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BERDON, J., concurring in the result. I agree with parts I, II and III of the majority opinion.

I part company from the majority with respect to part IV. In part IV, the majority gives its approval to the prosecutor's final argument, in which she argued with respect to C, the complaining witness, as follows: "She has taken an oath, an oath that you might find has real significance for her based on what is undisputedly a very religious and devoted life. That's something for you to consider when you consider her taking that oath and making these statements under oath."

The plain import of the prosecutor's remark directed the jury's attention to the fact that the complaining witness had given evidence under oath before the jury and, implicitly, that the jury had not heard from the defendant, Charles Johnson.

Our Supreme Court has stated that "[i]t is well settled that comment by the prosecuting attorney . . . on the defendant's failure to testify is prohibited by the fifth amendment to the United States constitution. . . . As we repeatedly have stated, [i]n determining whether a prosecutor's comments have encroached upon a defendant's [fifth amendment] right to remain silent, we ask: Was the language used manifestly intended to be, or was it of such character that the jury would naturally and necessarily take it to be a comment on the failure of the accused to testify?" (Citations omitted; internal quotation marks omitted.) *State v. Lemon*, 248 Conn. 652, 659, 731 A.2d 271 (1999). The prosecutor's argument violated the defendant's fifth amendment right to remain silent under the United States constitution.

Furthermore, I am also deeply concerned that the foregoing argument with respect to religion appealed to the emotions of the jurors and improperly usurped the province of the jury. Here, the majority concludes that the prosecutor's remarks regarding C and her parents' religiousness and devoutness were justified because such comments "had an evidentiary basis." I fail to comprehend the evidentiary basis supporting such comments in a case in which the defendant has been charged with sexual assault and risk of injury to a child.

Nevertheless, I do not dissent because the defendant did not object to the prosecutor's argument when it was made, nor did he move for a new trial. Rather, I leave this matter to another forum for correction of an injustice.

Accordingly, I reluctantly concur in the result.
