BORDEN, J., concurring. I agree with and join the majority opinion. I write separately and briefly to underscore two points.

First, I note that this case presents the same question that I raised in my concurrence in *Kinsey* v. *Pacific Employers Ins. Co.*, 277 Conn. 398, 414–19, 891 A.2d 959 (2006), regarding the constitutionality, under the separation of powers doctrine, of General Statutes § 1-2z. In the present case, the majority finds an ambiguity in the legislature's use of two somewhat linguistically different phrases to define the requisite intent for abduction and restraint, respectively. That is, the intent necessary for an abduction is an intent "to prevent [a person's] liberation"; General Statutes § 53a-91 (2); and the intent necessary for a restraint is the intent "to interfere substantially with [a person's] liberty . . . ." General Statutes § 53a-91 (1). It is that ambiguity that permits the majority to go beyond the literal language of the kidnapping statute, and delve into its historical background and other nontextual sources to conclude that the legislature did not intend that a conviction for kidnapping would lie when the kidnapping is merely incidental to an underlying crime. Although I would readily conclude that the two phrasings in all probability mean the same thing, it is—barely—plausible that they could have different meanings (although I am hard pressed to say what that difference is), because they do use somewhat different words. See *Felician Sisters of Connecticut, Inc.* v. *Historic District Commission*, 284 Conn. 838, 850, 937 A.2d 39 (2008) ("use of the different terms . . . within the same statute suggests that the legislature acted with complete awareness of their different meanings . . . and that it intended the terms to have different meanings" [internal quotation marks omitted]). Nonetheless, as in *Kinsey*, this is a slim but adequate reed on which to base a finding of ambiguity. *Kinsey* v. *Pacific Employers Ins. Co.*, supra, 415 (*Borden, J.*, concurring). That slim reed does again, however, bring to mind the serious question of the constitutionality of § 1-2z that I outlined in *Kinsey*, since, without it, the majority would be barred by § 1-2z from relying on the legislative history and likely would be compelled to arrive at a different answer. Id., 416.

Second, because I joined the majority in *State* v. *Luurtsema*, 262 Conn. 179, 811 A.2d 223 (2002), in which this court affirmed a kidnapping conviction that, under the new standard articulated by the majority in the present case, would in all likelihood be required to be reversed, and because I issued a separate concurrence in that case urging that challenges to kidnapping convictions on the basis of slight degrees of detention be confined to challenges for vagueness; id., 205; I think

it is incumbent on me to state why I have changed my mind and now join the majority in the present case. Briefly stated, I am persuaded by the majority opinion's insight that, in establishing our prior kidnapping jurisprudence, this court never fully analyzed the kidnapping statute, its historical background, and the anomalous results that our jurisprudence was producing. In light of that analysis, which the majority has now produced, I am convinced that, in enacting the kidnapping statutes, the legislature did not intend that almost every assault, sexual assault or robbery automatically would be elevated to a kidnapping, with its attendant heavy penalties and opportunities for prosecutorial overcharging, simply by virtue of a minor restraint of liberty that was inherent in the underlying crime. Such a result now strikes me, not simply as "counterintuitive"; id., 204 (*Borden*, *J.*, concurring); but as anomalous and not consistent with the likely legislative intent. It is time that we join the great majority of courts that have so concluded, as the majority has aptly demonstrated.