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VERTEFEUILLE, J., concurring and dissenting. I agree with and join parts I A through E, II, III, IV, V, VI, VII and VIII of the majority opinion. I do not join part I F of the majority opinion because I do not agree with the majority's construction of General Statutes (Rev. to 1997) § 53a-46a as requiring that "the jury must be instructed that it must be persuaded beyond a reasonable doubt that the aggravating factors outweigh the mitigating factors . . . ." Accordingly, I join part I of Chief Justice Sullivan's dissent, which would affirm the trial court's judgment in this regard.

I do not join part II of the Chief Justice's dissent, however, because I agree with the majority that there was prosecutorial misconduct in this case and that this misconduct "so infected the trial with unfairness as to make the resulting [imposition of the death penalty] a denial of due process." (Internal quotation marks omitted.) *State v. Reynolds*, 264 Conn. 1, 161, 824 A. 2d 611 (2003). Accordingly, I would remand the case for a new penalty hearing because of that prosecutorial misconduct.