Double Jeopardy and its Law

Let’s change wording of the 5th amendment so that clearly guilty individuals do not get away with murder-literally!

Tag words: double jeopardy; 5th amendment; US constitution

Authors: Edmond Laryea, Lequan Jefferson with Julie M. Fagan, Ph.D

Summary:

Individuals found not guilty of a crime cannot be retried even if new evidence is submitted that would likely convict them. According to the 5th amendment of the US constitution □ No person shall be subject for the same offense to be put in jeopardy twice of life or lime. Several social media sites were contacted which requested that people write to their legislators to demand that the wording of the 5th amendment be changed so that clearly guilty individuals do not get away with murder-literally!!! (EL)

http://www.youtube.com/watch?v=bG7qAAYPSAo

**Listed on YouTube under “Double Jeopardy Law”

Introduction

(EL) Initially, we approached this project through researching online about the amendments and different way we can make alterations to the constitution. During literary research we came across two court cases that we felt were significantly relevant to our topic. Casey Anthony and O.J. Simpson were both individuals who had high profile cases involving murder and final verdict were ones that no one saw coming, and were also something that the US citizens found very controversial.

Most state constitutions provide the right against double jeopardy, or what people know as the right to former jeopardy. In some states where the constitution does not necessarily abide by the right against double jeopardy, the Fifth Amendment still protects criminal defendants. We looked into the grounds for Double Jeopardy Rights, and found that there were five major reasons why the U.S. Constitution provides double jeopardy protections. These reasons included the prevention of government from using its advanced resources to impose and incorrectly convict innocent people; to protect individuals by preserving the veracity of the criminal process; to restrict the prosecution’s power to bring criminal charges against a defendant; and to eliminate judicial authority to impose multiple punishments that are not otherwise restricted by law.
The U.S. Supreme Court has detained that jeopardy only append to a court case during a jury trial when the jury is sworn. A criminal trial that does not involve a jury, jeopardy connects when the first witness is under oath. In juvenile delinquency adjudications, jeopardy attaches when the court first hears the provided evidence. If the defendant or juvenile defendant accepts a plea bargain, jeopardy is only likely to attach only after courts accepts a plea deal. Once jeopardy concludes in a criminal court case, government is not allowed to keep a defendant in custody for further court proceedings for the same offense; this in essence leads to questions about double jeopardy possibly being raised. We learned that jeopardy terminates after acquittal, after dismissal, after a mistrial, on appeal after conviction.

Jeopardy is viewed upon as continuing, if jeopardy does not conclude at the end of a criminal proceeding. In some cases of continuing jeopardy, further criminal proceedings are allowed in order to resolve the dilemma. Continuing jeopardy usually applies when a trial results in a dismissal or mistrial, for reasons that do not involve the guilt or innocence of the defendant; keeping in mind that doing so violates the Fourth Amendment’s right to a speedy trial.


History

(LJ) The history behind double jeopardy oddly came about as an unspoken agreement within the legal system many years ago in England and Romans justice system. There have been many who have tried to find the history behind double jeopardy and could not trace double jeopardy to any one particular criminal justice system. Many have said that it’s impossible to trace the doctrine to any distinct origin, one court blithely announcing that “it seems to have been always embedded in the common law of England, as well as in the Roman law, and doubtless in every other system of jurisprudence, and instead of having a specific origin, it simply always existed.”(Jay A. Sigler). In time double jeopardy simply became an accepted judicial technique to have a resort to the common law in order to officially have a label for double jeopardy. Stated within the” Fifth Amendment to the United States Constitution, “No person shall be subject for the same offense to be put in jeopardy twice of life or limb”. Also double jeopardy was simply a procedural defense that forbids a defendant from being tried again on the same or similar charges following a legitimate acquittal or conviction to limit abuse by the government in repeated prosecution for the same offense as a means of harassment of oppression. There are three essential protections included in the double jeopardy principle that somewhat protects the defendant in court from being tried more than once for the same or similar crime.

. Being tried for the same crime after and acquittal

Meaning: after the person was acquitted for the crime and a police officer found evidence conclusively proving the guilt of someone previously acquitted, there is little they can do because the defendant may not be tried again at least not on the same or a substantially similar charge.

. Retrial after a conviction, unless the conviction has been reversed, vacated or otherwise nullified
Meaning: The U.S. Supreme Court filed laws allowing the government to appeal criminal sentences in limited circumstances. The court ruled that sentences were not accorded the same constitutional finality as jury verdicts under the double jeopardy clause, and giving this right of appeal also did not put the defendant at risk of a succession of prosecutions.

**Being punished multiple times for the same offense**

Meaning: Double jeopardy is also not implicated for separate offenses or in separate jurisdictions arising from the same act. “A …offense and a conspiracy to commit that offense are not the same offense for double jeopardy purposes”

**The Flaws of Double Jeopardy**

(EL)

- The Pros and Cons of this Law

**Pros of Double Jeopardy**

One of the biggest problems with double jeopardy is that individuals who are clearly guilty of a crime due to the emergence of new evidence or a valid confession are not being properly punished for the crimes they have committed. After all the research that we have indulged in, we believe that that people should be penalized for the criminal behaviors, and our justice system should be modified in a way to be able to allow that. Collectively, one of our greatest responsibilities is to make sure miscarriages of justice are not committed on victims as on accused. An offence that was committed a decade ago should not come to a close because time has passed, or because the perpetrator has managed to avoid justice in the years past. Decisions made in order to charger individuals should solely reflect on likelihood of possible guilt, rather the fact that the individual was trailed before. For example, some people who were wrongly acquitted, or the murderer whose voice was not identifiable on the tape in previous investigations or the rapists whose DNA samples was not properly scanned due to the lack of a better DNA testing knowledge could all be retrial due to the law of double jeopardy.

- Our justice system can be questioned when people who are clearly the offenders of a crime are left unpunished and with no consequence. According to the view of the people, through their debates about the pros and cons of Double Jeopardy, they state that “Our bargain with the state entails the state’s right to judge the individual because the state protects the individual: if our attackers roam the streets because an arbitrary legal rule exempts them from prosecution despite clear guilt, then that system has broken down. Victims deserve justice and it is an insult to them, and all of us, to see their persecutors go free”.

- There are really never any guarantees that a second trial will be granted, poor procedure in prosecution service can be engaged in with or without this improvement and is a separate issue to this debate. In recent time times there have been incremental improvements in the technology of crime solving. Features such as DNA testing, voice identification technology, facial mapping techniques are all now available in order to
allow us to solve cases and show guilt in individuals whose escape from sentence occurred only because of a lack of satisfactory evidence.

- In the case of a retrial, all the regulations and laws that protect the accused at the first trial will be in place at a second trial. Assumption of innocence, along with valid proof beyond reasonable doubt, the judge’s duty to appropriately direct the jury, the right to a fair hearing and experienced counsel, will all be applicable in order to prevent any miscarriages of justice from occurring. A lot of the recent push for the end of the double jeopardy rule comes from the common use of DNA testing, which has allowed many old cases to be revisited with acquirement of convincing new evidence of guilt and of innocence. Once a certain amount of time has gone by, the impact of DNA testing will be greatly reduced and there will be very few retrials.

**Cons of Double Jeopardy**

Clear results are one of the most important things a justice system can provide. The proposition may quarrel that double jeopardy will only apply to unique cases; even though in essence every case is capable of being subject to further analysis. Individuals found innocent, or those who were acquitted will never be sure that another prosecution might not happen in the near future. Furthermore, being guilty is not provable in the same way in a second trial. It is no longer a test of verification; the evidence from the last trial is all alleged to be precise and can’t be acceptably disputed.

It may not matter how controversial the proposition gets: according to the debaters about this topic, they feel that the proposition is not just protecting the ‘evil people;’ the double jeopardy law protects everyone from the danger of constant harassment from the state. The opposition would much rather see someone found guilty occasionally go free, rather than innocent individuals trialed over and over again.

The rule of law will in fact come to imply less if it exists in a continuous state of possible overturn. People need to be able to feel protected from the state in other ways, “too from the cruel or obsessed policeman that will pursue a case because he ‘knows’ the accused, properly acquitted in a court of law, to be guilty nevertheless’ as stated in the in” according to the debate article. That is in the overall nature of the police force to continue investigating because that is what is being asked of them to do. They are asked to search for guilt unless provided with a rule implying them to stop. Given that people are talking about a small proportion of cases, it is better to have the principle of conclusiveness, just because the law enforcement will spend immense amounts of time and effort, along with a large amount of money on cases that are already resolved, to the loss of crimes that will receive less attention.

- In essence if the double jeopardy law is abolished, police work will be sloppier, simply because police detectives will know that the insurance of a second trial exists. “The ‘one-shot’ rule forces investigations and prosecutions to be of as high a quality as possible”. This would grant law enforcement and the prosecution the right to prosecute a person if the evidence against them can be reanalyzed. Surely enough almost all cases could see such improvement in investigatory techniques, which will then allow the state to pursue individuals at will.
Another factor will be that juries will know that a retrial is taking place, because evidence will have to be read from the first trial where witnesses have lost their lives, because notes from the previous trial will be made available to advocates and the accused, because the legal procedure of the last trial will be subject to discussion in the new trial. If a jury knows a case has been brought again, there will be an assumption made that the accused is guilty because a higher court has previously determined that the new evidence makes the acquitted individual look guilty after all, and so granted a retrial.

Reasonably, within the court system there is a higher anticipation upon the state, with all its immense authority, than on the individual, who has minimal power to investigate and acquire evidence in his/her defense, who personally stands to lose freedom on the decision to be made. Part of this means that there is a burden of proof; the state must prove what is known as beyond reasonable doubt in criminal law if doubt exists, then, and only then a conviction ought to be overturned. It’s a dishonest to say there should be somewhat of an equality between the parties, especially since there is no burden to prove beyond doubt on the accused.


Casey Anthony case

(LJ)The Casey Anthony case was one of the most talked about cases since the OJ Simpson case years ago that shocked Americas with its stunningly acquittal to a murder that America and everyone within the criminal justice system new that the outcome of the trial was wrong. Casey Anthony was a young mother from Florida that had a baby at an early age, due to unwanted circumstances. In April 13, 2009 Ms Anthony was finally being charged of the killing of her daughter Caylee Anthony death in the previous year of 2008. Ms Anthony was accused of killing her two year old child with chloroform and duct tape. Ms Anthony was being charged with first degree murder, aggravated child abuse, and aggravated manslaughter of a child. The many twist and turns that happen within the case really shocked authorities.

Ms Anthony daughter was not reported missing until a month later after her daughter was found in the trunk of her car and a car pound. The idea of Caylee’s death came about when the pound owner called Cindy Anthony the mother of Casey and stated “the damn car smelled like it was a dead body in the car” which influenced Cindy Anthony, Casey Anthony mother to file a missing report on two year old Caylee. Cindy Anthony never had a reason to report her granddaughter being missing because Casey reportedly told George and Cindy Anthony that Caylee was at her nanny’s named Zanny while she was working at Universal studios as an event coordinator which both where lies. When Casey Anthony was confronted with the murder of her two year old daughter, Casey lied and said she was abducted by her nanny Zanny which never existed. With every statement that Casey Anthony was making she was digging herself in a deeper whole. The more she talked the more evidence she was allowing authorities to gain from her.

Their where many different reasons why the death of Caylee happen that came up in court but not hard enough to convict Ms Anthony at the time, for instance, in court it was argued that three pieces of duct tape found with Caylee’s skeletal remains were the murder weapon but
there were no finger prints on the tape and the only unidentified DNA detected excluded both Caylee and her mother. The fact that Caylee body was not discovered until six months after her death, much of the evidence had decomposed or degraded which made it hard to hold up in court. Also in time investigators found in Casey’s car evidence of Chloroform that was found in the back of Ms Anthony car and on the body of her daughter when they found Caylee in a bag in wooded area. Due to this, The finding lead up to the findings of chloroform being searched on Ms Anthony’s family home computer on how to make chloroform.

The more the case went on the more evidence directed towards Ms Anthony killing her daughter, although the evidence showed she did it most of the evidence could not directly tie her to the murder of her daughter. In reaction to all the lies the Ms Anthony told authorities had a master plane to directly put Casey Anthony in the hands of her daughter’s murder. Authorities believed that Ms Anthony killed her daughter because she was a young mother at the age of 22 that wasn’t ready to take care of a child and wanted to enjoy life. Authorities stated that after Casey Anthony killed her daughter she was seen out at a night club within days in a hot body contest also the jury was showed Casey new tattoo of words saying “Bella Vita” which means in Italian “beautiful life”.

**O.J. Simpson Trail**

(EL)

The OJ Simpson murder case, which was known as “The People of the State of California v. Orenthal James Simpson” was the trial of OJ Simpson held in Los Angeles County, California superior Court in 1995. Former NFL standout and actor OJ Simpson was tried on two counts of murder following the death of his ex-wife Nicole Brown Simpson and Ronald Goldman in June of ‘94. This case in particular has been described as the most publicized criminal trial in history. Eventually, after a lengthy trial that spanned over nine months Simpson was acquitted. Led by Robert Shapiro and the Johnnie Cochran, Simpson hired one the most highly profiled defense team in the country. L.A. county believed it had a solid prosecution case, but Cochran was able to influence the jurors that there was reasonable doubt about the DNA evidence including that of the blood sample evidence he believed was allegedly mishandled by lab scientists and technicians, also about the circumstances surrounding other evidence. Cochran and the defense team also alleged other wrongdoings by the LAPD.

Shortly afterward, both the families of Goldman and Brown sued Simpson for damages in a civil trial. About two years later a jury collectively discovered there was a prevalence of proof to hold Simpson accountable for damages in the wrongful death of Goldman and battery of Brown. Three years ago on February 21, 2008, a Los Angeles court supported a renewal of the civil judgment against Simpson.


**Service Project**

(EL)

Our service project primarily focuses on spreading awareness of the Double Jeopardy Law. After gathering enough information about double jeopardy our primary focus for our
service project was not limited to only spread awareness but also to find out about how much people know about this law and from where did they acquire this information. We picked the Hale Center at Rutgers University for our service project. We asked people that we knew on Facebook, by posting a Status asking “What are your perspectives on the Casey Anthony and OJ Simpson Trials?” and we also asked “What do you know about Double Jeopardy?” We used this tool to get feedback about what type of awareness people had of double jeopardy. We also posted a video that was designed to have some shock factor to it. The video was posted on YouTube and in the description of the video; we wrote “Individuals found not guilty of a crime cannot be retried even if new evidence is submitted that would likely convict them. According to the 5th amendment of the US constitution ‘No person shall be subject for the same offense to be put in jeopardy twice of life or limb”. Write to your legislator to demand that the wording of the 5th amendment be changed so that clearly guilty individuals do not get away with murder-literally!!! This effectively serves as our service project as it gets the information out to all those that view the video to write to their legislator to change the wording of the 5th Amendment. The video was also sent to several main stream news media, with the hope that they will further research these threats and spread the information which we have gathered. The news outlets that we contacted were the Los Angeles Times and the Orlando Sentinel.

The letter below was sent to several media sites. These include:


CASEY ANTHONY

http://www.cayleedaily.com/


http://www.facebook.com/pages/Anti-Casey-Anthony-Page/182187001842047

http://www.facebook.com/pages/Wheres-Casey-Anthony-sightings/206284922752184


http://www.facebook.com/CaseyAnthonyLatestNews

http://theofficialcaseyanthonywebsite.com/up-to-the-minute-news.php

http://community.discovery.com/eve/forums/a/frm/f/3581916879

http://regator.com/whatshot/Casey+Anthony/

OJ SIMPSON
Individuals found not guilty of a crime cannot be retried even if new evidence is submitted that would likely convict them. According to the 5th amendment of the US constitution No person shall be subject for the same offense to be put in jeopardy twice of life or limb. Please write to your legislators to demand that the wording of the 5th amendment be changed so that clearly guilty individuals do not get away with murder-literally!!!

Below is a sample letter which you could send to your legislator to express your dissatisfaction with the current Double Jeopardy law. You can cut and paste the letter below and add your 2 cents in. Then you need to send it to YOUR legislators. The US Congress consists of the Senate (there are 100 senators total -2 per state) and the House of Representatives. There are 435 members of the House of Representatives which are apportioned among the states by population.

To identify your State House rep, go to http://www.house.gov/ and plug in your zip code.
To identify your state senators, go to http://www.senate.gov/ and plug in your state.

Sample letter to the legislator
Dear ____:

The Double Jeopardy Law that arises from the Fifth Amendment to the United States Constitution contains flaws in the amendment that should be reworded. The clause states: no person shall be subject for the same offense to be twice put in jeopardy of life or limb. We believe that there should be changes made in the wording of this law, such that if new evidence were to arise, by the way of DNA samples for example, that an individual, who was once acquitted can be retried. We are asking you together with your fellow legislators to amend the constitution so that people truly guilty of a crime could be prosecuted.

Thank you: signed ____________

Who is my legislator?

Please take my letter and send it to your legislators or make your own letter to inform your legislators your opinion on double jeopardy. If the legislators receive a lot of letters, then they may consider changing the constitution.

**Procedures needed to take place to amend the Constitution**

(EL)

Article Five of the United Stated Constitution describes the process whereby the Constitution may be altered. Such amendments may be proposed by the United States Congress or by a national convention assembled at the request of the legislatures of at least two-thirds of the states. The method of proposal by national convention has been attempted twice, but never succeeded. The method of proposal by Congress requires a supermajority of two-thirds of both houses; this means two-thirds of those members voting in each house assuming that a quorum exists when the vote is cast and not necessarily two-thirds of the entire membership. Amendment proposals generally contain a deadline before which the ratification by states must be completed, but the legal status of such a deadline remains unsettled. To become valid, an amendment must then be ratified by three-fourths of the states, that is, by 38 states, either by their legislatures or by ratifying conventions. States choosing the convention method usually hold elections specifically for the purpose of choosing delegates to the convention. Once certified by the Archivist of the United States, the amendment takes effect according to its provisions and the other rules of the constitution.


**Letter to Member of State Legislature**

(EL)

Dear Senator Smith of NJ House of Representatives,

The Double Jeopardy Law that arises from the Fifth Amendment to the United States Constitution, contains flaws in the amendment that should be reworded. The clause states: “no
person shall be subject for the same offense to be twice put in jeopardy of life or limb”

I am concerned because the amendment, as currently written:

No person is to be placed in jeopardy more than once for the same offense. The Fifth Amendment of the United States Constitution embodies that principle, and it is binding on the states by virtue of the Fourteenth Amendment. A prosecution of a defendant for a violation of the same provision of the statutes based upon the same facts as a former prosecution is barred by such former prosecution under the following circumstances:

1. The former prosecution resulted in an acquittal by a finding of not guilty by the trier of fact or in a determination that there was insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense is an acquittal of the greater inclusive offense, although the conviction is subsequently set aside.

2. The former prosecution was terminated, after the complaint had been filed or the indictment found, by a final order or judgment for the defendant, which has not been set aside, reversed, or vacated and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense. This subsection shall not apply to an order or judgment quashing an indictment prior to trial.

3. The former prosecution resulted in a conviction. There is a conviction if the prosecution resulted in a judgment of conviction which has not been reversed or vacated, a verdict of guilty which has not been set aside and which is capable of supporting a judgment, or a plea of guilty accepted by the court. In the latter two cases failure to enter judgment must be for a reason other than a motion of the defendant.

4. The former prosecution was improperly terminated. Except as provided in this subsection, there is an improper termination of a prosecution if the termination is for reasons not amounting to an acquittal and it takes place after the jury was impaneled and sworn or, in a trial before a court without a jury. Termination under any of the following circumstances is not improper:

(1) The defendant consents to the termination or waives, by motion to dismiss or otherwise, his right to object to the termination.
(2) The trial court finds that the termination is necessary because of the failure of the jury to agree upon a verdict after a reasonable time for deliberation has been allowed.
(3) The trial court finds that the termination is required by a sufficient legal reason and a manifest or absolute or overriding necessity
Please oppose this Amendment in its current form, and allow for modifications to be made in order to change the language in this Amendment. We believe that there should be changes made in the wording of this law in order to the point that if new evidence were to arise, by the way of DNA samples, that an individual, who was once acquitted can be retried. Double Jeopardy arose as a problem when we closely evaluated the Case trials of OJ Simpson and Casey Anthony. Myself and my peers feel that both these two individuals are guilty. Although we believe that they are guilty, if new evidence were to arise neither one of them would be re-trialed because of the Double Jeopardy Law. Therefore, we believe that there should be some type of modification to this law in order to serve justice.

Sincerely,
Edmond Laryea

**Editorials**

(EL)
Sent to Los Angeles Times (7/26/11)

Good Afternoon Mr. Stanton,

I am a Rutgers University student who is currently in his senior year. For one of my courses, it was required for us to analyze the Double Jeopardy Law and take a stand on why this is important and how it affects court cases. This letter was written to you and the LA Times, because one of the cases that we analyzed included the Trial of O.J. Simpson. Due to the fact that this case took place in the Los Angeles area we felt as though you were the best possible source to get this information out to. Although we believe that Mr. Simpson is guilty, he cannot be re-trialed due to the law of Double jeopardy. Overall, we believe that this law should be changed or modified to a point where if any new evidence or DNA samples were found, a person would be able to be trialed on the same counts, or charges. I think it is right to make the public aware of this Law and inform them on the possible flaws that surround this law. I believe we should at least get an input of how people feel about this. Thank you for everything.

Sincerely, Edmond Laryea

(LQ)
Sent to Orlando Sentinel (7/27/11)

Dear Orlando Sentinel,

On June 17th 2011, when Casey Anthony was released from prison I think it really pointed out the flaws we have in our justice system. There was so much evidence and emotion behind this case that it put the process of our courts in every one’s living room. While I personally think she’s guilty, she will never see a prison cell for the death of her baby daughter Caylee Anthony. Even though there has been evidence found after her case, it can’t be used against her in a court
of law because of double jeopardy. Double jeopardy allows Americans the right to not be tried twice for the same offense. Just like the O.J Simpson trial that sweep the nation, Casey Anthony will always be known as guilty, just like him. Too bad neither prosecution could prove it in their respective cases. Because of double jeopardy two guilty people were allowed to walk free. While I respect our nation’s justice system I think we need to change the double jeopardy law for the sake of all the victims who will never see justice.

In our paper, we talk about how double jeopardy affects people within the Federal and State court systems. We will argue both the positive and negative sides of double jeopardy, using the Casey Anthony trial of June 2009 and the O.J Simpson Trial of January 1995. We will then give an alternative solution what changes can be made to this law. One of the flaws of double jeopardy is that people who are clearly guilty due to the emergence of new evidence because they may have confessed or come clean, are not being punished for crimes they have committed. We believe that guilty people who have been found guilty or are later found guilty should be properly punished for their actions, and there should be modifications done to our justice system in order to allow that. As a whole, there is a large amount of responsibility that we must take on in order to prevent injustice on innocent people, or vice versa. An offence that was committed a decade ago should not come to a close because time has passed, or because the perpetrator has managed to avoid justice in the years past. The standard by which the decision to charge an individual is taken must be done through the likelihood of guilt, not whether or not the individual was previously trialed.

Sincerely, Lequan Jefferson