



ICJE, P.O. Box 293, Montgomery, AL 36101 \* 334-280-0020

ICJE Feature Article, May 6, 2002

## **Double Jeopardy: When it Applies**

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### **Dual Sovereignty Doctrine - Federal Government/State Government**

It is important to be aware that the laws of the United States and the laws of an individual state may be violated by the same single action. Certain criminal conduct may result in prosecution in more than one court system, for the same course of conduct. Does prosecution by the federal government and a state government violate double jeopardy? Does prosecution by two different states violate double jeopardy?

Consider a 1922 Supreme Court case: **United States v. Lanza**, 43 S. Ct. 141.

Vito Lanza was convicted of violating the Prohibition Act of the state of Washington. The United States then charged Mr. Lanza for violating provisions of the National Prohibition Act. Mr. Lanza claimed that his prosecution by the United States was in violation of the double jeopardy clause of the Fifth Amendment of the United States Constitution. The United States Supreme Court held, "...an act denounced as a crime by both national and state sovereignties is an offense against the peace and dignity of both and may be punished by each. The Fifth Amendment, like all other guaranties in the first eight amendments, applies only to proceedings by the federal government, and the double jeopardy therein forbidden is a second prosecution under the authority of the federal government after a first trial for the same offense under the same authority. Here the same act was an offense against the state of Washington, because a violation of its law, and also an offense against the United States under the National Prohibition Act. The defendant thus committed two different offenses by the same act, and a conviction by a court of Washington of the offense against that state is not a conviction of the different offense against the United States, and so is not double jeopardy." (**United States v. Lanza**, 43 S. Ct. 141, 142-143)

## **Dual Sovereignty Doctrine - Two State Governments (Georgia Gave Him Life/Alabama Gave Him Death)**

It is legally permissible for two states to prosecute the same defendant for the same offense?

Consider a 1985 Supreme Court case: **Heath v. Alabama**, 106 S. Ct. 433, 1985.

The defendant, Larry Gene Heath, was convicted of having hired Charles Owens and Gregory Lumpkin to kill his wife, Rebecca McGuire Heath, for \$2,000. Mr. Heath left his residence in Alabama to meet Mr. Owens and Mr. Lumpkin in Georgia, just across the Alabama state line. Mr. Heath led the two men back to his residence in Alabama, gave them the keys to his car and left in his girlfriend's pickup truck. The car belonging to the Heaths was later found on the side of a road in Troup County, Georgia. Mrs. Heath's body was inside. The cause of death was a gunshot wound to the head.

Mr. Heath pleaded guilty to "malice murder" in Georgia in exchange for a sentence of life imprisonment. Later, he was prosecuted in an Alabama court for murder during a kidnapping. Mr. Heath received a death sentence from the Alabama court. Mr. Heath appealed, but the Alabama Court of Criminal Appeals and the Supreme Court of Alabama affirmed the conviction. Mr. Heath then appealed to the United States Supreme Court, arguing that his conviction in Georgia barred his prosecution in Alabama for the same conduct. The United States Supreme Court held that successive prosecutions by two states for the same conduct were not barred by the double jeopardy clause. "In applying the dual sovereignty doctrine, then, the crucial determination is whether the two entities that seek successfully to prosecute a defendant for the same course of conduct can be termed separate sovereigns. This determination turns on whether the two entities draw their authority to punish the offender from distinct sources of power...The States are no less sovereign with respect to each other than they are with respect to the Federal Government. Their powers to undertake criminal prosecutions derive from separate and independent sources of power and authority originally belonging to them before admission to the Union and preserved to them by the Tenth Amendment." (**Heath v. Alabama**, 106 S. Ct. 433, 437-438)

### **Conclusion**

The same defendant may be tried, in some cases, by more than one government without violating double jeopardy. Each state government is considered to be a separate government. The federal government is a government separate from state governments. The material in the **Lanza** case relates to the laws of a state and the federal government concerning prohibition, but it also raises the constitutional issue of double jeopardy. The material in the **Heath** case relates to the laws of two different states, Georgia and Alabama, but it too raises the constitutional issue of double jeopardy. The United States Supreme Court has held that two separate states may convict a person for the same offense without violating double jeopardy. The United

States Supreme Court has held that the federal government and a state government may convict a person for the same offense without violating double jeopardy.

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