SCHALLER, J., concurring. The tragic family situation portrayed in these pages presents us with the case of a mother who, after an initial period of serious neglect of her children, has redeemed herself through her dedicated efforts to regain her role as a parent. The respondent mother, according to the reliable, well-informed testimony of many witnesses, has complied with each one of the specific steps required by the state despite the inconsistent and, at times, inadequate support of the department of children and families (department). The respondent ended her relationship with the children's abuser and rejected any other harmful relationships, acknowledged her responsibility for her past mistakes, became and remained substance free, participated fully in therapy, obtained an education, gained employment, secured a dwelling for herself and the children, and overcame all obstacles to maintaining close contact with her children. It is difficult to imagine how any person in this situation could do more toward the goal of being reunited with her children. Her efforts have been so fruitful that the testimony of all but one medical professional witness urged that termination of her parental rights was not in the children's best interests. That one witness, Kelly Rogers, the court-appointed evaluator on whom the trial court relied almost exclusively in its decision, had minimal contact with the respondent during a period of four years—a mere four sessions encompassing a mere ten hours. In an almost unprecedented development, all five children, whose relationship with their mother was terminated by the court against their wishes, have joined in appealing the termination.[1] The guardian ad litem for the children, Susanne McNamara, strongly supported the respondent's position—and the children's best interests—in her extensive trial testimony.

Although I agree with the conclusion of the majority opinion that, under the current standard of review of a trial court's termination of parental rights, we are bound to affirm the judgment of the trial court, I write separately to emphasize that these three appeals demonstrate emphatically that a more rigorous appellate review of the record is essential in appeals challenging the termination of parental rights.

I emphasize specifically that the trial court in the present case did not give appropriate weight to the highly reliable evidence in the record that unmistakably supported the claims of the children and the respondent in opposition to the termination of the respondent's parental rights. The trial court granted the petition for termination of the respondent's parental rights filed by the petitioner, the commissioner of children and families, on the basis of its determinations that the

department had proved by clear and convincing evidence that: (1) it had made reasonable efforts toward reunification, and the respondent was unable or unwilling to benefit from reunification efforts;[2] see General Statutes § 17a-112 (j) (1); (2) the respondent had failed sufficiently to rehabilitate herself; see General Statutes § 17a-112 (j) (3) (B) (ii); (3) the respondent had denied each child, with the exception of Neri Jasmin, by reason of an act or acts of commission or omission, the care, guidance or control necessary for his or her physical, educational or emotional well-being;[3] see General Statutes § 17a-112 (j) (3) (C); and (4) termination of the respondent's parental rights was in the best interest of each child. See General Statutes § 17a-112 (j) (2). A scrupulous review of the record casts great doubt on the trial court's conclusions that the department satisfied its burden of showing that it made reasonable efforts to reunify the children, and that the respondent was unable or unwilling to benefit from the offers of and provision of services to the point where she could be considered to be a parental resource for reunification. Although those conclusions would suffice to call the trial court's judgment into question, and it is unnecessary for me to reach the issue of whether there is substantial evidence in the record to support the court's conclusion that termination was in the best interests of the children, I reach that issue, and conclude that the record does not support the court's conclusion, to demonstrate further that a scrupulous review of the record would yield a different result in the present appeal.

Ordinarily, the factual findings of the trial court are subject to clearly erroneous review. *State* v. *Mullins*, 288 Conn. 345, 358, 952 A.2d 784 (2008). When, however, "the factual findings implicate a defendant's constitutional rights and the credibility of witnesses is not the primary issue, we will . . . undertake a scrupulous examination of the record to ensure that the findings are supported by substantial evidence."[4] Id. Under this level of review, the trial court's judgment will stand unless that judgment is clearly erroneous—the only difference is that in making that determination, we undertake a "scrupulous review" of the record, a level of factual review that we currently do not employ in termination cases. We have applied this heightened level of review of the factual record in cases involving: a criminal defendant's right to due process; see, e.g., *State* v. *Lawrence*, 282 Conn. 141, 154, 920 A.2d 236 (2007) (scrupulous examination of record to determine whether defendant's confession was voluntary); *State* v. *Colon*, 272 Conn. 106, 335, 864 A.2d 666 (2004) (scrupulous examination of record in reviewing finding of aggravating factor); equal protection; see, e.g., *State* v. *Ellis*, 232 Conn. 691, 700–701, 657 A.2d 1099 (1995) (scrupulous examination of record in reviewing trial court's finding that jury panel was selected randomly);

a criminal defendant's fifth amendment rights; see, e.g., *State* v. *Jones*, 281 Conn. 613, 654–55, 916 A.2d 17 (scrupulous examination of record to determine whether waiver of fifth amendment rights was valid), cert. denied, U.S. , 128 S. Ct. 164, 169 L. Ed. 2d 112 (2007); *State* v. *Atkinson*, 235 Conn. 748, 759–60, 670 A.2d 276 (1996) (scrupulous examination of record to determine whether defendant was in custody for purpose of fifth amendment *Miranda* warnings[5]); fourth amendment rights; see, e.g., *State* v. *Damon*, 214 Conn. 146, 154–55, 570 A.2d 700 (scrupulous examination of record to determine whether defendant's fourth amendment protections were implicated by police interrogation), cert. denied, 498 U.S. 819, 111 S. Ct. 65, 112 L. Ed. 2d 40 (1990); and eighth amendment rights. See, e.g., *State* v. *Webb*, 252 Conn. 128, 138, 750 A.2d 448 (scrupulous examination of record to review trial court's determination that lethal injection is not cruel and unusual punishment), cert. denied, 531 U.S. 835, 121 S. Ct. 93, 148 L. Ed. 2d 53 (2000).[6]

Although the present case is not a criminal matter, of course, it is unquestionable that termination of a parent's rights implicates a fundamental liberty interest—the right to raise one's children—that is accorded a unique position in our society. The United States Supreme Court has stated that it is "perhaps the oldest of the fundamental liberty interests recognized by this [c]ourt." *Troxel* v. *Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000). "The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." *Wisconsin* v. *Yoder*, 406 U.S. 205, 232, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972). In fact, to say that the present case *implicates* the fundamental right to raise one's children is a vast understatement. "A termination of parental rights is both total and irrevocable. Unlike other custody proceedings, it leaves the parent with no right to visit or communicate with the child." (Internal quotation marks omitted.) *M.L.B.* v. *S.L.J.*, 519 U.S. 102, 118, 117 S. Ct. 555, 136 L. Ed. 2d 473 (1996), quoting *Lassiter* v. *Dept. of Social Services*, 452 U.S. 18, 39, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981) (Blackmun, J., dissenting). "Few forms of state action are both so severe and so irreversible." *Santosky* v. *Kramer*, 455 U.S. 745, 759, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982). The interest of the parent in "the accuracy and justice of the decision . . . is, therefore, a commanding one." (Internal quotation marks omitted.) Id. Accordingly, the court has held that due process requires that, "[b]efore a [s]tate may sever completely and irrevocably the rights of parents in their natural child, due process requires that the [s]tate support its allegations by at least clear and convincing evidence." Id., 747–48.

In arriving at its conclusion that, at a minimum, the state must prove its case in support of termination by clear and convincing evidence, the court employed the due process balancing test set forth in *Mathews* v. *Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). For the same reasons that the court concluded that due process requires the clear and convincing standard as the minimum burden of persuasion borne by the state, I believe that due process also requires that a reviewing court examine the record scrupulously to determine whether the trial court's termination of parental rights is supported by substantial evidence. Specifically, in *Mathews*, the court stated that the "identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the [g]overnment's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." Id. No one disputes that the private interest at stake in termination cases is a fundamental right protected by both the federal and state constitutions. See, e.g., *Troxel* v. *Granville*, supra, 530 U.S. 65; *Dutkiewicz* v. *Dutkiewicz*, 289 Conn. 362, 372–73, 957 A.2d 821 (2008); *Roth* v. *Weston*, 259 Conn. 202, 218, 789 A.2d 431 (2002). In sweeping language that has direct application to the case at hand, the court in *Santosky* described the significant risk of erroneous deprivation in a termination proceeding: "At such a proceeding, numerous factors combine to magnify the risk of erroneous factfinding. Permanent neglect proceedings employ imprecise substantive standards that leave determinations unusually open to the subjective values of the judge. . . . In appraising the nature and quality of a complex series of encounters among the agency, the parents, and the child, the court possesses unusual discretion to underweigh probative facts that might favor the parent. Because parents subject to termination proceedings are often poor, uneducated, or members of minority groups . . . such proceedings are often vulnerable to judgments based on cultural or class bias.

"The [s]tate's ability to assemble its case almost inevitably dwarfs the parents' ability to mount a defense. No predetermined limits restrict the sums an agency may spend in prosecuting a given termination proceeding. The [s]tate's attorney usually will be expert on the issues contested and the procedures employed at the factfinding hearing, and enjoys full access to all public records concerning the family. The [s]tate may call on experts in family relations, psychology, and medicine to bolster its case. Furthermore, the primary witnesses at the hearing will be the agency's own professional

caseworkers whom the [s]tate has empowered both to investigate the family situation and to testify against the parents. Indeed, because the child is already in agency custody, the [s]tate even has the power to shape the historical events that form the basis for termination." (Citations omitted.) *Santosky* v. *Kramer*, supra, 455 U.S. 762–63.

The present case exemplifies precisely the type of problems envisioned in *Santosky*. The state, through its action and its inaction, shaped the course of the termination proceedings. In the state's determined efforts to pursue termination, the realities of the complex factual situation became obscured in an overly simplistic view of the family relationships involved. As a result, the respondent's extraordinarily successful efforts to recover from a difficult situation were too readily dismissed. The fact that the testimony of a court-appointed evaluator with disturbingly limited contacts with the family, rather than a state's witness, had unusual and inappropriate impact on the court's decision making, should not insulate the factual record from our penetrating review.

The addition of the due process safeguard that I propose in this concurrence is, I submit, one of great benefit—namely, a decreased likelihood of an unjust termination of parental rights. Moreover, according the level of factual review that I propose would not subject the trial court's determinations to more than clearly erroneous review; it would merely require the reviewing court, in applying clearly erroneous review to the judgment of the trial court, to scrutinize the factual record as closely as it would when dealing with the deprivation of liberty that is at issue in criminal cases. The deprivation of liberty and the far-reaching consequences of a parental termination are surely no less important than many of the criminal proceedings that are given scrupulous review. The government's interest in safeguarding children would not be affected adversely by a more exacting review of the record, because such a review must be conducted solely for the purpose of ascertaining whether there was substantial evidence to support the trial court's determination. This case illustrates that the government's interest in safeguarding children would, in fact, be strengthened. This balance is appropriate given the unique nature of the fundamental right to raise one's children, and given *Santosky*'s recognition that the interest at stake in parental rights termination cases is "far more precious than any property right." Id., 758–59.

The present case illustrates clearly the need for a more exacting review of the factual record in termination cases. To illustrate, I examine each of the following in turn to determine whether the trial court's conclusion that the department met its burden of establishing each requirement by clear and convincing evidence was sup-

ported by substantial evidence: (1) the department made reasonable efforts toward reunification; (2) the respondent was unable or unwilling to benefit from further reunification efforts; and (3) termination of the respondent's parental rights is in the best interest of each child. As to each, I conclude that there is not substantial evidence in the record to support the trial court's conclusion.

In arriving at its conclusion that the department had made reasonable efforts toward reunification, the trial court relied on evidence of the services provided to the respondent. The court listed those services as including: the nonoffending partner parenting program, substance abuse evaluation and treatment, individual and group therapy, random urine screenings, child parenting program, court-ordered evaluations, family therapy, supervised and unsupervised visitation, transportation for the respondent and her children, assistance in obtaining appropriate housing, assistance in obtaining furniture, intensive family reunification services, in-home services, assistance in obtaining resources for employment, infant outreach program, parent aide services, and administrative and case management services.

Although the department did provide many services to the respondent, the question, in determining whether the department made reasonable efforts, is whether the department did *everything* reasonable toward reunification—not necessarily everything *possible*, but at the very least everything reasonable. See *In re Daniel C.*, 63 Conn. App. 339, 361, 776 A.2d 487 (2001). My review of the record reveals that the department failed in three major areas to make reasonable efforts toward reunification: family therapy, visitation, and the first reunification attempt.

Denise Stone, the respondent's therapist, testified that family therapy was essential to the reunification process. She testified that family therapy would allow the therapist to observe the family functioning as a unit and address any issues that arose in that context. It also would have allowed the children a forum to present the respondent with their concerns about the respondent's failure to protect them from abuse, and would have allowed the therapist to observe how she responded to those difficult questions. It would have allowed the children an opportunity to process the abuse with the respondent in a safe environment and receive reassurances that she would be able to protect them in the future. McNamara, the children's guardian ad litem, also testified that the amount of family therapy provided to the family, a service that the experts agreed was essential as part of a reunification plan, was minimal and did not demonstrate a commitment to reunification on the part of the department. She testified specifically regarding Melody's need for family therapy, a service that had not been provided on any consistent

and significant basis by the department, and expressed the view that such therapy would have been essential to assist Melody to work through the trauma of the sexual abuse.

Even Rogers, a clinical psychologist and the court-appointed evaluator in the present case, strongly recommended in his first evaluation that family therapy would be the "ideal" way to address the sexual abuse that the children had suffered, and the resulting erosion of their sense of security in the home and trust in the respondent. He reiterated that recommendation several times, in very strong terms: "Family therapy must be instituted and at least four sessions . . . are necessary before reunification is *considered*." (Emphasis added.) In his second evaluation report, Rogers stated that family therapy for about six months to prepare the family for reunification would be reasonable. Such therapy, according to Rogers, would "form an evaluative context to drive the decision whether or not to reunify." According to Rogers, open communication between the family therapist and all the individual therapists would be required in order for the process to be effective.[7] Given the recommendations of Stone and Rogers, and McNamara's opinion of the importance of providing family therapy on a consistent basis, it is not even a close call to say that the provision of family therapy to this family by the department would have been reasonable, and, therefore, that the department should have, as part of its reasonable efforts toward reunification, provided family therapy.

Despite the fact that both Stone and Rogers informed the department that family therapy was an essential component of reunification, the department provided no more than minimal family therapy to the family. Stone testified that she had spoken to Denita Weber, a social worker assigned to the case, several times about beginning family therapy with the respondent and the children. Weber responded initially that Melody's individual therapist had indicated that Melody was not ready for family therapy at that time. The department gave no reason for the failure to supply family therapy for the younger children at the outset. Eventually, family therapy was provided for Marcus, Melinda and Jenira, but the girls' sessions did not even begin until 2005, three years after the children had been removed from the home, and the sessions stopped soon after they began. Melody appears to have had one family therapy session with the respondent. After the respondent missed one family therapy session with Melody, the sessions were terminated and were not resumed.

Stone and Rogers also both advocated increased visitation between the respondent and the children. Rogers recommended a progressive increase in visitation, from supervised to unsupervised, and in increasing time increments, eventually to include weekend visits, in

order to prepare the children for reunification. Stone testified that increased visitation would have assisted in fostering the parent-child relationship. Given this information, it is without question that it would have been reasonable for the department progressively to increase visitation between the respondent and her children.

When Stone requested increased visitation between the respondent and the children, however, Weber claimed that it would take too much time to schedule the visits and that no one was available to provide transportation. Eventually, in 2005, during the attempted reunification with Marcus and Jaime, the respondent had some unsupervised visitation with Melinda, Jenira and Neri Jasmin, but the frequency of that visitation and the duration of the visits is not clear from the record. McNamara noted specifically in her assessment of the best interests of the children that the department had made only a minimal attempt to implement a progression of visitation—either by increasing the frequency and duration of the visits or by allowing some unsupervised visitation—despite an obvious need for it, and despite the respondent's extraordinary commitment to adhere to the existing visitation schedule.

There is also evidence in the record that the department prematurely abandoned its first attempt at reunification with Marcus and Jaime. Marcus was returned to the respondent in April, 2005. The department transported Marcus back and forth to his individual therapy throughout the attempted reunification. Several issues and concerns arose during the reunification process. The respondent had difficulty controlling Marcus' behavior and on two occasions hit him. Weber testified that Marcus missed some therapy sessions when he refused to get into the medical cab that came to the house to transport him to therapy. He also refused to take his anti-seizure medication and eventually had a seizure. He missed several medical appointments and the respondent allowed his medical coverage to lapse. The respondent doubtless exercised poor judgment at times, including one occasion when she allowed Marcus to be alone with Jaime during the summer, playing football outside while she was sleeping inside the house. Additionally, Melinda told Weber that, during an unsupervised visit, the girls were left alone with Marcus, who tormented the family cat in the girls' presence.

Several professional service providers testified, however, that all of these issues could and should have been dealt with by assisting the respondent without removing Marcus and Jaime from the home. Patricia Valle, a social worker employed by the Village for Families and Children, worked in the intensive family preservation program (program), which provides services to families in which the department has indicated that the

children are at risk of removal. Valle worked with the respondent from March, 2005, through October, 2005, during the attempted reunification with Marcus and Jaime and was aware of the ongoing issues. At the beginning of the first unit of service, which was dedicated to reunifying the respondent and Marcus, the department and the program identified three goals for the respondent and Marcus: (1) reunification of the respondent with Marcus; (2) the respondent's provision of a safe and appropriate environment for Marcus; and (3) Marcus' compliance with the respondent's house rules. As of June 10, 2005, service with regard to Marcus was terminated because the program determined that the respondent had completed the goals successfully. Valle testified that the respondent had made improvements during the course of the first unit of service in providing structure and discipline for Marcus. Valle worked with the respondent on setting limits for Marcus and establishing clear expectations for him. According to Valle, the respondent greatly improved in her parenting skills and did not hesitate to contact Valle any time that she needed support and guidance. At the close of the first unit of service, Valle recommended that the department continue to support and assist the family toward reunification. At that time, the program opened a second unit of service to reunify the respondent with Jaime. Similar goals were identified for this second unit: reunification, strengthening of parenting skills and provision of a safe and appropriate home environment for Jaime. Valle testified that, in the beginning of his placement with the respondent, Jaime had some delays in his speech. The respondent worked with providers and physicians, who advised her as to how to assist Jaime in improving his speech. Consistent with that advice, she obtained educational toys and worked with Jaime. By the end of the placement, there was a noticeable improvement in his speech development. Valle also testified that the respondent continued to make use of her services, seeking her assistance in being consistent and improving her coping skills. When questioned as to whether she had any concerns about the home environment, Valle responded: "No. [The respondent] maintained a good home, a clean home. She was also going to school at the time, and she had found employment during the second unit of services, and she still maintained a good home, and also, the boys helped out. The boys were now—especially, Marcus was now actively involved. I would come, and I would see the two oldest boys do chores in the kitchen, and they were all functioning well within the home, and it was kept well." The program terminated the second unit of services because the respondent successfully completed the identified goals. Valle, who was aware of the issues that subsequently occasioned the removal of Marcus and Jaime from the home, once again recommended that the department follow through and continue to assist the respondent in working toward reunification. When

questioned regarding the respondent's level of commitment to her children, Valle responded that she was "very committed to her children." She elaborated: "She was trying to improve their life, and she was trying to make sure that she provided the safety that she stated that she was not able to provide . . . prior . . . to her children being removed from her care."

Stone testified that when Jaime and Marcus initially were returned to the home, the respondent "struggled" and was "overwhelmed" at having responsibility for an "active toddler" and a teenager with behavioral problems. The respondent, however, eventually was able to overcome that anxiety and stress, in part because she actively sought out the support and advice of her therapist, the pastor at her church, and other professionals who were available as part of her support network. The respondent also took the initiative to seek out additional parenting courses offered by the Village for Families and Children.

McNamara testified that she had not been notified that Jaime had been reunified with the respondent, and found out about his removal only afterward. In her opinion, the department unnecessarily and prematurely removed Jaime on the basis of issues that could have been addressed while Jaime remained with the respondent. Given the opinions of Valle, Stone and McNamara, I conclude that it would have been reasonable for the department to address the issues that the respondent was having during this first attempted reunification while the children remained in the home with her, rather than abandoning the effort entirely.

That the department could have dealt with the concerns that arose during the first attempted reunification while Jaime and Marcus remained in the home with the respondent is further borne out by the success of the second reunification between Marcus and the respondent. Connie Carter, a family support team clinician employed by Catholic Charities, offered testimony regarding the second reunification between Marcus and the respondent. The family support team (team), which provides intensive in-home services to families, was assigned to assist the respondent during the second reunification attempt. The services were ongoing at the time of trial. At the beginning of the provision of services, the team set goals for the respondent, including establishing appropriate roles, rules and boundaries, creating positive communication, encouraging Marcus to participate in after school activities, and setting consequences for him. Carter testified that both the respondent and Marcus had made progress in attaining those goals, and that the respondent was trying to implement the goals, was willing to discuss issues and welcomed input from the team. She also testified that she was very impressed with the respondent's ability to follow the team's recommendations and "go with it." For

example, the respondent had implemented a rewards program that the team had suggested for Marcus, rewarding him for good behavior at home and in school. The respondent consistently applied the plan, and Marcus was responding by improving his behavior. As compared to other parents in similar situations, the respondent, according to Carter, had a much higher frustration threshold, and was much more willing to accept suggestions and implement them. When Carter observed the respondent and Marcus together, the respondent's behavior was appropriate and affectionate. Finally, Carter testified that the team's services would be available to assist the respondent, given a referral from the department, in achieving reunification with the remaining children.

The department's failure to provide family therapy and to both increase and progress visitation, contrary to the strong recommendations of both Stone and Rogers, coupled with the department's premature abandonment of the attempted reunification, despite the opinions of Stone, Valle and McNamara that the problems during that reunification could have been addressed without removing the children from the home, leads me to conclude that substantial evidence is lacking in the record for the trial court's conclusion that the department established by clear and convincing evidence that it made reasonable efforts toward reunification. The trial court's conclusion is further called into question by the testimony of McNamara, the guardian ad litem for the children, that family therapy, progressively increased visitation, and a more committed attempt at reunifying Marcus and Jaime, would have been in the best interests of the children. In light of this scrupulous review of the record, I would conclude that the trial court's termination of the respondent's parental rights was clearly erroneous.

I next turn to the question of whether the department established by clear and convincing evidence that the respondent would have been unable to benefit from further services. In concluding that further services would not benefit the respondent, the court gave unjustifiably great weight to the testimony of Rogers, the court-appointed evaluator, who conducted a mere four evaluations in this case, spending a total of only ten hours with the respondent over the course of four years, and who testified that the respondent had never accepted responsibility for the sexual and physical abuse suffered by the children.[8] Specifically, Rogers testified that, at different times during the course of the court-ordered evaluations, the respondent had claimed that Melody had not told her of the sexual abuse, had stated that although she may have been "partly to blame for not seeing [the abuse]," she "did not do anything *directly* to [her] children"; (emphasis added); and had stated that her addiction to heroin had prevented her from realizing that her boyfriend was sexually abusing

the children. Rogers stated that in his opinion, the respondent had "minimize[d]" the sexual abuse and had tried to relegate it to the back of her mind. In the fourth and final evaluation, Rogers stated that, in his opinion, "[the respondent] continues to accept little responsibility for the children's mistreatment—at her hands and at the hands of her former partner . . . ." The court also relied on Rogers' statement, in an addendum to his second evaluation, that Stone had told him that the respondent "steadfastly maintained in therapy that Melody never made any disclosure to [the respondent] prior to removal . . . ."

Rogers' testimony regarding the respondent's pattern of becoming involved in abusive relationships illustrates why both he and the court linked the respondent's alleged failure to accept responsibility with a supposed inability to benefit from further services. Although Rogers admitted that there was no evidence whatsoever that the respondent was currently involved in any relationship, he expressed reservations regarding the respondent's ability to avoid becoming involved in an abusive relationship in the future, a development that would jeopardize the well-being of the children. In addition to that speculation, he further testified that, given the respondent's failure to "show much positive response" from past reunification efforts, it was his opinion that the respondent would tend not to benefit from further reunification efforts. When asked what he meant by stating that the respondent did not show a positive response, he stated that the respondent continued to minimize her role in the abuse and failed to accept responsibility for that role. In other words, Rogers speculated that, because of her alleged failure to accept responsibility, the respondent could allow the same thing to happen again.

The court also indicated in its memorandum of decision that McNamara's testimony supported the conclusion that the respondent never swayed from her initial failure to acknowledge the abuse and accept responsibility for her role in it. Specifically, the trial court stated that McNamara testified that "[the respondent] has continued to use the excuse of 'I was blinded by my excessive substance abuse' through the present to excuse her from having or taking responsibility for the sexual abuse of her children, her failure or unwillingness to protect them, and the consequences thereof." Relying primarily on the testimony of Rogers, but also in part on what it asserted was McNamara's testimony and Rogers' testimony of a hearsay statement by Stone, the court concluded that the respondent had failed to acknowledge the sexual abuse to which her children had been subjected and failed to accept responsibility for her role in permitting that abuse to occur. The court considered its conclusion that the respondent never accepted responsibility for her role in the sexual abuse as essential to its further conclusion that the respondent

had been unable to rehabilitate sufficiently and benefit from further services, stating: "Because [the respondent] has not been able to acknowledge and accept that she was personally responsible for what happened to and that she failed to protect such children, [the respondent] has been unable to take the steps necessary for her rehabilitation to the point where she could be viewed as a viable resource for the protection and safety of her children, and thus as a viable parenting resource with whom the children could again reside permanently."

Contrary to the trial court's statements concerning McNamara's testimony in the memorandum of decision, McNamara's testimony does not at all support the conclusion that the respondent failed to acknowledge and accept responsibility for the sexual abuse suffered by her children. McNamara specifically testified that one of the respondent's great strengths as a parent was her willingness to learn and change in order to be reunified with her children. She also testified that the respondent openly had acknowledged to McNamara her role in and responsibility for the sexual abuse suffered by her children. McNamara testified that she was "quite confident" that the respondent had accepted responsibility for her part in the abuse. This testimony cannot be reconciled with the trial court's characterization of McNamara's opinion on the issue of whether the respondent accepted responsibility.[9]

In addition to misstating McNamara's testimony, the trial court gave no credence at all to the testimony of the mental health care professional who was in the best position to give an opinion regarding the extent and sincerity of the respondent's acceptance of responsibility—Stone, the respondent's therapist. Instead, the court chose to accept Rogers' testimony regarding an alleged hearsay statement made to him by Stone, that the respondent had evaded responsibility for her role in the abuse by maintaining that Melody was lying in reporting that she had told the respondent about the abuse. The court only briefly acknowledged the fact that Stone's testimony supported exactly the opposite conclusion, and dismissed it immediately because, in the court's opinion, Stone, and all of the other mental health providers who concluded that the respondent had accepted responsibility for her actions, failed to realize that the respondent's ultimate acceptance of responsibility was negated by the fact that she ultimately admitted that her addiction to heroin prevented her from being able to protect her children.[10]

Stone's testimony strongly supported the conclusion that the respondent eventually came to acknowledge the abuse and accepted responsibility for her failure to protect her children against their abuser. Stone began to provide treatment for the respondent in May, 2003, and had continued to treat her until shortly prior to trial, meeting with the respondent on a weekly basis

for most of those three and one-half years. The context of Stone's initial contact with the respondent is also significant; the respondent participated in a program for nonoffending parents of children who were abused and was referred to Stone by the leader of that program when she sought additional services. Stone was in a significantly better position than Rogers, therefore, accurately to assess the respondent's progress in acknowledging that the sexual abuse had occurred and accepting responsibility for her role in allowing it to happen. She testified that the respondent had made significant progress in therapy, progress comparable to parents who had achieved reunification with their children. She stated that it took some time before the respondent trusted her enough to be able to be honest, in the context of their sessions, about "what had led . . . to her children being sexually abused." In the first six months of therapy, the respondent struggled with accepting the fact that her children had been sexually abused. Eventually, however, after the respondent was provided access to the children's forensic interviews, she gradually moved from acknowledgment that the abuse had occurred to acceptance of her responsibility for not protecting her children from that abuse. Part of that process involved coming to terms with the role that her substance abuse had played in her failure to protect her children from their abuser. Stone also testified that the respondent made significant progress during therapy in understanding the role that domestic violence had played in her past relationships and working toward not repeating the patterns that had led her to seek out abusive partners. For example, Stone testified that the respondent had built considerable support networks for herself, particularly in her church and with the Village for Families and Children.

That the trial court only briefly references Stone's testimony, relying instead on a hearsay statement reported by Rogers that is completely at odds with Stone's direct testimony during trial, and mischaracterizes McNamara's testimony, aptly demonstrates that a scrupulous review of the record in this case and other termination cases is absolutely essential. The true picture of the respondent that emerges from the testimony of these two well-informed witnesses stands in sharp contrast to the image accepted by the trial court as established by clear and convincing evidence, and supported only by the testimony of Rogers on the basis of his limited contacts. What is most concerning is that Rogers' portrayal of the respondent is not consistent with the opinions of all the mental health care professionals who observed the respondent's parenting skills after the respondent had made a truly extraordinary effort at transforming herself into a better parent for the sake of her children. For example, Valle's testimony indicated that she had complete confidence in the respondent's ability to parent her children safely. Car-

ter, who was still providing in-home services to the respondent at the time of trial, also testified strongly regarding the respondent's progress, her willingness to accept suggestions and implement recommendations, her ability to cope with frustration and her commitment to becoming a better parent.

The testimony of two additional mental health care providers who observed the respondent's parenting skills in dealing with Marcus is also significant. Peter McGreen, a clinical psychologist at Riverview Hospital (hospital), testified regarding his interaction with the respondent while Marcus was committed to the care of the hospital from March, 2006, to July, 2006. He testified that he "found [the respondent] to be cordial, respectful, interested in what [he] had to say, and very interested in working with the staff at the hospital towards making good interventions with Marcus." He testified further that the respondent was very responsive to the interventions, universally following through on McGreen's suggestions and assisting by setting goals for Marcus, encouraging him to be cooperative, and giving Marcus feedback regarding his behavior. McGreen observed that Marcus was more cooperative when the respondent suggested behavior than when the same suggestions came from staff. He testified that the respondent was extremely reliable and always on time for visits, despite the fact that it was extremely difficult for her to get there, taking two, sometimes three, buses over a course of two hours in order to get to the hospital. Although other parents in similar situations in the past had become frustrated and had ceased coming, the respondent persisted. He testified that her commitment to Marcus was outstanding, and that she had been excellent to work with, doing whatever was asked of her and following through consistently. When questioned regarding how he found the respondent to be coping with the stress of assisting with Marcus' treatment, and juggling all of her other responsibilities, including studying for exams, McGreen stated that he found the respondent to be a very calm and even person, who neither overreacted nor underreacted to stress in her life. On the basis of his interaction with her and observations of her, he stated that he found the respondent to be a very strong parent. He even went so far as to say: "[I]f I had to give her a grade, it would be A+ as a parent, and compared to the other parents that I've dealt with over two decades . . . . she really was outstanding."

Also testifying regarding Marcus' stay at the hospital was Joan Narad, a child and adolescent psychiatrist and the associate medical director at the hospital. She also worked as the unit psychiatrist for Marcus' unit in the hospital. She, too, testified regarding the respondent's frequent visitation, and stated that the respondent was cooperative and eager to learn what would be most helpful to her son. She stated that she observed

the respondent during visitation to parent effectively, following the direction of staff to set limits with him, and being very reliable. Narad noted that the respondent encouraged Marcus' academic interests, and functioned as an "effective member" of the team. She further testified that the respondent had a "deep commitment" to Marcus and that she was willing to go to great lengths to be his parent. Despite the stressful circumstances under which the respondent lived, Narad noted that the respondent functioned "quite well." When asked how she would describe the respondent as a parent, Narad stated that she believed that the respondent was "a parent who has learned a lot and has matured. . . . She's willing to take in information. She is willing to get help . . . ."

Another aspect of the record that does not support the trial court's conclusion is the respondent's compliance with the specific steps ordered by the court. The respondent complied with all of the specific steps ordered by the court, with the exception of the step that required her to submit to substance abuse assessment. I first note that this step was not ordered as a final specific step in the order dated September 8, 2003. Moreover, as I explain in footnote 11 of this concurring opinion, the department conceded that the respondent maintained sobriety for the two years prior to trial. The remaining specific steps required the respondent to: keep all appointments set by or with the department; keep the department informed of her own whereabouts and that of the children; participate in counseling and make progress toward identified treatment goals; accept and cooperate with in-home support services referred by the department; cooperate with court-ordered evaluations and testing; obtain and cooperate with restraining/protective orders and safety plans to avoid domestic violence; sign releases; secure and maintain adequate housing and legal income; refrain from substance abuse; refrain from any involvement with the criminal justice system; inform the department of household changes; cooperate with the children's therapy; and visit the children as often as the department permitted.

Because the trial court found that the respondent complied with most of the specific steps, I address only those steps that the court concluded that the respondent did not meet or only partially met. The court concluded that the respondent participated in individual therapy, but noted that Stone expressed concern regarding the respondent's progress on two occasions. Considering the whole of Stone's testimony at trial, which unequivocally supports the conclusion that the respondent made significant progress toward identified treatment goals, two isolated expressions of concern do not justify the determination that the respondent failed to comply with this specific step. The court also concluded that the respondent did not fully cooperate

with Rogers in the testing process, citing to the fourth evaluation report, but it is unclear on what the trial court based this conclusion. The court also noted that the department did not ask the respondent to seek a restraining order against the boyfriend, yet faulted the respondent for failing to do so. Regarding the requirement that the respondent maintain adequate housing and legal income, the trial court faulted the respondent for failing to complete the nursing program, which she began in September, 2006, by the time of trial, which began in November, 2006, and for failing to find full time employment while enrolled in school. The court also concluded, despite the department's concession to the contrary, and despite the lack of any evidence that the respondent was engaged in substance abuse, that the respondent failed to comply with the specific step requiring her to cease substance abuse. As for the requirement that the respondent comply with the children's therapy, the court's finding that the respondent missed many scheduled family therapy sessions with Melody is completely at odds with the record. Weber did not remember how many therapy sessions with Melody had been planned, but she recalled that the respondent missed one therapy session with Melody and that the sessions were thereafter terminated. The court concluded that the respondent complied with all of the remaining specific steps.

The respondent went well beyond the specific steps ordered by the court. The testimony of the mental health care professionals, along with the testimony of McNamara and Stone, is consistent with the exceptional effort that the respondent made to obtain services to become a better parent for her children. The sheer list of services she sought out and participated in is, to say the least, *impressive*. Beginning in July, 2002, she participated in a mother/infant outreach program, which lasted until January, 2003. In August, 2002, the respondent was given the specific steps ordered by the court. The day after she was given the specific steps, the respondent contacted Kyle Klecak, the social worker assigned to the case at that time, in order to begin participating in any available services. That same month, the respondent was evaluated for substance abuse. Because she tested positive for heroin and marijuana, the respondent participated in treatment with a relapse prevention group and individual therapy at the Institute for Hispanic Families.[11] She also participated in a parenting program at the Institute for Hispanic Families in November, 2002. During the parenting program, the respondent was randomly tested for drugs and alcohol and tested negative. Also in November, 2002, with the assistance of the department, she obtained an apartment and a rent subsidy, and eventually procured a five bedroom home. In February, 2003, the respondent began participating in the nonoffending parent group through which the respondent met Stone,

who subsequently provided the respondent with individual therapy that was ongoing at the time of trial. In January, 2003, the respondent was working with the department of labor in trying to find employment, and completed computer training as part of that employment effort. During this time, the respondent attended weekly visitation with her children, and missed only one visit during the entire time that the visitation continued—the day after the boyfriend came to her house, struck her and stole her van. In October, 2006, the respondent completed a program offered by the Village for Families and Children, commonsense parenting. From April, 2005, through September, 2005, she participated in the intensive family preservation program through the Village for Families and Children. Beginning in August, 2006, and continuing through trial, she utilized the services of the Catholic Charities family support team. In September, 2006, after taking classes at Capitol Community College while she was awaiting acceptance, the respondent began the nursing program at the college. She obtained employment through the work study program at the college.

In sum, the facts in the record are inconsistent with the conclusion that the respondent would not have benefited from further services. As I have detailed, the respondent made extraordinary efforts in obtaining services, the mental health care workers assisting the respondent with her reunification efforts held the virtually unanimous view that she had made significant and meaningful progress in becoming a better parent, and the testimony of Stone and McNamara clearly indicated that the respondent had made the difficult acknowledgment that her children had been sexually abused by her boyfriend and that she had failed to protect them. On the basis of my scrupulous review of the record, I conclude that there is not substantial evidence in the record to support the trial court's conclusion that the respondent would not have benefited from further services.

Finally, I believe that scrupulous review of the record reveals that the great weight of the evidence supports the conclusion that termination of the respondent's parental rights was not in the best interests of the children. Stone testified that in her opinion, it was in the best interests of the children to be reunified with the respondent. She based her opinion on her observations of the strong bond between the respondent and her children, the significant support network that the respondent had established and the progress that the respondent had made toward becoming a parent who can physically and psychologically protect her children. Stone testified that the corporal punishment that the respondent used during the initial reunification with Marcus was not an ongoing concern. In her opinion, the respondent's actions during those incidents did not represent her normal parenting style, and instead were

responses to extreme stress. She based this opinion on the fact that, during the second reunification with Marcus, no similar incidents had occurred.

McNamara who was questioned as to whether the termination of the respondent's parental rights was in the best interest of each individual child, testified in great detail that termination was not in each child's best interest. She based her opinion on the bond that the respondent shared with each child, the strong commitment she has to the children, her willingness to learn and change in order to be reunified with them, and her ability to differentiate the children according to their age, according to their individual personalities, and to make herself available to them in ways that respond to each child's needs.

Specifically, as to Jaime, McNamara testified that the bond between Jaime and the respondent is very strong, and that Jaime has told her that he wants to live at home with the respondent. She also based her opinion on the fact that Jaime is a very active child, and the respondent is able to set appropriate boundaries for him. She has observed the respondent encourage Jaime's learning needs, and noted that Jaime made progress in his speech development while he was briefly reunified with the respondent.

As to Melody, McNamara testified that the bond between her and the respondent is very strong, and Melody has expressed her desire to be reunified with the respondent. McNamara observed that Melody functioned with the other children as the "older sister," and that the respondent was able to relate to her in that role, and also show interest in Melody's activities and interests, while at the same time providing an environment that minimizes Melody's tendency to "act out." McNamara viewed it as significant that the respondent likely would continue her course of seeking out support networks, and use those skills to advocate for Melody in the school setting, and to encourage Melody to become involved in the church.

As to Melinda, McNamara testified that there was a strong bond between her and the respondent, and between her and her other siblings. She testified that Melinda is a good student, and that the respondent, being a person who values education, would encourage that. Melinda also participates in church activities, another pursuit that the respondent values and would foster and encourage. McNamara commented specifically on the respondent's willingness to participate in family therapy, and stated that such therapy would be an essential component of any plan to return Melinda, as well as the other children, to the home.

As to Jenira, McNamara testified that the bond between her and the respondent, as well as that between her and her siblings, is very strong. McNamara

opined that the respondent would encourage Jenira's budding intellectual curiosity and her interest in church activities. She testified that the respondent's tenacity and consistency would be a significant resource that would aid her in reunifying with Jenira, as well as the other children. She noted that over the years that the children had been in the department's custody, the respondent had missed only one visit.

With regard to Neri Jasmin, McNamara testified that she shares a strong bond with the respondent, despite having been removed from the home at such a young age. She exhibits excitement and anticipation in relation to upcoming visits and interacts with the respondent as her mother. The same attributes that make reunification with the respondent in the best interests of the other children also persuade McNamara that reunification would serve Neri Jasmin's best interests.

McNamara testified that, despite Marcus' behavioral problems, he has a strong bond with his siblings, and they with him. That bond, rather than his behavioral problems, according to McNamara, should be the focus in determining whether it is in the best interests of the children to be reunified with the respondent.

McNamara also testified regarding the seven factors that the trial court must consider in making its determination that termination is in the best interest of the child. See General Statutes § 17a-112 (k).[12] As to the timeliness, nature and extent of the services offered and provided by the department, McNamara stated that, in her opinion, the nature of the services offered by the department had not been the most beneficial. The respondent, she observed, had been responsible for actively seeking out the many counseling, educational and community services that had assisted her in preparing to be reunified with the children. That initiative on the part of the respondent speaks strongly of her commitment to reunification. Regarding the second factor, whether the department made reasonable efforts toward reunification, McNamara testified that, beyond stating that reunification was the projected goal, the department displayed little commitment toward effecting reunification. For instance, despite the need for increased visitation, and the respondent's commitment to visitation, she noted that there was no progression of visitation—either by increasing the frequency and duration of the visits or by allowing some unsupervised visitation. She also testified as to the minimal amount of family therapy provided to the family, a service that the experts agreed was essential as part of a reunification plan. McNamara also pointed to the failed attempt at reunification with Jaime, Marcus and the respondent, stating that she had not been notified that Jaime had been reunified with the respondent, and found out about his removal only afterward. In her opinion, the department unnecessarily and prematurely

removed Jaime on the basis of issues that could have been addressed while Jaime remained with the respondent. As to the third factor, McNamara testified that the respondent had complied with the specific steps ordered by the court, and that the respondent's compliance persuaded McNamara that the respondent was committed to doing whatever is necessary to achieve reunification with her children. As to the fourth prong, the feelings and emotional ties between the children and the parent, McNamara testified without hesitation that the ties between the respondent and her children are strong. The fifth factor, the age of the children, is also a factor that McNamara believed supported reunification, as the children are young enough that reunification is a reasonable goal. The sixth factor, the efforts that the respondent has made to adjust her circumstances, conduct and conditions to make it in the best interests of the children to return home, is one that McNamara testified strongly favors the respondent, because of the exceptional efforts that the respondent has taken to improve herself as a parent. She also considered it highly significant that the respondent openly acknowledged to McNamara her role in and responsibility for the sexual abuse suffered by her children.[13]

In contrast to the confident and informed testimony offered by McNamara and Stone that termination of the respondent's parental rights would not be in the best interests of the children, the trial court relied on Rogers' testimony alone that Melody was still experiencing posttraumatic stress disorder, and expressed anxiety regarding the return to the respondent. This must be understood in conjunction with the failure of the department to provide family therapy for Melody and the respondent, therapy that would have assisted Melody in dealing with her anxieties. Family therapy still would be an available option as part of a reunification program between Melody and the respondent. Also, contrary to Rogers' testimony, McNamara testified that the bond between Melody and the respondent is strong, and that Melody expressed a desire to be reunited with the respondent. Regarding Melinda, the court stated that she is fearful of being returned to the respondent. Again, this is an issue that should have been addressed in timely and consistent family therapy, and still could be. Additionally, McNamara testified that the bond between Melinda and the respondent is strong. As for Neri Jasmin, the court stated only that she was still an infant when removed from the respondent's care. McNamara observed, however, that despite Neri Jasmin's early removal, she is strongly bonded to the respondent and to her siblings. The trial court acknowledged that the bond between Jaime and the respondent is strong, but relied on the failed reunification attempt in concluding that reunification was not in his best interest. The failure of the reunification, however, was in large part due to the department's premature removal of Jaime and

Marcus, without attempting to address the issues while allowing the respondent to retain custody. Regarding Jenira, the court stated only that she views the foster parents as her psychological parents. This is discredited by McNamara's testimony.

On the basis of the foregoing, I emphasize the wisdom—and the necessity—of subjecting the factual record underlying this and other judgments terminating parental rights to a scrupulous review. A searching review of the record properly recognizes the extraordinary significance of the rights as well as the extreme and irreversible nature of termination. See *Troxel* v. *Granville*, supra, 530 U.S. 65; *M.L.B.* v. *S.L.J.*, supra, 519 U.S. 118. If that level of heightened review were to apply to this appeal, I firmly believe that the proper resolution would be to reverse the trial court's judgment terminating the respondent's parental rights. The record falls far short of providing substantial evidence to support the conclusion that the department met its burden of showing by clear and convincing evidence that the department made reasonable efforts to reunify the children, that the respondent was unable or unwilling to benefit from the offers of and provision of services to the point where she could be considered to be a parental resource for reunification, and that termination of the respondent's parental rights was in the best interests of the children. After a scrupulous review of the record, I would conclude, therefore, that the trial court's judgment was clearly erroneous. Because we currently do not conduct scrupulous review of the factual record in cases such as this one—although I urge that we do—I have no choice but to concur with the majority opinion in affirming the judgment of the trial court.

[1] One of the children, Melinda, has withdrawn from the children's appeals. See footnote 3 of the majority opinion. The other children are Melody, Jenira, Jaime and Neri Jasmin.

[2] General Statutes § 17a-112 (j) requires the department to make a three-pronged showing in a petition for termination of parental rights. See footnote 7 of the majority opinion. Each prong must be established by clear and convincing evidence. In the first prong, the department must show that it made reasonable efforts to locate the parent and reunify the child with the parent. If the department can show by clear and convincing evidence that the parent is unable or unwilling to benefit from reunification efforts, however, it need not establish that it made reasonable efforts toward reunification. See General Statutes § 17a-112 (j) (1). In the present case, although either finding would have been sufficient to resolve this prong, the trial court found that the department had made reasonable efforts, and also determined that the respondent was unable or unwilling to benefit from reunification efforts. Because either of these determinations would support the trial court's judgment, I address both in considering the first prong of the three-pronged showing required by the department.

[3] Because I conclude that, upon a scrupulous review of the record, the trial court's conclusions regarding the reasonableness of the department's efforts at reunification and the best interests of the children are not supported by substantial evidence in the record, it is unnecessary to address the issue of whether the trial court's conclusions that the statutory grounds set forth in § 17a-112 (j) (3) (B) (ii) and (C) were so supported.

[4] The credibility of the witnesses was not the primary issue in the present case.

[5] See *Miranda* v. *Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

[6] See also *Kelo* v. *New London*, 268 Conn. 1, 150, 843 A.2d 500 (2004)

(*Zarella*, *J.*, concurring and dissenting) (eminent domain case stating that "[i]n light of the constitutional interests at stake . . . the issue of whether the properties actually will be used for a public purpose is an ultimate issue that should be reviewed by this court on the basis of its own scrupulous examination of the record . . . [which] is necessary to ensure that judicial review comports with constitutional standards of due process" [citation omitted; internal quotation marks omitted]), aff'd, 545 U.S. 469, 125 S. Ct. 2655, 162 L. Ed. 2d 439 (2005).

[7] In his final evaluation, in light of his recommendation in support of termination of parental rights, Rogers did not recommend family therapy.

[8] Over the course of those four years, Rogers spent a total of two hours with Melody, two and one-half to three hours with Melinda, one and one-half hours each with Jenira and Jaime, and no time with Neri Jasmin. In fact, Rogers repeatedly confused Melody and Melinda in writing his evaluation reports, even his final report, and corrected some of the errors in handwriting.

[9] Ironically, although the trial court did not consider the respondent's acknowledgment of responsibility valid for purposes of determining whether she had accepted responsibility, it considered those same admissions as evidence in support of its finding that the respondent denied the children, by means of acts of omission or commission, of the care, guidance or control necessary for their physical, educational, moral or emotional well-being. See General Statutes § 17a-112 (j) (3) (C).

[10] The trial court characterized the respondent's understanding of the role that her substance abuse played in her failure to protect her children as an "excuse" and as yet another attempt to avoid responsibility. First, I note that, although the respondent initially denied it, she eventually admitted that she was addicted to heroin. It is not a stretch of credulity to believe that such an addiction would prevent her from being capable of caring for her children and protecting them from her abusive boyfriend. Second, I struggle to comprehend how one can understand, in the context of a proceeding for the termination of parental rights, that failing to prevent the sexual abuse of one's children due to an addiction to heroin is somehow an "excuse." The mere fact that the respondent provided a very credible explanation of how her failure came about does not in any way change the fact that she admitted that she had failed to protect her children. In fact, if the respondent's substance abuse contributed to her inability to protect her children, not only is it not an "excuse" for her to accept that connection—it is an essential step in her rehabilitation as a parent.

[11] Although it is troubling that the respondent refused to submit to alcohol and drug testing in December, 2005, and January, 2006, the trial court noted that the department conceded that the respondent had maintained sobriety for two years.

[12] "In the dispositional phase of a termination of parental rights hearing, the trial court must determine whether it is established by clear and convincing evidence that the continuation of the respondent's parental rights is not in the best interest of the child. In arriving at this decision, the court is mandated to consider and make written findings delineated in [§ 17a-112 (k)]." (Internal quotation marks omitted.) *In re Trevon G.*, 109 Conn. App. 782, 794–95, 952 A.2d 1280 (2008).

General Statutes § 17a-112 (k) provides: "Except in the case where termination is based on consent, in determining whether to terminate parental rights under this section, the court shall consider and shall make written findings regarding: (1) The timeliness, nature and extent of services offered, provided and made available to the parent and the child by an agency to facilitate the reunion of the child with the parent; (2) whether the Department of Children and Families has made reasonable efforts to reunite the family pursuant to the federal Adoption Assistance and Child Welfare Act of 1980, as amended; (3) the terms of any applicable court order entered into and agreed upon by any individual or agency and the parent, and the extent to which all parties have fulfilled their obligations under such order; (4) the feelings and emotional ties of the child with respect to the child's parents, any guardian of such child's person and any person who has exercised physical care, custody or control of the child for at least one year and with whom the child has developed significant emotional ties; (5) the age of the child; (6) the efforts the parent has made to adjust such parent's circumstances, conduct, or conditions to make it in the best interest of the child to return such child home in the foreseeable future, including, but not limited to, (A) the extent to which the parent has maintained contact with the child as part of an effort to reunite the child with the parent, provided the court

may give weight to incidental visitations, communications or contributions, and (B) the maintenance of regular contact or communication with the guardian or other custodian of the child; and (7) the extent to which a parent has been prevented from maintaining a meaningful relationship with the child by the unreasonable act or conduct of the other parent of the child, or the unreasonable act of any other person or by the economic circumstances of the parent."

[13] McNamara was not asked, and did not testify, regarding the seventh factor, "the extent to which a parent has been prevented from maintaining a meaningful relationship with the child by the unreasonable act or conduct of the other parent of the child, or the unreasonable act of any other person or by the economic circumstances of the parent." General Statutes § 17a-112 (k) (7).