

Thursday, April 27, 2006

**Separate sovereigns doctrine diminishes double jeopardy rights.**

A member of a different Indian tribe pleads guilty in a tribal court to violence to a policeman on an Indian reservation. The federal government subsequently prosecutes the man for assaulting a federal officer. The United States Court of Appeals for the Eighth Circuit agrees that the first prosecution bars the federal prosecution, under the United States Constitution's Fifth Amendment protections against twice putting one's life and liberty in jeopardy. Sadly, the United States Supreme Court reverses in a 7-2 decision, not only confirming that a criminal offense against a sovereign (or government) other than the federal government allows separate prosecution by each sovereign, but also deciding that Indian tribal courts have jurisdiction over members of all Indian tribes. The case is U.S. v. Lara, 541 U.S. 193 (2004). Because of this separate sovereign doctrine, caveat emptor is critical to criminal defendants, to consider the possibility of a separate federal criminal proceeding under this doctrine. By Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00