MCDONALD, C. J., with whom PALMER, J., joins, concurring in part and dissenting in part. I agree with parts I and II A of the majority opinion. I disagree, however, with part II B.

In *State* v. *Williams*, 231 Conn. 235, 244, 679 A.2d 920 (1994), this court assumed, without deciding, that the mid-deliberation substitution of an alternate juror violated General Statutes § 54-82h (c) and then proceeded to employ a harmless error analysis.[1] The majority now overrules this court's holding in *Williams*. ''[T]he doctrine of stare decisis counsels that a court should not overrule its earlier decisions unless the most cogent reasons and inescapable logic require it.'' (Internal quotation marks omitted.) *George* v. *Ericson*, 250 Conn. 312, 318, 736 A.2d 889 (1999). I would conclude that this is not such a case.

The majority states that it is not overruling the holding of *State* v. *Williams*, supra, 231 Conn. 243–44, that ''the mechanisms for providing for and dismissing alternate jurors, and the circumstances under which they may be substituted for regular jurors do not implicate constitutional rights.'' Because, however, '' '[i]t is impossible to say that the remaining [jurors] would be

capable of disregarding their prior deliberations, even with an instruction to do so, and become receptive to the alternate's attempt to assert a view that might be nonconforming,' " the majority concludes "that reversal must be automatic." In reaching this conclusion, the majority is at odds with this court's precedent. We have held that a jury is presumed to follow the trial court's instructions. See, e.g., *State* v. *Griffin*, 175 Conn. 155, 160, 397 A.2d 89 (1978). In this case, there is no indication that the jury failed to follow the trial court's instructions to begin deliberations anew following the seating of the alternate juror.

The majority's conclusion is also at odds with the wisdom of the United States Court of Appeals for the Second Circuit, whose rulings are binding on federal courts in Connecticut. In *United States* v. *Hillard*, 701 F.2d 1052, 1058 (2d Cir. 1983), that court held that, despite the rule 24 (c) of the Federal Rules of Criminal Procedure,[2] the federal equivalent to § 54-82h (c), the substitution of an alternate juror after deliberations have begun does not lead to reversal per se, absent a showing of prejudice. A great number of other Circuit Courts of Appeal have so held as well. See *United States* v. *Quiroz-Cortez*, 960 F.2d 418, 420 (5th Cir. 1992) (same); *United States* v. *Huntress*, 956 F.2d 1309, 1316 (5th Cir. 1992) (same); *United States* v. *Gambino*, 788 F.2d 938, 948 (3d Cir. 1986) (same); *United States* v. *Josefik*, 753 F.2d 585, 587 (7th Cir. 1985) (same); *United States* v. *Kopituk*, 690 F.2d 1289, 1309 (11th Cir. 1982) (same).

The majority is also at odds with other states that have followed the federal approach of applying a harmless error test to claims of improper substitution of alternate jurors. See, e.g., *People* v. *Henderson*, 45 Ill. App. 3d 798, 805, 359 N.E.2d 909 (1977) (error harmless if no prejudice from late substitution); *State* v. *Williams*, 659 S.W.2d 298, 300 (Mo. App. 1983) (same); *State* v. *Grovenstein*, 335 S.C. 347, 351–52, 517 S.E.2d 216 (1999) (burden on defendant to demonstrate prejudice due to improper jury influence).

Finally, in reaching this conclusion, the majority is at odds with the collective wisdom of the people of Connecticut as embodied by the legislature. Since *State* v. *Williams*, supra, 231 Conn. 235, was decided, the legislature had taken no action in response to our holding that a violation of § 54-82h (c) is subject to harmless error analysis. Although "we are aware that legislative inaction is not necessarily legislative affirmation . . . we also presume that the legislature is aware of [this court's] interpretation of a statute, and that its subsequent nonaction may be understood as a validation of that interpretation." (Citation omitted; internal quotation marks omitted.) *State* v. *Hodge*, 248 Conn. 207, 262–63, 726 A.2d 531, cert. denied, U.S. , 120 S. Ct. 409, 145 L. Ed. 2d 319 (1999). The legislature, how-

ever, recently amended § 54-82h (c) to permit the trial court to retain alternate jurors and to substitute an alternate juror for a regular juror after deliberations have begun. The very practice that the majority deems to be so prejudicial as to prohibit harmless error review is now permitted by statute.

In this case, the record, as in *Williams*, indicates that the trial court had attempted to minimize any potential prejudice. The trial court questioned each of the alternate jurors as to whether they had spoken to anyone about the case. Each juror responded in the negative, without hesitation or equivocation. As a result, the trial court deemed them "very credible," concluding that they were "still viable, unbiased and fair jurors . . . ." The trial court also instructed the jurors to "begin the determination and deliberation process from ground zero." I would therefore conclude that, because the defendant has failed to establish that he was prejudiced by the needed substitution of the alternate juror, the defendant's conviction should be sustained.

Accordingly, I respectfully dissent.

[1] The trial court in *State* v. *Williams*, supra, 231 Conn. 240, questioned the alternate juror as to whether he had spoken to anyone about the case, and he responded that he had not. The trial court also questioned the remaining eleven jurors as to whether they would be able to begin deliberations anew. The jurors indicated that they would be able to do so. Id. Because the record indicated that the trial court in *Williams* had attempted to minimize any potential prejudice to the defendant resulting from the substitution of the alternate juror, this court determined that no prejudice had occurred. Id., 245.

[2] In 1998, the year during which the defendant's trial in the present case took place, rule 24 (c) of the Federal Rules of Criminal Procedure provided in relevant part: "Alternate jurors in the order in which they are called shall replace jurors, who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. . . . An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. . . ."