

Criminal Justice: Double Jeopardy - Abolition of the Dual Sovereignty Theory of City-State Prosecutions

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by paying compensatory royalties to its lessor computed on one-half the production of the presumed draining well. Making such payments merely permits the lessee to evaluate further the producing well and will not alone be sufficient to continue the lease in force; however, the lessee's right to rebut the above presumptions is not prejudiced by compensatory royalty payments. In addition to the specific offset obligation outlined above, the lessee also has the general obligation either to drill an offset well, form a drilling or production unit, or take any other action reasonably necessary to prevent drainage. Further, if the lessee is the operator, or has a working interest in any well on adjoining property, he has ninety days from the time he knows or reasonably should know drainage is occurring to drill an offset well or to take other action reasonably necessary to protect the leased premises from drainage. Should he fail to act within ninety days, damages are computed from the time the lessee knows or should know drainage is occurring.

The equities in such a plan are apparent. In the specific offset provision it is the lessee who has the burden of ascertaining whether drainage is in fact occurring—a task he is well-equipped to handle. By paying the compensatory royalties, the lessee buys time during which he can conduct the necessary tests to determine what future course of action is required. At the same time the lessor is saved from having to act as watchdog on the adjoining premises while being reimbursed in case his premises are actually being drained. In the case of operations not covered by the express offset provision the same result as that of the *Williams* case is achieved.

The *Williams* decision places the lessor closer to parity with the lessee; still, adequate defenses and protections are available to prevent the latter from being treated unjustly. For this reason, it is hoped that *Williams* will stand and that Louisiana courts will see fit to affirm the proposition that it correctly states the law of Louisiana.

James Louis Williams, IV

CRIMINAL JUSTICE: DOUBLE JEOPARDY—ABOLITION OF THE DUAL SOVEREIGNTY THEORY OF CITY-STATE PROSECUTIONS

A group of looters removed a canvas mural from the City Hall of St. Petersburg, Florida. When the mural was recovered

in a damaged condition, petitioner was arrested, charged, and found guilty of violating two city ordinances in municipal court.¹ The state of Florida then filed an information charging petitioner with grand larceny based on the same acts involved in the violation of the ordinances. Against petitioner's claim that he was being twice put in jeopardy, the state argued that municipalities and the state are separate sovereign entities, each capable of imposing punishment for the same alleged crime. The trial court rejected petitioner's claim; the Florida appellate court sustained the conviction,² and the Supreme Court of Florida refused certiorari.³ The United States Supreme Court *held*, the theory of dual sovereignty is inapplicable to successive city-state prosecutions and the trial of the petitioner in state court for the same offense tried previously in city court violated the United States Constitution's guarantee against double jeopardy. *Waller v. Florida*, 90 S. Ct. 1184 (1970).

The Fifth Amendment guarantee against double jeopardy⁴ in the United States Constitution was made applicable to state proceedings in *Benton v. Maryland*,⁵ where the court overruled *Palko v. Connecticut*⁶ which had long stood for the proposition that the prohibition against double jeopardy was not so inherent in the "fundamental principles of liberty and justice"⁷ that it need be imposed upon the state courts. The *Benton* ruling caused no great reaction in the states, however, because the guarantee against double jeopardy was one of "the universal maxims of the common law"⁸ and clauses similar to the federal double

1. The violations charged were "first, destruction of city property; and second, disorderly breach of the peace." 90 S. Ct. 1184, 1185 (1970).

2. *Waller v. State*, 213 So.2d 623 (Fla. App. 2d Dist. 1968).

3. *Waller v. State*, 221 So.2d 749 (Fla. 1968).

4. U.S. CONST. amend. V: "[N]or shall any person be subject for the same offense to be twice put in jeopardy of life or limb . . ."

5. 395 U.S. 784, 794 (1969): "[W]e today find that the double jeopardy prohibition of the Fifth Amendment represents a fundamental ideal in our constitutional heritage, and that it should apply to the States through the Fourteenth Amendment. Insofar as it is inconsistent with this holding, *Palko v. Connecticut* is overruled." This decision has been affirmed in several subsequent decisions: *Price v. Georgia*, 90 S. Ct. 1757 (1970); *Ashe v. Swenson*, 90 S. Ct. 1189 (1970); *North Carolina v. Pearce*, 395 U.S. 711 (1969).

6. 302 U.S. 319 (1937).

7. *Id.* at 328: "Is that kind of double jeopardy to which the [state] statute has subjected him a hardship so acute and shocking that our policy will not endure it? Does it violate those 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions'? *Hebert v. Louisiana*, [272 U.S. 312 (1926)]. . . . The answer must surely be 'no.'"

8. R. CUSHMAN, *CASES IN CONSTITUTIONAL LAW* 478 (1965).

jeopardy provision were contained in most, if not all, state constitutions.⁹

The major problem in the area of double jeopardy has been in defining the term "same offense" in the double jeopardy clause. Over the years, the majority of state and federal courts have developed three basic tests to determine when a second trial will constitute double jeopardy. By the same transaction test, re-prosecution is barred if defendant's criminal conduct constituted a single act or transaction.¹⁰ By the same evidence test, a second trial is not allowed if the same evidence is required to sustain both charges.¹¹ The test of collateral estoppel means simply that when an issue of ultimate fact has once been deter-

9. *Id.* See also LA. CONST. art. I, § 9: "[N]or shall any person be twice put in jeopardy of life or liberty for the same offense, except on his own application for a new trial, or where there is a mistrial, or a motion in arrest of judgment is sustained." See also Comment, 21 LA. L. REV. 615 (1961): "The maxim 'nor shall any person be twice put in jeopardy of life or liberty for the same offense' is incorporated into Article I, Section 9, of the Louisiana Constitution. Although the phraseology may differ, this maxim is accepted in all federal and state courts."

10. See Comment, 75 YALE L. J. 262, 275-76 (1965): "Some state courts, and legislatures, searching for a more generous approach to the double jeopardy prohibition, have focused on the 'criminal transaction.' The tests which follow this approach . . . depend upon the defendant's behavior, rather than the evidence or laws. Reprosecution and multiple punishment will be barred if the defendant's conduct constituted a single act or transaction, or was motivated by a single intent."

Suppose A attacks B, beats him senseless, and robs him; B dies as a result of the beatings. A was involved in only one criminal episode, yet, in Louisiana, he is subject to charges for simple battery, simple robbery, and murder. LA. R.S. 14:35, 65, 30 (1950). Under the same transaction theory A must be charged with all three crimes at the same trial or the prosecution is considered as having waived those charges not made at A's trial.

"If it is only another 'product of a single criminal act' the accused cannot be placed in jeopardy even though the offenses are not the same. *State v. Mowser*, 92 N.J.L. 474, 106 A. 416 (1919). In part, this is justified on the basis that to take a contrary view would be to permit the prosecutor to obtain successive convictions where several crimes are included within one another. . . ." Lugar, *Criminal Law, Double Jeopardy and Res Judicata*, 39 IOWA L. REV. 317, 325 (1954).

11. *Morey v. Commonwealth*, 108 Mass. (12 Browne) 433, 434 (1871): "A conviction or acquittal upon one indictment is no bar to a subsequent conviction and sentence upon another, unless the evidence required to support a conviction upon one of them would have been sufficient to warrant a conviction upon the other."

Morgan v. Devine, 237 U.S. 632, 641 (1915). "[T]he test of identity of offenses is whether the same evidence is required to sustain them; if not, then the fact that both charges relate to and grow out of one transaction does not make a single offense where two are defined by the statutes." Thus, under the facts in note 10, the same evidence test would allow A to first be tried for robbery of B and later tried for B's murder if the prosecution could introduce one additional piece of evidence that had not been used in A's first trial. See also *Gavieres v. United States*, 220 U.S. 338 (1911) (offenses are not the same if each contains an element not included in the other).

mined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit.¹² Louisiana courts have adopted the same evidence test as their standard for defining "same offense."¹³

The dual sovereignty theory upon which the state relied in *Waller* to defeat petitioner's claim of double jeopardy was first enunciated by the United States Supreme Court in *Moore v. Illinois*.¹⁴ Recently, a more succinct explanation of this theory has been made:

"One of the obvious results of living under our federal form of government is that every person is subject to the criminal jurisdiction of two separate governments, the state and the national. It is entirely possible, therefore, for a single act to constitute an offense against the statutes of the United States and at the same time to be punishable under state law. . . . A person may be tried and punished by both governments without violating the protection against double jeopardy. That guarantee is violated only by a second trial

12. *Ashe v. Swenson*, 90 S. Ct. 1189, 1194 (1970): "'Collateral estoppel' . . . means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." See Lugar, *Criminal Law, Double Jeopardy and Res Judicata*, 39 Iowa L. Rev. 317, 331 (1954); Comment, 75 YALE L.J. 262, 283 (1965). Thus, under the facts in note 10 if A were first tried for B's murder and A defended by establishing and proving an alibi that he was elsewhere when B was attacked and the jury accepted the alibi and acquitted A then he could not later be tried for B's robbery since a jury had already ruled that A was not present when the crime was committed.

13. *State v. Roberts*, 152 La. 283, 286, 93 So. 95, 96 (1922): "Identity of the offenses is an essential element in support of a plea of autre fois [double jeopardy]. By this is not meant formal, technical, absolute identity; the rule is that there must be only substantial identity, that the evidence necessary to support the second indictment would have been sufficient for the first." See also LA. CODE CRIM. P. art. 596, comment (a); *State v. Foster*, 156 La. 891, 101 So. 255 (1924); *State v. McGarrity*, 140 La. 436, 73 So. 259 (1916). For instances where the single transaction test has been expressly rejected by Louisiana courts, see *State v. Calvo*, 240 La. 75, 121 So.2d 244 (1960); *State v. Roberts*, 170 La. 727, 129 So. 144 (1930); *State v. Montcrieffe*, 165 La. 296, 115 So. 493 (1928); *State v. Hill*, 122 La. 711, 48 So. 160 (1909); *State v. Barrett*, 121 La. 1058, 46 So. 1016 (1908); *State v. Faulkner*, 39 La. Ann. 811, 2 So. 539 (1887); Comment, 21 LA. L. REV. 615, 619-20 (1961).

14. 55 U.S. (14 How.) 13, 20 (1852): "Every citizen of the United States is also a citizen of a State or territory. He may be said to owe allegiance to two sovereigns, and may be liable to punishment for an infraction of the laws of either. The same act may be an offence or transgression of the laws of both. . . . That either or both may (if they see fit) punish such an offender, cannot be doubted. Yet it cannot be truly averred that the offender has twice been punished for the same offence; but only that he has committed two offences, for each of which he is justly punishable. He could not plead the punishment by one in bar to a conviction by the other."

for the same act when it constitutes a separate and distinct crime against another sovereign."¹⁵

This theory was approved by the Supreme Court in 1922¹⁶ and has been consistently reaffirmed when applied to successive federal-state prosecutions;¹⁷ by contrast, it has been held inapplicable to successive prosecutions by federal-territorial governments.¹⁸

In *Waller*, Florida attempted to justify the city prosecution by asserting that the relationship between a municipality and a state is analogous to the relationship between a state and the federal government. The attorneys for the state of Florida relied upon *Abbate v. United States*¹⁹ and *Bartkus v. United States*²⁰ in support of this contention.²¹ Using the dual sovereignty theory, Florida courts had developed considerable jurisprudence allowing successive city-state prosecutions.²² In reaching its decision in *Waller*, the Supreme Court examined Florida's Constitution²³ and found that Florida municipalities were not separate

15. R. CUSHMAN, *CASES IN CONSTITUTIONAL LAW* 479-80 (1965).

16. *United States v. Lanza*, 260 U.S. 377 (1922).

17. *Abbate v. United States*, 359 U.S. 187 (1959); *Bartkus v. Illinois*, 359 U.S. 121 (1959); *Screws v. United States*, 325 U.S. 91 (1945); *Jerome v. United States*, 318 U.S. 101 (1943); *People of Puerto Rico v. Shell Co.*, 302 U.S. 253 (1937); *Westfall v. United States*, 274 U.S. 256 (1927); *Hebert v. Louisiana*, 272 U.S. 312 (1926).

"While the *Lanza* rule has a logical persuasiveness about it and the Court has done nothing to weaken it, it has not been given wide application. It is not, for example, followed in international law. . . . Nor has the Court felt the rule should apply in cases where two states have concurrent jurisdiction. . . . 'Where an act is . . . prohibited and punishable by the laws of both States,' the Court commented, 'the one first acquiring jurisdiction of the person may prosecute the offense and its judgment is a finality in both states, so that one convicted or acquitted in the courts of the one state cannot be prosecuted for the same offense in the courts of the other.'" *See Nielsen v. Oregon*, 212 U.S. 315 (1909).

"The manifest unfairness of the *Lanza* rule has been widely recognized, and following the *Abbate* and *Bartkus* decisions the Attorney General of the United States ordered that 'no federal case should be tried when there has already been a state prosecution for substantially the same act or acts without the United States Attorney first submitting a recommendation to the appropriate Assistant Attorney General in the Department.'" R. CUSHMAN, *CASES IN CONSTITUTIONAL LAW* 941 (1965).

18. *Grafton v. United States*, 206 U.S. 333, 354-55 (1907) (prosecution by a court of the United States is a bar to a subsequent prosecution by a territorial court, since both are arms of the same sovereign).

19. 359 U.S. 187 (1959). *See also* note 17 *supra*.

20. 359 U.S. 121 (1959). *See also* note 17 *supra*.

21. 90 S. Ct. 1184, 1189 (1970).

22. *Hilliard v. City of Gainesville*, 213 So.2d 689 (Fla. 1968); *Thiesen v. McDavid*, 34 Fla. 440, 16 So. 321 (1894); *Waller v. State*, 213 So.2d 623 (Fla. App. 2d Dist. 1968).

23. *Waller v. Florida*, 90 S. Ct. 1184, 1187-88 (1970).

sovereigns but simply arms of the state government. The Court decided that the judicial power to try Waller in the municipal court was based on the same organic law that created the state court; thus, the proper analogy to the municipal-state relationship was the relationship between a territorial government and the government of the United States.²⁴ *Grafton v. United States*,²⁵ which held that prosecution by a federal court is a bar to a subsequent prosecution by a territorial court, was then applied to the facts of *Waller* and the dual sovereignty theory was held inapplicable in this situation. Therefore, the trial in the municipal court barred any further state prosecution for the same offense.

The *Waller* ruling has immediate repercussions in Louisiana, particularly upon Article 597 of the Louisiana Code of Criminal Procedure which provides: "Double jeopardy does not apply to a prosecution under a law enacted by the Louisiana Legislature if the prior jeopardy was in a prosecution under the laws of another state, the United States, or *under a municipal or parochial ordinance.*" (Emphasis added.) It is readily apparent that the last clause of this article is invalidated by *Waller* which held successive city-state prosecutions a violation of the double jeopardy clause of the Fifth Amendment.²⁶

This invalidity becomes even more apparent after comparing applicable Louisiana and Florida law. The similarity between the two states' laws is illustrated by the fact that both Louisiana and Florida, in attempting to justify successive prosecutions,

24. *Id.* at 1189. Harbingers of this decision may be found in *Reynolds v. Sims*, 377 U.S. 533, 575 (1964), where Chief Justice Warren said: "Political subdivisions of States—counties, cities, or whatever—never were and never have been considered as sovereign entities." A similar statement was made much earlier in *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178 (1907): "Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them."

25. 206 U.S. 333 (1906). *See also* note 18 *supra*.

26. It is submitted that the first portion of the same article may also be invalid, *i.e.*, "Double jeopardy does not apply to a prosecution under a law enacted by the Louisiana Legislature if the prior jeopardy was in a prosecution under the laws of another state. . . ." In *Nielsen v. Oregon*, 212 U.S. 315, 320 (1909) the Court said: "Where an act is *malum in se* prohibited and punished by the laws of both States, the one first acquiring jurisdiction of the person may prosecute the offense, and its judgment is a finality in both States, so that one convicted or acquitted in the courts of the one State cannot be prosecuted for the same offense in the courts of the other. . . ."

"Doubtless the same rule would apply if the act was prohibited by each State separately. . . ."

based their provisions on the *Abbate* and *Bartkus* decisions.²⁷ In addition, the Louisiana Constitution grants the legislature the power to create courts in the state, including municipal courts, and to provide for the jurisdiction of all state courts.²⁸ The Louisiana legislature has provided for the election, appointment, and salaries of municipal court judges.²⁹ Thus, in Louisiana, as in Florida, the municipal courts are only arms of the state, not separate sovereignties. Consequently, it is apparent that the dual sovereignty theory can no longer be relied upon to justify successive city-state prosecutions in Louisiana. This proposition is corroborated by repeated statements in opinions of the Supreme Court of Louisiana that municipal corporations are creatures of the state established by the legislature for the purpose of administering local affairs of government.³⁰

If rejection of the dual sovereignty theory in successive city-state prosecutions were the only ramification of *Waller*, then a simple amendment of article 597 of the Code of Criminal Procedure would be the solution. But *Waller* presents additional problems. Since *Benton v. Maryland*³¹ the United States Supreme Court has not hesitated in prescribing double jeopardy standards.³² In *Ashe v. Swenson*,³³ decided the same day as *Waller*, the Court held that the theory of collateral estoppel is inherent in the double jeopardy clause; three concurring Justices³⁴ in a joint opinion expressed the view that the same transaction theory³⁵ should be incorporated into the Fifth Amendment. Mr. Justice Brennan echoed this view in *Waller*.³⁶ This theory re-

27. LA. CODE CRIM. P. art. 597, comment (a) provides: "[T]he article is simply a codification of the long-standing general jurisprudence to the effect that where several sovereigns prosecute, the principals of double jeopardy do not apply.

"This rule was only recently affirmed by the United States Supreme Court in the case of *Bartkus v. Illinois*, 359 U.S. 121. . . (1959); *Abbate v. United States*, 359 U.S. 187. . . (1959)."

28. See LA. CONST. art. VII, §§ 51 and 52.

29. See LA. R.S. 13:1872-76 (1950).

30. *Edwards v. Town of Ponchatoula*, 213 La. 116, 34 So.2d 394 (1948). See also *Louisiana v. Mayor of New Orleans*, 109 U.S. 285 (1883); *Klein v. New Orleans*, 99 U.S. 149 (1878); *City of New Orleans v. Clark*, 95 U.S. 644 (1877); *Pyle v. City of Shreveport*, 215 La. 257, 40 So.2d 235 (1948); *State v. Jordan*, 207 La. 78, 20 So.2d 543 (1944); *Terrebonne Parish School Bd. v. St. Mary Parish School Bd.*, 131 So.2d 266 (La. App. 1st Cir. 1961); *Johnson v. City of Natchitoches*, 129 So. 433 (La. App. 2d Cir. 1930).

31. 395 U.S. 784 (1969). See note 5 *supra*.

32. See cases cited in note 5 *supra*.

33. 90 S. Ct. 1189 (1970).

34. *Id.* at 1197, Justices Brennan, Douglas, and Marshall.

35. See note 10 *supra* and accompanying text.

36. 90 S. Ct. 1184, 1189 (1970).

quires the prosecution to charge a defendant with all the offenses which arose out of one criminal episode, regardless of number or diversity.³⁷ Any charges not made at the trial are considered waived by the prosecution.

Statements in the majority opinion in *Waller* indicate the possibility that the same transaction theory may soon be incorporated into the double jeopardy clause. At the beginning of the majority opinion Chief Justice Burger pointed out that the subsequent prosecution by the state was based on the same acts of the petitioner as were involved in the violation of the two city ordinances.³⁸ In a subsequent paragraph he reiterated the fact that the two prosecutions were based on the same acts of the petitioner³⁹ stating: "We act on the statement of the District Court of Appeal that the second trial on the felony charge by information 'was based on the same acts of the appellant as were involved in the violation of the two city ordinances. . . .'"⁴⁰ These statements, together with the advocacy of the same transaction test in the concurring opinion, intimate possible incorporation of the same transaction theory into the double jeopardy clause in the near future.

Further support for this prediction is found in the fact that the American Law Institute has adopted the same transaction test for defining the "same offense" for double jeopardy purposes.⁴¹ Also, the Federal Rules of Criminal Procedure provide for permissive joinder of charges which are similar in character, or arise from the same transaction or from connected transactions. England, as well, has adopted the same transaction test.⁴² Thus, the consensus of these legal authorities indicates adoption of the same transaction theory.⁴³

If this theory were adopted, a revision of the present joinder

37. See note 10 *supra* and accompanying text.

38. *Waller v. Florida*, 90 S. Ct. 1184, 1185 (1970): "It is conceded that this information was based on the same acts of the petitioner as were involved in the violation of the two city ordinances."

39. *Id.*: "The opinion of the District Court of Appeal first explicitly acknowledged that the charge on which the state court action rested 'was based on the same acts of the appellant as were involved in the violation of the two city ordinances.'"

40. *Id.* at 1186.

41. Compare ALI ADMINISTRATION OF THE CRIMINAL LAW, OFFICIAL DRAFT: DOUBLE JEOPARDY § 5 (1935) (which used the same evidence test) with ALI MODEL PENAL CODE, PROPOSED OFFICIAL DRAFT §§ 1.07(2), 1.09(1)(b) (1962).

42. FED. R. CRIM. P. 8(a). See also FED. R. CRIM. P. 13.

43. *Ashe v. Swenson*, 90 S. Ct. 1189, 1190 (1970).

rules of the Louisiana Code of Criminal Procedure would become imperative to permit trials of multiple offenses arising from the same transaction. Under the present Code an indictment may charge only one offense,⁴⁴ except in very specific situations.⁴⁵ If the same transaction theory were adopted as a test of double jeopardy, it would be necessary to charge all of the related offenses in one indictment. Otherwise, a plea of double jeopardy could be urged when an additional charge or charges were brought.

As an example of the problems posed by the same transaction theory, suppose that X separately shoots and kills A and B in the same affray. One objection to charging both homicides in one indictment and the simultaneous trial is that the mere fact of cumulation of offenses may create prejudice against X. Another objection is that a jury is likely to use evidence introduced in support of one charge to convict the accused of another charge, not independently or adequately proved. In the A-murder, X's intent may not be clear, although another essential element of the crime may be evident. In the B-murder, only X's intent may be clearly established. Separately tried, the evidence in each case may be clearly insufficient to convict the defendant. However, when the charges are tried together, a jury may erroneously convict by combining the evidence in both cases to supply a necessary element of the crime.⁴⁶ The American Bar Association has recognized the problems created by joinder of offenses, and its minimum standards authorize severance and separate trial of the charges if joinder is prejudicial to either the prosecution or the defense.⁴⁷ The Federal Rules of Criminal Procedure are in accord.⁴⁸

As Justice Brennan points out,⁴⁹ the same transaction rule, with required joinder of offenses unless severance is ordered, will serve a useful purpose in informing the defendant of all the charges against him, so that he can properly prepare his defense. Moreover, under the same transaction rule the decision of whether charges are to be tried jointly or separately rests with

44. LA. CODE CRIM. P. art. 493.

45. See LA. CODE CRIM. P. arts. 481 and 482.

46. Slovenko, *The Accusation in Louisiana Criminal Law*, 32 TUL. L. REV. 47, 71 (1957).

47. ABA MINIMUM STANDARDS FOR CRIMINAL JUSTICE: JOINDER AND SEVERANCE (1967).

48. FED. R. CRIM. P. 13 and 14.

49. *Ashe v. Swenson*, 90 S. Ct. 1189, 1200 n. 11 (1970).

the judge rather than the prosecutor. Of course, separate trials may not be ordered when the evidence will be repetitious, the multiplicity of trials vexatious, or when the multiplicity will enable the prosecution to use the experience of the first trial to strengthen its case in a subsequent trial.⁵⁰

The actual holding in *Waller* is both logical and clearly stated. However, the same transaction concept of double jeopardy may well have opened a veritable Pandora's Box of legal problems and collateral issues that could have both immediate and profound effects on the administration of criminal justice in Louisiana. The best solution to the problems posed by this concept seems to be the proposal by the American Law Institute in their Model Penal Code which requires the joinder of all known offenses in a single trial.⁵¹

W. John English, Jr.

DECLARATORY RELIEF IN LOUISIANA: THE POTENTIAL FOR PROCEDURAL MISUSE

Developers purchased an option on a large tract of land to be exercised by the payment of almost a million dollars and the execution of a note and mortgage for the balance of the sale price.¹ At the instance of developers the land was rezoned to permit construction of apartments, a shopping center, and other non-residential uses. Area residents filed suit seeking a declaratory judgment that the ordinances under which the tract was rezoned² were unconstitutional. Developers responded by filing

50. *Id.*

51. ALI MODEL PENAL CODE § 1.07 (1962):

"(2) *Limitation on Separate Trials for Multiple Offenses.* Except as provided in Subsection (3) of this Section, a defendant shall not be subject to separate trials for multiple offenses based on the same conduct or arising from the same criminal episode, if such offenses are known to the appropriate prosecuting officer at the time of the commencement of the first trial and are within the jurisdiction of a single court.

"(3) *Authority of Court to Order Separate Trials.* When a defendant is charged with two or more offenses based on the same conduct or arising from the same criminal episode, the Court, on application of the prosecuting attorney or of the defendant, may order any such charge to be tried separately, if it is satisfied that justice so requires."

1. Cost of the option itself was \$40,000. Developers shortly thereafter expended more than \$200,000 in engineering and consulting fees. The option was to be exercised by the payment of \$910,000 and the execution of a mortgage for \$3,850,000. Total outlay for the completed development was estimated to be approximately \$100,000,000.

2. Baton Rouge, La., Ordinance 2317, June 11, 1969; Parish of East Baton Rouge, La., Ordinance 3095, June 11, 1969.