HARPER, J., with whom ROGERS, C. J., joins, dissenting. I agree with the majority that it is appropriate for this court to consider, via a writ of error, the challenge of the plaintiff in error (plaintiff), Jermaine Hardy, to his summary contempt adjudication as procedurally defective. I disagree, however, with the majority's conclusion that there was substantial compliance with the notice and allocution requirements of Practice Book § 1-16 and thus no procedural defect. In particular, I take issue with the majority's adoption of a new substantial compliance standard relating to the contemnor's right to allocute and its application of that standard to the facts of the present case. I would conclude that the trial court did not substantially comply with the requirements of § 1-16 and would reverse the judgment of contempt.[1]

Practice Book § 1-16 provides in relevant part: "Misbehavior or misconduct in the court's presence causing an obstruction to the orderly administration of justice shall be summary criminal contempt, and may be summarily adjudicated and punished by fine or imprisonment, or both. Prior to any finding of guilt, the judicial authority shall inform the defendant of the charges against him or her and inquire as to whether the defendant has any cause to show why he or she should not be adjudged guilty of summary criminal contempt by presenting evidence of acquitting or mitigating circumstances. . . ." As scores of cases demonstrate, even in the face of egregious misconduct by a contemnor, strict adherence to this rule is neither impractical nor unduly burdensome. See, e.g., *Banks* v. *Thomas*, 241 Conn. 569, 575–79, 698 A.2d 268 (1997); *Vasquez* v. *Superior Court*, 102 Conn. App. 394, 400–401 and n.8 and 9, 925 A.2d 1112, cert. denied, 284 Conn. 915, 931 A.2d 935 (2007). Although this court has determined that lack of literal compliance with the notice and allocution requirements of the rules of practice is not fatal; *Jackson* v. *Bailey*, 221 Conn. 498, 515, 605 A.2d 1350, cert. denied, 506 U.S. 875, 113 S. Ct. 216, 121 L. Ed. 2d 155 (1992); *In re Dodson*, 214 Conn. 344, 363, 572 A.2d 328, cert. denied sub nom. *Dodson* v. *Superior Court*, 498 U.S. 896, 111 S. Ct. 247, 112 L. Ed. 2d 205 (1990); these dual requirements reflect the considered opinion of the judges of the Superior Court that such procedures are necessary to protect due process rights and are nondiscretionary. See *In re Dodson*, supra, 363 (referring to "due process requirements" of predecessor to § 1-16). Thus, substantial compliance must fully effectuate the underlying purposes of the rule. In other words, the substantial compliance standard cannot render these procedures essentially directory and the protections nugatory.

The two cases in which we previously have found substantial compliance to have been established, *Jackson* v. *Bailey*, supra, 221 Conn. 498, and *In re Dodson*, supra, 214 Conn. 344, reflect procedures that afford the level of due process protections intended by Practice Book § 1-16. In *Jackson*, the court identified an obscenity uttered by the contemnor in the courtroom as the contemptuous conduct, specifically inquired whether the contemnor understood the basis of the contempt finding, and then further inquired whether the contemnor " 'ha[d] any reason why [the court] should not find you in contempt . . . .' "[2] *Jackson* v. *Bailey*, supra, 514. Because the contemnor indicated that he had no such reason, when the contemnor immediately thereafter twice hurled the same obscenity at the trial court that in turn triggered successive adjudications of contempt, this court concluded that there was no need to provide the contemnor with additional notice and the right to allocute given the contemnor's knowledge that the identical conduct was contemptuous. Id., 514–15. In *In re Dodson*, following remarks by the contemnor, a defense attorney, expressing his view that the sentence just imposed on his client was " 'outrageous' " and unwarranted, the trial court warned the contemnor that he was " 'out of order' " and made the finding of contempt only after the contemnor again expressed disagreement with the sentence. *In re Dodson*, supra, 347. The court then recessed to allow the contemnor to obtain counsel and continued the proceedings to a later date, at which time the contemnor and his counsel presented evidence in an attempt to excuse or mitigate the contempt. Id., 348.

These cases reflect that, for an initial act of contempt, the trial court substantially complies with the requirements of Practice Book § 1-16 when the record establishes that the contemnor knew or should have known the basis of the contempt charge before the court made a formal finding of contempt, and that, after making such a finding but before imposing any punishment, the court affirmatively inquired whether the contemnor had evidence relative to mitigation or acquittal.[3] The timing and nature of the notice and opportunity for allocution in these cases constituted substantial compliance because they effectuated the underlying purpose of § 1-16. Sufficiently specific notice of the conduct supporting the contempt charge is essential to effectuate the right to offer acquitting or mitigating evidence.[4] An affirmative inquiry as to whether there is such evidence prior to the imposition of punishment serves several important functions: (1) it puts the alleged contemnor on notice that such a right exists; (2) the contemnor's response provides a sounder basis to determine whether the contemptuous conduct was wilful, a required element of the crime of contempt;[5] (3) if persuasive evidence in support of acquittal or mitigation is proffered, the court may vacate the finding of

contempt, thus placing the contemnor in the same position as had there been literal compliance with § 1-16;[6] and (4) it allows the court to impose punishment of a type and severity commensurate with the contemnor's culpability. Moreover, adherence to these procedures not only ensures the fairness of the proceeding to the contemnor but the perception of fairness by the public by demonstrating that the courtroom "is a forum for the courteous and reasoned pursuit of truth and justice"; *Taylor* v. *Hayes*, 418 U.S. 488, 503, 94 S. Ct. 2697, 41 L. Ed. 2d 897 (1974); even when a contemnor tests the court's ability to remain dispassionate in its administration of the court's business. See *Green* v. *United States*, 356 U.S. 165, 198, 78 S. Ct. 632, 2 L. Ed. 2d 672 (1958) (Black, J., dissenting) ("Judges are not essentially different from other government officials. Fortunately they remain human even after assuming their judicial duties. Like all the rest of mankind they may be affected from time to time by pride and passion, by pettiness and bruised feelings, by improper understanding or by excessive zeal.").

The substantial compliance standard reflected in *In re Dodson* and *Jackson* was not met in the present case as to either the notice or allocution requirements.[7] With respect to notice, I disagree with the majority that "the record contains abundant evidence that the plaintiff knew full well why he had been found in contempt." First, there is nothing in the record to indicate what conduct by the plaintiff prompted the court to order him out of the courtroom, and the record is not entirely clear as to what conduct prompted the court to direct the marshal to bring the plaintiff back. Cf. *Jackson* v. *Bailey*, supra, 221 Conn. 501 n.1 ("The court later stated that the reason it ordered the plaintiff back into the courtroom was because '[the plaintiff] went through that door, banged the door open, and was going out mumbling and talking in a loud voice. And I had him brought back, because this is a courtroom, it's not a barroom . . . .' "). Second, the court's statements to the plaintiff—"Excuse me. You're in court."; "[B]ased on your continued conduct, I'm going to find you in contempt."; "You have prevented the orderly processes of this court."; and "You've interrupted the orderly processes of this court."—were either vague or simply a restatement of the legal standard for summary contempt. See Practice Book § 1-16 (conduct "causing an obstruction to the orderly administration of justice"); cf. *Jackson* v. *Bailey*, supra, 501–502 n.2 (identifying obscenity uttered as basis for contempt). Moreover, although I strongly disagree with the majority that the marshal's comments also may be considered in determining whether the court has fulfilled its obligation to provide the plaintiff with notice under § 1-16, I do not find those comments sufficiently illuminating in any event to provide the requisite notice.[8] Third, the plaintiff's inquiry—"I did what?"—in response to the

court's admonition that the plaintiff had "prevented the orderly processes of this court" and "interrupted the orderly processes of this court" suggests a lack of understanding on his part as to what the court meant. Thus, I disagree that there was substantial compliance with the notice requirement.

With respect to allocution, it is clear that the trial court neither instructed the plaintiff that he had the right to present acquitting or mitigating evidence nor inquired as to whether the plaintiff had any such evidence. Indeed, the following exchange evidences that the court made clear not only that it had no intention of providing the plaintiff with an opportunity to allocute but also that the court actively foreclosed any such attempt as contemptuous:

"The Court: I'm going to find you in contempt of this court. You have prevented the orderly processes of this court. You've interrupted the orderly processes of this court.

"[The Plaintiff]: I did what?

"The Court: And, sir, if you wish to keep it up, sixty days, dead time.

"[The Plaintiff]: You see what this dude just did to me, man.

"The Court: See you in sixty days. You're committed to the commissioner of correction for sixty days."[9]

Although the majority acknowledges at least the potential defect in this exchange, it determines that substantial compliance with the allocution requirement nonetheless was met. In so doing, the majority both adopts a new legal standard that substantially lowers the bar for substantial compliance and draws unwarranted inferences from the record in support of that standard. Specifically, the majority reads the aforementioned exchange in connection with the longer preceding exchange, principally between the plaintiff and the marshal; see footnote 6 of this dissenting opinion; and concludes that the entire transcript "made it entirely clear that, if [the plaintiff] had been permitted to allocute more extensively, he simply would have repeated his earlier explanation" that the trial court previously had rejected. The majority then goes on to hold that "the trial court may afford an alleged contemnor only the briefest of allocutions if he already has availed himself of the opportunity to give an explanation for his conduct and, in his brief allocution, makes it entirely clear that, if he were to allocute more extensively, he simply would repeat his earlier explanation." The majority deems this holding analogous to the holding in *Jackson* v. *Bailey*, supra, 221 Conn. 514–15, wherein this court had determined that the trial court could dispense with allocution if the contemnor already had the opportunity to give an explanation for previous identical misconduct.

The *Jackson* analogy is inapt, however, as it conflates the substantial compliance standard for an initial act of contempt with the standard applicable to successive acts, in rapid succession, of the same contemptuous conduct when the court already had satisfied the requirements of Practice Book § 1-16 with respect to the first contemptuous act. The more fundamental problem with the majority's standard and its conclusion that this standard was satisfied in the present case is that it makes unwarranted presumptions. In the present case, the plaintiff obviously had voiced displeasure with the way the marshal had been treating him. I see no basis, however, to presume as a matter of law that had the trial court made an affirmative inquiry as to whether there was any reason not to hold the plaintiff in contempt, such an inquiry would have been a hollow formality because the plaintiff would have had nothing different to say. We cannot foreclose as a matter of law the possibility that, had such an inquiry been made, the plaintiff might have tendered a sincere apology that the court in turn might have accepted. Compare *Banks* v. *Thomas*, supra, 241 Conn. 595–96 (initially declining to find defendant in contempt after contemnor accepted court's invitation to apologize), *Cameron* v. *Cameron*, 187 Conn. 163, 168, 444 A.2d 915 (1982) ("the court stated its reluctance to pursue the contempt charge against counsel for the defendant and vacated its judgment of contempt after receiving his apology") and *State* v. *Small*, 78 Conn. App. 14, 20, 826 A.2d 211 (2003) (trial court declined to find defendant in contempt after he accepted court's offer to apologize for inappropriate remark made in courtroom) with *Higgins* v. *Liston*, 88 Conn. App. 599, 614, 870 A.2d 1137 (declining to accept contemnor's apology as it was insincere and not directed at court), cert. denied, 276 Conn. 911, 886 A.2d 425 (2005), cert. denied, 546 U.S. 1220, 126 S. Ct. 1444, 164 L. Ed. 2d 143 (2006).

I also would not foreclose as a matter of law the possibility that the plaintiff, once properly informed of his allegedly contemptuous behavior, might have offered a different explanation unrelated to the reasons he previously stated. See *Taylor* v. *Hayes*, supra, 418 U.S. 499 ("the contemnor . . . might present matters in mitigation or otherwise attempt to make amends with the court"). The majority's presumption that the plaintiff merely would have repeated his complaint about the marshal is particularly troubling in the present case, in which the plaintiff was provided with neither an opportunity to allocute nor adequate notice of his alleged offense. Even if the majority were correct that the plaintiff simply would have repeated his earlier complaints if allowed to allocute under the facts of this case, I could not say with any confidence that the repetitive explanation would still occur had the plaintiff been alerted more precisely of his allegedly contemptuous conduct. The fact that the trial court deprived the plain-

tiff of the notice required to allocute effectively should not have the effect of rendering proper the trial court's further failure to provide an opportunity to allocute on the ground that the allocution would have been ineffective.[10]

I respectfully dissent.

[1] I do not believe that remand is a practical option, given that the circumstances leading to the finding of contempt cannot be recreated and that a summary proceeding is all that is required. Reversal of the conviction should not be construed, however, as either disapproval of the trial court's view of the conduct as contemptuous or a constraint on the trial court's authority to impose contempt sanctions when warranted. Nonetheless, even operating under the assumption that the plaintiff's conduct was contemptuous, the failure to afford him with the minimal guarantee of substantial compliance with Practice Book § 1-16 must have a meaningful effect. Moreover, it can hardly be said that the plaintiff has gotten off scot-free given that he has served his sentence for the contempt.

[2] The initial finding of contempt in *Jackson* is reflected in the following exchange, which occurred after the trial court ordered the defendant back into the courtroom due to loud remarks he made as he exited the courtroom:

"The Court: Well—OK. Just remember, you're in a courtroom, Sir.

"The Defendant: I wouldn't give a fuck about your courtroom. I would just like to—

"The Court: OK. . . . [B]ring [the defendant] back. For that statement, I'm finding you in contempt of court, for saying an obscenity in this courtroom. Do you understand that?

"The Defendant: So what? So what?

"The Court: Do you have any reason why I should not find you in contempt? OK.

"The Defendant: Why shouldn't you?

"The Court: OK. Ninety days for contempt." (Internal quotation marks omitted.) *Jackson* v. *Bailey*, supra, 221 Conn. 501–502 n.2.

In my view, the trial court's initial statement was not a formal finding of contempt, but, rather, a warning that the court believed the obscene remark to be contemptuous and that the process of holding the defendant in contempt had begun. Only after giving the defendant notice and an opportunity to explain himself did the court formally find the defendant in contempt. See id., 502 n.2.

[3] In my view, the separate hearing in *In re Dodson*, supra, 214 Conn. 348, that was conducted with counsel solely for the purpose of permitting the contemnor to offer argument and evidence is greater than a functional equivalent to an affirmative inquiry as to whether the contemnor has acquitting or mitigating evidence.

[4] I am mindful that our rules of practice no longer require that "[a] judgment of guilty of contempt shall include a recital of those facts on which the adjudication of guilt is based." Practice Book (1978–97) § 488. Although the elimination of this requirement avoids the need for a trial court to provide a comprehensive statement of facts through a written decision or oral statement on the record; see, e.g., *Vasquez* v. *Superior Court*, supra, 102 Conn. App. 401 n.9; the plain language of Practice Book § 1-16 still requires the court to provide sufficient notice to the alleged contemnor of the charge.

[5] See *Banks* v. *Thomas*, supra, 241 Conn. 588–89 ("[T]o be held in criminal contempt, a contemnor must have the requisite intent; the conduct must be willful. . . . Intent may be inferred from facts and circumstances. . . . Generally, willfulness may be inferred from a reckless disregard for a court's order. . . . Stated another way, '[t]he minimum requisite intent [for criminal contempt] is better defined as a volitional act by one who knows or should reasonably be aware that his conduct is wrongful." [Citations omitted; internal quotation marks omitted.]); see also *Panico* v. *United States*, 375 U.S. 29, 30–31, 84 S. Ct. 19, 11 L. Ed. 2d 1 (1963) (vacating summary contempt adjudication due to substantial evidence of mental impairment of contemnor).

[6] See *In re Dodson*, supra, 214 Conn. 361 ("[n]o final judgment existed in the contempt proceeding until the court decided . . . not to change its earlier ruling but proceeded to final adjudication and imposed the sanction of the $100 fine").

[7] The record reflects the following exchange leading up to the adjudication of contempt:

"The Court: Sir? Sir? Excuse me. Out. Out of the courtroom.

"The Marshal: Knock it off.

"The Court: All right.

"[The Plaintiff]: Don't treat me like that.

"The Court: Bring him back. Bring him back.

"[The Plaintiff]: Why are you treating me like that?

"The Court: Bring him back. Bring him back.

"The Marshal: Go on back.

"[The Plaintiff]: Why are you pushing me like that?

"The Marshal: Go on back.

"[The Plaintiff]: This dude, man. Hey, yo. Don't push me like no more, man. You want to walk with us, you don't have to push.

"The Marshal: You listen to him.

"[The Plaintiff]: Get your hands off of me.

"The Court: Excuse me.

"[The Plaintiff]: Get your hands off.

"The Court: Excuse me.

"[The Plaintiff]: This dude got his hands on me for what?

"The Court: Excuse me. You're in court.

"[The Plaintiff]: I know, but he's pushing me for no reason at all. I'm walking back slowly. Come on, man. I'm a human being like him, man. Fuck. Cause I mean, I'm in chains, because I'm different. Come on, man. . . . This dude, man. . . .

"The Marshal: Stop talking. Look at the judge.

"[The Plaintiff]: I got so much anger in me right now, man.

"The Court: All right. All right.

"[The Plaintiff]: I'm telling you, man.

"The Court: I've heard enough. I've heard enough. Sir, you're represented by counsel and normally I would say—

"[The Plaintiff]: Yo. The cuff, hold on my cuff.

"The Marshal: Relax.

"[The Plaintiff's Counsel]: Stop.

"The Court: Normally I would say that your attorney should—sir, I excused you from the courtroom. Thank you. Normally I would allow a chance for your attorney to talk to you. However, based on your continued conduct, I'm going to find you in contempt.

"[The Plaintiff]: Whatever, man, put me back.

"The Court: I'm going to find you in contempt of this court. You have prevented the orderly processes of this court. You've interrupted the orderly processes of this court.

"[The Plaintiff]: I did what?

"The Court: And, sir, if you wish to keep it up, sixty days, dead time.

"[The Plaintiff]: You see what this dude just did to me, man.

"The Court: See you in sixty days. You're committed to the commissioner of correction for sixty days.

"[The Plaintiff]: You see what this dude just did to me.

"The Court: Thank you. Thank you.

"[The Plaintiff]: I'm what? I'm what for sixty days? Fuck you, sixty days, motherfucker.

"The Court: Back.

"[The Plaintiff]: Ain't that nothing.

"The Court: Back.

"[The Plaintiff]: Yo, get the fuck off of me. Yo, get the fuck off of me, man. Wait until I get off these cuffs, yo. Wait until I get off these cuffs, man.

"The Marshal: I can't wait.

"[The Plaintiff]: Wait until I get off these cuffs, man. Yo.

"The Court: I'll vacate the prior sentence—

"[The Plaintiff]: Man, get the fuck out of here, man.

"The Court: You're committed to the custody of the commissioner of correction for a period of one hundred—

"[The Plaintiff]: Hey, yo? I don't give a fuck, man.

"The Court: One hundred twenty days."

Because I conclude that the trial court did not substantially comply with the requirements of Practice Book § 1-16 when rendering its initial finding of contempt, and because the statements that immediately precede and follow the court's decision to vacate and increase its initial sentence do not add anything substantive to the substantial compliance question, I do not address the effect of the court's ruling vacating the initial sentence. It would appear, however, that the court effectively was making a second finding of contempt for engaging in different conduct—stating obscenities in open

court—but provided the plaintiff with no opportunity to allocute.

[8] It is self-evident that the single word spoken by the plaintiff's counsel—"[s]top"—does not aid in providing notice of the specific conduct at issue.

[9] Even if this exchange arguably could be deemed ambiguous as to whether the plaintiff was being punished for attempting to allocute, as the majority suggests, a concern about the appearance of injustice given the lack of process afforded, in combination with the notice defect, should counsel strongly against a finding of substantial compliance.

[10] I do not foreclose the possibility that substantial compliance properly could be established in a rare case in which the trial court made no affirmative inquiry as to mitigating evidence but nonetheless provided the alleged contemnor with an unencumbered opportunity to allocute and that opportunity was utilized in fact to offer acquitting or mitigating evidence. The present case, however, was not such a case.