UIC Law Review

Volume 5 | Issue 1 Article 7

Winter 1971

United States v. Daddano: A Procedure for Prejudicial Publicity in the Seventh Circuit, 5 J. Marshall J. of Prac. & Proc. 205 (1971)

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UNITED STATES v. DADDANO: A PROCEDURE FOR PREJUDICIAL PUBLICITY IN THE SEVENTH CIRCUIT

The difficulty faced by a trial court in preserving the integrity of a proceeding before it without curtailing either the right of the news media to provide full coverage of the proceeding or the legitimate public interest in the details of what transpires before the court, as well as peripheral and background information concerning the proceeding and parties involved, is the problem which has come to be designated by the phrase, "free press — fair trial."[1] The gravamen of the problem is this. Freedom of the press is protected specifically by the United States Constitution.[2] The Constitution further guarantees to every defendant in a criminal proceeding the right to a public trial,[3] and the United States Supreme Court has recognized that secrecy of judicial proceedings is repugnant to the concept of justice which prevails in the United States.[4] On the other hand, the Supreme Court has asserted with equal force the proposition that the Constitutional guarantee that no one shall be deprived of his life, his liberty or his property without due process of law[5] requires that judicial proceedings be free from outside influence,[6] and that a jury's verdict must be based solely upon the evidence and testimony adduced at the trial[7] and not upon information received from external sources.[8]

The practical aspects of the problem are brought into focus more clearly upon consideration of the dilemma faced by the trial judge. He must protect the Constitutional right of the defendant in the proceeding before him to a trial by an impartial jury, as well as the public interest in the integrity of the judicial system.[9] To accomplish this, he must insure to the best of his

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[1] An apt statement of the problem is provided by Mr. Justice Black in Bridges v. California, 314 U.S. 252 (1941). "For free speech and fair trials are two of the most cherished policies of our civilization, and it would be a trying task to choose between them." *Id.* at 260.

[2] U.S. CONST. amend. I.

[3] U.S. CONST. amend. VI.

[4] *In re* Oliver, 333 U.S. 257, 270 (1947).

[5] U.S. CONST. amend. XIV.

[6] Sheppard v. Maxwell, 384 U.S. 333, 362 (1966).

[7] In Bridges v. California, 314 U.S. 252 (1941), the Supreme Court raised the proposition that "[t]he very word 'trial' connotes decisions on the evidence and arguments properly advanced in open court." *Id.* at 271.

[8] *Id.* at 271; Patterson v. Colorado, 205 U.S. 454, 462 (1906).

[9] In Pennekamp v. Florida, 328 U.S. 331 (1945), the Supreme Court recognized the extent of the interest of the public at large in the integrity of the judicial system:

> The safety of society and the security of the innocent alike depend upon wise and impartial criminal justice. Misuse of its machinery may

ability that the jurors will not be exposed to any news media containing information concerning the trial or parties involved.[10] Simultaneously, he must use the powers[11] available to him for controlling the propagation of potentially prejudicial news items in such a way that neither the Constitutional right of the news media to publish freely nor the public interest in unhampered availability of information is abridged.[12]

Three courses of action are available to the trial judge in this situation. First, he may exercise his general contempt powers[13] to prevent the dissemination to and by the news media of any items which go beyond the record of the proceeding.[14] In practice, this solution is of limited effectiveness due to the difficulty of applying it without violating the Constitutional rights guaranteed the news media[15] and due to the fact that citation for contempt does not operate to prevent the actual dissemination of the proscribed articles, but only to punish the offending party after the fact. Second, he may, without attempting to limit the items reported by the news media, prevent their exposure to the jury by ordering the jurors sequestered during the trial.[16] While sequestration of the jury is an effective solution to the problem, especially where the adverse publicity is expected to be severe,[17] many courts have felt that it imposes a hardship upon the jurors and should be used only where the situation is extreme.[18] In addition, defense counsel in several cases have

undermine the safety of the State; its misuse may deprive the individual of all that makes a free man's life dear.

Id. at 357.

[10] The particular objection to prejudicial items reaching the jury through news media is that such items are not subject to the procedural safeguards which can be applied to prejudicial items which might arise during the proceeding as part of the prosecution's case. Marshall v. United States, 360 U.S. 310, 313 (1959).

[11] The broadest power available to the trial judge in this situation is the citation for contempt, by which theoretically he can enjoin the parties to the proceeding from making disclosures to news media or public statements and can prevent the publication of items which go beyond the record. 18 U.S.C. §401 (1958). However, the Supreme Court has made it clear that the use of such power, at least in regard to news media, is not favored. Craig v. Harney, 331 U.S. 367, 373 (1946); Pennekamp v. Florida, 328 U.S. 331, 347 (1945); Bridges v. California, 314 U.S. 252, 263 (1941). For a discussion of other methods available for controlling the spread of prejudicial news coverage, see Sheppard v. Maxwell, 384 U.S. 333, 358-63 (1966).

[12] Sheppard v. Maxwell, 384 U.S. 333, 350 (1966).

[13] Note 11 *supra.*

[14] Publication of the record is not objectionable because "[w]hat transpires in the court room is public property." Craig v. Harney, 331 U.S. 367, 374 (1947).

[15] Bridges v. California, 314 U.S. 252, 260-63 (1941). *See also* Craig v. Harney, 331 U.S. 367 (1946); Pennekamp v. Florida, 328 U.S. 331 (1945); People v. Gross, 10 Ill. 2d 533, 141 N.E.2d 385 (1957), *reargued*, 20 Ill. 2d 224, 170 N.E.2d 113 (1960).

[16] Whether the jury should be confined rests within the sound discretion of the trial judge. Koolish v. United States, 340 F.2d 513 (8th Cir. 1965).

[17] *See* Sheppard v. Maxwell, 384 U.S. 333 (1966).

[18] Koolish v. United States, 340 F.2d 513, 528 (8th Cir. 1965). *See also* Baker v. Hudspeth, 129 F.2d 779, 782 (10th Cir. 1942).

opposed sequestration of the jury on the grounds that the inconvenience caused the jurors will create a bias against the defendant.[19] Third, the judge may, without limiting the items which may be reported by the news media, attempt to limit the effect of such items upon the proceeding by admonishing the jurors not to allow themselves to be exposed to such items, even though they are physically free to do so, and by taking steps during the proceeding to determine the degree of compliance with his admonitions.[20]

The case of *United States v. Daddano*,[21] recently decided by the United States Court of Appeals for the Seventh Circuit, provides clarification of the procedure to be followed by trial judges in the Seventh Circuit in cases where the judge chooses to adopt this third course of action. Specifically, *Daddano* demonstrates the steps which the trial judge must take to safeguard the rights of the defendant in a criminal proceeding where the jury is not sequestered and no attempt has been made to restrain news media. The significance of *Daddano* is not that it represents a change in the law, but that it demonstrates the application of the comprehensive rule established in the earlier case of *Margoles v. United States*.[22]

In the *Daddano* case, the defendants were charged with conspiracy to commit bank robbery, bank robbery and misprison of a felony.[23] A trial before a jury in the United States District Court for the Northern District of Illinois, Eastern Division, resulted in the defendants being convicted of all charges in the indictment, and they appealed, contending that the measures taken by the trial judge to prevent the jury from being prejudiced by various news items which appeared during the trial were inadequate and not in accord with the established procedure in the Seventh Circuit.[24]

The jury was not sequestered during the trial, which lasted approximately three weeks. At the beginning of the first day of *voir dire*, the judge admonished the prospective jurors that they must decide the case only upon the evidence presented in

[19] United States v. Palermo, 410 F.2d 468, 471 (7th Cir. 1969); United States v. Holovachka, 314 F.2d 345, 352 (7th Cir. 1963).

[20] Margoles v. United States, 407 F.2d 727, 732 (7th Cir. 1969).

[21] 432 F.2d 1119 (7th Cir. 1970).

[22] 407 F.2d 727, 735 (7th Cir. 1969).

[23] Count 1 of the indictment charged the defendants Daddano, Montagna, Cain and Varelli with conspiracy to violate 18 U.S.C. §3 and §4 in violation of 18 U.S.C. §371 (1958). Count 2 charged the defendants Frank DeLegge, Sr. and Frank DeLegge, Jr. with bank robbery with the use of dangerous weapons in violation of 18 U.S.C. §2113 (a) (d) (1958). Count 3 charged the defendants Daddano, Montagna and Cain with violation of 18 U.S.C. §3 (1958), and Count 4 charged the defendants Daddano, Montagna, Cain and Varelli with violation of 18 U.S.C. §4 (1958).

[24] United States v. Accardo, 298 F.2d 133, 136 (7th Cir. 1962).

open court, that they must not discuss the case and that they should avoid exposure to news reports concerning it.[25] This admonition was repeated before each recess, so that on the 15 days on which jurors were present, the order was given 46 times.

During the course of the trial, articles concerning it appeared in four Chicago papers. For the most part, these articles, several of which were on the front page and one of which included a full width headline, contained a record of the proceeding as it progressed. However, some stories did appear which imputed various underworld ties to the defendants and discussed other criminal activity with which the defendants allegedly were connected. Also appearing was a story which carried the implication that some of the defendants were responsible for the murder of an associate who had cooperated with police[26] and a story in which a prosecution witness expressed the belief that his life was in jeopardy because of his role in the proceeding.

At various times throughout the trial, defense counsel brought newspaper stories to the court's attention and requested that the judge poll the jurors to determine whether any had read them and, if any juror responded affirmatively, whether he had been prejudiced.[27] Each time, the judge declined to comply with the request, calling attention to his frequent admonitions[28] and stating that he was relying upon the presumption that his orders were being followed.

In affirming the convictions, the court of appeals held that the failure of the trial judge to examine the jurors regarding specific items as requested by defense counsel did not deprive the defendants of an impartial jury.[29]

> Viewing the special facts of the instant case, tried before our pronouncement in *Margoles*, we think the trial judge could reasonably presume that jurors followed the orders so carefully and

[25] The exact content of the admonition is not reported.

[26] Evidence presented during the trial indicated that, at some point after the commission of the robbery, the suspicion arose among the participants that one of them had informed the police. The defendant Daddano then decided that all should take lie detector tests concerning the matter, and that if anyone failed the test, the others could shoot him if they wished. Pursuant to this plan, the defendants Daddano and Montagna arranged with the defendant Cain, who was then Chief of the Special Investigations Unit of the office of the Cook County Sheriff to have the tests administered by an investigator from that office. The news stories which appeared during the trial implied that Guy Mendola, a participant in the robbery who was deceased at the time of the trial, had been shot because he failed to pass the lie detector test. The implication of Cain imparted to the proceeding a news value which it would not otherwise have had due to the fact that Richard Ogilvie, who was Cook County Sheriff at the time the events occurred, was running for governor, and the involvement of his staff member with the other defendants in the proceeding became a campaign issue.

[27] The procedure requested was that established in United States v. Accardo, 298 F.2d 133, 136 (7th Cir. 1962).

[28] Note 25 *supra*.

[29] 432 F.2d 1119, 1128 (7th Cir. 1970).

> frequently given, and that they neither intentionally read the stories nor had prejudicial material forced upon them.[30]

The "special facts" upon which the court of appeals based its decision were the admonition given by the trial judge and the nature of the adverse publicity.[31] The admonition was explicit in forbidding exposure to news media of any kind[32] and was given prior to every occasion that the jurors were allowed to separate. The publicity, while clearly prejudicial,[33] was neither so sensational nor so frequent as to force itself upon anyone making a reasonable effort to avoid exposure to it.[34]

On the basis of these special facts, the court distinguished the situation in *Daddano* from that in *United States v. Accardo.*[35] In *Accardo,* the trial lasted for approximately eight weeks, and the jury was allowed to separate each night. Front page headlines carried prejudicial material, and the trial judge admonished the jurors regarding exposure to adverse publicity only once, at the opening of the first day of *voir dire.*[36] As in *Daddano,* the trial judge declined to poll the jury when prejudicial items were brought to his attention.[37] In reversing the convictions, the Court of Appeals for the Seventh Circuit said:

> In view of . . . defendant's publicity value, it was essential that the judge frequently, prior to separation, call the attention of the jurors *specifically* to the possibility of newspaper accounts carrying statements of fact about the case . . . .
>
> His general inquiry during the *voir dire* examination did not supply the deficiency. He should have, by the careful examination of each juror out of the presence of the others, determined the effect of the articles on those who had read them and whether they had discussed the articles with others . . . .[38]

The decision in *Accardo* appeared to require this particular procedure whenever the possibility of jurors being exposed to prejudicial publicity was brought to the trial judge's attention.[39] However, the court of appeals recognized that each case must turn on its own facts,[40] and a series of subsequent decisions confirmed that the procedure laid out in *Accardo* was not required in all situations.[41]

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[30] *Id.* at 1128.
[31] *Id.*
[32] *Id.* at 1126-27.
[33] *Id.* at 1127.
[34] *Id.* at 1128.
[35] 298 F.2d 133 (7th Cir. 1962).
[36] *Id.* at 135.
[37] *Id.* at 136.
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] United States v. Battaglia, 394 F.2d 304 (7th Cir. 1968) (Frequent admonitions; no juror admitted having seen any prejudicial items); United States v. Largo, 346 F.2d 253 (7th Cir. 1965) (Overwhelming proof of defendant's guilt); United States v. Jannsen, 339 F.2d 916 (7th Cir. 1964)

In *Margoles v. United States*,[42] a decision rendered subsequent to the trial in *Daddano*, but prior to the decision on appeal, the court of appeals announced a revised procedure, based upon the earlier decision in *Accardo*.[43] The rule of *Margoles* was not controlling in the decision of *Daddano*, as the court had previously held in *United States v. Solomon*[44] that the procedure established in the *Margoles* case would be applied prospectively only.[45] However, both in *Solomon*[46] and in *Daddano*,[47] the court affirmed the proposition that the rule of *Margoles* should apply to all trials commenced after March 4, 1969, the date of its decision.

The *Margoles* case established a comprehensive statement of the procedure to be followed by trial judges in proceedings begun after the date of that decision.

> Thus, the procedure required by this Circuit where prejudicial publicity is brought to the court's attention during a trial is that the court must ascertain if any jurors who had been exposed to such publicity had read or heard the same. Such jurors who respond affirmatively must then be examined, individually and outside the presence of the other jurors, to determine the effect of the publicity. However, if no juror indicates, upon inquiry made to the jury collectively, that he has read or heard any of the publicity in question, the judge is not required to proceed further.[48]

That part of the rule which establishes the procedure to be followed in the event of an affirmative response by one or more jurors is dictum, inasmuch as no juror responded affirmatively in *Margoles*. The earlier decision in *Accardo* also contained language to the effect that interrogation of jurors who indicate exposure to prejudicial material should occur out of the presence of other jurors.[49] However, in subsequent decisions,[50] the court treated this language as establishing a recommended, but not required, procedure due to the fact that, of the two judges voting for reversal, only Judge Kiley would have made the procedure required,[51] while Judge Duffy in his concurring opinion considered it to be optional.[52] Despite this, the language used in describing the development of the rule in

(Publicity not prejudicial as a matter of law); United States v. Micele, 327 F.2d 222 (7th Cir. 1964) (Publicity concerned defendant's brother).

[42] 407 F.2d 727 (7th Cir. 1969).

[43] *Id.* at 735.

[44] 422 F.2d 1110 (7th Cir. 1970).

[45] *Id.* at 1117.

[46] *Id.*

[47] 432 F.2d 1119, 1127-28 (7th Cir. 1970).

[48] 407 F.2d 727, 735 (7th Cir. 1969).

[49] 298 F.2d 133, 136 (7th Cir. 1962).

[50] United States v. Solomon, 422 F.2d 1110, 1117 (7th Cir. 1970); United States v. Largo, 346 F.2d 253, 256 (7th Cir. 1965); United States v. Jannsen, 339 F.2d 916, 919 (7th Cir. 1964).

[51] 298 F.2d 133, 136 (7th Cir. 1962).

[52] *Id.* at 140.

Margoles indicates that the court now considers the separate interrogation of jurors to be required.[53]

During the course of the trial in *Margoles*, the judge "strongly and repeatedly admonished the jury . . . not to read or listen to any news coverage of the case and not to discuss it with anyone."[54] Although there is language in *Margoles* and in the later case of *United States v. Solomon*[55] which indicates that the trial judge is not required to give such an admonition unless requested by counsel,[56] the court of appeals expressed the opinion that the overall approach to determining which safeguards must be employed in a situation involving possible exposure to prejudicial publicity is that "[t]he nature of the measures taken by the trial court should . . . depend upon the severity of the threat to the integrity of the trial."[57] From this, it is fairly certain that implicit in the comprehensive procedure to be followed in the event that prejudicial material is brought to the court's attention is the assumption that the judge will have been giving a frequent and explicit admonition throughout the course of the trial. The frequency is not specified in *Margoles*, but at least once daily, prior to the jurors separating seems to be preferred.[58] In extreme cases, more than once per day may be desirable.[59] That the admonition must specifically enjoin exposure to news items is well established.[60]

As the foregoing indicates, the full procedure required in the Seventh Circuit to safeguard the rights of the defendant in the situation where the jurors are not sequestered, and prejudicial publicity threatens the integrity of the proceeding, requires three things. The first of these is a frequent and explicit admonition not to read or listen to any news items concerning the trial or any of the persons involved, given throughout the proceeding. The second is a poll of the jurors upon each occasion during the trial that the existence of prejudicial publicity is brought to the court's attention.[61] The poll, which may be made either collectively or individually, is to determine whether any juror has read or heard the item in question. If no juror answers affirmatively, the procedure need not go beyond this point. The

[53] 407 F.2d 727, 734 (7th Cir. 1969).
[54] *Id.* at 733.
[55] 422 F.2d 1110, 1115 (7th Cir. 1970).
[56] 407 F.2d 727, 733 (7th Cir. 1969).
[57] *Id.*
[58] United States v. Solomon, 422 F.2d 1110, 1115 (7th Cir. 1970); United States v. Micele, 327 F.2d 222, 226 (7th Cir. 1964); United States v. Accardo, 298 F.2d 133, 136 (7th Cir. 1962).
[59] Sheppard v. Maxwell, 384 U.S. 333, 353 (1966).
[60] United States v. Accardo, 298 F.2d 133, 136 (7th Cir. 1962).
[61] The procedure established in Margoles v. United States apparently applies only to the situation in which the existence of prejudicial news items is brought to the court's attention by counsel, and the court is under no duty to initiate the procedure *sua sponte*. 407 F.2d 727, 735 (7th Cir. 1969).

third requirement is an interrogation of each juror who responds to the poll in the affirmative. The judge must individually interrogate each juror so answering out of the presence of the others to determine whether exposure to the prejudicial item has affected that juror's ability to remain impartial.

Although not referred to in the comprehensive rule stated in *Margoles*, the court continued to acknowledge the role of "special facts," primarily as a corollary to their statement that the nature of the measures taken by the trial court to protect the defendant's rights should be proportionate to the severity of the threat to the integrity of the trial.[62] Recent decisions indicate that the procedures outlined in *Margoles* are the minimum safeguards which will be tolerated,[63] and at least one decision indicates that situations may arise in which the special facts are such that the trial judge should declare a mistrial despite compliance with the procedure established in *Margoles*. In *Marshall v. United States*,[64] the Supreme Court held that where some jurors admitted having seen newspaper articles which recounted the defendant's two prior convictions, the trial judge should have declared a mistrial *even though* he had interrogated separately each juror who admitted having read the article and had concluded that there was no prejudice to the defendant.[65]

The procedure established by *Margoles* requires that the trial judge interrogate each juror who responds that he or she has read or heard the news item under consideration to determine whether that juror has been so influenced by exposure to the prejudicial item as no longer to be impartial.[66] *Margoles* does not, however, establish any standard by which the partiality of a juror may be judged.

The Supreme Court has established the principle that a trial judge has wide discretion in ruling on the impartiality of a juror.[67] However, as the decision in *Marshall* indicates, this discretion is not without limits. In *Reynolds v. United States*,[68] the Court established that the precise issue to be determined is that of "whether the nature and strength of the opinion formed are such as in law necessarily to raise the presumption of partiality."[69] Continuing, the Court said, "[t]he question thus

[62] 407 F.2d 727, 733 (7th Cir. 1969).
[63] *See* United States v. Palermo, 410 F.2d 468, 471 (7th Cir. 1969).
[64] 360 U.S. 310 (1959).
[65] Neither the opinion of the Supreme Court nor that of the Court of Appeals, reported in 258 F.2d 94 (10th Cir. 1958), indicates whether the trial judge had admonished the jury concerning exposure to news items. While the absence of an admonition could have constituted "special facts" sufficient for reversal, neither court discussed the point.
[66] 407 F.2d 727, 735 (7th Cir. 1969).
[67] Holt v. United States, 218 U.S. 245, 251 (1910).
[68] 98 U.S. 145 (1878).
[69] *Id.* at 156.

presented is one of mixed law and fact, and to be tried, as far as the facts are concerned, like any other issue of that character, upon the evidence."[70] Therefore, a mistrial need not be declared unless evidence shows that the juror had formed such an opinion that he could not be deemed impartial as a matter of law.

When the judge is required to interrogate a juror as to his impartiality, the juror's own testimony regarding his state of mind is the primary evidence upon which the judge will be required to decide the question. However, the mere expression by a juror that he has formed an opinion may not be sufficient to find that he is no longer impartial if his manner while responding indicates otherwise.[71] Thus, the demeanor of the juror while responding is to be considered along with the substance of his answer.

The situations in which a juror must be declared no longer impartial as a matter of law are not clearly defined. In *Marshall*, the Supreme Court held that where jurors were exposed to a newspaper article revealing defendant's two prior convictions, information which had previously been ruled inadmissible as evidence, the trial judge should have considered them prejudiced as a matter of law, despite the representations of the individual jurors that they could still reach an impartial verdict.[72] Another situation in which partiality was deemed to exist as a matter of law was in *Sheppard v. Maxwell*,[73] where the publicity to which the jurors were exposed was particularly inflammatory.[74]

While there is no settled rule, a distinction between those cases in which the prejudicial publicity has consisted of representations of fact, true or untrue, and those in which it has consisted of editorial opinion generally unfavorable to the defendant may be of significance. Thus, as in *Marshall*, where the news items to which the jurors are exposed contain representations of fact which have been ruled inadmissible as evidence or which would be ruled inadmissible were an attempt made to introduce them, the judge may be required to declare a mistrial in spite of the responses of the jurors who have been exposed to the material. In a case where the prejudicial items do not contain representations of fact, but consist only of an editorial opinion, a reasonable reliance upon the representations of the jurors may be possible.

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[70] *Id.*

[71] Reynolds v. United States, 98 U.S. 145, 156 (1878).

[72] 360 U.S. 310, 312 (1959).

[73] 384 U.S. 333 (1966).

[74] The opinion of Mr. Justice Clark reports the "more flagrant episodes" of prejudicial publicity which arose during the trial of Dr. Sheppard. Sheppard v. Maxwell, 384 U.S. 333, 345-49 (1966).

CONCLUSION

In *Margoles v. United States*[75] the Court of Appeals for the Seventh Circuit developed a comprehensive procedure to be followed by trial judges in the Seventh Circuit in criminal proceedings where the jury is not sequestered, and prejudicial news coverage threatens the integrity of the proceeding. The application of this procedure, mandatory in all proceedings commenced after March 4, 1969,[76] is demonstrated in the subsequent case of *United States v. Daddano.*[77] The procedure established by *Margoles* is that where prejudicial publicity is brought to the court's attention during a trial, the court must ascertain if any jurors who had been exposed to the publicity had read or heard it. Such jurors who respond affirmatively must then be examined, individually and outside the presence of the other jurors, to determine the effect of the publicity.[78] While not expressly required by *Margoles,* implicit in that case, as well as in *Daddano,* is the assumption that during the trial, the judge will admonish the jurors to avoid exposure to news coverage of the proceeding, and that the function of the procedure established in *Margoles* is to determine the degree of compliance with such admonition.[79]

Recent decisions indicate that the procedure outlined in *Margoles* is the minimum safeguard which will be tolerated in a case where the possibility of exposure to prejudicial publicity exists,[80] and some situations may arise in which this procedure will be insufficient to protect the rights of the defendant.[81] In such a situation, tainting of the proceeding is presumed as a matter of law, and a mistrial must be declared, regardless of the representations of individual jurors that they are still capable of rendering an impartial verdict.[82] At present, no clear-cut rule for distinguishing those situations in which the procedure outlined in *Margoles* will be sufficient from those in which it will not has emerged.

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[75] 407 F.2d (7th Cir. 1969).
[76] United States v. Solomon, 422 F.2d 1110, 1117 (7th Cir. 1970).
[77] 432 F.2d 1119 (7th Cir. 1970).
[78] 407 F.2d 727, 735 (7th Cir. 1969).
[79] United States v. Daddano, 432 F.2d 1119, 1128 (7th Cir. 1970); Margoles v. United States, 407 F.2d 727, 734 (7th Cir. 1969).
[80] Note 63 *supra.*
[81] *See* Marshall v. United States, 360 U.S. 310 (1959).
[82] *Id.* at 312.