



Patrick Hanigan



Thomas Hanigan

Double jeopardy and the Hanigan trial

By HOWARD FISHER
The Arizona Daily Star

BISEEE — Despite having been acquitted once, the Hanigan brothers are going to trial again for robbing three Mexican nationals. Critics charge this violates the Constitution's protection against double jeopardy.

Thomas and Patrick Hanigan were acquitted two years ago in Cochise County Superior Court of charges of kidnapping, robbery and assault. The new charges result from the same incident that led to the first trial.

It is likely the defense will argue that the Hanigans' right not to be prosecuted twice for the same crime is being violated. But the law — double jeopardy notwithstanding — makes a distinction between two separate jurisdictions, the state and

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The Constitution's double jeopardy clause is interpreted to mean that neither the state nor the federal government can try a defendant twice. State and federal jurisdictions are allowed one attempt each.

The Hanigans are accused of robbing three Mexican nationals in 1961 of \$18 and their clothing. They are also charged with aiding and abetting each other (and their father, George, who died before the trial).

In the state trial, the jury found the prosecution had not proved the charges of robbery, assault and kidnapping.

Hispanic-American groups protested. They argued that because the trial was held in Bisbee and because the jury was all white, conviction was impossible. They asked for, and received, federal intervention.

U.S. Attorney Michael Hawkins says that another jury should consider the robbery charge. The reason, Hawkins says, is that the Mexicans were looking for work in agricultural fields — which involves interstate commerce — when they were detained.

Despite what some might see as an unfair situation, Hawkins has the law on his side.

In an 1894 Supreme Court case, *U.S. vs. Borchart*, defense attorneys argued that because their clients were tried and acquitted of manslaughter charges in an Oregon court, the federal government could not come back and indict them again on federal manslaughter charges.

But the court ruled that the men, accused of killing an Indian on a reservation, could indeed face additional federal charges for the same act.

"A person living under two gov-

ernments or jurisdictions, as does every inhabitant of the states of this union, may commit two crimes by doing or omitting one act — one against the state and the other against the United States."

In 1932, Vito Lanza, Dick Barto, Fresno Mazzoncini and Eugini Mazzoncini had been convicted in a State of Washington court of possession, manufacture and transportation of liquor. Each was fined \$750.

However, this was during Prohibition and the federal government subsequently filed charges of possession, manufacture and transportation of liquor against the three men. The high court upheld the indictment.

The court said:

"We have here two sovereignties, deriving power from different sources, capable of dealing with the same subject matter within the same territory. Each may, without interference by the other, enact laws to secure prohibition.

"It follows that 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 guarantees in the first eight amendments, applies only to proceedings by the federal government."

While the federal government should be concerned, particularly because of allegations of civil rights violations, the new indictment should not have been sought.

First, the Hanigans were not acquitted because of "hometown favoritism." The state never proved its case.

Contacted after the trial, jurors pointed out that the defense presented alibi witnesses for Patrick Hanigan who accounted for his whereabouts for all but 40 minutes of the day. These claims went unchallenged by the state.

Jurors cited other problems, including lack of corroborative evidence at the scene, failure to account for the victims' whereabouts for several hours after the incident. Jurors also pointed to inconsistencies in their victims' stories.

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The jury had no choice except to acquit.

Second, the U.S. Attorney's office has used a legal technicality — robbery affecting interstate commerce — allegedly to secure justice. But justice was done in the state court. Assuming the federal government comes up with no better evidence than the state did, the outcome will likely be the same.

Hawkins would do better if he were to announce that in any incidents involving civil rights, the federal government will investigate and, if necessary, prosecute before the state court decides to prosecute.

Howard Fisher covers Cochise County for The Arizona Daily Star.