second trial, even if the termination was erroneous, is barred.[72] The reasons the Court has given for fixing the attachment of jeopardy at a point prior to judgment and thus making some terminations of trials before judgment final insofar as the defendant is concerned is that a defendant has a "valued right to have his trial completed by a particular tribunal."[73] The reason that the defendant's right is so "valued" is that he has a legitimate interest in completing the trial "once and for all" and "conclud[ing] his confrontation with society,"[74] so as to be spared the expense and ordeal of repeated trials, the anxiety and insecurity of having to live with the possibility of conviction, and the possibility that the prosecution may strengthen its case with each try as it learns more of the evidence and of the nature of the defense.[75] These reasons both inform the determination when jeopardy attaches and the evaluation of the permissibility of retrial depending upon the reason for a trial's premature termination.

A second trial may be permitted where a mistrial is the result of "manifest necessity,"[76] as when, for example, the jury cannot reach a verdict[77] or circumstances plainly prevent the continuation of the trial.[78] The question of whether there is double jeopardy becomes more difficult, however, when the doctrine of "manifest necessity" is called upon to justify a second trial following a mistrial granted by the trial judge because of some event within the prosecutor's con-

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[72] *Cf.* United States v. Jorn, 400 U.S. 470 (1971); Downum v. United States, 372 U.S. 734 (1963). "Even if the first trial is not completed, a second prosecution may be grossly unfair. It increases the financial and emotional burden on the accused, prolongs the period in which he is stigmatized by an unresolved accusation of wrongdoing, and may even enhance the risk that an innocent defendant may be convicted. The danger of such unfairness to the defendant exists whenever a trial is aborted before it is completed. Consequently, as a general rule, the prosecutor is entitled to one, and only one, opportunity to require an accused to stand trial." Arizona v. Washington, 434 U.S. 497, 503–05 (1978).

[73] Wade v. Hunter, 336 U.S. 684, 689 (1949).

[74] United States v. Jorn, 400 U.S. 470, 486 (1971) (plurality opinion).

[75] Arizona v. Washington, 434 U.S. 497, 503–05 (1978); Crist v. Bretz, 437 U.S. 28, 35–36 (1978). *See* Westen & Drubel, *Toward a General Theory of Double Jeopardy*, 1978 SUP. CT. REV. 81, 86–97.

[76] United States v. Perez, 22 U.S. (9 Wheat.) 579, 580 (1824).

[77] United States v. Perez, 22 U.S. (9 Wheat.) 579 (1824); Logan v. United States, 144 U.S. 263 (1892). *See* Renico v. Lett, 559 U.S. ___, No. 09–338, slip op. (2010) (in a habeas review case, discussing the broad deference given to trial judge's decision to declare a mistrial because of jury deadlock). *See also*, Yeager v. United States, 557 U.S. ___, No. 08–67, slip op. at 7 (2009); Blueford v. Arkansas, 566 U.S. ___, No. 10–1320, slip op. (2012) (reprosecution for a greater offense allowed following jury deadlock on a lesser included offense).

[78] Simmons v. United States, 142 U.S. 148 (1891) (juror's impartiality became questionable during trial); Thompson v. United States, 155 U.S. 271 (1884) (discovery during trial that one of the jurors had served on the grand jury that had indicted defendant and was therefore disqualified); Wade v. Hunter, 336 U.S. 684 (1949) (court-martial discharged because enemy advancing on site).