KATZ, J., concurring. I agree with and join the well reasoned majority opinion in so far as it determines that the Appellate Court improperly affirmed the trial court's exclusion of the testimony of John W. Kennish, the expert witness proffered by the plaintiff, James E. Sullivan. I disagree, however, with its decision to address the merits of the plaintiff's second claim that the Appellate Court improperly affirmed the trial court's instruction to the jury on the superseding cause doctrine. In my view, it is both unnecessary and unwise to sanction this particular instruction in light of the facts of the present case.

In *Barry* v. *Quality Steel Products, Inc.*, 263 Conn. 424, 439 n.16, 820 A.2d 258 (2003), we limited our conclusion "that the doctrine of superseding cause no longer serves a useful purpose . . . to the situation in cases . . . wherein a defendant claims that its tortious conduct is superseded by a subsequent negligent act or there are multiple acts of negligence." Specifically, we explained that this conclusion did "not necessarily affect those cases where the defendant claims that an *unforeseeable* intentional tort, force of nature, or criminal event supersedes its tortious conduct. . . . Nor [did] our conclusion necessarily affect the doctrine of superseding cause in the area of criminal law. See *State* v. *Munoz*, 233 Conn. 106, 124–25, 659 A.2d 683 (1995)." (Citation omitted; emphasis added.) *Barry* v. *Quality Steel Products, Inc.*, supra, 439 n.16. The majority in this case concludes that "[t]he present case presents precisely this type of excepted situation." I agree.

The defendant in the present case, Metro-North Commuter Railroad Company, did assert as a special defense that the criminal acts of a third party superseded any possible negligence on its part. Because, however, the trial court incorrectly identified the matter at issue as *railroad* security, and not *premises* security, it excluded Kennish's testimony that the plaintiff had proffered to establish that the fatal attack against the plaintiff's decedent was foreseeable in light of the overall lack of security at the train station and the high crime rate in the surrounding area. As the majority correctly points out, Kennish was the only expert to testify on the issue of foreseeability. Therefore, the jury, charged with deciding whether appropriate security measures had been taken in the stairway where the plaintiff's decedent was killed and whether his assault and death were foreseeable, never heard any expert testimony on that issue and, accordingly, found that the attack was not foreseeable.

At the new trial ordered as a result of the majority opinion in the present case, the jury presumably will

hear testimony from Kennish and, thus, will have evidence as to the foreseeability of the attack to consider in its deliberations. Therefore, the trial court will have to provide new and appropriate jury instructions, instructions tailored to the evidence presented and the issues squarely before the jury. Although those instructions may well include instructions on the doctrine of superseding cause, the court necessarily will have to explain that the doctrine applies only when the intentional attack was unforeseeable. Although this court will address issues unnecessary to the resolution of an appeal when they are likely to arise on remand, there is no pressing need to do so in the present case. This court's decision in *Barry* v. *Quality Steel Products, Inc.*, supra, 263 Conn. 435, 439 n.16, provides sufficiently clear guidance to the trial courts as to the parameters and application of the doctrine of superseding cause. Jury instructions should be tailored to the case at hand, and I see no need to put our imprimatur on any particular jury instruction as to that doctrine. Because, however, the majority has decided to sanction the particular instruction given in this case, it seems likely that the trial court simply will repeat this instruction in the new trial. Therefore, rather than approve the instructions previously given at trial, wherein the only expert evidence on foreseeability, the key issue pertaining to the special defense of superseding cause, was disallowed, I would simply reverse the judgment of the Appellate Court and remand the case for a new trial.

Accordingly, I respectfully concur.