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First Circuit Upholds Reprosecution of Defendant Acquitted in 'Sham' Trial

John Rappaport

CRIMINAL LAW — DOUBLE JEOPARDY — FIRST CIRCUIT UPHOLDS REPROSECUTION OF DEFENDANT ACQUITTED IN "SHAM" TRIAL. — *Gonzalez v. Justices of the Municipal Court of Boston*, 382 F.3d 1 (1st Cir. 2004), *vacated mem.*, 125 S. Ct. 1640 (2005).

The thin line that sometimes divides acquittals from dismissals for double jeopardy purposes separates two trial outcomes with starkly differing consequences: absolute freedom and reprosecution with the possibility of incarceration. In patrolling the acquittal/dismissal divide, the Supreme Court has repeatedly eschewed a formalistic approach, opting instead for a functional inquiry that disregards labels and divides those cases resolved on the merits — "true acquittals" — from those resolved on grounds unrelated to guilt or innocence.[1]

Recently, in *Gonzalez v. Justices of the Municipal Court of Boston*,[2] the First Circuit followed the Supreme Court's cues and upheld a state supreme court decision that sent an acquitted defendant back to trial because his acquittal had been, in the state court's view, a "sham."[3] The First Circuit accused the trial judge of incanting the "magic word[]" "acquittal" to mask what was really a dismissal.[4] In so holding, however, the First Circuit robbed Peter to pay Paul — to fulfill its duties to the functional inquiry doctrine, it hollowed out an even more deeply rooted double jeopardy value: the finality of acquittals.[5] To avoid undermining this value, courts should not second-guess trial resolutions labeled "acquittal"; rather, they should employ a rule under which resolutions labeled "acquittal" absolutely bar review.

On June 8, 2000, the Commonwealth of Massachusetts tried Jorge Gonzalez in the Boston Municipal Court for various state drug law violations.[6] After both sides reported ready for trial, the judge granted Gonazalez's motion in limine to exclude most of the relevant evidence on the ground that the prosecution had failed to disclose the evidence

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[1] The seminal case creating this distinction is *United States v. Scott*, 437 U.S. 82 (1978). For a short exposition of the acquittal/dismissal divide, see Jason Wiley Kent, Note, *Double Jeopardy: When Is an Acquittal an Acquittal?*, 20 B.C. L. REV. 925 (1979). For a compendium of relevant cases and materials, see DAVID S. RUDSTEIN, DOUBLE JEOPARDY: A REFERENCE GUIDE TO THE UNITED STATES CONSTITUTION 110–26, 219–28 (2004).

[2] 382 F.3d 1 (1st Cir. 2004), *vacated mem.*, 125 S. Ct. 1640 (2005).

[3] *See id.* at 2 (quoting *Commonwealth v. Gonzalez*, 771 N.E.2d 134, 142 (Mass. 2002)).

[4] *See id.* at 10.

[5] *See* United States v. Martin Linen Supply Co., 430 U.S. 564, 571 (1977) ("Perhaps the most fundamental rule in the history of double jeopardy jurisprudence has been that '[a] verdict of acquittal . . . could not be reviewed, on error or otherwise, without putting [a defendant] twice in jeopardy, and thereby violating the Constitution.'" (alterations and omission in original) (quoting *United States v. Ball*, 163 U.S. 662, 671 (1896))).

[6] *Gonzalez*, 382 F.3d at 2–3.

in a timely manner.[7] Befuddled, the prosecution declared itself "no longer ready for trial,"[8] but the judge, unrelenting, pushed on.[9] After Gonzalez opted for a bench trial, the judge summoned the prosecution's first witness, but the prosecution again resisted, explaining that Gonzalez's successful evidentiary motion had devastated its case.[10] Seeing an escape, Gonzalez moved for a judgment of acquittal; the prosecution objected and suggested dismissal for noncompliant discovery instead.[11] But the judge declined to indulge the prosecution and "took the bull by the horns," advising Gonzalez to call a witness so that jeopardy would attach.[12] Taking this tip, Gonzalez's attorney called Gonzalez's daughter, asked her two trivial questions,[13] and then renewed his motion for a judgment of acquittal. The court granted the motion over the prosecution's "vociferous objection."[14]

The Commonwealth petitioned the Massachusetts Supreme Judicial Court (SJC) for relief pursuant to the SJC's "general superintendence" over inferior state courts.[15] The SJC accepted the Commonwealth's application and vacated both the exclusion order and the judgment.[16] The court found that the exclusion order was erroneous, that the error was exacerbated by the trial judge's hastiness, and that jeopardy had not attached.[17] In the SJC's view, the trial, and therefore the acquittal, had been a "sham."[18]

After unsuccessfully petitioning the United States Supreme Court for certiorari,[19] Gonzalez filed a petition for a writ of habeas corpus in the United States District Court for the District of Massachusetts.[20]

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[7] *Id.* at 3. The judge had expressed frustration that the prosecutor's office had repeatedly failed to comply with discovery orders. *See Gonzalez*, 771 N.E.2d at 137.

[8] *Gonzalez*, 382 F.3d at 3.

[9] Under *Commonwealth v. Super*, 727 N.E.2d 1175, 1181 (Mass. 2000), the judge had authority to proceed even without the prosecution's assent. *See Gonzalez*, 382 F.3d at 3. The First Circuit specifically noted that the prosecutor "could have nol-prossed the case or attempted to file an interlocutory appeal" but "took neither of these steps." *Id.*

[10] *Gonzalez*, 382 F.3d at 3.

[11] *Id.* If a reviewing court considered the motion to have been made "pretrial," such a dismissal would not preclude reprosecution. *See* Serfass v. United States, 420 U.S. 377, 394 (1975).

[12] *Gonzalez*, 382 F.3d at 3. In a bench trial, jeopardy typically attaches when the first witness is sworn, *see* Crist v. Bretz, 437 U.S. 28, 37 n.15 (1978) (citing *Serfass*, 420 U.S. at 388), or when the court begins to receive evidence, *see* United States v. Martin Linen Supply Co., 430 U.S. 564, 569 (1977).

[13] *See Gonzalez*, 382 F.3d at 3–4. The attorney asked the witness her name and whether she knew the defendant. *Id.* at 3 n.3.

[14] *Id.* at 4.

[15] *Id.* (citing MASS. GEN. LAWS ch. 211, § 3 (2002)) (internal quotation mark omitted).

[16] Commonwealth v. Gonzalez, 771 N.E.2d 134, 136 (Mass. 2002).

[17] *Id.* at 138, 140.

[18] *Id.* at 142.

[19] *See* 538 U.S. 962 (2003) (mem.).

[20] *See* Gonzalez v. Justices of the Mun. Ct. of Boston, No. Civ.A 0310859GAO, 2003 WL 22937727 (D. Mass. Nov. 25, 2003).

The district court rejected Gonzalez's petition, finding "no reason to quarrel" with the SJC.[21] The trial court's resolution, explained the district court, was "more akin" to a dismissal based on trial error than to an acquittal based on insufficiency of evidence.[22]

The First Circuit found the question "close," but nevertheless unanimously affirmed.[23] Reviewing the SJC's conclusions de novo,[24] Judge Selya[25] applied a "twofold inquiry" that, he stated, the Supreme Court has implicitly endorsed: "whether jeopardy attached in the original state proceeding" and, if so, "whether the state court terminated jeopardy in a way that prevents reprosecution."[26] The court reasoned that jeopardy probably had never attached because the state court proceeding had not subjected Gonzalez to "actual danger of conviction."[27] Ultimately, though, the court found it unnecessary to resolve the issue of attachment, ruling that even if jeopardy had attached, the trial court had not terminated the case "in a way that makes retrial constitutionally impermissible."[28] An acquittal, the court explained, is not always an acquittal: the label "acquittal" itself "enjoys no talismanic significance"[29] because the "appropriate inquiry is functional, not semantic."[30] Noting the irrelevance of the lone witness's testimony to the offenses charged, the court had no trouble concluding that "the trial judge disposed of the case on a basis wholly unrelated to [Gonzalez's] factual guilt or innocence."[31] Accordingly, the Double Jeopardy Clause did not bar reprosecution.[32]

Assessing whether the First Circuit erred in conducting its functional inquiry on the facts of this case is rather like judging whether a

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[21] *Id.* at *4.

[22] *Id.* A decision based on trial error would not bar reprosecution, whereas a decision based on insufficiency of evidence would. *See* Kent, *supra* note 1, at 926 & n.5.

[23] *Gonzalez*, 382 F.3d at 2.

[24] *Id.* at 6–7. The First Circuit had authority to conduct de novo review under 28 U.S.C. § 2241 (2000).

[25] The panel also included Judge Lynch and Judge Porfilio, who sat by designation from the Tenth Circuit.

[26] *See Gonzalez*, 382 F.3d at 8.

[27] *Id.* at 9.

[28] *Id.*

[29] *Id.* (citing *Serfass v. United States*, 420 U.S. 377, 392 (1975)).

[30] *Id.* at 10.

[31] *Id.* The court's language referenced the standard for acquittals that the Supreme Court laid out in *United States v. Martin Linen Supply Co.*, 430 U.S. 564, 571 (1977).

[32] *Gonzalez*, 382 F.3d at 11. Recently, the Supreme Court summarily vacated the First Circuit's decision and remanded the case for further consideration in light of *Smith v. Massachusetts*, 125 S. Ct. 1129 (2005). Gonzalez v. Justices of the Mun. Ct. of Boston, 125 S. Ct. 1640 (2005). Because *Smith* governs a conceptually distinct area of double jeopardy law — midtrial acquittals — it may be irrelevant to *Gonzalez*. In any case, the values that underlie *Smith* arguably militate in favor of the formalistic rule proposed here. *See infra* note 56.

cup of tea is hot or merely quite warm.[33] In distinguishing acquittals from dismissals, the Supreme Court has time and again rejected formalism and instructed that a resolution labeled "acquittal" is not actually an acquittal (and thus does not bar retrial) if it is merely a dismissal given a different name.[34] This mantra requires an inquiry into the content behind acquittals to make sure that the label "acquittal" is functionally accurate.[35] In particular, an "acquittal" must be a resolution on the merits and must not be based on some procedural ground unrelated to guilt; the latter resolution is actually a dismissal without prejudice and does not bar reprosecution.[36] The First Circuit undertook this prescribed functional inquiry in *Gonzalez*. But this content-based line of doctrine squarely contradicts *Fong Foo v. United States*,[37] another longstanding double jeopardy darling, which upholds the finality of even erroneous acquittals.[38] Fashioning a doctrine consistent with *Fong Foo* requires a "magic word" rule that prevents appellate courts from second-guessing acquittals on review.

In *Fong Foo*, the trial judge, apparently irked by improper prosecutorial conduct and lack of witness credibility, had directed the jury to acquit during the testimony of the prosecution's fourth witness.[39] The judge's resolution could not have constituted a judgment that the prosecution's evidence was insufficient — which would have been an "actual acquittal" under the Supreme Court's definition — because the prosecution had not yet rested.[40] The court of appeals vacated the ac-

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33 The Supreme Court has provided no guidance on how to resolve the functional inquiry in ambiguous cases like *Gonzalez*. On the First Circuit's view, the lack of meaningful evidence presented at trial indicated that the trial judge's resolution was *not* on the merits. A different (possibly more plausible) view is that, when a judge has authority to push the case to trial and the prosecution presents *no* evidence, the trial judge's resolution is the *clearest kind* of merits ruling — *total* insufficiency of evidence. Other courts have taken this alternate view and found, on facts similar to *Gonzalez*, that it was "perfectly obvious" that the proper resolution was to acquit the defendant due to insufficiency of evidence. Daff v. Maryland, 566 A.2d 120, 124 (Md. 1989); *see also* Goolsby v. Hutto, 691 F.2d 199 (4th Cir. 1982). The First Circuit, however, dismissed that view as unpersuasive. *See Gonzalez*, 382 F.3d at 10.

34 *See, e.g.*, *Martin Linen Supply*, 430 U.S. at 571; *Serfass*, 420 U.S. at 392.

35 *See Martin Linen Supply*, 430 U.S. at 571 ("[W]e must determine whether the ruling of the judge, whatever its label, *actually* represents a resolution . . . of some or all of the factual elements of the offense charged." (emphasis added)).

36 *See* Anne Bowen Poulin, *Double Jeopardy and Judicial Accountability: When Is an Acquittal Not an Acquittal?*, 27 ARIZ. ST. L.J. 953, 973 (1995) ("[A] resolution unrelated to guilt or innocence . . . does not qualify as an acquittal and does not raise a Double Jeopardy bar.").

37 369 U.S. 141 (1962) (per curiam).

38 The Supreme Court cites *Fong Foo* in nearly every double jeopardy decision, and, while not leaning heavily upon it, approvingly cited *Fong Foo* twice in its most recent double jeopardy pronouncement, *Smith v. Massachusetts*, 125 S. Ct. 1129, 1134, 1137 (2005).

39 *Fong Foo*, 369 U.S. at 141–42.

40 *See* 15B CHARLES ALAN WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE § 3919.5, at 646 (2d ed. 1992) ("[T]he acquittal [in *Fong Foo*] could not purport to rest on an evaluation of the facts yet to be adduced.").

quittal, finding that the trial court was "without power to direct the judgment in question."[41] But the Supreme Court reversed, finding it irrelevant that the acquittal may have been based upon "an egregiously erroneous foundation."[42] Regardless of whether the trial court actually had authority to direct the acquittal, the Court explained, "[t]he verdict of acquittal was final, and could not be reviewed . . . without putting [the petitioners] twice in jeopardy, and thereby violating the Constitution."[43]

Analytically, a court can offer only two justifications for uprooting a trial judge's acquittal: either the trial judge, under the circumstances, *could not* acquit (lacked authority) or *did not* acquit (lacked intent).[44] *Fong Foo* likely renders the former justification invalid:[45] when a trial judge acquits, for whatever reason, *Fong Foo* instructs that retrial offends the Double Jeopardy Clause. This principle applies, for example, when a judge acquits to punish the prosecution, as seemingly occurred in *Fong Foo*.[46] In fact, *Fong Foo* suggests that a judge is even allowed purposefully to miscategorize her resolution as an acquittal. There is, therefore, no such thing as an "erroneous acquittal."[47] Be-

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41 *Fong Foo*, 369 U.S. at 142.

42 *Id.* at 143.

43 *Id.* (alterations and omission in original) (quoting *United States v. Ball*, 163 U.S. 662, 671 (1896)) (internal quotation marks omitted). The First Circuit's attempt in *Gonzalez* to distinguish *Fong Foo* is unpersuasive. The court construed *Fong Foo* as "merely one iteration of a well-established rule . . . that 'when a defendant has been acquitted at trial he may not be retried on the same offense, even if the legal rulings underlying the acquittal were erroneous.'" *Gonzalez*, 382 F.3d at 11 (quoting *Sanabria v. United States*, 437 U.S. 54, 64 (1978)). The court explained that the trial judge in *Gonzalez* had not erred in acquitting, but that he had *never acquitted* because he had not resolved the factual elements of the offenses charged. *See id.* This purported distinction ignores that, in *Fong Foo*, the judge directed an acquittal *during the prosecution's case*, making it implausible that *Fong Foo* represented a resolution on the merits.

44 A third possibility is that the judge had the capacity and intent to acquit, but somehow failed to do so, perhaps through a clerical error or a vague trial resolution. This could be foreclosed by forcing judges to label each pro-defendant resolution as either a "dismissal" or an "acquittal," a requirement that parties could enforce through motions for clarification. Such a practice could virtually guarantee that all judges who intend to acquit actually do so.

45 *See* David S. Rudstein, *Double Jeopardy and the Fraudulently-Obtained Acquittal*, 60 MO. L. REV. 607, 616 (1995) ("The [*Fong Foo*] Court held that because of the final verdict of acquittal, the Double Jeopardy Clause barred the retrial of the defendants, even if the trial judge *lacked the power* to direct the acquittals under the circumstances and committed egregious error in doing so." (emphasis added)).

46 *See Fong Foo*, 369 U.S. at 142.

47 Peter Westen and Richard Drubel have noted that, in the jury context, the possibility of nullification renders "the term 'erroneous acquittal' . . . a misnomer." Peter Westen & Richard Drubel, *Toward a General Theory of Double Jeopardy*, 1978 SUP. CT. REV. 81, 130. They have also argued that "there are . . . good reasons to vest *trial judges* with the authority to acquit against the evidence." *Id.* at 134 (emphasis added). These reasons include lenity, placing bench trials on equal footing with jury trials and thereby encouraging defendants to select bench trials (which are more efficient), and legitimization of what already occurs in practice — judges acquitting "for reasons of personal conscience, irrespective of the defendant's actual guilt." *Id. Fong Foo* very likely

cause a trial judge's acquittal, regardless of its basis in the record, precludes reprosecution, examining the basis behind any particular acquittal is inappropriate.[48] A commitment to *Fong Foo* and the finality of erroneous acquittals means abandoning content-based review.

Because lack of authority — "could not acquit" — is an illegitimate ground for reversing an acquittal, the relevant inquiry must be whether the trial judge truly *did* acquit. That is, the proper inquiry is one of subjective judicial intent: whether the judge intended her ruling to have the effect of an acquittal. Indeed, because functional analysis is indeterminate whenever a procedural ground for dismissal may (but does not clearly) form the basis for a trial judge's decision, as in *Gonzalez*, only an assessment of the judge's intent can determine whether the trial actually ended in an acquittal or a dismissal.[49]

Interestingly, functional analysis of trial outcomes does not avoid formalism but merely changes the question that formalist analysis must answer. Although a trial judge with an ambiguous record cannot with certainty bar retrial by invoking the formal label "acquittal," it seems she *can* bar retrial by making it clear in the record that she finds "insufficient evidence," whether or not this is truly the case.[50] These words — "insufficient evidence" — are purportedly the outcome of a functional process and yet themselves seem to enjoy "talismanic significance."[51] In other words, at some level, formalism is inescapable. Accordingly, elevating the label "acquittal" to talismanic heights does not increase the risk that judges might, shielded by the Double

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represents a manifestation of these rationales. *See* WRIGHT, MILLER & COOPER, *supra* note 40, at 645–46 (explaining that *Fong Foo* illustrates that "[s]pecial importance is attached to the power of the first judge . . . to acquit, perhaps willfully *against the law and the facts*, perhaps ignorantly, perhaps wisely and well" (emphasis added)).

[48] One commentator has even gone so far as to argue that defendants who obtain acquittals through fraud should not be subject to reprosecution. *See generally* Rudstein, *supra* note 45. *But see* Thomas M. DiBiagio, *Judicial Equity: An Argument for Post-Acquittal Retrial When the Judicial Process Is Fundamentally Defective*, 46 CATH. U. L. REV. 77 (1996) (arguing that reprosecution should be permitted whenever a judgment is fundamentally flawed); Anne Bowen Poulin, *Double Jeopardy Protection from Successive Prosecution: A Proposed Approach*, 92 GEO. L.J. 1183, 1251 n.371 (2004) (proposing circumstances in which reprosecution should be permissible).

[49] *See supra* note 33.

[50] *See, e.g.*, Mannes v. Gillespie, 967 F.2d 1310, 1316 (9th Cir. 1992) (finding retrial barred when the trial judge first declared mistrial but later dismissed charges on the basis of "insufficient evidence"); United States v. Giampa, 758 F.2d 928, 929, 934 (3d Cir. 1985) (finding reprosecution barred when the trial judge initially dismissed charges on "legal" grounds but later entered judgment of acquittal because the evidence was "insufficient to sustain a conviction").

[51] Notably, the Supreme Court has never conceded that "insufficient evidence" is a talisman, and has maintained otherwise. *See* United States v. Jorn, 400 U.S. 470, 478 n.7 (1971) (plurality opinion) ("[T]he trial judge's characterization of his own action cannot control the classification of the action . . . ."). A magic word rule would both clarify whether the phrase "insufficiency of evidence" is dispositive and shift the focus to a phrase — "acquittal" — that more clearly relates to the history and purposes of the Double Jeopardy Clause.

Jeopardy Clause, permanently unlock the jailhouse door for guilty defendants — it merely recasts the key.

Once a court properly limits its task in reviewing acquittals to an examination of judicial intent, *Gonzalez* becomes an easy case. The trial judge's intent in *Gonzalez* was obvious: he intended to acquit. He explicitly rejected a suggestion to dismiss for noncompliant discovery in favor of acquitting. And to protect the defendant and guarantee the finality of his chosen outcome, he also ensured that jeopardy first attached and clearly distinguished his resolution from a dismissal without prejudice.[52] Given the trial's circumstances, the First Circuit, in upholding a reversal of this acquittal, could only contend that the judge lacked the authority to acquit. Stated another way, the First Circuit stepped in to correct the trial judge's "erroneous acquittal" — exactly the type of intervention that *Fong Foo* forbids.

True, judicial intent will not always be as transparent as it was in *Gonzalez*.[53] Inquiries into subjective intent are notoriously troublesome, and for good reason — divining the intent of a government actor and hinging constitutional decisions upon it can be a recipe for disaster.[54] In this context, however, there exists a simple solution: a magic word rule would assure judges that they can make manifest their intent to acquit by using the word "acquittal."[55] Under such a rule, there would be no need to conduct any more searching inquiry beyond the label itself; only a misguided or careless judge would choose the label contrary to his intent.[56] A resolution labeled "acquittal" would

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[52] *See Gonzalez*, 382 F.3d at 3.

[53] Imagine, for example, a judge who orally signals his intent to dismiss a case but enters an acquittal in the record.

[54] For example, the predominant critique of *Washington v. Davis*, 426 U.S. 229 (1976), which held that plaintiffs must prove discriminatory intent to succeed on equal protection claims, is that subjective intent of government actors is often difficult, if not impossible, to prove. *See, e.g.*, Catharine A. MacKinnon, *The Supreme Court, 1999 Term—Disputing Male Sovereignty: On* United States v. Morrison, 114 HARV. L. REV. 135, 137 (2000) (noting that "the 'intent' requirement . . . has made it increasingly difficult to hold states responsible for equal protection violations committed by state actors"). In numerous other areas of law, the Supreme Court has steered clear of inquiries into subjective intent. *See, e.g.*, Horton v. California, 496 U.S. 128, 138 (1990) ("[E]venhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer."); New York v. Quarles, 467 U.S. 649, 655–56 (1984) (holding that the "public safety" exception to *Miranda* does not depend on officers' motivations).

[55] While administrability might favor affording analogous significance to dismissals, a magic word rule cannot shelter "dismissals" as it does "acquittals." To hold that an insufficiency of evidence ruling that is mislabeled "dismissal" does not preclude reprosecution would lower double jeopardy protection beneath the constitutionally permissible floor. *See* Sanabria v. United States, 437 U.S. 54, 68–69 (1978).

[56] In *Smith v. Massachusetts*, 125 S. Ct. 1129 (2005), the Supreme Court held that while states have flexibility to adjust the finality of midtrial acquittals, the Constitution demands that defendants *know* when an acquittal is really an acquittal. *See id.* at 1136–37. A magic word rule en-

represent a decision to acquit and bar retrial — and under *Fong Foo would* bar retrial — even if based on an "egregiously erroneous" foundation.[57]

Adherence to a magic word rule not only captures formalism's rule of law benefits,[58] but also divines most accurately the crucial distinction between "true acquittals" and dismissals: the trial judge's intent. The current doctrine, by contrast, permits an appellate court to overturn an acquittal in exactly the fashion that *Fong Foo* held offended the Constitution. Moreover, a magic word rule succeeds, while a functional inquiry fails, in giving practical meaning to the Supreme Court's repeated assurance that "the most fundamental rule in the history of double jeopardy jurisprudence" is the finality of acquittals.[59]

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sures that this principle also finds expression in the context of acquittals that terminate trial proceedings.

[57] *Fong Foo* does not preclude inquiry into whether jeopardy has attached. Thus, even under a magic word rule, an appellate court still has some breathing room to review an acquittal in an especially suspect trial: a reviewing court could find that retrial is permissible because jeopardy never attached. This possibility is particularly relevant since the Supreme Court has required a *functional* determination that jeopardy has attached. *See* Serfass v. United States, 420 U.S. 377, 391–92 (1975) ("Without risk of a determination of guilt, jeopardy does not attach . . . ."); *see also Gonzalez*, 382 F.3d at 8–9 (declining to "elevate[] form over substance" and explaining that "jeopardy connotes risk").

[58] Such benefits might include restraint, efficiency, error reduction, consistency, transparency, clarity, comity, and predictability. For the classic modern account, see Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. CHI. L. REV. 1175 (1989).

[59] United States v. Martin Linen Supply Co., 430 U.S. 564, 571 (1977) (citing *United States v. Ball*, 163 U.S. 662, 671 (1896)); *accord Sanabria*, 437 U.S. at 64.