****

The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the electronic version of an opinion and the print version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest print version is to be considered authoritative.

****

BORDEN, J., concurring and dissenting. I agree with the result reached by the majority, and with most of its analysis. I write separately, however, to register my disagreement with some of its reasoning.

With respect to part I of the majority opinion, I agree that the state's attorney improperly emphasized the notion that, in order to acquit the defendant, Balbir Singh, the jury would have to conclude that the witness, Christopher Gansen, was lying in his identification of the defendant. I disagree with the majority's conclusion, however, that the state's attorney improperly expressed his personal belief that the jury had concluded that Gansen had not lied. Simply because the state's attorney used the phrase ''I think,'' is not, in my view, sufficient to invoke the rule that the state's attorney may not express his personal belief in the veracity of a witness. The rationale behind that rule is to prevent the jury from speculating that the state's attorney is presenting his own unsworn testimony and that, because he prepared and presented the case, he may have access to matters not in evidence. *State* v. *Whipper*, 258 Conn. 229, 263, 780 A.2d 53 (2001). In my view, the state's attorney's argument in this respect did not create a serious risk of such speculation.

For the same reason, I disagree with part II of the majority opinion. I do not think that any of the state's attorney's arguments went beyond permissible rhetoric. First, in my view, the majority too easily dismisses the state's attorney's initial caveat to the jury that, when he would be discussing the evidence and how it fits together, he would be doing so as if he had said, '' 'I submit to you that you will conclude from the evidence that something happened,' '' and that it would be the jury's task, and not his, to see how the evidence fits together and find the facts. The full text of that initial statement to the jury; see footnote 21 of the majority opinion; seems to me to be quite full and fair, and there is no reason to think that the jury did not understand and follow it.

Second, as both the majority and I agree, the rationale for the rule against the state's attorney's expression of his own beliefs is to prevent a form of unsworn testimony that will appear to the jury to be drawn from matters not in evidence to which only the state's attorney had access. *State* v. *Whipper*, supra, 258 Conn. 263. Although the state's attorney used phases such as ''I think,'' and ''I believe,'' rather than ''I submit that the evidence shows,'' I do not believe that his remarks violated that rule. Particularly given his original caveat to the jury, I do not think it is reasonably likely that the jury would have interpreted his remarks as such unsworn testimony.

Thus, in my view, the majority goes too far, and does not give the jury the credit of being able to differentiate between argument on the evidence and attempts to persuade them to draw inferences in the state's favor, on one hand, and improper unsworn testimony, with the suggestion of secret knowledge, on the other hand. The state's attorney should not be put in the rhetorical straightjacket of always using the passive voice, or continually emphasizing that he is simply saying "I submit to you that this is what the evidence shows," or the like. I think that the majority creates this impression, and in my view micromanages the limits of prosecutorial argument.

With respect to part IV of the majority opinion, I disagree with the majority's assertion that the state's attorney's reference to the defendant's conduct and demeanor on the stand constituted a personal attack on him. See footnote 27 of the majority opinion. Contending that the jury should reject an inference of innocence arguably deriving from his consent to the search of his apartment was not improper, and did not constitute a personal attack. Furthermore, characterizing him as "arrogan[t]," although perhaps somewhat personal, seems to me to be quite mild as such and within the permissible leeway granted to the vagaries of what often are unprepared oral remarks in final argument.

Nonetheless, despite these disagreements with certain specifics of the majority's reasoning, I agree with its ultimate conclusion that, based on the particular improprieties that it has identified and with which I agree, the state's overall conduct deprived the defendant of a fair trial. I write separately here only to highlight my reasons, which track those of the majority, for that conclusion.

With respect to the only disputed issue in the case, namely, the identification of the defendant as the arsonist, the state's case was weak. It was based solely on Gansen's identification made from across the street at nighttime, and on the presence of gasoline on the shoes of the defendant, a taxicab driver, who claimed that he had spilled gasoline on his shoes.

Moreover, it was particularly egregious to suggest, both during the trial and in final argument, that in order to acquit the defendant, the jury would necessarily have to believe that it was the defendant's testimony that Gansen was lying in his eyewitness identification of the defendant and that the police officers were lying in their testimony regarding whether a state police canine had alerted to the defendant's shoes. It is too close a step from this argument to the equally improper argument, which the jury was likely to have heard, that in order to acquit the defendant the jury would have had to find that these witnesses had lied. It is obvious that there are many explanations for a claimed misidentifi-

cation other than a lie, and there was no evidence that the defendant knew that the canine had alerted to his shoes.

It was also egregious, in my view, to imply that the jurors had some sort of obligation to the state—to be, in the words of the state's attorney, ''the jurors [he] thought [he] selected when [he] started all of this.'' The expression of this sense of either obligation to him or expectation by him created too high a risk of impermissibly skewing the jurors' views of their proper function as impartial fact finders, without alignment with either side.

Finally, the suggestion by the state, during final argument, that the defendant had destroyed his shirt—had disposed of it in the dumpster—also was unjustified by any evidence. Its necessary implication of consciousness of guilt could not have gone unnoticed by any discerning juror.

This is one of the rare cases in which the totality of the improprieties leads to the conclusion that the defendant was deprived of a fair trial. I therefore agree with the majority that the conviction must be reversed.