

Double-jeopardy appeal will delay Hanigans' trial

By AL ARIAV
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The federal trial of Thomas H. and Patrick Hanigan will be delayed indefinitely by an appeal charging that the trial would constitute double jeopardy, the brothers' attorney said yesterday.

The attorney, Alex Gaynes of Tucson, said a decision on a similar appeal was reached in two months by the same appellate court, the 9th Circuit Court of Appeals in San Francisco. The Hanigans' federal trial had been scheduled to start Jan. 22.

Gaynes said again that the decision to prosecute was politically motivated.

U.S. District Judge Richard Bilby rejected the double-jeopardy motion Dec. 13. He said the "prosecution of a federal crime arising out of the same factual situation which resulted in a state prosecution does not constitute double jeopardy."

The Hanigans were acquitted two years ago in Cochise County Superior Court on 22 charges of kidnapping, assaulting and robbing three Mexicans. The federal indictment accuses them of obstructing interstate commerce.

Gaynes said he will also argue before the appellate court that interstate commerce clauses under the federal Hobbs Act should not be applied to cases involving illegal aliens, and that the federal government lacks jurisdiction under that act.

"Do all robberies and extortions fall under the Hobbs Act and federal jurisdiction?" Gaynes asked, and, "Will the guy who rolled the drunk for a dime be prosecuted because he obstructed interstate commerce?"

The lawyer said federal prosecutors are interpreting the Hobbs Act too broadly.

And Bilby has said the law's language is broad in prohibiting interference with commerce "in any way or degree." But the judge said the U.S. Supreme Court and 9th Circuit Court of Appeals have repeatedly ruled in favor of a broad interpretation of the Hobbs Act.

Gaynes said the defense briefs for the appeal are due Jan. 25, with final written correspondence between defense lawyers and prosecutors due in late February.

In a related matter, Gaynes said yesterday he is "scared to death" by the efforts

of a group to support prosecution of the Hanigans.

"There are people who want their hides," he said. "I want the trial to be fair, and passions and prejudices that are displayed frighten me very much."

The lawyer said he has been receiving hate calls since he took the case, and that flyers circulated in Tucson calling for a "vigorous and diligent prosecution" of the Hanigans are "a dangerous kind of propaganda."

About 200 such flyers have been circulated by the Tucson Committee for Human

Rights in Latin America, said committee member Erika Kreider.

The flyers urge people to attend the trial, send donations to pay for a bilingual stenographer and sign a petition demanding vigorous and diligent prosecution to be sent to U.S. Attorney General Benjamin Civiletti.

Gaynes said that although Bilby is considering moving the trial from Tucson because of extensive publicity, coverage of the case has been fair. "The publicity has been evenly balanced," the defense lawyer said.