FLYNN, C. J., concurring. I agree with the majority's conclusion that the judgment of the trial court must be affirmed and with much of its reasoning. I write separately, however, to explain a factor that was critical to my agreement with part I of the majority decision.

"[T]o secure a conviction for failure to appear. . . the state must prove beyond a reasonable doubt that the defendant was legally ordered to appear . . . that he failed to appear and that such failure was wilful. To prove the wilful element of failure to appear the state must prove beyond a reasonable doubt . . . that the defendant received and deliberately ignored a notice to appear . . . ." (Internal quotation marks omitted.) *State* v. *Pauling*, 102 Conn. App. 556, 568, 925 A.2d 1200, cert. denied, 284 Conn. 924, 933 A.2d 727 (2007).

In this appeal, the defendant, Charles W. Outlaw, Jr., claims that the court improperly denied his motion for a judgment of acquittal on the basis of insufficient evidence. I agree with the majority's conclusion that the evidence was sufficient to support a conviction under General Statutes § 53a-172 (a) (1) because the jury was free to make an independent assessment of the defendant's testimony. It did not have to believe that the defendant was present in the courthouse and that he left the courthouse on instruction from his attorney.[1]

My concern lies not in what the majority opinion says, but in what it does not say. On a daily basis, defendants are instructed by their attorneys, by court personnel and by prosecutors that their cases will not be going forward on that particular day or that a dismissal or nolle will be recommended and, therefore, that they need not be present and are free to leave. This avoids wasting the time of both the court and Connecticut citizens who are called to court when, for one good reason or another, cases cannot be heard or disposed of on that day or can be disposed of quickly without the presence of the defendant. Early every morning, lines form in the courthouses of our Superior Courts, filled with defendants waiting to meet with prosecutors on motor vehicle infractions. Many of these defendants are told that the case will be nolled for various reasons and that they should leave the courthouse. Unless the presiding judge has forbade such common practices a defendant should be able to rely on such statements without facing criminal charges.

In the present case, the defendant submitted to the court a request to charge the jury on the element of wilfullness, which provided in relevant part: "Wilfully, as in General Statutes § 53a-172, implies doing a forbidden act purposely in violation of the law. . . . In order to prove that the defendant wilfully failed to appear

before the [c]ourt, the [s]tate must prove beyond a reasonable doubt that the defendant purposely ignored his obligation to appear in court. If you believe the defendant physically went to the courthouse on March 28, 2003, to meet his lawyer in order to attend court and thereafter, when his lawyer failed to appear in the courthouse, the defendant contacted his lawyer and was advised that his lawyer was in another court and would obtain a new court date for the defendant, then you must find that the defendant did not deliberately ignore his obligation to appear in court as scheduled." The court, however, did not include this request in its charge to the jury. In this appeal, the defendant does not claim that the court improperly failed to give this requested instruction. It is for this reason that I agree with the majority's decision.

[1] There was no evidence before the jury that the attorney ever appeared in the New Britain courthouse on March 28, 2003, the day that the defendant was to be sentenced. Consequently, without his attorney present, the defendant could not have been sentenced on that day. See *State* v. *Williams*, 199 Conn. 30, 45, 505 A.2d 699 (1986) (under both federal and state constitutions, defendant has due process right to assistance of counsel during sentencing); *James L.* v. *Commissioner of Correction*, 245 Conn. 132, 144, 712 A.2d 947 (1998) (sentencing process is critical stage of criminal proceeding).