****

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.

****

KATZ, J., with whom SULLIVAN, C. J., joins, dissenting. The sole issue in this appeal is whether a taxicab falls within the ''place of business'' exception of General Statutes § 29-35 (a).[1] The majority agrees with the state that the trial court improperly determined that a taxicab may constitute a place of business. Specifically, the majority concludes that, because a taxicab is a motor vehicle, taxicab drivers are not exempt under the place of business exception in § 29-35 (a). In essence, the majority determines that, even if the defendant, John Lutters, had a proprietary interest in his taxicab, his taxicab cannot constitute a place of business because of its mobility. I respectfully disagree with the majority. The issue is whether the legislature intended to exempt from the permit requirement a place of business that is not stationary. Because I have reasonable doubt about the application of the exemption to the defendant's taxicab, I would affirm the judgment of the trial court.

I

Like the majority, I begin with our well established principles of statutory interpretation in analyzing the defendant's claim. Our legislature recently has enacted No. 03-154, § 1, of the 2003 Public Acts, which provides: ''The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.'' In the present case, the relevant statutory text and the relationship of that text to other statutes do not reveal a meaning that is plain and unambiguous. Accordingly, the analysis is not limited and, like the majority, I look to other factors relevant to the inquiry into the meaning of § 29-35, including its legislative history and the circumstances surrounding its enactment and its purpose.

Additionally, this case implicates our rigorous rules of construction regarding criminal statutes. In specific, ''[w]e have long held that [c]riminal statutes are not to be read more broadly than their language plainly requires . . . . Thus, we begin with the proposition that [c]ourts must avoid imposing criminal liability where the legislature has not *expressly* so intended . . . and ambiguities are ordinarily to be resolved in favor of the defendant. . . . In other words, penal statutes are to be construed strictly and not extended by implication to create liability which no language of the act purports to create. . . . [T]his does not mean [however] that every criminal statute must be given the nar-

rowest possible meaning in complete disregard of the purpose of the legislature. . . . No rule of construction . . . requires that a penal statute be strained and distorted in order to exclude conduct clearly intended to be within its scope—nor does any rule require that the act be given the narrowest meaning. It is sufficient if the words are given their fair meaning in accord with the evident intent of [the legislature]. . . . The rule that terms in a statute are to be assigned their ordinary meaning, unless context dictates otherwise . . . also guides our interpretive inquiry.'' (Citations omitted; emphasis in original; internal quotation marks omitted.) *State* v. *Scott*, 256 Conn. 517, 531–32, 779 A.2d 702 (2001).

Finally, I note the rule of lenity, which applies whenever there is a reasonable doubt as to the scope of a statute. See, e.g., *State* v. *Sostre*, 261 Conn. 111, 120, 802 A.2d 754 (2002). This rule is ''not merely a convenient maxim of statutory construction.'' *Dunn* v. *United States*, 442 U.S. 100, 112, 99 S. Ct. 2190, 60 L. Ed. 2d 743 (1979). Rather, as the United States Supreme Court consistently has reaffirmed, the rule of lenity is rooted in principles of due process and the separation of powers. See, e.g., id. (rule rooted in fundamental principles of due process); *United States* v. *Bass*, 404 U.S. 336, 348, 92 S. Ct. 515, 30 L. Ed. 2d 488 (1971) (two policies behind rule of lenity are to give '' 'fair warning . . . of what the law intends to do if a certain line is passed' '' and that ''legislatures and not courts should define criminal activity''); *United States* v. *Wiltberger*, 18 U.S. (5 Wheat.) 76, 95, 5 L. Ed. 73 (1820) (''The rule that penal laws are to be construed strictly . . . is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals . . . and on the plain principle that the power of punishment is vested in the legislative, not in the judicial department.'').

II

The language of the statute itself is the first stop on this journey. In *State* v. *Vickers*, supra, 260 Conn. 221–22, the issue on appeal was whether the defendant, a welder, who was found to be in possession of a firearm when he was summoned to his supervisor's office at his employer's manufacturing plant, was at his place of business such that he was exempt from the permit requirement of General Statutes § 29-28. As we explained therein, the phrase ''place of business'' is not defined explicitly in either the text of § 29-35 (a), or anywhere else in the General Statutes. Therefore, our consideration in *Vickers* of the meaning of the phrase as used in § 29-35 (a) was an issue of first impression. Id., 224. We looked first to the common understanding expressed in the law and in dictionaries; see *Caldor, Inc.* v. *Heffernan*, 183 Conn. 566, 570–71, 440 A.2d 767 (1981); as well as to sentence structure and the remain-

der of the statutory section delineating the specific occupations excluded from the permit requirement to conclude that the legislature did not intend the phrase ''place of business'' to refer to all employees at all places of employment. *State* v. *Vickers*, supra, 224–25. Rather, we determined that the legislature had intended to restrict the presence of unlicensed handguns in the public sphere, and accordingly, we concluded that the statutory exception to the permit requirement is extended only to individuals within their dwelling houses or in their place of business in which they have a proprietary or controlling interest and to those who fall under the specific occupations so delineated. Id., 229.

The state relies on this legislative intent to argue that, because the legislature's goal was to limit the number of firearms in the public sphere carried by persons untrained in their use, a motor vehicle *cannot* be part of the place of business exception. In determining the issue, the majority endorses much of the state's reasoning supporting its proposed interpretation. I address those arguments separately.

A

First, the state points to General Statutes § 29-38,[2] which criminalizes the possession of a weapon in a motor vehicle without a permit. The state argues that, because it is a crime for someone to have a weapon in a motor vehicle without a permit, reading §§ 29-35 and 29-38 together, and keeping in mind the goal to limit the access to firearms in public, the legislature could not have intended to allow a motor vehicle to constitute a place of business. The state contends that § 29-38, the more specific statute, must prevail over § 29-35, the more general provision dealing with the same subject matter. Subsection (b) of § 29-38 contains a list of occupations and situations to which the proscriptions in subsection (a) do not apply, and the state maintains that, because taxicab drivers are not included therein, the legislature did not intend to exempt them from the permit requirement.

The defendant has several responses. First, he recognizes the prohibitions listed in § 29-38, but points out that possession of a pistol in a motor vehicle is not prohibited, but merely is circumscribed to persons with permits. Therefore, the legitimate concerns expressed by the state, and espoused by the majority, about the presence of firearms in the public sphere do not result in possession of the weapon being outlawed, but merely constrained. Additionally, the defendant suggests that, by incorporating the permit statute, § 29-28, in § 29-38, it equally is logical to conclude that someone who is exempt from needing to obtain a permit via the § 29-35 (a) ''place of business'' exemption, would also be exempt from prosecution for a violation of § 29-38. Furthermore, because the legislature did not intend to

exclude *all* taxicab drivers from the permit requirement, but only those whose taxicabs fall within the ''place of business'' exception, its failure to include that category of driver in subsection (b) of § 29-38 does not prohibit an interpretation that a taxicab *might* qualify under § 29-35. The defendant contends, therefore, that §§ 29-35 and 29-38 can be read in harmony, limiting the possession of firearms to those persons who have permits pursuant to § 29-28, or who fall within the exceptions contained in either § 29-35 or § 29-38. In other words, according to the defendant, by incorporating the permit statute, § 29-28, in the motor vehicle statute, § 29-38, it is not irrational as a matter of statutory construction to conclude that someone who is exempt from needing to obtain a permit via the § 29-35 (a) ''place of business'' exception would also be exempt from prosecution for a violation of § 29-38. Although I do not find the defendant's reasoning unassailable, I also am not persuaded by the majority's analysis.[3] Therefore, upon reflection of all the relevant considerations, I consider the defendant's construal sufficient to provide me with reasonable doubt regarding the operation of the statute.

Indeed, the language used by other states to limit gun possession is far less ambiguous. Our legislature, in drafting § 29-35, specifically *could have* limited the ''place of business'' exception to fixed businesses, as evidenced in a number of sister state statutes. See, e.g., Ala. Code § 13A-11-73 (Michie 1994) (exception for ''fixed place of business''); Idaho Code § 18-3302 (7) (Michie 1997) (same); 720 Ill. Comp. Stat. Ann. § 5/24-1 (a) (4) (West 2003) (same); Ind. Code § 35-47-2-1 (Lexis 1998) (same); Kan. Stat. Ann. § 21-4201 (a) (4) (1995) (same); N.J. Stat. Ann. § 2C:39-6e (West 1995) (''[f]or the purposes of this section, a place of business shall be deemed to be a fixed location''); N.D. Cent. Code § 62.1-03-01 (2) (b) (1995) (exception for ''fixed place of business''); Pa. Cons. Stat. Ann. § 6106 (a) (1) and (2) (West 2000) (same); S.C. Code Ann. § 16-23-20 (8) (1985) (same); Wash. Rev. Code Ann. § 9.41.050 (1) (a) (West 1998) (same).[4]

Finally, I note statutes in other states and jurisdictions in which the legislature provided some modifying language within the statute creating the *unambiguous* grounds upon which to conclude that place of business refers solely to land. See Ariz. Rev. Stat. Ann. § 13-3102 (B) (2001) (prohibition against carrying deadly weapon without permit ''shall not apply to a person in his dwelling, on his business premises or *on real property owned or leased by that person*'' [emphasis added]); D.C. Code Ann. § 22-4504 (a) (LexisNexis 2001) (''[n]o person shall carry . . . a pistol, without a license . . . [1] . . . in a place other than the person's dwelling place, place of business, or *on other land possessed by the person*'' [emphasis added]); Iowa Code § 724.4 (4) (a) (2001) (defense when person armed with dangerous weapon ''in the person's own dwelling or place of business, or

on land owned or possessed by the person'' [emphasis added]); Mich. Comp. Laws § 750.227 (2) (2003) (''[a] person shall not carry a pistol . . . except in his or her dwelling house, place of business, or *on other land possessed by the person*, without a license'' [emphasis added]); R.I. Gen. Laws § 11-47-8 (a) (2002) (''[n]o person shall, without a license or permit . . . carry a pistol or revolver . . . except in his or her dwelling house or place of business or *on land possessed by him or her*'' [emphasis added]); S.D. Codified Laws § 22-14-11 (Michie 1998) (prohibition against carrying concealed pistol or revolver without permit ''shall not apply to any person . . . in his own dwelling house or place of business or *on land owned or rented by him or by a member of his household*'' [emphasis added]). The absence of such modifying language in § 29-35 is persuasive evidence that our legislature did not intend necessarily to further limit the exceptions in § 29-35.

B

The state next argues that the statutory development of §§ 29-35 and 29-38 reveals that the legislature never intended the place of business exception to apply to motor vehicles. In its original form, § 29-35 provided that ''[n]o person shall carry any pistol or revolver in or upon any vehicle or upon his person, except when such person shall be within his dwelling house or place of business, without a permit to carry the same issued as hereinbefore provided.'' Public Acts 1923, c. 252, § 9. Section 10 of that same Public Act provided for exemptions to § 9 based on certain occupations and in certain circumstances. Public Acts 1923, c. 252, § 10. The wording remained virtually identical through 1930, when those two sections of the Public Act were codified together in the revised statutes. See General Statutes (1930 Rev.) § 2671. Then, in 1935, the legislature created two separate statutes, one pertaining to carrying a pistol without a permit; General Statutes (Cum. Sup. 1935) § 1009c; the other pertaining to having a pistol in a vehicle. See General Statutes (Cum. Sup. 1935) § 1010c. The ''place of business'' exception was not included in § 1010c. According to the state, the legislature's failure to carry over the exception indicates that it did not intend for the exception to apply when motor vehicles were involved.

As the defendant points out, there is no legislative history available for the 1935 provisions. Therefore, it is hard to look to that change as expressing any authoritative direction on the subject. As we recognized in *State* v. *Vickers*, supra, 260 Conn. 227–28, however, subsequent legislative history, specifically as it pertains to No. 81-222 of the 1981 Public Acts, clearly expressed an intent to minimize the possession of firearms in public.[5] See 24 S. Proc., Pt. 10, 1981 Sess., p. 3146, remarks of Senator Howard T. Owens, Jr. The state is correct that that always has been a significant consid-

eration.

The interest of protecting the public at large from the unrestricted possession of guns traveling in the public sphere must be balanced, however, against that of property owners in being able to protect their property. See *State* v. *Vickers*, supra, 260 Conn. 224–25. Although, in *Vickers*, we did not define the phrase ''public sphere,'' we looked to the ''common understanding expressed in the law and in dictionaries.'' (Internal quotation marks omitted.) Id., 224. Doing so again in the present case, I note that the word ''public'' means: ''Open to all; notorious. Common to all or many; general; open to common use. Belonging to the people at large; relating to or affecting the whole people of a state, nation, or community; not limited or restricted to any particular class of the community.'' Black's Law Dictionary (6th Ed. 1990). Weighed against that consideration is the right to protect one's property interest. Because a mere employee has no property interest to be balanced against the public interest, however, we concluded in *Vickers* that the employee in that case was not exempt from the permit requirement.[6] *State* v. *Vickers*, supra, 225. A person who has a proprietary interest in his place of business has a recognized interest in protecting that property, however, and when that person is within his place of business, he is *not* in the public sphere. That remains as true in a taxicab as it does in a store, a restaurant, a club, a theatre, or the like. Indeed, as the trial court recognized in this case, the taxicab driver has the right to exclude the public, to require a passenger to conform to certain rules, and to protect his property.

III

The state next argues that a decision that recognizes a taxicab as a place of business for purposes of an exemption from carrying a pistol without a permit would be an anomaly.[7] Indeed, the state contends that ''[a]ll the states that have considered the issue have, for various reasons, concluded that the 'place of business' exception should not be applied to taxicabs or other mobile businesses.'' Other than the aforementioned states in which the pertinent statutes provide specific linguistic guidance on the issue of whether a taxicab may constitute a place of business; see part II A of this dissenting opinion; I have found only three states in which the courts have acted in the absence of such direction in deciding whether a taxicab can be a place of business.

The courts in New York are split on whether a taxicab constitutes a place of business under the exception in § 265.02 (4) of the New York Penal Laws. Compare *People* v. *Romero*, 280 App. Div. 2d 316, 316–17, 720 N.Y.S.2d 145 (2001) (''police officer's testimony showing that the vehicle was a regular passenger car and not a taxi was sufficient evidence upon which the jury

could conclude that the vehicle was not [the] defendant's 'place of business', and there was no evidence to the contrary''), appeal denied, 96 N.Y.2d 806, 750 N.E.2d 86, 726 N.Y.S.2d 384 (2001), *People* v. *Solomon*, 253 App. Div. 2d 692, 693, 679 N.Y.S.2d 97 (1998) (concluding that ''[d]efendant was not in his 'place of business' when he stood on the street corner near his cab'' without addressing issue of whether taxicab is place of business), appeal denied, 92 N.Y.2d 1037, 707 N.E.2d 459, 684 N.Y.S.2d 504 (1998), *People* v. *Santana*, 77 Misc. 2d 414, 415, 354 N.Y.S.2d 387 (1974) (extending place of business exception to driver who had exited his taxicab with revolver), *People* v. *Anderson*, 74 Misc. 2d 415, 419, 344 N.Y.S.2d 15 (1973) (''gypsy'' cab is place of business), and *People* v. *Santiago*, 74 Misc. 2d 10, 11, 343 N.Y.S.2d 805 (1971) (taxicab is place of business) with *People* v. *Khudadzade*, 156 App. Div. 2d 384, 384–85, 548 N.Y.S.2d 336 (1989) (''under the facts of this case,'' which opinion did not delineate, ''the defendant's taxi cab and the car service office from which his vehicle had been dispatched were not his places of business''), appeal denied, 75 N.Y.2d 814, 551 N.E.2d 1242, 552 N.Y.S.2d 564 (1990), *People* v. *Francis*, 45 App. Div. 2d 431, 433, 358 N.Y.S.2d 148 (1974) (stating, in dicta, that taxicab is not place of business, and citing *People* v. *Levine*, 42 App. Div. 2d 769, 346 N.Y.S.2d 756 [1973], for that proposition), aff'd, 38 N.Y.2d 150, 152, 341 N.E.2d 540, 379 N.Y.S.2d 21 (1975), *People* v. *Levine*, supra, 769 (summarily affirming judgment of conviction of felony weapons possession charge without specifically addressing underlying facts or place of business exception), and *People* v. *Abbatiello*, 129 Misc. 2d 831, 832–33, 494 N.Y.S.2d 625 (1985) (stating, in dicta, that taxicab is not place of business). The New York Court of Appeals, while recognizing the issue of whether a taxicab constitutes a place of business under § 265.02 (4) of the New York Penal Laws, expressly has declined the opportunity to resolve it. *People* v. *Francis*, 38 N.Y.2d 150, 152, 341 N.E.2d 640, 379 N.Y.S.2d 21 (1975) (''we do not today decide the question of whether the place of business exception should apply to one in defendant's position''). Accordingly, the law in New York remains unsettled concerning the applicability of the place of business exception to taxicabs. See *People* v. *Malave*, 124 Misc. 2d 210, 215, 476 N.Y.S.2d 422 (1984) (noting ''the unsettled state of the case law'' concerning meaning of ''place of business''); *People* v. *Allison*, 117 Misc. 2d 463, 464 n.1, 458 N.Y.S.2d 496 (1983) (noting disagreement among New York courts concerning issue of whether taxicab is place of business); *People* v. *McWilliams*, 96 Misc. 2d 648, 653–54, 409 N.Y.S.2d 610 (1978) (noting ''that this area of the law is at best, unsettled,'' and concluding that ''[i]f the 'place of business exception' has any application to a taxicab, it should apply to the taxi driver who possesses a loaded firearm in his taxi, without utilizing it for any purpose outside of his role as a driver. Since there has been

no definitive appellate determination on this particular issue, its resolution should be left to the trier of fact.'').

The courts in California similarly have been indecisive concerning the question of whether the place of business exception of § 12026 of the California Penal Code applies to taxicabs.[8] In *People* v. *Marotta*, 128 Cal. App. 3d Sup. 1, 6, 180 Cal. Rptr. 611 (1981), the Appellate Department of the Superior Court concluded that the place of business exception applies to taxicabs. The court reasoned that a taxicab ''is as much a place of business as a store in a fixed location. This is where the cab driver worked and collected his fees. The driver had no other business location which the cab served to facilitate, such as a store's delivery truck, where the truck is not the location of the enterprise, but merely the means to facilitate the store's business.'' Id., 5. The court further stated: ''The term 'place of business' has no set or established meaning in California case or code law. Importing into these words the limitation of a fixed geographic location is unsupported in the law. In California's highly mobile culture many business enterprises have no fixed geographic location. Even such staid institutions as banks often use mobile facilities.'' Id., 6. Finally, the court noted that, ''[h]ad the Legislature intended to . . . exclude vehicles from the compass of the words 'place of business,' it could easily have done so.'' Id.

Thereafter, in *People* v. *Wooten*, 168 Cal. App. 3d 168, 173, 214 Cal. Rptr. 36 (1985), the California Court of Appeal declined to extend the place of business exception to the case of a bounty hunter who had been convicted of carrying a concealed, loaded pistol in the glove compartment of his pickup truck. Noting that ''*Marotta* is readily distinguishable,'' the court reasoned: ''While taxicab drivers must do business in their cabs, bounty hunters do not. Their job is to get out of their car and arrest bail jumpers, not to run over them. The vehicle is simply a means to transport the bounty hunter. Unlike a taxi driver whose work cannot be done without a vehicle, bounty hunters may leave their own cars behind and use airplanes, buses, trains or taxis to pursue bail jumpers.'' Id. The court went on to criticize the reasoning of *Marotta*, remarking that ''[t]he natural meaning of the term 'place of business' is a fixed location,'' and does not include mobile businesses. Id. Additionally, the court concluded that § 12026 of the California Penal Code was not unconstitutionally vague because ''[t]he phrase 'place of business' has a [narrow] meaning . . . [that] is used to describe stores, offices, warehouses, etc. . . . [and] not mobile pieces of personal property.'' Id., 174–75. Nonetheless, *Wooten* did not overrule *Marotta* explicitly, nor have any more recent decisions.

Finally, I note that the Arkansas Supreme Court decisively has interpreted the exceptions to that state's statute prohibiting the carrying of a weapon without a

permit. Ark. Code Ann. § 5-73-120 (c) (Michie Sup. 2003) provides in relevant part: ''It is a defense to a prosecution under this section that at the time of the act of carrying a weapon . . . [c] [t]he person is in his or her own dwelling, place of business, or on property in which he or she has a possessory or proprietary interest . . . .'' In *Boston* v. *State*, 330 Ark. 99, 101, 952 S.W.2d 671 (1997), the court concluded that this exception does not apply to taxicabs. Because ''[i]n three of the other exemption sections [of § 5-73-120 of the Arkansas Code Annotated], the legislature created exceptions in instances where a person was in an automobile,'' the court held that ''[t]he exemption for a 'business' is contained in a subsection of the statute which pertains to real property . . . .'' Id. Therefore, these jurisdictions provide little guidance or insight into whether a decision that a taxicab can be a place of business for purposes of an exemption from carrying a pistol without a permit would indeed be an anomaly.

IV

Finally, I return to the rule of lenity. ''When the statute in question is one of a criminal nature . . . we must refrain from imposing criminal liability [when] the legislature has not expressly so intended. . . . [C]riminal statutes are not to be read more broadly than their language plainly requires and ambiguities are ordinarily to be resolved in favor of the defendant. . . . Finally, unless a contrary interpretation would frustrate an evident legislative intent, criminal statutes are governed by the fundamental principle that such statutes are strictly construed against the state.'' (Citations omitted; internal quotation marks omitted.) *State* v. *Davis*, 255 Conn. 782, 788–89, 772 A.2d 559 (2001).

In *State* v. *Harrell*, 238 Conn. 828, 832, 681 A.2d 944 (1996), emphasizing that a criminal statute should not be applied so as to impose criminal liability unless the legislature has ''*expressly* so intended''; (emphasis in original); we ''determined as a matter of statutory interpretation that the word 'murder' as used in § 53a-54b means intentional murder as defined by Public Acts 1973, No. 73-137, § 2, now codified as [General Statutes] § 53a-54a (a). [See id., 835–36.] Therefore, we concluded in *Harrell* that the defendant's conviction for arson murder in violation of [General Statutes] § 53a-54d could not serve as a predicate murder for purposes of the capital felony statute.'' *State* v. *Coltherst*, 263 Conn. 478, 500, 820 A.2d 1024 (2003), citing *State* v. *Harrell*, supra, 839. Similarly, in *State* v. *Johnson*, 241 Conn. 702, 712, 699 A.2d 57 (1997), we rejected the state's claim that the defendant's conviction of felony murder could serve as the predicate for capital felony when the defendant's codefendant had an intent to kill, concluding that the ''requirement [under General Statutes § 53a-54b] of an intentional murder refers to the underlying murder that the defendant was *convicted of*

. . . .'' (Emphasis in original.)

In *State* v. *Sostre*, supra, 261 Conn. 142, we stated that ''[e]ven if we were to conclude, however, that it is simply uncertain whether [General Statutes] § 53a-46a (i) (6) was intended to apply to a capital felony committed during the course of a robbery, *when 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 . . . we apply the rule of lenity and resolve any ambiguity in favor of the defendant*.'' (Citation omitted; emphasis added; internal quotation marks omitted.) See *Moskal* v. *United States*, 498 U.S. 103, 108, 111 S. Ct. 461, 112 L. Ed. 2d 449 (1990) (''we . . . [reserve] lenity for those situations in which 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]). The defendant argues in the present case that if the language of § 29-35, its legislative history and the motivating policies do not *clearly* support his interpretation, we are *at least* faced with an ambiguity, thereby implicating the rule of lenity, which favors his construction of the exemption provision.

Because I have a reasonable doubt about the application of the exemption to the defendant's taxicab, I agree with the defendant. Indeed, the absence in § 29-35 of qualifying terms such as ''fixed,'' ''land'' or ''real property,'' on the one hand, or explicit reference to motor vehicles, on the other; see footnote 4 of this dissenting opinion; makes the defendant's invocation of the rule of lenity particularly appropriate. Therefore, I would conclude that the defendant's taxicab, over which he had exclusive control, falls within the ''place of business'' exemption of § 29-35 (a). In so concluding, I recognize the laudatory general purpose of § 29-35 to control the threat to public safety in the indiscriminate possession and carrying of concealed and loaded weapons, while also giving effect to the express exception that allows businesspersons to protect their property. Indeed, I cannot choose to take note of one legislative purpose, so as to achieve the admirable social end of stronger gun control, while ignoring the intent of the legislative purpose embodied in the exceptions. That goal—to allow businesspersons to possess weapons to protect their property—is as important to a taxicab driver as it is to a businessperson in a fixed locale,[9] while the possible danger to the public posed by taxicab drivers with guns is no more serious than that posed by armed retail store operators.

Finally, I am not unaware of the hypothetical scenarios that the state threatens will result from this opinion.[10] Consistent with how this court decides cases, we cannot forecast how any particular hypothetical situation will be resolved. Any person reading the terms

of § 29-35 in conjunction with this opinion, however, should appreciate that the exemption for residences and places of business would not extend to the vehicle used by *every* businessperson who must travel in the course of his or her business. The phrase ''place of business'' has a narrower meaning than each of its component terms. On the other hand, where it is not possible to perform the business without using the vehicle, its mobility, in and of itself, should not preclude its consideration as a ''place of business.''

Accordingly, I respectfully dissent.

[1] General Statutes § 29-35, entitled ''Carrying of pistol or revolver without permit prohibited. Exceptions,'' provides: ''(a) No person shall carry any pistol or revolver upon one's person, except when such person is within the dwelling house or place of business of such person, without a permit to carry the same issued as provided in section 29-28. The provisions of this subsection shall not apply to the carrying of any pistol or revolver by any parole officer or peace officer of this state, or parole officer or peace officer of any other state while engaged in the pursuit of official duties, or federal marshal or federal law enforcement agent, or to any member of the armed forces of the United States, as defined by section 27-103, or of this state, as defined by section 27-2, when on duty or going to or from duty, or to any member of any military organization when on parade or when going to or from any place of assembly, or to the transportation of pistols or revolvers as merchandise, or to any person transporting any pistol or revolver while contained in the package in which it was originally wrapped at the time of sale and while transporting the same from the place of sale to the purchaser's residence or place of business, or to any person removing such person's household goods or effects from one place to another, or to any person while transporting any such pistol or revolver from such person's place of residence or business to a place or individual where or by whom such pistol or revolver is to be repaired or while returning to such person's place of residence or business after the same has been repaired, or to any person transporting a pistol or revolver in or through the state for the purpose of taking part in competitions, taking part in formal pistol or revolver training, repairing such pistol or revolver or attending any meeting or exhibition of an organized collectors' group if such person is a bona fide resident of the United States and is permitted to possess and carry a pistol or revolver in the state or subdivision of the United States in which such person resides, or to any person transporting a pistol or revolver to and from a testing range at the request of the issuing authority, or to any person transporting an antique pistol or revolver, as defined in section 29-33. For the purposes of this subsection, 'formal pistol or revolver training' means pistol or revolver training at a locally approved or permitted firing range or training facility, and 'transporting a pistol or revolver' means transporting a pistol or revolver that is unloaded and, if such pistol or revolver is being transported in a motor vehicle, is not readily accessible or directly accessible from the passenger compartment of the vehicle or, if such pistol or revolver is being transported in a motor vehicle that does not have a compartment separate from the passenger compartment, such pistol or revolver shall be contained in a locked container other than the glove compartment or console. Nothing in this section shall be construed to prohibit the carrying of a pistol or revolver during formal pistol or revolver training or repair.

''(b) The holder of a permit issued pursuant to section 29-28 shall carry such permit upon one's person while carrying such pistol or revolver.''

Section 29-35 (a) was amended subsequent to June of 2001, the time of the defendant's alleged offenses, however, the portion of subsection (a) relevant in this case had only three minor technical changes. See Public Acts 2003, No. 03-19, § 68; see also Public Acts 2001, No. 01-130, § 9. For purposes of clarity, I refer herein to the current codification of the statute.

[2] General Statutes § 29-38, entitled ''Weapons in vehicles,'' provides: ''(a) Any person who knowingly has, in any vehicle owned, operated or occupied by such person, any weapon, any pistol or revolver for which a proper permit has not been issued as provided in section 29-28 or any machine gun which has not been registered as required by section 53-202, shall be fined not more than one thousand dollars or imprisoned not more than five years or both, and the presence of any such weapon, pistol or revolver, or

machine gun in any vehicle shall be prima facie evidence of a violation of this section by the owner, operator and each occupant thereof. The word 'weapon', as used in this section, means any BB. gun, any blackjack, any metal or brass knuckles, any police baton or nightstick, any dirk knife or switch knife, any knife having an automatic spring release device by which a blade is released from the handle, having a blade of over one and one-half inches in length, any stiletto, any knife the edged portion of the blade of which is four inches or over in length, any martial arts weapon or electronic defense weapon, as defined in section 53a-3, or any other dangerous or deadly weapon or instrument.

"(b) The provisions of this section shall not apply to: (1) Any officer charged with the preservation of the public peace while engaged in the pursuit of such officer's official duties; (2) any security guard having a baton or nightstick in a vehicle while engaged in the pursuit of such guard's official duties; (3) any person enrolled in and currently attending a martial arts school, with official verification of such enrollment and attendance, or any certified martial arts instructor, having any such martial arts weapon in a vehicle while traveling to or from such school or to or from an authorized event or competition; (4) any person having a BB. gun in a vehicle provided such weapon is unloaded and stored in the trunk of such vehicle or in a locked container other than the glove compartment or console; and (5) any person having a knife, the edged portion of the blade of which is four inches or over in length, in a vehicle if such person is (A) any member of the armed forces of the United States, as defined in section 27-103, or any reserve component thereof, or of the armed forces of this state, as defined in section 27-2, when on duty or going to or from duty, (B) any member of any military organization when on parade or when going to or from any place of assembly, (C) any person while transporting such knife as merchandise or for display at an authorized gun or knife show, (D) any person while lawfully removing such person's household goods or effects from one place to another, or from one residence to another, (E) any person while actually and peaceably engaged in carrying any such knife from such person's place of abode or business to a place or person where or by whom such knife is to be repaired, or while actually and peaceably returning to such person's place of abode or business with such knife after the same has been repaired, (F) any person holding a valid hunting, fishing or trapping license issued pursuant to chapter 490 or any salt water fisherman while having such knife in a vehicle for lawful hunting, fishing or trapping activities, or (G) any person participating in an authorized historic reenactment."

[3] The majority reasons that it would be nonsensical to view the legislature as permitting a loaded pistol to be freely transported in society while prohibiting less dangerous weapons such as a BB gun, stun gun, brass knuckles, or a nightstick. I suggest that this is the same anomaly permitted by the legislature in its decision to allow a firearm in a motor vehicle when a permit has been granted pursuant to § 29-28, but not allow these other weapons for which a permit is not authorized. See General Statutes § 29-38.

The majority also is persuaded that, as a practical matter, the defendant's proposed reading of the statute would be unworkable. For example, if a taxicab driver left his vehicle to get lunch, he would be required to leave his loaded pistol in the taxicab and the pistol would potentially be accessible to the public at large. This trepidation exists either way this case is resolved. The permit requirement certainly would allow the taxicab driver to remove the gun at any time, but does not guarantee that he will not leave the firearm unattended in the vehicle nonetheless.

The majority also relies on the permit requirement in § 29-28 as evidence of the legislature's intent to minimize the possible harm to the public from firearms through misuse or accident. To allow a person without training to have a pistol in a motor vehicle greatly increases the likelihood of harm because, if the firearm is discharged, the bullet likely will exit the vehicle and enter the public arena. Finally, the majority relies on the "six limited exceptions to § 29-35's general prohibition against the possession of a handgun without a permit outside of a dwelling house or place of business" and the "severe restrictions on the manner in which an unlicensed handgun may be transported" as representative of "the legislature's recognition that, on occasion, it may be necessary to transport an unlicensed handgun from a dwelling house or place of business to another location for a specific and limited purpose . . . [and] is indicative of the overriding purpose of § 29-35 (a), namely, to curtail the possession of unlicensed handguns in the public arena." As the defendant cautions, however, the exposure to the danger of firearms can be far greater in stationary places of business, like

restaurants, where there are more potential victims than in a motor vehicle. Moreover, these various exceptions deal with *transportation to and from* a dwelling house or place of business, and do not address the issue of what is a dwelling house or a place of business.

[4] Similarly, five other states that have enacted statutes addressed to the carrying of a weapon in a motor vehicle have differentiated between private automobiles and common carriers, thereby providing better guidance. See Ala. Code § 13A-11-74 (Michie 1994) (providing exception for ''any common carrier, except taxicabs''); Colo. Rev. Stat. § 18-12-105 (2) (2003) (''[i]t shall not be an offense if the defendant was . . . [b] A person *in a private automobile or other private means of conveyance* who carries a weapon for lawful protection of such person's or another's person or property while traveling'' [emphasis added]); N.M. Stat. Ann. § 30-7-2 (A) (Michie 1994) (''[u]nlawful carrying of a deadly weapon consists of carrying a concealed loaded firearm or any other type of deadly weapon anywhere, except . . . [2] *in a private automobile or other private means of conveyance*, for lawful protection of the person's or another's person or property'' [emphasis added]); Or. Rev. Stat. Ann. § 166.250 (2) (Lexis Sup. 1998) (providing exception for possession of handgun without permit ''within the person's place of residence or place of business . . . . [b] As used in this subsection, 'residence' includes a recreational vessel or *recreational vehicle* while used, for whatever period of time, as residential quarters.'' [Emphasis added.]); Va. Code Ann. § 18.2-308 (C) (LexisNexis Cum. Sup. 2002) (''[t]his section shall . . . not apply to any of the following individuals while in the discharge of their official duties, or while in transit to or from such duties . . . [4] Conservators of the peace, except that the following conservators of the peace shall not be permitted to carry a concealed handgun without obtaining a permit . . . [c] *drivers, operators, or other persons in charge of any motor vehicle carrier of passengers for hire*'' [emphasis added]).

[5] Public Act 81-222, § 2, amended § 29-35 (a) to exempt ''any person carrying a pistol or revolver to and from a testing range at the request of the issuing authority, or to any person carrying an antique pistol or revolver . . . .'' It also amended General Statutes § 29-37, the penalty provision of the gun control statutes, to provide for a mandatory minimum sentence of one year for violations of § 29-35 (a). Senator Howard T. Owens, Jr., explained that the purpose of the mandatory minimum sentence was to provide ''a warning to those [who] might go out and use [a] handgun for some illicit reason . . . to leave their handgun at home, because if they do [not] and they're caught with it . . . they have the problem of this mandatory sentence.'' 24 S. Proc., Pt. 10, 1981 Sess., p. 3146. During the discussion of the bill in the House of Representatives, Representative Robert G. Jaekle expressed a similar rationale: ''If you want to keep your gun in your home or place of business, you don't even need a permit; but if you want to carry it out on the street where you and I and our constituents walk, by golly, get a permit. That's what our present law says. That's what this bill seeks to enforce.'' 24 H.R. Proc., Pt. 12, 1981 Sess., pp. 3845–46.

[6] In *State* v. *Vickers*, supra, 260 Conn. 225, we noted that ''[t]he remainder of [§ 29-35 (a)] delineates the specific jobs that also are excluded from the permit requirement.'' See also footnote 1 of this dissenting opinion. ''We have stated that [u]nless there is evidence to the contrary, statutory itemization indicates that the legislature intended [a] list to be exclusive.'' (Internal quotation marks omitted.) *State* v. *Vickers*, supra, 225. Therefore, we determined that ''the legislature did not intend the phrase 'place of business' to refer to all employees at all places of employment.'' Id. Rather, ''the statutory exception is extended only to individuals within their dwelling houses or in their place of business in which they have a proprietary or controlling interest and to those who fall under the specific occupations so delineated.'' Id., 226.

In the present case, the issue is not whether the statutory exception of § 29-35 applies to all taxicab drivers, as an occupational class. Rather, the question is whether a taxicab is a place of business. If a taxicab indeed is a place of business, then the individual who has a proprietary or controlling interest in that taxicab is exempt from the permitting requirements of § 29-35, irrespective of whether he falls within a specific occupation delineated therein. Accordingly, the inclusion of the list of excluded occupations is of little value to the inquiry.

[7] Certainly, it would not be an anomaly in Connecticut to recognize that a building need not be stationary. Indeed, the legislature has chosen to treat stationary structures and motor vehicles identically for purposes of determining whether a burglary has transpired. See General Statutes § 53a-

100 (a) (1) (‘‘[b]uilding’ in addition to its ordinary meaning, includes any . . . vehicle’’).

[8] Section 12026 of the California Penal Code provides an exception for weapons kept within one’s ‘‘place of residence’’ or ‘‘place of business.’’ In 1988, the California legislature expanded § 12026 to include an exception for weapons kept ‘‘on private property owned or lawfully possessed by the citizen or legal resident.’’ Cal. Penal Code § 12026; see also *People* v. *Melton*, 206 Cal. App. 3d 580, 593, 253 Cal. Rptr. 661 (1988).

[9] According to a study by the United States Department of Labor, Bureau of Labor Statistics, 431 taxicab drivers died from job-related injuries between 1992 and 1995. Of these fatalities, 338 were homicides. A. Knestaut, ‘‘Fatalities and Injuries Among Truck and Taxicab Drivers,’’ 2 Compensation and Working Conditions 55, 59, table 3 (1997). ‘‘Cabdrivers had the highest homicide rate—32 homicides per 100,000—among the occupations most affected by deadly violence. This rate is four times more than that of police officers. Robbery appeared to be the motive in many cases. . . . Several factors help to explain why taxicab drivers are frequent victims of this crime: They work alone, frequently at night, and handle cash. In addition, taxicab drivers tend to work in areas, such as inner cities, with higher crime rates.’’ Id., 55.

[10] Equally of concern is the hypothetical scenario that could result from the limiting of § 29-35 to stationary structures. Indeed, as the defendant points out, in the absence of a fixed locale limitation in either the dwelling exception or the place of business exception, such a limitation would expose dwellers in mobile homes to criminal prosecution as well.