BERDON, J., dissenting. I disagree with the majority's decision affirming the trial court's ruling precluding the expert testimony of John Kennish on the ground that he had no experience, training or special knowledge relating to railroad security systems.[1] It is correct that he had no such experience, but he was not offered for that purpose. Kennish was offered as an expert on premises security and did not require knowledge of or experience with the operation of a railroad. "An expert witness may be qualified to give an opinion on one subject, but not on another." C. Tait, Connecticut Evidence (3d Ed. 2001) § 7.6.1, p. 75 (Cum. Sup. 2006).

Premises security was relevant because there is no basic difference between security on the stairs of a railroad from that of any other public stairway in a high crime area. "Except in malpractice cases, it is not essential that an expert witness possess any particular credential, such as a license, in order to be qualified to testify, so long as his education or experience indicate that he has knowledge on a relevant subject significantly greater than that of persons lacking such education or experience. Generally, expert testimony is admissible if (1) the witness has a special skill or knowledge directly applicable to a matter in issue, (2) that skill or knowledge is not common to the average person, and (3) the testimony would be helpful to the court or jury [in] considering the issues." (Internal quotation marks omitted.) *Conway* v. *American Excavating, Inc.*, 41 Conn. App. 437, 448–49, 676 A.2d 881 (1996), quoting *State* v. *Kemp*, 199 Conn. 473, 476, 507 A.2d 1387 (1986).

The plaintiff, James E. Sullivan, administrator of the estate of James P. Sullivan, represents that Kennish would have testified as to the lack of security at the location where the murder occurred and those measures that the defendant Metro-North Commuter Railroad Company could have and should have taken to protect the public and the victim.[2] The testimony was essential to the plaintiff's case as to whether the defendant was negligent with respect to the care that the plaintiff's decedent was due and whether the death of the decedent was foreseeable.

"The determination of the qualification of an expert is largely a matter for the discretion of the trial court. . . . The trial court's decision is not to be disturbed on appeal unless that discretion has been abused, or the error is clear and involves a misconception of the law." (Citations omitted; internal quotation marks omitted.) *Siladi* v. *McNamara*, 164 Conn. 510, 513, 325 A.2d 277 (1973). In the present case, however, the trial court both abused its discretion and misconceived the law.

II

I also disagree with respect to the court's instructing the jury on superseding and intervening causes. In *Barry* v. *Quality Steel Products, Inc.*, 263 Conn. 424, 440, 820 A.2d 258 (2003), our Supreme Court concluded that the doctrine of superseding cause no longer serves a useful purpose in our jurisprudence when a defendant claims that a subsequent act by a third party cuts off his own liability for the plaintiff's injuries. The court went on to explain that superseding cause instructions serve to complicate what is fundamentally a proximate cause analysis. The court concluded that "because our statutes allow for apportionment among negligent defendants; see General Statutes § 52-572h; and because Connecticut is a comparative negligence jurisdiction; General Statutes § 52-572o; the simpler and less confusing approach to cases . . . where the jury must determine which, among many, causes contributed to the plaintiffs' injury, is to couch the analysis in proximate cause rather than allowing the defendants to raise a defense of superseding cause." *Barry* v. *Quality Steel Products, Inc.*, supra, 436–39.

The Supreme Court, in footnote 16 in *Barry*, did limit its decision to situations "wherein a defendant claims that its tortious conduct is superseded by a subsequent negligent act or there are multiple acts of negligence." Id., 439 n.16. The court pointed out, however, that its decision "does not necessarily affect those cases where the defendant claims that an *unforeseeable* intentional tort, force of nature, or criminal event supersedes its tortious conduct," but left those situations to another day. (Emphasis added.) Id. Although in the present case, the intervening cause was a criminal act, it cannot be classified as unforeseeable because, as both parties point out, the shooting took place in a high crime area and should have been no surprise to the defendant. See, e.g., *Stewart* v. *Federated Dept. Stores, Inc.*, 234 Conn. 597, 662 A.2d 753 (1995).

In the present case, the defendant objected to the instruction both prior to and subsequent to the time it was given.

I respectfully dissent.

[1] The trial court makes it clear in its articulation that it focused solely on railroad expertise. "The court found that Mr. Kennish had no *railroad* experience, no involvement in *railroad* security; that he was not a *railroad* expert, a *railroad* police procedure expert or a *railroad* police security expert. The court further found that Mr. Kennish had consulted with no discernible data, could not explain or support his methodology and had no objective criteria to support his opinions. Mr. Kennish did not rely on any reliable studies, but used his personal experience, which as stated, was not in the area of *railroad* security." (Emphasis added.)

[2] In the plaintiff's supplemental disclosure, he represented: "James W. Kennish is expected to testify as to the lack of security at the South Norwalk Train Station and those measures that the [d]efendant could have and should have taken to protect the public and the [p]laintiff in particular . . . consistent with his records, as to his evaluation of the South Norwalk Train Station, [its] general design, maintenance, lighting, upkeep, the relevancy of criminal activity in a general area and specifically at the train station, the overall safety

afforded the public in general and, more specifically, to those individuals who avail themselves of the services offered by Metro North. He/she will further testify as to the overall lack of security at the South Norwalk Train Station, as to those measures which should have been taken to protect the deceased and furthermore an overall comparison of the train station and its lack of security versus security measures taken by others in the vicinity of the train station.

"James Kennish will testify as to his opinion of liability with regard to the incident which is the subject of this action. Additionally, he is expected to testify as to issues of liability and foreseeability.

"The basis for his opinions include his examination and evaluation of the incident location, police investigation records and reports, review of site plan, engineer designs of the station, locations of other stations, photographs and films already provided to the defendant through discovery as well as his education, training and experience.

"Mr. Kennish's opinion will be based upon his physical observations of the station and the surrounding area as well as various records and a review of various reports that are either public records or have been made available to him through the defendant, the City of Norwalk and other railroad stations."