****

The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the electronic version of an opinion and the print version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest print version is to be considered authoritative.

****

ZARELLA, J., concurring. Although I regard this as a very close case, I concur in the result reached by the majority. I agree, in particular, with the conclusion of the majority that the trial court's interpretation of General Statutes § 29-35 (a), if allowed to stand, would place General Statutes § 29-38 in constitutional jeopardy with respect to others similarly situated to the defendant because it would deprive such persons of fair warning as to the conduct permitted or prohibited under the statutory scheme. See, e.g., *State* v. *Moran*, 264 Conn. 593, 616, 825 A.2d 111 (2003); *State* v. *Perruccio*, 192 Conn. 154, 164, 471 A.2d 632, appeal dismissed, 469 U.S. 801, 105 S. Ct. 55, 83 L. Ed. 2d 6 (1984).

I also agree with the majority that the rule of lenity does not apply in this case because, upon an examination of the text of the statute and its relationship to other statutes; see Public Acts 2003, No. 03-154, § 1; it is clear beyond a reasonable doubt that a taxicab does not fall within the ''place of business'' exception of § 29-35 (a). I disagree, however, with the view of the majority that the court may examine, in any given case, extratextual sources to clarify the meaning of a criminal statute before applying the rule of lenity.

The majority relies on *Moskal* v. *United States*, 498 U.S. 103, 111 S. Ct. 461, 112 L. Ed. 2d 449 (1990), in stating that the rule of lenity does not apply unless ''a reasonable doubt persists about a statute's intended scope *even after resort to the language and structure, legislative history, and motivating policies of the statute*.'' (Emphasis in original; internal quotation marks omitted.) Majority opinion, p. , quoting *Moskal* v. *United States*, supra, 108. The court in *Moskal*, however, did not examine whether the use of legislative history and extratextual sources to resolve ambiguity in a statute is consistent with the fair warning rationale underlying the rule of lenity; see *Moskal* v. *United States*, supra, 107–108; and neither has this court. See *State* v. *Courchesne*, 262 Conn. 537, 611–12 n.8, 816 A.2d 562 (2003) (*Zarella, J.*, dissenting). My concern is that judicial reliance on the ''legislative history'' and ''motivating policies'' of a statute to clarify its meaning may compromise the purpose of the rule of lenity, namely, to provide ''[a] fair warning . . . to the world in language that the common world will understand, of what the law intends to do if a certain line is passed.'' (Internal quotation marks omitted.) *United States* v. *R. L. C.*, 503 U.S. 291, 308, 112 S. Ct. 1329, 117 L. Ed. 2d 559 (1992) (Scalia, J., with whom Kennedy and Thomas, Js., join, concurring in part and concurring in judgment). As I have noted previously, it is for this reason that ''[s]everal members of the United States Supreme Court . . . have expressed their view that the rationale for the

rule of lenity precludes consideration of extratextual sources to clarify an ambiguous statute.'' *State* v. *Courchesne*, supra, 611 n.8 (*Zarella, J.*, dissenting), citing *United States* v. *R. L. C.*, supra, 307 (Scalia, J., with whom Kennedy and Thomas, Js., join, concurring in part and concurring in judgment) (''it is not consistent with the rule of lenity to construe a textually ambiguous penal statute against a criminal defendant on the basis of legislative history''). Accordingly, this court's continued reference to the language of *Moskal* is unwarranted in the absence of its own examination of whether the use of extratextual sources to clarify an ambiguous statute is consistent with the principle of fair warning.

Furthermore, the United States Supreme Court has noted that ''the need for fair warning will make it rare that legislative history or statutory policies will support a construction of a statute broader than that clearly warranted by the text . . . .'' (Internal quotation marks omitted.) *United States* v. *R. L. C.*, supra, 503 U.S. 306 n.6 (plurality opinion). These words indicate that, even the highest court in our nation, to which the majority has turned for guidance, does not believe that extratextual sources always should be considered when applying the rule of lenity. I therefore do not agree with the majority's reliance on the quoted passage from *Moskal* because the passage suggests that the rule of lenity may be applied following routine consideration of legislative history and other extratextual evidence of a statute's meaning.

Finally, to the extent that I believe that the rule of lenity precludes consideration of extratextual sources to clarify the meaning of a criminal statute, I disagree with the standard of statutory review employed by the majority at the outset of its opinion, which suggests that the court may examine extratextual evidence to resolve ambiguities in a criminal statute prior to applying the rule of lenity.

I concur in the majority opinion in all other respects.