule, and since its enunciation it has been accepted in most states. The minority rule which merges a solicitation into an attempt has been recognized to some extent in Georgia, Massachusetts, New York, Oregon, South Carolina.
In a recent interpretation of this question by a Missouri court it was stated: "Therefore in conformity with the weight of authority, we hold that merely soliciting one to commit a crime does not constitute an attempt." In passing it is to be noted that the queries propounded in the introduction relative to the inconsistent views now extant have in a sense been answered in the previous analysis. The development of the cases indicates that the failure of the courts to isolate the crime of solicitation and agree upon its common legal meaning has been the prime cause of a three-fold classification instead of a uniform one. By confusing the popular meaning of attempt and solicitation with the scientific and historical meaning, solicitation has been considered a substantive crime in one instance, an attempt in another, and no crime in the third. Furthermore, the failure to isolate each crime explains to some extent why the additional conduct accompanying a solicitation, such as the payment of money or the furnishing the machinery of destruction, is classified by some courts as an attempt instead of a solicitation. Before summarizing a glance will be taken at the statutes relating to solicitation.

**Statutory Aspects of Solicitation**

An examination of the statutes indicates that California is one of the few jurisdictions that has a basic general statute on solicitation in its penal code. It reads:

"Every person who solicits another to offer or accept 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 or violence, perjury, subornation of perjury, forgery or kidnapping, is punishable by imprisonment in the county jail not longer than one year or in the state prison not longer than five years, or by fine of not more than five thousand dollars. Such offence must be proved by the testimony of two witnesses, or of one witness and corroborating circumstances."

Three points to be noted about the above statute are: first that

---

50 In a recent interpretation of this question by a Missouri court it was stated: "Therefore in conformity with the weight of authority, we hold that merely soliciting one to commit a crime does not constitute an attempt." In passing it is to be noted that the queries propounded in the introduction relative to the inconsistent views now extant have in a sense been answered in the previous analysis. The development of the cases indicates that the failure of the courts to isolate the crime of solicitation and agree upon its common legal meaning has been the prime cause of a three-fold classification instead of a uniform one. By confusing the popular meaning of attempt and solicitation with the scientific and historical meaning, solicitation has been considered a substantive crime in one instance, an attempt in another, and no crime in the third. Furthermore, the failure to isolate each crime explains to some extent why the additional conduct accompanying a solicitation, such as the payment of money or the furnishing the machinery of destruction, is classified by some courts as an attempt instead of a solicitation. Before summarizing a glance will be taken at the statutes relating to solicitation.

**Statutory Aspects of Solicitation**

An examination of the statutes indicates that California is one of the few jurisdictions that has a basic general statute on solicitation in its penal code. It reads:

"Every person who solicits another to offer or accept 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 or violence, perjury, subornation of perjury, forgery or kidnapping, is punishable by imprisonment in the county jail not longer than one year or in the state prison not longer than five years, or by fine of not more than five thousand dollars. Such offence must be proved by the testimony of two witnesses, or of one witness and corroborating circumstances."

Three points to be noted about the above statute are: first that

---

51 State v. Taylor, (1906) 47 Or. 455, 84 Pac. 82.
53 Collins v. State, (1870) 3 Heisk, (Tenn.) 14.
54 State v. Davis, (1928) 319 Mo. 1222, 1229, 6 S. W. (2d) 609, 612, by Davis, C.
55 California, Penal Code, (Deering) 1931, par. 653f, p. 399.
solicitation is a distinct crime, second that solicitation is distinguished from attempt, third that the penalties for the crime of solicitation are generally less than for the attempts. Illinois is typical of other states that do not have a basic general solicitation statute like that of California. In this group a few aspects of solicitation are covered by separate enactment. Illinois is similar to California in that it holds solicitation is a distinct crime. As the common law prevails in Illinois when no other provision is made by statute, solicitation is considered a common law misdemeanor. In states in which the common law has been abolished it often happens that solicitations which would be criminal are considered non-criminal on account of statutory omission. New York resembles Illinois in that it has no basic general solicitation statute and only occasionally provides for specific kinds of solicitation. It has often placed solicitations in the class of criminal attempts, but Illinois has never followed New York's example in this respect. It appears that New York tortured its attempt statute in order to include solicitations within it and thus established an unusual precedent. New York invariably classifies a solicitation as falling within its attempt statute while California revolts at such practice. Oklahoma is like New York in that it considers only those acts crimes which are within its penal code, but it differs from New York in that it does not extend its attempt statute to include solicitations. Like New York it differs from Illinois in that it has abolished the common law of crimes, and thus it permits a non-criminal classification of solicitations which might otherwise be criminal. Probably that explains why Oklahoma and New York sometimes indict for an attempt on evidence showing solicitation.

Although the four states just mentioned presented some variations typical of those jurisdictions, it appears that statutory solicitation is generally of two types. The first, a basic one of the general class similar to the statute in California; the second type, a specific one covering a particular act of solicitation such as is found in the federal statutes and in a large number of the states.

---

The statutory analysis also showed that as a general rule the crime of solicitation is penalized less severely than the criminal attempt in parallel instances.66

CONCLUSION

In England and the United States the solicitation of any crime is generally considered a misdemeanor except in cases where it has been made a felony by statute. A few jurisdictions in the United States qualify this rule by holding that the solicitation of minor misdemeanors is not criminal. In states where the common law has been abolished and solicitation is exclusively statutory it is usually classified as a misdemeanor except where it is provided that it is a felony. And in statutory jurisdictions where there is not a general solicitation statute only those solicitations specifically provided for by special act are criminal.

In the United States but not in England there is a further classification. If the solicitation is accompanied by additional conduct such as payment or offering of a reward or furnishing the machinery of destruction (i.e., guns or matches) the majority rule holds that the resulting crime is solicitation while a fading minority repudiate that interpretation and improperly merge the solicitation into an attempt and prosecute for that crime instead of the solicitation.

All solicitations to commit crime should be considered criminal as the solicitor of either a major or minor crime tends to cause a breach of the peace that is highly prejudicial to the general welfare. The theory that criminal solicitation should only extend to felonies was early exploded, and that is also true of the hypothesis that the rule extended to malum in se crimes but not to malum prohibitum offences. A multitude of citations indicate it is criminal to solicit the commission of any crime.

---