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KATZ, J., dissenting. It is black letter law that, as a part of the constitutional protection against multiple prosecutions, " 'the [d]ouble [j]eopardy [c]lause affords a criminal defendant a valued right to have his trial completed by a particular tribunal.' *Oregon* v. *Kennedy*, 456 U.S. 667, 671–72, 102 S. Ct. 2083, 72 L. Ed. 2d 416 (1982)." *State* v. *Butler*, 262 Conn. 167, 174, 810 A.2d 791 (2002). In order to safeguard this right adequately, before a trial court properly may declare a mistrial, it is the state's heavy burden to prove manifest necessity and the trial court's responsibility to give due consideration to feasible alternatives in determining whether the state has satisfied that burden. Although a trial court's decision to order a mistrial is entitled to some deference, in my view, in the present case, it acted improperly because the process by which it reached that determination does not reflect the requisite scrupulous, sound exercise of discretion. I reach this conclusion because the record did not reflect an adequate basis to inform the court's decision to order a mistrial in lieu of other alternatives. Specifically, there was an inadequate basis from which the trial court could make a reasoned determination that it was not feasible to order a continuance to allow substitute counsel to take over the case for the state. That deficiency resulted from both the state's failure to provide relevant information to the trial court and the trial court's failure to make appropriate inquiries. Because the majority's sanction of this inadequate effort is unduly deferential[1] and inconsistent with the constitutional rights of the defendants, Richard Anderson and Janice Anderson, I respectfully dissent.

The majority has set forth the general principles regarding declarations of mistrial, which need not be repeated. I would highlight, however, the following essential obligations of the state, the trial court and the reviewing court. "[T]he words manifest necessity appropriately characterize the *magnitude* of the prosecutor's burden. *Arizona* v. *Washington*, [434 U.S. 497, 505, 98 S. Ct. 824, 54 L. Ed. 2d 717 (1978)]. . . . [That] burden is a *heavy* one. . . . Id. . . . [A] *high* degree of necessity is required before a conclusion may be reached that a mistrial is appropriate . . . . Id., [506]." (Emphasis added; internal quotation marks omitted.) *State* v. *Tate*, 256 Conn. 262, 278, 773 A.2d 308 (2001). "A trial judge must therefore engage in a '*scrupulous* exercise of judicial discretion'; *United States* v. *Jorn*, [400 U.S. 470, 485, 91 S. Ct. 547, 27 L. Ed. 2d 543 (1971)];[2] in order to 'assure himself that the situation warrants action on his part foreclosing the defendant from a potentially favorable judgment by the tribunal.' Id., 486." (Emphasis added.) *State* v. *Buell*, 221 Conn. 407, 415, 605 A.2d 539, cert. denied, 506 U.S. 904, 113 S. Ct. 297,

121 L. Ed. 2d 221 (1992). "All possible alternatives to a mistrial must be considered, employed *and found wanting* before declaration of a mistrial over the defendant's objection is justified. *State* v. *Pugliese*, 120 N.H. 728, 730, 422 A.2d 1319 (1980)." (Emphasis added; internal quotation marks omitted.) *State* v. *Tate*, supra, 286–87; accord *United States* v. *Tinney*, 473 F.2d 1085, 1089 (3d Cir.) ("*Jorn* places on the trial judge a duty to exhaust all other reasonable possibilities before deciding to foreclose [a defendant's] option to proceed. . . . The scrupulous exercise of that discretion means that he must seek out and consider all avenues of cure to avoid trial abortion." [Internal quotation marks omitted.]), cert. denied, 412 U.S. 928, 93 S. Ct. 2752, 37 L. Ed. 2d 156 (1973).

"A reviewing court looks for manifest necessity by examining the entire record in the case without limiting itself to the actual findings of the trial court. . . . It is the examination of the propriety of the trial court's action against the backdrop of the record that leads to the determination [of] whether, in the context of a particular case, the mistrial declaration was proper. Given the constitutionally protected interest involved, reviewing courts must be satisfied . . . that the trial judge exercised *sound* discretion in declaring a mistrial." (Citations omitted; emphasis added; internal quotation marks omitted.) *State* v. *Van Sant*, 198 Conn. 369, 379, 503 A.2d 557 (1986); accord *United States* v. *Scott*, 437 U.S. 82, 96, 98 S. Ct. 2187, 57 L. Ed. 2d 65 (1978) ("a trial judge's characterization of his own action cannot control the classification of the action" [internal quotation marks omitted]). Sound discretion requires that, although the trial court need not state expressly its findings on the record, the record must reflect an adequate factual basis to inform the court's reasoned decision to order a mistrial in lieu of other alternatives that would allow the trial to continue.[3] See *Arizona* v. *Washington*, supra, 434 U.S. 517 (no constitutional impropriety when "basis for the trial judge's mistrial order is adequately disclosed by the record" to demonstrate "deliberate exercise of his discretion"); see also *United States* v. *Lara-Ramirez*, 519 F.3d 76, 84–85 (1st Cir. 2008) ("Our task on appeal is to determine whether the district judge's declaration of a mistrial was reasonably necessary under all the circumstances. . . . We are guided in this determination by consideration of three interrelated factors: [i] whether alternatives to a mistrial were explored and exhausted; [ii] whether counsel had an opportunity to be heard; and [iii] whether the judge's decision was made after sufficient reflection." [Citations omitted; internal quotation marks omitted.]); *United States* v. *Bates*, 917 F.2d 388, 395–96 (9th Cir. 1990) ("When it is not patently clear that reversal is certain, the reviewing court must scrutinize the record, since the Supreme Court requires the courts of appeal to ascertain that

the trial court exercised its discretion properly in the circumstances that confronted it. The Supreme Court and appellate courts have relied on four indicators in determining whether the trial court abused its discretion. Has the trial judge [1] heard the opinions of the parties about the propriety of the mistrial, [2] considered the alternatives to a mistrial and chosen the alternative least harmful to a defendant's rights, [3] acted deliberately instead of abruptly, and [4] properly determined that the defendant would benefit from the declaration of mistrial?"). In determining whether the granting of a mistrial has violated the double jeopardy clause, "[w]e resolve any doubt in favor of the liberty of the citizen, rather than exercise what would be an unlimited, uncertain, and arbitrary judicial discretion." (Internal quotation marks omitted.) *Downum* v. *United States*, 372 U.S. 734, 738, 83 S. Ct. 1033, 10 L. Ed. 2d 100 (1963); accord *Sanchez* v. *United States*, 919 A.2d 1148, 1151 (D.C. 2007).

Turning to the facts of the present case, I agree that the trial court did not abuse its discretion in deciding that continuing the case until Senior Assistant State's Attorney John Malone recovered from his illness was not a feasible alternative to declaring a mistrial. The trial court directly communicated with Malone to affirm his unavailability and to assess the seriousness of his condition and, as a result, learned of Malone's diagnosis of pneumonia and imminent hospitalization. There is nothing in the record to raise any question as to the veracity of these facts. In light of the facts gleaned upon this inquiry, the trial court reasonably concluded that Malone's return date was too indeterminate to allow a continuance pending his return.

The aforementioned inquiry and the facts gleaned from that inquiry stand in stark contrast to the basis, however, for the trial court's determination that it was not feasible to order a continuance to allow substitute counsel to take over the case. The only statement made on the record by the state relative to this matter was the following sweeping, self-serving statement by State's Attorney John Whelan: "I don't think *anyone* could step in at this point and try to salvage this case until [Malone] returns or finish it if he doesn't return."[4] (Emphasis added.) Whelan did not represent that anyone from his office actually had inquired into the availability of other state's attorneys in the crime fraud unit to take over the case, nor, *if* such an inquiry had been made, how this ultimate determination had been reached. Cf. *United States* v. *Lynch*, 598 F.2d 132, 135–36 (D.C. Cir. 1978) (no abuse of discretion to order mistrial on basis of judge's illness after initial two week continuance and administrative judge's later inquiries determined that no other judges were available to substitute), cert. denied, 440 U.S. 939, 99 S. Ct. 1287, 59 L. Ed. 2d 498 (1979). Nor did he provide any information to the court about the preparation time that would be necessary for

such a substitution, information that could have been obtained from Malone.[5] Whelan never brought to the court's attention the fact that other members of the office of the chief state's attorney previously had been involved in the case,[6] and there is no evidence that anyone from that office had ascertained whether assistance by these staff members could minimize the preparation time for substitute counsel. In sum, the state did *nothing* to prove that a continuance with substitute counsel was not a feasible option. Accordingly, on the basis of this record, the state's position essentially was, first, as evidenced by Whelan's statement, that *no one other than Malone* could prosecute the case, and, second, as evidenced by the state's failure to provide any relevant information to the court, that the trial court should defer to the *state's* assessment of the feasibility of continuing the case with substitute counsel. Under these circumstances, I question how the state met its "heavy" burden of proving that a mistrial was a manifest necessity.

Despite the state's failure to provide such information and its responsibility in creating the situation at hand by assigning only one attorney to what it now characterizes as a highly complicated case,[7] the trial court made no inquiries on the record regarding facts relevant to the feasibility of a continuance with substitute counsel. In the absence of a clear record, however, such inquiries are an essential aspect of the soundness of the exercise of the court's discretion. Compare *Fulton* v. *Moore*, 520 F.3d 522, 529 (6th Cir. 2008) (concluding that manifest necessity standard was met when, inter alia, trial judge "asked defense counsel how long a period would be needed to prepare under the amended indictment, demonstrating that he considered calling the jury back at a later date") with *United States* v. *Lara-Ramirez*, supra, 519 F.3d 87 ("Although the [D]istrict [C]ourt has broad discretion to fashion an appropriate procedure for assessing whether the jury has been exposed to substantively damaging information, and if so, whether cognizable prejudice is an inevitable and ineradicable concomitant of the jury's exposure to an improper outside influence . . . the judge does not have discretion to refuse to conduct any inquiry at all regarding the magnitude of the taint-producing event and the extent of the resulting prejudice. Accordingly, the [D]istrict [C]ourt's investigation in this case fell short of the scrupulous exercise of judicial discretion required to support the mistrial declaration." [Citation omitted; internal quotation marks omitted.]) and *Camden* v. *Circuit Court of the Second Judicial Circuit*, 892 F.2d 610, 621 (7th Cir. 1989) (Posner, J., dissenting) (reaching manifest necessity issue not reached by majority and concluding that no manifest necessity existed for mistrial on basis of juror bias when trial court had failed to make inquiry to jurors and biased juror could be replaced with alternate). The trial court apparently

determined that it could glean sufficient facts from the record to conclude that the state had met its burden of establishing manifest necessity. I therefore turn to those facts.

First, the trial court, *Schimelman, J.*, stated that the case was complicated, pointing to the more than 300 exhibits that had been submitted in the eight days of trial as evidence of that fact, and, therefore, concluded that substitute counsel would require significant preparation time. I would agree that the case was not a simple one.[8] A review of the record makes clear, however, that the overwhelming majority of the exhibits submitted were simply checks that had been introduced in short order on a single day of trial.[9] The record also reflects that the most complicated testimony, that of the forensic accountants, had not yet begun. Therefore, a continuance would not have impaired the jury's ability to recall the most complicated aspects of the case.

Second, the trial court pointed to the fact that there were jurors who were impatient because of the original trial schedule of five and one-half weeks, plans that jurors had made and the delay that already had occurred.[10] The trial court stated on the record, however, that it had considered polling the jury to determine whether a continuance until September, 2007, was feasible when it had thought that Malone might be able to return by then. It did not explain why such a continuance was a viable option under those circumstances, but not for substitute counsel. Of course, because the state had provided no date by which it could be prepared to proceed with substitute counsel and the trial court declined to inquire into that matter, the court had no basis on which to poll the jury as to its availability in September or any other time. See *United States* v. *Lara-Ramirez*, supra, 519 F.3d 87–88 ("In its written opinion denying [the defendant's] motion to dismiss, the court stated that, '[i]n view of all the circumstances, cautioning the jurors as to their ability to render a verdict discarding any reference to the Bible would have been self-defeating.' We do not understand the basis for these generalities. Although a more developed record might have supported findings that the Bible had played a central role in deliberations and that individual jurors would not have been able to disregard its influence, we see no basis for such findings in this record."); *United States ex rel. Russo* v. *Superior Court*, 483 F.2d 7, 15–16 (3d Cir. 1973) (concluding that trial court's determination that jury was too exhausted to continue deliberations improper in absence of inquiries as to jurors physical condition or their progress toward reaching verdict and citing *United States* v. *Lansdown*, 460 F.2d 164, 169 [4th Cir. 1972], which held that conclusion of inability of jury to reach verdict must be supported by "something in addition to" trial court's decision that jury had deliberated "long enough"), cert. denied, 414 U.S. 1023, 94 S. Ct. 447, 38 L. Ed. 2d 315

(1973).

With regard to the jury, however, there is no indication that the trial court gave any weight to the fact that it had taken one month to select this jury. Nor is there any indication that the court considered the fact that there were four alternate jurors, some of whom might have been willing to serve in the place of any of the six jurors who might have been unavailable at a later date. Rather, the trial court suggested that, if it were to order a continuance, the jury might be prejudiced against the defendants. The defendants, however, had asserted their desire to continue with this jury. In the absence of some concrete reason to believe that the jury would have such bias, the trial court's speculation should not override the defendants' "valued right to have [their] trial completed by a particular tribunal." (Internal quotation marks omitted.) *State* v. *Butler*, supra, 262 Conn. 174; see also *United States* v. *Shafer*, 987 F.2d 1054, 1058 (4th Cir. 1993) ("As an initial matter, we must put aside any statements by the [D]istrict [C]ourt that the mistrial was partially motivated by concerns of prejudice to the defense. . . . We note that such reservations were not shared by [the defendant], who wanted the trial to continue." [Citations omitted.]).

In sum, I do not intend to suggest that the state's failure to provide, and the trial court's failure to inquire about, *every* fact that might be relevant to whether an alternative is feasible will render a mistrial order improper. Moreover, I am open to the possibility that the actual facts might have justified the conclusion that a continuance was not feasible. The record in the present case, however, does not reflect sufficient facts to have allowed the trial court to exercise sound, scrupulous discretion in rejecting the alternative of a continuance. Therefore, "[t]he court's failure to conduct an adequate investigation leaves us with a record that does not support the finding that the mistrial was manifestly necessary. In the absence of such record support, [the defendants'] valued right to have [their] trial completed by a particular tribunal is not to be foreclosed." (Internal quotation marks omitted.) *United States* v. *Lara-Ramirez*, supra, 519 F.3d 89.

Accordingly, I respectfully dissent.

[1] The majority concludes that there are two possible levels of scrutiny afforded to the trial court's decision regarding whether manifest necessity exists, strict or highly deferential, and that the present case necessarily requires the highly deferential standard by default because it does not involve the circumstances specifically identified by the United States Supreme Court under which strict scrutiny applies. Several courts, however, have characterized those two standards as extremes at either end of a *spectrum* of degrees of deference accorded, depending on the basis for the mistrial. See, e.g., *Baum* v. *Rushton*, 572 F.3d 198, 207 (4th Cir. 2009); *United States* v. *Campbell*, 544 F.3d 577, 581 (5th Cir. 2008), cert. denied, U.S. , 129 S. Ct. 1019, 173 L. Ed. 2d 308 (2009); *United States* v. *Wecht*, 541 F.3d 493, 505–508 (3d Cir.), cert. denied, U.S. , 129 S. Ct. 658, 172 L. Ed. 2d 616 (2008); *United States* v. *Berroa*, 374 F.3d 1053, 1057 (11th Cir. 2004), cert. denied, 543 U.S. 1076, 125 S. Ct. 932, 160 L. Ed. 2d 817 (2005); *United States* v. *Stevens*, 177 F.3d 579, 583 (6th Cir. 1999); *United States* v. *Ruggiero*, 846

F.2d 117, 123 (2d Cir.), cert. denied, 488 U.S. 966, 109 S. Ct. 491, 102 L. Ed. 2d 528 (1988); see also *Arizona* v. *Washington*, 434 U.S. 497, 510, 98 S. Ct. 824, 54 L. Ed. 2d 717 (1978) (citing "spectrum of trial problems which may warrant a mistrial and which vary in their amenability to appellate scrutiny"). At one end of the spectrum, strict scrutiny has been applied when the mistrial either is prompted by the unavailability of critical prosecution evidence or is being used by the prosecution to gain a tactical advantage, whereas, at the other end of the spectrum, great deference has been accorded when the mistrial results from the classic grounds for a mistrial, a jury deadlock. See *Baum* v. *Rushton*, supra, 207 (citing Supreme Court case law to this effect). As the court in *Baum* noted: "Other cases lie somewhere between these two extremes on the spectrum of necessity, and may (or may not) satisfy the manifest necessity test." Id. The facts of the present case are not akin to jury deadlock or even jury bias, which "lies on the spectrum between these two extremes but is considered 'an area where the trial judge's determination is entitled to special respect.' " *United States* v. *Stevens*, supra, 583. Moreover, I question whether stricter scrutiny may be called for in a case, such as the present one, in which the state is wholly responsible for the mistrial. Nonetheless, I need not determine whether two tiers or a spectrum of deference should be accorded to a trial court's ultimate decision to order a mistrial because, in the present case, the process by which the trial reached its conclusion does not reflect the requisite sound exercise of its discretion. See *United States* v. *Wecht*, supra, 507 ("'[T]he deference accorded the trial judge's finding of manifest necessity can disappear, even in the classic case of a hung jury, when the trial judge has not exercised sound discretion.' [*United States* v. *Berroa*, supra, 1057] . . . . Exactly how much deference is lessened is not an exact science: we still are much more likely to sustain a mistrial declaration based on a genuinely deadlocked jury than on any other basis, but our review will be somewhat more rigorous when we perceive procedural flaws in a [D]istrict [C]ourt's decision." [Citation omitted.]); *United States* v. *Razmilovic*, 507 F.3d 130, 140 (2d Cir. 2007) ("[i]n these circumstances, where the record does not indicate that there was genuine deadlock [by the jury], and the court has not provided an explanation for its conclusion or pointed to factors that might not be adequately reflected on a cold record, we are unable to satisfy ourselves that the trial judge exercised 'sound discretion' in declaring a mistrial"); see also footnote 2 of this dissenting opinion.

[2] Although the scrupulous exercise of discretion language is derived from the plurality opinion in *United States* v. *Jorn*, supra, 400 U.S. 485, many Circuit Courts of Appeals, this court and many other state courts have adopted and applied that standard. See, e.g., *Baum* v. *Rushton*, 572 F.3d 198, 207 n.5 (4th Cir. 2009); *United States* v. *Taylor*, 569 F.3d 742, 746 (7th Cir. 2009); *United States* v. *Lara-Ramirez*, 519 F.3d 76, 83 (1st Cir. 2008); *United States* v. *Huang*, 960 F.2d 1128, 1134 (2d Cir. 1992); *United States* v. *Dixon*, 913 F.2d 1305, 1311, 1313 (8th Cir. 1990); *Jones* v. *Hogg*, 732 F.2d 53, 56–57 (6th Cir. 1984); *United States* v. *Grasso*, 552 F.2d 46, 52 (2d Cir. 1977); *United States* v. *Tinney*, 473 F.2d 1085, 1089 (3d Cir.), cert. denied, 412 U.S. 928, 93 S. Ct. 2752, 37 L. Ed. 2d 156 (1973); *State* v. *Saunders*, 267 Conn. 363, 394, 838 A.2d 186, cert. denied, 541 U.S. 1036, 124 S. Ct. 2113, 156 L. Ed. 2d 722 (2004); *People* v. *Segovia*, 196 P.3d 1126, 1133 (Colo. 2008); *Swanson* v. *State*, 956 A.2d 1242, 1244 (Del. 2008); *People* v. *Edwards*, 388 Ill. App. 3d 615, 623, 902 N.E.2d 1230 (2009); *State* v. *Fassero*, 256 S.W.3d 109, 115 (Mo. 2008); *State* v. *Kornbrekke*, 156 N.H. 821, 829, 943 A.2d 797 (2008); *State* v. *Voigt*, 734 N.W.2d 787, 791 (N.D. 2007); *State* v. *Robinson*, 146 Wash. App. 471, 479, 191 P.3d 906 (2008); see also *United States* v. *Dinitz*, 424 U.S. 600, 607, 96 S. Ct. 1075, 47 L. Ed. 2d 267 (1976) (citing this language from *Jorn*).

[3] See *Ross* v. *Petro*, 515 F.3d 653, 664 (6th Cir. 2008) ("the failure of a lower court to explicitly explain its ruling in terms of the governing standard is not determinative, as long as the record provides sufficient justification for the ruling"), cert. denied sub nom. *Ross* v. *Rogers*, U.S. , 129 S. Ct. 906, 173 L. Ed. 2d 109 (2009); *United States* v. *Razmilovic*, 507 F.3d 130, 140 (2d Cir. 2007) ("[w]hile a trial judge is not constitutionally mandated to explain the decision to declare a mistrial if the record provides significant justification . . . when we are unable to discern from the record that a jury was genuinely deadlocked, a trial judge's explanation, elaborating on the decision to declare a mistrial, can aid our inquiry" [citation omitted; internal quotation marks omitted]); *United States* v. *Bates*, 917 F.2d 388, 397 n.12 (9th Cir. 1990) ("[t]he [c]onstitution does not require the trial judge to consider the alternatives on the record or conduct a hearing . . . but

the record must support the finding that manifest necessity justified the mistrial" [citation omitted]); *United States* v. *Smith*, 621 F.2d 350, 351 (9th Cir. 1980) ("The record gives no indication that the court here even considered the possibility of a continuance before ordering a mistrial. Since the court did not consider, *or have before it the facts necessary for thorough consideration of*, an obvious alternative to a mistrial, we cannot say that there was a 'manifest necessity' to terminate the trial at that time." [Emphasis added.]); *Dunkerley* v. *Hogan*, 579 F.2d 141, 146 (2d Cir. 1978) ("Although findings of fact or a statement of the trial court's reasons for the declaration of a mistrial are not constitutionally mandated, the failure of the record to provide adequate support for the trial judge's action may bar a retrial. It is not enough that plausible reasons might conceivably exist for the trial judge's action. If we are to review his exercise of discretion, to which deference should ordinarily be accorded, we must know the basis for that decision as disclosed by the record, including argument of counsel prior to the judge's ruling." [Internal quotation marks omitted.]), cert. denied, 439 U.S. 1090, 99 S. Ct. 872, 59 L. Ed. 2d 56 (1979).

[4] Because the state took such an unequivocal position, the defendants, in addition to stating clearly that they wanted to go forward with the present jury, limited their response to the court as follows: "[T]he state, with all due respect, should have been prepared. Knowing a trial of this dimension that was projected to be five weeks of presenting of evidence by the state with that many exhibits, it would have been wise had the state got a second lawyer in a case like this." I note, however, that the defendants had no burden to produce evidence or make specific objections to the mistrial decision. See *State* v. *Van Sant*, supra, 198 Conn. 381–82 n.11.

[5] The state later essentially conceded that it had not provided such information to the court on the record prior to the declaration of a mistrial. In its second request for an evidentiary hearing and factual findings, which was filed along with its opposition to the defendants' motion to dismiss, the state asserted: "[T]he trial court was not presented with certain evidence concerning the preparation time required for a substitute assistant state's attorney to familiarize himself/herself with the case and to resume trial, apart from the complexity of the trial itself to the point at which it was interrupted and the large number of exhibits, because [Malone] who was the only person knowledgeable about the necessary preparation time was the attorney who had tried the cases and was hospitalized on July 5 [2007] and unable to travel to court to provide that evidence to the presiding judge." We note that the fact that the trial court had spoken directly with Malone on the same day that it ordered the mistrial suggests that someone from the office of the chief state's attorney also could have spoken to Malone. Alternatively, because other members of the office of the chief state's attorney had been involved in the case; see footnote 6 of this dissenting opinion; information could have been sought from them.

[6] According to the affidavit in support of Richard Anderson's arrest warrant, at least three people from the office of the chief state's attorney, in addition to Malone, had been involved in the case: (1) Michael O'Connor, an inspector for the computer crimes task force with thirty years of experience, who was the affiant in the arrest warrant and had investigated the allegations of the complainant, Luigi Chinetti, Jr.; (2) Vic Sharma, a forensic fraud examiner, who had met with the complainant in 2003 and was scheduled to testify in the cases for the state; and (3) Senior Assistant State's Attorney Gary Nicholson, who also had met with the complainant in 2003.

[7] The state look a slightly different position in its motion to consolidate the cases against the two defendants. In that motion, the state represented: "Each information is supported by a relatively uncomplicated series of facts that will not be confusing to the jury when presented in the course of the same trial . . . ."

[8] I would also point out, however, that public defenders are all too familiar with circumstances wherein they routinely are assigned to cases on short notice and the trial court nonetheless expects them to quickly familiarize themselves with the details of the case and to provide a competent defense. I see no reason why there should be a double standard for the state, especially when the right to protection against double jeopardy is implicated and the state has chosen to assign a single state's attorney to a case that it deems complex.

[9] The log for the exhibits reveals that 80 percent of the approximately 350 state exhibits were introduced on the same day, and almost all of these exhibits were checks. According to the trial court's daybook, on that day, three witnesses testified for brief periods ranging from ten to fifty minutes.

[10] Given the original scheduled end date of the trial, near the end of July, 2007, the most reasonable assumption is that these jurors had summer vacation plans. Indeed, in its memorandum of law in opposition to the defendants' motion to dismiss the case, the state asserted: "It must be remembered that the trial began in late spring and extended into the summer months, a time when many people take their annual vacation." If that were the case, the jurors might have been more amenable to a long continuance rather than a short one.