[**The Movie "Double Jeopardy" Gets Its Named Concept Completely Wrong**](http://www.criminallawconsulting.com/blog/the-movie-double-jeopardy-gets-its-named-concept-completely-wrong)

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**March 2014**

The movie thriller, "Double Jeopardy" gets the concept of double jeopardy completely wrong.  Here is the explanation of the basics of double jeopardy under the law and how the movie got it wrong.

The Law of Double Jeopardy

The legal concept of double jeopardy comes from the Double Jeopardy Clause of the Fifth Amendment of the U.S. Constitution, which states:

***Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb.***

The Double Jeopardy Clause prevents a criminal defendant from being tried more than once by the **same sovereign for the same offense.**
First, double jeopardy only applies if the defendant was either convicted (found guilty) or acquitted (found not guilty) after the first trial.

Second, it must be the **same sovereign** that is trying the defendant both times.  Each government entity is a separate sovereign.  The federal government is separate from the states, and each state is a separate sovereign from the others.  Also a Native American tribal government is separate from the federal government and states.

A true crime example of this was shown during the trials of the LAPD Officers who were accused of beating Rodney King.  The four officers were initially charged by the state of California (through the Los Angeles County District Attorney's Office).  They were acquitted of the charges in state court.  The acquittals sparked the L.A. Riots.  The federal government then charged the four officers with civil rights violations based on the same incident.  This was not precluded by the Double Jeopardy Clause because the California and the federal government are two separate sovereigns.

The third requirement of double jeopardy is that the crimes charged in the first and second trials must be for the **same offenses.**  This is determined by the *same elements* test.  The elements of the crimes charged in the first and second cases are compared.  If there is an element that must be proven in each crime that is different from the other, than the crimes are not considered the same, and double jeopardy does not apply.

In the movie "Double Jeopardy," a married couple spend a weekend sailing.  The wife, Libby (Ashley Judd), wakes up to find blood all over herself and the boat.  Her husband, Nick, is missing.  She is arrested when the coast guard spots her holding a bloody knife, which she found on the deck.

Libby is convicted of Nick's murder.  Her best friend agrees to care for her four-year-old son while Libby is in prison.  While on the phone with her son, Libby hears a door open in the background, and her son yells, "Daddy."  The phone disconnects.

Libby suspects Nick faked his death and framed her for murder.  Another inmate advises Libby that when she is paroled, she can kill Nick with no fear of arrest or legal consequence because she had already been convicted of his murder, and the Double Jeopardy Clause would prevent her from being charged again.  Libby does just that.  (Tommy Lee Jones plays Libby's parole officer who at first investigates her violations of parole, then helps her once he realizes her story may be true.)

**Lesson number one**:  Never take legal advice from a fellow prison inmate - or a movie - without first checking with a lawyer.

Libby's fellow inmate, and this movie, get the concept of double jeopardy wrong.  If someone is wrongly convicted of murder, they do not then have free license to kill that person if the person is found alive.

Although both charged crimes are for the murder of Nick, they are two separate incidents.  The dates, facts, and evidence supporting each charge would be completely different.  Therefore, the charges are not for the **same offense**.

Also, in the movie, the first framed murder occurred in Washington state.  The second murder occurred in Louisiana.  Therefore, double jeopardy is not an appropriate defense in the second prosecution because the two states are not the **same sovereign**.

Because she was falsely convicted the first time, she could probably sue and recover some money to compensate her for her time in prison, but she would not be able to use that first conviction as a defense for her the second (valid) charges.

Double Jeopardy is often misunderstood. An urban legend has been around for decades describing a murderer being found not guilty at trial and on the way out of court announcing his/her guilt. This person would be arrested and charged with the felony crime of perjury.

This is why the courts require the defendant to state in his or her own words a plea or guilty or not guilty. A lawyer is not allowed to make that claim for a client.

The sentencing guidelines for perjury are commensurate with the level and type of crime it interfered with. A perjury sentence from a defendant for a murder case will likely carry a lengthy jail sentence.

On a side note, as a criminal defense attorney I have worked closely with an array of prosecutors. Very few will go to trial on a case they believe they cannot prove outright. Most will put forth or hold back another charge to be used “in place of” or “in case of” a conviction that does not go their way.

**DOUBLE JEOPARDY: AN ANALYSIS**

Below write a brief explanation based on the movie of how Libby would be able to shoot her husband Nick without risk of going to jail a second time. (2-3 sentences supporting this claim!)

**NOW,** read the article by Allen Dershowitz and list the reasons why according to the Double Jeopardy law as described by him, Libby would have been going to jail for murder.

List 5 facts from the article that you did not know, that made you think or that surprised you.

 1.

 2.

 3.

 4.

 5.