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STATE OF CONNECTICUT *v.* ROBERT COURCHESNE
(SC 16665)

Sullivan, C. J., and Borden, Norcott, Katz, Palmer, Vertefeuille and Zarella, Js.

Argued April 26, 2002—officially released March 11, 2003

Harry Weller, senior assistant state's attorney, with whom, on the brief, were *John A. Connelly*, state's attorney, *Maureen M. Keegan*, supervisory assistant state's attorney, and *Eva B. Lenczewski*, senior assistant state's attorney, for the appellant (state).

Mark Rademacher, assistant public defender, with whom, on the brief, was *Ronald Gold*, senior assistant public defender, for the appellee (defendant).

Opinion

BORDEN, J. Under our statutory scheme, a defendant becomes eligible for the death penalty if he is convicted of a capital felony for the ''murder of two or more persons at the same time or in the course of a single transaction . . . .'' General Statutes (Rev. to 1997) § 53a-54b (8), as amended by No. 98-126, § 1, of the 1998 Public Acts (P.A. 98-126).[1] One of the aggravating factors that permits the imposition of the death penalty is that ''the defendant committed the offense in an especially heinous, cruel or depraved manner . . . .'' General Statutes (Rev. to 1997) § 53a-46a (i) (4).[2] Although in *State* v. *Breton*, 235 Conn. 206, 220 n.15, 663 A.2d 1026 (1995), we had been asked to decide whether it was necessary for the state, in order to seek the death penalty based on that factor, to prove that the defendant had killed ''both . . . of the victims in an especially cruel manner,'' rather than just one of the victims, we ultimately did not have to answer that question because the evidence was sufficient to show that he had done so with respect to both victims. The present case, however, requires us to decide that question.

Thus, the sole issue of this appeal is whether, when the defendant has been convicted of a capital felony for the murder of two persons in the course of a single transaction, in violation of § 53a-54b (8), the state, in order to establish the aggravating factor defined by § 53a-46 (i) (4), must prove that the defendant murdered both victims in an especially heinous, cruel or depraved manner.[3] We conclude that proof that the defendant committed at least one of the murders in the specified aggravated manner is sufficient. Accordingly, we reverse the ruling of the trial court to the contrary.

The state charged the defendant with capital felony in violation of § 53a-54b (8) by murdering two persons, namely, Demetris Rodgers and Antonia Rodgers, in the course of a single transaction.[4] The defendant waived a jury trial on the guilt phase, and elected to be tried by a three judge panel.[5] The trial court, *West*, *Cofield* and *D'Addabbo, Js.*, found the defendant guilty. The defendant then moved to dismiss the aggravating factor and for the court to impose a life sentence without the possibility of release, on the basis that there was insufficient evidence to justify holding a penalty hearing. The trial court, *D'Addabbo, J.*, denied the motion to dismiss, concluding that the defendant was not entitled to a prehearing determination by the court on the sufficiency of the evidence. In the course of its decision, however, the court also ruled that, as a matter of law, the state, in order to prove the noticed aggravating factor, would be required to prove at the penalty hearing that, as to the conviction of capital felony in violation of § 53a-54b (8), both murders were committed in an especially heinous, cruel or depraved manner. This interlocutory appeal followed.

For purposes of this appeal only, the following facts may be considered as undisputed. In the late evening hours of December 15, 1998, the defendant stabbed Demetris Rodgers to death. At the time she was stabbed, she was pregnant with Antonia Rodgers. Although Demetris Rodgers was dead on arrival at the hospital, the physicians at the hospital performed an emergency cesarean section and delivered Antonia Rodgers, who lived for forty-two days before dying from global anoxic encephalopathy, or deprivation of oxygen to the brain.[6]

I

The state claims that, when a defendant has been convicted of capital felony for the murder of two persons in the course of a single transaction, the state, in order to prove the aggravating factor that the defendant committed the offense in an especially heinous, cruel or depraved manner, need only do so with respect to one of the murder victims. We agree.

This claim presents a question of statutory interpretation. ''The process of statutory interpretation involves a reasoned search for the intention of the legislature. *Frillici* v. *Westport*, 231 Conn. 418, 431, 650 A.2d 557 (1994). In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of this case, including the question of whether the language actually does apply. In seeking to determine that meaning, we look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter. . . . Id.; *Carpenteri-Waddington, Inc.* v. *Commissioner of Revenue Services*, 231 Conn. 355, 362, 650 A.2d 147 (1994); *United Illuminating Co.* v. *Groppo*, 220 Conn. 749, 755–56, 601 A.2d 1005 (1992). . . . *United Illuminating Co.* v. *New Haven*, 240 Conn. 422, 431–32, 692 A.2d 742 (1997).'' (Internal quotation marks omitted.) *Bender* v. *Bender*, 258 Conn. 733, 741, 785 A.2d 197 (2001).

We have interpreted the aggravating factor involved to mean that ''the defendant engaged in intentional conduct that inflicted extreme physical or psychological pain [suffering] or torture on the victim above and beyond that necessarily accompanying the underlying killing, *and* that the defendant specifically intended to inflict such extreme pain [suffering or] torture . . . or . . . the defendant was callous or indifferent to the extreme physical or psychological pain, suffering or torture that his intentional conduct in fact inflicted on the victim.'' (Citation omitted; emphasis in original; internal quotation marks omitted.) *State* v. *Johnson*, 253 Conn. 1, 66–67, 751 A.2d 298 (2002). We conclude that, under our death penalty statutory scheme, if the

defendant's mental state and conduct meet these requirements with respect to one of his victims, the aggravating factor is satisfied. Put another way, it is not necessary under that statutory scheme that the defendant in the present case intentionally, or callously or indifferently, inflicted extreme pain, suffering or torture on both of his victims, so long as he is shown to have done so with respect to one of his victims.

We begin our analysis with the language of the statutes presently at issue, namely, §§ 53a-46a (f) (2) and (i) (4) and 53a-54b (8). Both parties rely on what each claims to be the plain language of certain of these statutes to support their respective positions.

The state points to the language of § 53a-46a (f) (2), namely, that if "*one* or more of the aggravating factors set forth in subsection (i) exist"; (emphasis added); the death penalty may be imposed, provided, of course, that the other requirements of the statute are met.[7] Thus, the state contends, "the torture of one victim of a capital felony satisfies the plain language of § 53a-46a (f) (2), which demands proof of but one aggravating factor."

The defendant contends, to the contrary, that the plain language of §§ 53a-46a (i) (4) and 53a-54b (8) compels the conclusion that both murders must be committed in the manner proscribed by the aggravating factor in order for the factor to be established. The defendant points to the language of § 53a-46a (i) (4): "[T]he defendant committed *the offense* in an especially heinous, cruel or depraved manner . . . ." (Emphasis added.) He then points to the language of § 53a-54b (8) defining the relevant capital felony as the "*murder of two or more persons* at the same time or in the course of a single transaction . . . ." (Emphasis added.) Thus, the defendant argues, "the essential gravamen of the offense set forth at § 53a-54b (8) that must be 'especially heinous' is the 'murder of two or more persons,' not the murder of one person."

We acknowledge that, if we were to apply the applicable language literally, as a purely linguistic matter the defendant's contention probably carries more weight than that of the state. It would be linguistically appealing to adopt the syllogism embodied in the defendant's contention, namely, that: (1) § 53a-46a (i) (4) requires that "the offense" be committed in the aggravated manner; (2) the likely referent of "the offense" is the capital felony of which the defendant has been convicted; (3) that capital felony at issue in the present case is the "murder of two or more persons," as defined in § 53a-54b (8); and (4) therefore, the murder of *two* persons must be committed in the aggravated manner. Thus, under the defendant's position, there is a direct linguistic line between the language, "the offense," contained in § 53a-46a (i) (4), and the definition of the capital felony as the "murder of two . . . persons," contained

in § 53a-54b (8).

The state's plain language argument is not as linguistically appealing. There is no direct linguistic line between the language, ''one or more aggravating factors set forth in subsection (i) [of § 53a-46a],'' contained in § 53a-46a (f) (2), and the definition of the capital felony, contained in § 53a-54b (8). Subsection (i) of § 53a-46a lists seven potential aggravating factors, of which the commission of the offense in a cruel manner is only one. The likely reference of ''one,'' in the language, ''one or more of the aggravating factors,'' contained in § 53a-46a (f) (2), is to that set of seven factors, and provides no more than that the state must prove at least one, and may prove more than one, of those factors in order to meet its initial burden in seeking the death penalty following a conviction of an underlying capital felony. Linguistically, however, that reference offers little, if any, help in deciding the question posed by this appeal, namely, the meaning of the language, ''the defendant committed the offense in an especially heinous, cruel or depraved manner''; General Statutes (Rev. to 1997) § 53a-46a (i) (4); as applied to the capital felony of the ''murder of two or more persons at the same time or in the course of a single transaction . . . .'' General Statutes (Rev. to 1997) § 53a-54b (8), as amended by P.A. 98-126, § 1.

The conclusion that would flow from the linguistic analysis suggested by the defendant, however, cannot withstand further scrutiny. Although the language of the statute, viewed literally and in isolation, suggests a conclusion consistent with the interpretation offered by the defendant, when viewed in its context and history leads us to conclude, to the contrary, that when § 53a-46a (i) (4) refers to ''the offense,'' as applied in the circumstances of the present case, it means the murder of either of the ''two'' persons referred to in § 53a-54b (8), and does not mean both murders.

First, as our case law demonstrates, the ''constituent parts'' of the capital felony involved here are two murders that are committed in the course of a single transaction. See *State* v. *Solek*, 242 Conn. 409, 423, 699 A.2d 931 (1997) (''constituent parts'' of capital felony under § 53a-54b [7] are murder and sexual assault in first degree). Thus, the reference in § 53a-46a (i) (4) to ''the offense'' must be read as referring to those constituent parts. This reading permits the interpretation that the aggravating factor may be satisfied by proof of its existence with respect to at least one of those constituent parts. See *State* v. *Ross*, 230 Conn. 183, 264, 646 A.2d 1318 (1994), cert. denied, 513 U.S. 1165, 115 S. Ct. 1133, 138 L. Ed. 2d 1095 (1995) (aggravating factor satisfied by proof of existence ''beyond the elements of the [capital felony] charged''). Put another way, it would permit the interpretation that the language, ''the offense,'' refers to either of those parts, and does not necessarily refer

to *both, and only both,* of those parts.

Second, the context and legislative genealogy of § 53a-54b (8) strongly support the conclusion that the aggravating factor involved here need only attach to one of the murders. When this state's death penalty legislation was first reenacted in 1973; Public Acts 1973, No. 73-137, § 3; following the decision of the United States Supreme Court in *Furman* v. *Georgia*, 408 U.S. 238, 92 S. Ct. 2726, 33 L. Ed. 2d 346 (1972), invalidating all states' death penalty statutes, the list of capital felonies included murder by a kidnapper of a kidnapped person during the course of the kidnapping, but did not include either § 53a-54b (7) (''murder committed in the course of the commission of sexual assault in the first degree''), or § 53a-54b (8) (''murder of two or more persons at the same time or in the course of a single transaction''). See General Statutes (Rev. to 1975) § 53a-54b.[8] In addition, under that original statutory scheme, the aggravating factor involved in this case was the same as it is today. See General Statutes (Rev. to 1975) § 53a-46a (g) (4).[9] Both subdivision (7), namely, murder committed in the course of a sexual assault, and subdivision (8), namely, murder of two or more persons at the same time or in the course of a single transaction, were added to § 53a-54b in 1980 by Public Acts 1980, No. 80-335 (P.A. 80-335).[10]

Thus, in 1973, the original death penalty legislation contained at least one capital felony that involved a murder in the course of another serious felony, namely, murder in the course of a kidnapping, and contained the same aggravating factor involved in the present case. Under that statutory scheme, there were six forms of capital felony, designated in general terms as follows: (1) murder of certain law enforcement, corrections or firefighting officials; (2) murder for hire; (3) murder by a previously convicted murderer; (4) murder by one under a life sentence; (5) murder by a kidnapper during the course of a kidnapping; and (6) death directly resulting from the illegal sale of cocaine, heroin or methadone by a person who is not drug-dependent. General Statutes (Rev. to 1975) § 53a-54b. Subdivisions (1) through (4) and (6) of § 53a-54b involved only one underlying offense. For subdivisions (1) through (4), that offense was murder, which was then further defined either by the motive for the murder, such as murder for hire, by the prior criminal status of the defendant, namely, murder by a convicted murderer or by one under a life sentence, or by the status of the victim, namely, murder of a law enforcement, corrections or firefighting official. As to subdivision (6), the underlying offense was death resulting from the specified illegal drug sales. Subdivision (5) of § 53a-54b, however, involved two underlying offenses, namely, murder and kidnapping.

It cannot be disputed that, with respect to all of the

capital felonies that involved only one underlying offense, the aggravating factor at issue in the present case need only have applied to that sole underlying offense. We can conceive of no rationale for the legislature to have set a higher bar to the imposition of the death penalty when the underlying capital felony involved, not one, but two underlying serious felonies, namely, kidnapping and murder. We are constrained to conclude, therefore, that when our statutory scheme was first enacted in 1973, the aggravating factor, as applied to the capital felony of ''murder by a kidnapper of a kidnapped person during the course of the kidnapping or before such person is able to return or be returned to safety''; General Statutes (Rev. to 1975) § 53a-54b (5); did not have to apply to both the underlying felonies, namely, kidnapping and murder.

In 1980, the legislature added to the capital felony statute two offenses that were similar in nature; they both involved two underlying felonies, namely, murder in the course of a sexual assault in the first degree, and two or more murders committed either at the same time or in the course of a single transaction. See P.A. 80-335. Therefore, after the enactment of the 1980 legislation, our death penalty statutory scheme contained three capital felonies that involved murder plus another serious felony: (1) murder plus kidnapping; (2) murder plus sexual assault in the first degree; and (3) murder plus murder. General Statutes (Rev. to 1981) § 53a-54b. Both before and after the 1980 legislation, the aggravating factor remained the same, namely, that the offense was committed in a heinous, cruel or depraved manner. On the basis of this history, and in the absence of evidence to the contrary, we conclude that the legislature intended all three of these capital felonies to be treated the same with respect to the unchanged aggravating factor of heinous, cruel or depraved conduct.[11]

We can conceive of no reason why the legislature, in adding the two additional capital felonies that it did in 1980, would have intended that, with respect to a murder committed in the course of a kidnapping or sexual assault, it would be sufficient, with regard to the imposition of the death penalty, for the state to prove the aggravating factor with respect to just *one* of the underlying felonies, but with respect to the murder of two persons in the course of a single transaction, the state would be required to prove the aggravating factor with respect to *both* of the underlying felonies. Indeed, to attribute such an intent to the legislature, or, to put it another, more accurate way, to attribute such a meaning to the legislative language, would be to attribute to that language a perverse result.[12]

It would mean that when, in the course of a single transaction, a capital felon committed two felonies of unequal seriousness on *one* victim—unequal because one of those felonies does *not* involve the death of the

victim—the aggravating factor need only apply to *one* of the underlying felonies; but when, in the course of a single transaction, a capital felon committed *the most serious* felony on *two* victims, *each* resulting in the death of the victim, the aggravating factor must apply to *both* of the underlying felonies. A capital felon who murdered two persons in the course of a single transaction must be regarded, under any rational system of deterrence and moral hierarchy, as at least equally subject to deterrence and at least equally morally blameworthy to one who murders and either kidnaps or sexually assaults only one victim in the course of a single transaction. We cannot conceive of any legislative rationale pursuant to which the legislature would have intended, when it added multiple murder to the definition of capital felony, to set a higher bar to the imposition of the death penalty on multiple murder in a single transaction than it would have for murder-kidnap or murder-sexual assault in a single transaction. ''The legislature cannot have intended such an interpretation when it enacted P.A. 80-335 . . . because it would lead to bizarre results.'' *State* v. *Solek*, supra, 242 Conn. 423.

Indeed, as part of his plain language argument, the defendant posits that, ''[i]f the legislature had intended the essential gravamen [of the offense set forth at § 53a-54b (8)] to have been only one of the murders, it would have said that it was a capital felony to commit murder during the commission of another murder,'' as the legislature did say with respect to both sexual assault-murder and kidnap-murder.[13] Thus, the defendant implicitly concedes that, with respect to both sexual assault-murder and kidnap-murder, the aggravating factor need not apply to both of the underlying offenses,[14] and, if the statutory formulation were as he posits with respect to a double murder, namely, ''murder committed in the course of the commission of another murder,'' the aggravating factor would apply to either murder.

This argument poses the wrong question. The question of statutory interpretation is not, as the defendant's argument suggests, if the legislature meant that, why did it not say so? The question is, what did the legislature mean by what it *did* say? Furthermore, with regard to the question posed by the present case, we see no substantive difference between the two formulations: (1) what the legislature did say in § 53a-54b (8), namely, the ''murder of two or more persons at the same time or in the course of a single transaction''; and (2) what the defendant contends the legislature would or should have said if it meant something different, namely, ''murder committed in the course of the commission of another murder.'' In short, we cannot place on these two differing linguistic formulations the weight that the defendant would attribute to them.

The defendant also relies on the rules of strict con-

struction and lenity in interpreting criminal statutes, and emphasizes their special pertinence to death penalty statutes. See, e.g., *State* v. *Harrell*, 238 Conn. 828, 832–33, 681 A.2d 944 (1996) (statutory construction implicating death penalty must be based on conclusion that legislature has clearly and unambiguously made intention known, and rules of strict construction and lenity especially pertinent to death penalty statute); see also *State* v. *Rawls*, 198 Conn. 111, 121, 502 A.2d 374 (1985) (fundamental tenet to resolve doubts in enforcement of Penal Code against imposition of harsher punishment). We are unpersuaded, however, that these rules require a different conclusion in the present case.

First, those rules apply when ''a contrary interpretation would [not] frustrate an evident legislative intent''; *State* v. *Ross*, supra, 230 Conn. 200; and when, after the court has engaged in the full process of statutory interpretation, there is nonetheless a reasonable doubt ''about [the] statute's intended scope . . . .'' (Internal quotation marks omitted.) *State* v. *Sostre*, 261 Conn. 111, 120, 802 A.2d 754 (2002). Second, the rules of strict construction and lenity, like all such axioms of construction, are ''important guideline[s] to legislative meaning, but [they] cannot displace the result of careful and thoughtful interpretation.'' *United Illuminating Co.* v. *New Haven*, supra, 240 Conn. 460. After engaging in the full process of statutory construction, we are not left with a reasonable doubt about the statute's intended scope.[15] Furthermore, those rules cannot be applied so as to yield a bizarre result. *State* v. *Solek*, supra, 242 Conn. 423. In the present case, in our view, the interpretation offered by the defendant: would frustrate the legislature's intent; would displace the result of careful and thoughtful interpretation; and would yield a bizarre result. We decline, therefore, to apply those rules so as to yield the result that the aggravating factor must apply to both murders.

The defendant also relies on what he characterizes as the structure of the capital felony statute, namely, that it divides capital felonies into two categories: one, focusing on the culpability of the defendant;[16] and the other, focusing on the status of the victim.[17] He contends that the capital felony in the present case falls into the former category, because ''[t]he defendant's contemporaneous behavior in murdering a second person is like the prior conduct specified in sub[division] (3) of the capital felony statute (a prior murder conviction) and that in sub[division] (4) (a conviction resulting in a life sentence). It is also like the contemporaneous behavior of contracting to kill in sub[division] (2).'' This, he asserts, supports the conclusion that the legislature intended the aggravating factor to apply to both murders. This argument is unconvincing.

First, the defendant's classification is arbitrary, at least when applied to the offense in the present case.

It is difficult to see why a capital felony defined as the murder of two or more persons at the same time or in the course of a single transaction focuses more on the defendant's conduct than on the status of the victims. In our view, the fact that there are two victims of the defendant's murderous conduct in the present case, rather than one, is as much a focus on the victims as it is on the defendant's conduct. Indeed, other capital felonies in the defendant's proffered classification of capital felonies based on the status of the victim could just as easily be put in the category of culpability based on the defendant's conduct. See, e.g., General Statutes (Rev. to 1997) § 53a-54b (7), as amended by P.A. 98-126, § 1 (''murder committed in the course of the commission of sexual assault in the first degree''). Second, we simply fail to see how such a classification, if it were employed, illuminates the meaning of the statutory language at issue in the present case. Moreover, there is nothing in the language or structure of the statute to suggest that the legislature intended any such classifications to yield significantly different results with respect to eligibility for the death penalty.

The defendant also argues that the ''legislature knew how to define a capital offense so that the cruel aggravating factor would apply to only one of [the] two murders,'' because when it did so it used the language ''in the course of,'' such as ''murder committed in the course of'' a sexual assault, or murder of a kidnapped person ''during the course of'' the kidnapping. This argument ignores, however, the fact that this capital felony also uses that language, namely, ''murder of two or more persons at the same time *or in the course of a* single transaction . . . .'' (Emphasis added.) General Statutes (Rev. to 1997) § 53a-54b (8), as amended by P.A. 98-126, § 1. It cannot be, moreover, that the legislature intended the aggravating factor to apply differently, depending on whether the two murders were committed ''at the same time'' or ''in the course of a single transaction,'' as the defendant's argument suggests.

Finally, the defendant draws support for his position from the fact that our statutory scheme uses language that differs from that used in other states, and also differs from that used by certain proposed model statutes, such as the Model Penal Code and a proposed 1973 federal death penalty statute. See S. Rep. No. 93-721 (1974). Certain of those other statutes and statutory proposals use language similar to that suggested previously by the defendant, namely, ''murder in the course of another murder.'' According to the defendant, those other statutory formulations do permit the death penalty to be imposed in multiple murder situations without their analogs to our aggravating factor being applied to both murders. Thus, the defendant suggests that we should infer a legislative intent to embrace a different result based on our language, because it differs from the language of those formulations.

Suffice it to say that, in the absence of some strong indication that, when the legislature added the murder of two persons to the list of capital felonies in 1980, it specifically intended a result different from that yielded by those other statutes or statutory proposals, we are not inclined to draw such an inference. There is no such indication in the legislative history. Simply because our legislature did not use precisely the same language as that used or proposed for use by other legislative bodies to address a similar situation, namely, multiple murders as laying the basis for a potential death penalty, does not require a conclusion that it also intended a different result, especially when, as in the present case, we can see no substantive difference between our language and those other statutory formulations. We, therefore, conclude that the state need only prove that the defendant killed one of the victims in an especially heinous, cruel or depraved manner, pursuant to § 53a-46 (i) (4), in order to seek the death penalty based on that factor.

II

We take this opportunity to clarify the approach of this court[18] to the process of statutory interpretation.[19] For at least a century, this court has relied on sources beyond the specific text of the statute at issue to determine the meaning of the language as intended by the legislature. See, e.g., *State* v. *Briggs*, 161 Conn. 283, 288–90, 287 A.2d 369 (1971); *Muller* v. *Town Plan & Zoning Commission*, 145 Conn. 325, 329, 142 A.2d 524 (1958); *Connecticut Rural Roads Improvement Assn.* v. *Hurley*, 124 Conn. 20, 25, 197 A. 90 (1938); *Corbin* v. *Baldwin*, 92 Conn. 99, 105, 101 A. 834 (1917); *Seidel* v. *Woodbury*, 81 Conn. 65, 71–74, 70 A. 58 (1908). For that same period of time, however, this court often has eschewed resort to those sources when the meaning of the text appeared to be plain and unambiguous. See, e.g., *State* v. *Simmons*, 155 Conn. 502, 504, 234 A.2d 835 (1967); *Niedzwicki* v. *Pequonnock Foundry*, 133 Conn. 78, 82, 48 A.2d 369 (1946); *O'Brien* v. *Wise & Upson Co.*, 108 Conn. 309, 318–19, 143 A. 155 (1928); *Bridgeport Projectile Co.* v. *Bridgeport*, 92 Conn. 316, 318, 102 A. 644 (1917); *Lee Bros. Furniture Co.* v. *Cram*, 63 Conn. 433, 437–38, 28 A. 540 (1893).

In 1994, however, we noted a dichotomy in our case law regarding whether resort to extratextual sources was appropriate even in those instances where the text's meaning appeared to be plain and unambiguous. In *Frillici* v. *Westport*, supra, 231 Conn. 430–31 n.15, we stated: "It is true that, in construing statutes, we have often relied upon the canon of statutory construction that we need not, and indeed ought not, look beyond the statutory language to other interpretive aids unless the statute's language is not absolutely clear and unambiguous. See, e.g., *State* v. *Cain*, 223 Conn. 731, 744–45, 613 A.2d 804 (1992); *Mercado* v. *Commissioner of Income Maintenance*, 222 Conn. 69, 74, 607 A.2d

1142 (1992); *Rose* v. *Freedom of Information Commission*, 221 Conn. 217, 225, 602 A.2d 1019 (1992); *Anderson* v. *Ludgin*, 175 Conn. 545, 552–53, 400 A.2d 712 (1978). That maxim requires some slight but plausible degree of linguistic ambiguity as a kind of analytical threshold that must be surmounted before a court may resort to aids to the determination of the meaning of the language as applied to the facts of the case. See, e.g., *Sanzone* v. *Board of Police Commissioners*, 219 Conn. 179, 187, 592 A.2d 912 (1991). It is also true, however, that we have often eschewed such an analytical threshold, and have stated that, in interpreting statutes, we look at all the available evidence, such as the statutory language, the legislative history, the circumstances surrounding its enactment, the purpose and policy of the statute, and its relationship to existing legislation and common law principles. See, e.g., *Fleming* v. *Garnett*, 231 Conn. 77, 91–92, 646 A.2d 1308 (1994); *State* v. *Metz*, 230 Conn. 400, 409, 645 A.2d 965 (1994); *Glastonbury Volunteer Ambulance Assn., Inc.* v. *Freedom of Information Commission*, 227 Conn. 848, 852–57, 633 A.2d 305 (1993); *Ambroise* v. *William Raveis Real Estate, Inc.*, 226 Conn. 757, 764, 628 A.2d 1303 (1993); *Texaco Refining & Marketing Co.* v. *Commissioner of Revenue Services*, 202 Conn. 583, 589, 522 A.2d 771 (1987). This analytical model posits that the legislative process is purposive, and that the meaning of legislative language (indeed, of any particular use of our language) is best understood by viewing not only the language at issue, but by its context and by the purpose or purposes behind its use.''

Since then, we have not been consistent in our formulation of the appropriate method of interpreting statutory language. At times, we have adhered to the formulation that requires identification of some degree of ambiguity in that language before consulting any sources of its meaning beyond the statutory text. See, e.g., *MacDermid, Inc.* v. *Dept. of Environmental Protection*, 257 Conn. 128, 154, 778 A.2d 7 (2001) (''if the language of a statute is plain and unambiguous, we need look no further than the words themselves because we assume that the language expresses the legislature's intent'' [internal quotation marks omitted]). We refer herein to that formulation as the ''plain meaning rule,'' which we discuss in further detail later in this opinion. At other times, we have, as in the present case; see part I of this opinion; adhered to a more encompassing formulation that does not require passing any threshold of ambiguity as a precondition of consulting extratextual sources of the meaning of legislative language. See, e.g., *Bender* v. *Bender*, supra, 258 Conn. 741.[20]

A

We now make explicit that our approach to the process of statutory interpretation is governed by the *Bender* formulation, as further explicated herein. The

first two sentences of that formulation set forth the fundamental task of the court in engaging in the process of statutory interpretation, namely, engaging in a ''reasoned search for the intention of the legislature,'' which we further defined as a reasoned search for ''the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply.''[21] (Internal quotation marks omitted.) Id. The rest of the formulation sets forth the range of sources that we will examine in order to determine that meaning. That formulation admonishes the court to consider all relevant sources of meaning of the language at issue—namely, the words of the statute, its legislative history and the circumstances surrounding its enactment, the legislative policy it was designed to implement, and its relationship to existing legislation and to common-law principles governing the same general subject matter. Id. We also now make explicit that we ordinarily will consider all of those sources beyond the language itself,[22] without first having to cross any threshold of ambiguity of the language.

We emphasize, moreover, that the language of the statute is the most important factor to be considered, for three very fundamental reasons. First, the language of the statute is what the legislature enacted and the governor signed. It is, therefore, the law. Second, the process of interpretation is, in essence, the search for the meaning *of that language* as applied to the facts of the case, including the question of whether it does apply to those facts. Third, all language has limits, in the sense that we are not free to attribute to legislative language a meaning that it simply will not bear in the usage of the English language.

Therefore—and we make this explicit as well—we always *begin* the process of interpretation with a searching examination of that language, attempting to determine the range of plausible meanings that it may have in the context in which it appears and, if possible, narrowing that range down to those that appear most plausible. Thus, the statutory language is always the starting point of the interpretive inquiry. A significant point of the *Bender* formulation, however, is that we do not end the process with the language.

The reason for this, as we stated in *Frillici*, is that ''the legislative process is purposive, and . . . the meaning of legislative language (indeed, of any particular use of our language) is best understood by viewing not only the language at issue, but by its context[23] and by the purpose or purposes behind its use.'' *Frillici* v. *Westport*, supra, 231 Conn. 430–31 n.15; see also *Conway* v. *Wilton*, 238 Conn. 653, 680 A.2d 242 (1996) (interpreting General Statutes § 52-557f in light of purpose to encourage private landowners to make land available for recreational use); *Genovese* v. *Gallo Wine Merchants, Inc.*, 226 Conn. 475, 628 A.2d 946 (1993) (inter-

preting General Statutes § 31-51bb in light of purpose to overrule *Kolenberg* v. *Board of Education*, 206 Conn. 113, 536 A.2d 577, cert. denied, 487 U.S. 1236, 108 S. Ct. 2903, 101 L. Ed. 2d 935 [1988]).

Thus, the purpose or purposes of the legislation, and the context of that legislative language, which includes the other sources noted in *Bender*, are directly relevant to its meaning as applied to the facts of the case before us. See L. Fuller, ''Positivism and Fidelity to Law—A Reply to Professor Hart,'' 71 Harv. L. Rev. 630, 664 (1958) (it is not ''possible to interpret a word in a statute without knowing the aim of the statute''); S. Breyer, ''On the Uses of Legislative History in Interpreting Statutes,'' 65 S. Cal. L. Rev. 845, 853 (1992) (''[a] court often needs to know the purpose a particular statutory word or phrase serves within the broader context of a statutory scheme in order to decide properly whether a particular circumstance falls within the scope of that word or phrase''); F. Frankfurter, ''Some Reflections on the Reading of Statutes,'' 47 Colum. L. Rev. 527, 538–39 (1947) (''Legislation has an aim; it seeks to obviate some mischief, to supply an inadequacy, to effect a change of policy, to formulate a plan of government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evinced in the language of the statute, as read in the light of other external manifestations of purpose.'').

Indeed, in our view, the concept of the context of statutory language should be broadly understood. That is, the context of statutory language necessarily includes the other language used in the statute or statutory scheme at issue, the language used in other relevant statutes, the general subject matter of the legislation at issue, the history or genealogy of the statute, as well as the other, extratextual sources identified by the *Bender* formulation. All of these sources, textual as well as contextual, are to be considered, along with the purpose or purposes of the legislation, in determining the meaning of the language of the statute as applied to the facts of the case.

B

This brings us to a discussion of what is commonly known as the ''plain meaning rule.'' Although we have used many different formulations of the plain meaning rule, all of them have in common the fundamental premise, stated generally, that, where the statutory language is plain and unambiguous, the court must stop its interpretive process with that language; there is in such a case no room for interpretation; and, therefore, in such a case, the court must not go beyond that language.[24]

It is useful to note that both the plain meaning rule and the *Bender* formulation have, as a general matter, their starting points in common: both begin by acknowledging that the task of the court is to ascertain the intent of the legislature in using the language that it

chose to use, so as to determine its meaning in the context of the case. See, e.g., *Sanzone* v. *Board of Police Commissioners*, supra, 219 Conn. 186 ("[o]ur task is to find the expressed intent of the legislature"). Where these approaches differ, however, is on how to go about that task.

Unlike the *Bender* formulation, under the plain meaning rule, there are certain cases in which that task must, as a matter of law, end with the statutory language. Thus, it is necessary to state precisely what the plain meaning rule means.

The plain meaning rule means that in a certain category of cases—namely, those in which the court first determines that the language at issue is plain and unambiguous—the court is *precluded as a matter of law* from going beyond the text of that language to consider any extratextual evidence of the meaning of that language, no matter how persuasive that evidence might be. Indeed, the rule even precludes reference to that evidence where that evidence, if consulted, would *support or confirm* that plain meaning. Furthermore, inherent in the plain meaning rule is the admonition that the courts are to seek the objective meaning of the language used by the legislature "not in what [the legislature] meant to say, but in [the meaning of] what it did say." (Internal quotation marks omitted.) Id., 187.[25] Another inherent part of the plain meaning rule is the exception that the plain and unambiguous meaning is *not* to be applied if it would produce an unworkable or absurd result. See, e.g., *State* v. *Cain*, supra, 223 Conn. 744 (unworkable result); *State* v. *DeFrancesco*, 235 Conn. 426, 437, 668 A.2d 348 (1995) (absurd result).[26]

Thus, the plain meaning rule, at least as most commonly articulated in our jurisprudence, may be restated as follows: If the language of the statute is plain and unambiguous, and if the result yielded by that plain and unambiguous meaning is not absurd or unworkable, the court must not *interpret* the language (i.e., there is no room for construction); instead, the court's sole task is to apply that language literally to the facts of the case, and it is precluded as a matter of law from consulting any extratextual sources regarding the meaning of the language at issue. Furthermore, in deciding whether the language is plain and unambiguous, the court is confined to what may be regarded as the objective meaning of the language used by the legislature, and may not inquire into what the legislature may have intended the language to mean—that is, it may not inquire into the purpose or purposes for which the legislature used the language. Finally, the plain meaning rule sets forth a set of thresholds of ambiguity or uncertainty, and the court must surmount each of those thresholds in order to consult additional sources of meaning of the language of the statute. Thus, whatever may lie beyond any of those thresholds may in any

given case be barred from consideration by the court, irrespective of its ultimate usefulness in ascertaining the meaning of the statutory language at issue.[27]

We now make explicit what is implicit in what we have already said: in performing the process of statutory interpretation, we do not follow the plain meaning rule in whatever formulation it may appear. We disagree with the plain meaning rule as a useful rubric for the process of statutory interpretation for several reasons.

First, the rule is fundamentally inconsistent with the purposive and contextual nature of legislative language. Legislative language *is* purposive and contextual, and its meaning simply cannot be divorced from the purpose or purposes for which it was used and from its context. Put another way, it *does* matter, in determining that meaning, what purpose or purposes the legislature had in employing the language; it *does* matter what meaning the legislature intended the language to have.

Second, the plain meaning rule is inherently self-contradictory. It is a misnomer to say, as the plain meaning rule says, that, if the language is plain and unambiguous, there is no room for interpretation, because application of the statutory language to the facts of the case *is interpretation* of that language. In such a case, the task of interpretation may be a simple matter, but that does not mean that no interpretation is required.

The plain meaning rule is inherently self-contradictory in another way. That part of the rule that excepts from its application cases in which the plain language would yield an absurd or unworkable result is implicitly, but necessarily, premised on the process of going beyond the text of the statute to the legislature's intent in writing that text. This is because the only plausible reason for that part of the rule is that the legislature could not have intended for its language to have a meaning that yielded such a result. Indeed, we have explicitly acknowledged as much. See, e.g., *State* v. *DeFrancesco*, supra, 235 Conn. 437 ("[i]t is also a rule of statutory construction that those who promulgate statutes or rules do not intend to promulgate statutes or rules that lead to absurd consequences or bizarre results"); *State* v. *Delafose*, 185 Conn. 517, 523, 441 A.2d 158 (1981) ("[t]his is the bizarre result of a literal construction of the statute not contemplated by the legislature"). Thus, application of this aspect of the plain meaning rule requires an implicit inquiry into the legislature's intent or purpose, beyond the bare text, thus, in effect, permitting the court to *rule out* the plain meaning of the language because that meaning would produce an absurd or unworkable result. We see no persuasive reason for a rule of law that prohibits a court from similarly going beyond the bare text of the statute to *rule in* a *different* meaning that other sources of meaning might suggest in any given case. Yet such a prohibition is precisely what the plain meaning rule

accomplishes.

Third, application of the plain meaning rule necessarily requires the court to engage in a threshold determination of whether the language is ambiguous. This requirement, in turn, has led this court into a number of declarations that are, in our view, intellectually and linguistically dubious, and risk leaving the court open to the criticism of being result-oriented in interpreting statutes.[28] Thus, for example, we have stated that statutory language does not become ambiguous ''merely because the parties contend for different meanings.'' (Internal quotation marks omitted.) *Glastonbury Co.* v. *Gillies*, 209 Conn. 175, 180, 550 A.2d 8 (1988). Yet, if parties contend for different meanings, and each meaning is plausible, that is essentially what ''ambiguity'' ordinarily means in such a context in our language. See Webster's Third New International Dictionary, and Merriam-Webster's Collegiate Dictionary (10th Ed.), for the various meanings of ''ambiguity'' and ''ambiguous'' in this context. For example, in Merriam-Webster's Collegiate Dictionary, the most apt definition of ''ambiguous'' for this context is: ''[C]apable of being understood in two or more possible senses or ways.'' We also have stated that, although the statutory language is clear on its face, it contains a ''latent ambiguity'' that is disclosed by its application to the facts of the case, or by reference to its legislative history and purpose. *Conway* v. *Wilton*, supra, 238 Conn. 664–65; see also *University of Connecticut* v. *Freedom of Information Commission*, 217 Conn. 322, 328, 585 A.2d 690 (1991) (when application of clear language to facts reveals ''latent ambiguity,'' court turns for guidance to purpose of statute and legislative history). Statutory language, however, always requires some application to the facts of the case. Therefore, the notion of such a ''latent ambiguity'' as a predicate to resort to extratextual sources simply does not make sense. Moreover, we have stated that the plain meaning principle does not apply where the statutory language, although clear and unambiguous, is not ''*absolutely* clear and unambiguous . . . .'' (Emphasis in original.) *State* v. *Cain*, supra, 223 Conn. 744. The line of demarcation between clear and unambiguous language, on one hand, and *absolutely* clear and unambiguous language, on the other hand, however, eludes us. We have stated further that the court may go beyond the literal language of the statute when ''a common sense interpretation leads to an ambiguous . . . result . . . .'' *State* v. *Delafose*, supra, 185 Conn. 522. It is similarly difficult to make sense of the notion of otherwise clear language becoming ambiguous because it leads to an ''ambiguous . . . result . . . .'' Id. Indeed, within the very same case: (1) we have stated that the language of the statute is clear and unambiguous and, therefore, ''is not subject to construction''; *University of Connecticut* v. *Freedom of Information Commission*, supra, 328; and (2) nonetheless, ''we *construe[d]*''

the statute so as to avoid a particular result that one of the parties had pointed out would otherwise come within that plain language. (Emphasis added.) Id., 329. Thus, in that case, in applying the plain meaning rule, we directly violated it. We see little value in a rule of law that has led this court into such dubious distinctions.[29]

Eschewing the plain meaning rule does not mean, however, that we will not in any given case follow what may be regarded as the plain meaning of the language.[30] Indeed, in most cases, that meaning will, once the extratextual sources of meaning contained in the *Bender* formulation *are* considered, prove to be the legislatively intended meaning of the language. See, e.g., *Glastonbury Volunteer Ambulance Assn., Inc.* v. *Freedom of Information Commission*, supra, 227 Conn. 853–54 (plain language meaning confirmed by legislative history).

There are cases, however, in which the extratextual sources will indicate a different meaning strongly enough to lead the court to conclude that the legislature intended the language to have that different meaning. See, e.g., *Lisee* v. *Commission on Human Rights & Opportunities*, 258 Conn. 529, 539, 782 A.2d 670 (2001) (statutory reference to ''section'' intended to mean ''subsection''); *Conway* v. *Wilton*, supra, 238 Conn. 664–65 (statutory reference to ''owner'' does not include municipality). Importantly, and consistent with our admonition that the statutory language is the most important factor in this analysis, in applying the *Bender* formulation, we necessarily employ a kind of sliding scale: the more strongly the bare text of the language suggests a particular meaning, the more persuasive the extratextual sources will have to be in order for us to conclude that the legislature intended a different meaning.[31] See, e.g., *Schiano* v. *Bliss Exterminating Co.*, 260 Conn. 21, 45, 792 A.2d 835 (2002) (concluding extratextual sources provided ''compelling evidence'' that plain meaning of statute was contrary to legislative intent). Such a sliding scale, however, is easier to state than to apply. In any given case, it necessarily will come down to a judgmental weighing of all of the evidence bearing on the question.

The point of the *Bender* formulation, however, is that it requires the court, in *all* cases, to consider *all* of the relevant evidence bearing on the meaning of the language at issue. Thus, *Bender*'s underlying premise is that, the more such evidence the court considers, the more likely it is that the court will arrive at a proper conclusion regarding that meaning.

Moreover, despite the fact that, as we noted at the outset of this discussion, no other jurisdiction specifically has adopted the particular formulation for statutory interpretation that we now adopt, there is really nothing startlingly new about its core, namely, the idea that the court may look for the meaning of otherwise

clear statutory language beyond its literal meaning, even when that meaning would not yield an absurd or unworkable result. It stretches back to the sixteenth century; see, e.g., *Heydon's Case*, 3 Co. Rep. 7a, Eng. Rep. (1584); to the early days of the last century; see *Bridgeman* v. *Derby*, 104 Conn. 1, 8–9, 132 A. 25 (1926) ("As we seek to interpret this provision of [the] defendant's charter, it will be well to keep before us some of the fundamental principles of statutory construction. The intent of the lawmakers is the soul of the statute, and the search for this intent we have held to be the guiding star of the court. It must prevail over the literal sense and the precise letter of the language of the statute. *Brown's Appeal*, 72 Conn. 148, 150, 44 Atl. 22 [1899]; *Stapleberg* v. *Stapleberg*, 77 Conn. 31, 35, 58 Atl. 233 [1904]; *Wetherell* v. *Hollister*, 73 Conn. 622, 625, 48 Atl. 826 [1901]. When one construction leads to public mischief which another construction will avoid, the latter is to be favored unless the terms of the statute absolutely forbid. Sutherland on Statutory Construction [Ed. 1891] § 323; *Balch* v. *Chaffee*, 73 Conn. 318, 320, 47 Atl. 327 [1900]. 'A statute should be construed, having in view the nature and reason of the remedy and the object of the statute, in order to give effect to the legislative intent.' *Newton's Appeal*, 84 Conn. 234, 241, 79 Atl. 742 [1911]."); and forward to the present. See *Train* v. *Colorado Public Interest Research Group*, 426 U.S. 1, 10, 96 S. Ct. 1938, 48 L. Ed. 2d 434 (1976) ("When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no rule of law which forbids its use, however clear the words may appear on superficial examination. *United States* v. *American Trucking Assns., [Inc.]*, 310 U.S. 534, [543–44, 60 S. Ct. 1059, 84 L. Ed. 1345] (1940) . . . . See *Cass* v. *United States*, 417 U.S. 72, 77–79 [94 S. Ct. 2167, 40 L. Ed. 2d 668] (1974). See generally Murphy, Old Maxims Never Die: The 'Plain-Meaning Rule' and Statutory Interpretation in the 'Modern' Federal Courts, 75 Col[um]. L. Rev. 1299 [1975]." [Internal quotation marks omitted.]); *United States* v. *American Trucking Assns., Inc.*, supra, 543–44 ("Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this Court has followed that purpose, rather than the literal words. When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.' "); *State* v. *Ellis*, 197 Conn. 436, 445, 497 A.2d 974 (1985) ("This court does not interpret statutes in a vacuum, nor does it refuse to consider matters of known historical fact. When aid to the meaning of a statute is available, there certainly can be no rule of law which forbids its use, however clear the words may appear on superficial examination." [Internal quotation marks omitted.]).

In summary, we now restate the process by which we interpret statutes as follows: "The process of statutory interpretation involves a reasoned search for the intention of the legislature. *Frillici* v. *Westport*, [supra, 231 Conn. 431]. In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. In seeking to determine that meaning, we look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter." (Internal quotation marks omitted.) *Bender* v. *Bender*, supra, 258 Conn. 741. Thus, this process requires us to consider all relevant sources of the meaning of the language at issue, without having to cross any threshold or thresholds of ambiguity. Thus, we do not follow the plain meaning rule.

In performing this task, we begin with a searching examination of the language of the statute, because that is the most important factor to be considered. In doing so, we attempt to determine its range of plausible meanings and, if possible, narrow that range to those that appear most plausible. We do not, however, end with the language. We recognize, further, that the purpose or purposes of the legislation, and the context of the language, broadly understood, are directly relevant to the meaning of the language of the statute.

This does not mean, however, that we will not, in a given case, follow what may be regarded as the plain meaning of the language, namely, the meaning that, when the language is considered without reference to any extratextual sources of its meaning, appears to be *the* meaning and that appears to preclude any other likely meaning. In such a case, the more strongly the bare text supports such a meaning, the more persuasive the extratextual sources of meaning will have to be in order to yield a different meaning.

Before concluding this discussion, we respond to several of the main points of the dissent. The dissent takes issue with both the appropriateness and the reliability of ascertaining the purpose or purposes of the statute under consideration in determining its meaning. This point demonstrates a fundamental difference between our view and the dissent's view of the nature of legislation. We think that legislation is inherently purposive and that, therefore, it is not only appropriate, but necessary to consider the purpose or purposes of legislation in order to determine its meaning. Furthermore, the experience of this court demonstrates no particular difficulty in reliably ascertaining such purposes, based not on our own personal preferences but on both textual and extratextual sources. For example, in *State* v.

Albert, 252 Conn. 795, 804, 750 A.2d 1037 (2000), we ascertained from the text of the statute itself that the purpose of the statutory language was to incorporate a certain common-law doctrine. We stated: ''[T]he legislature, in using the phrase '[p]enetration, however slight,' evinced an intent to incorporate, into our statutory law, the common-law least penetration doctrine.'' Id. In *Conway* v. *Hilton*, supra, 238 Conn. 664–65, we ascertained, from various extratextual sources, including reports accompanying the model act on which the statute was based, the legislative history of the statute and the surrounding legislation, that the purpose of the statute was to address certain social problems by encouraging private landowners to dedicate their land to recreational uses. In *Genovese* v. *Gallo Wine Merchants, Inc.*, supra, 226 Conn. 481–82, we ascertained from the legislative history that the purposes of the statute involved were to overrule a prior decision of this court and to adopt the reasoning of certain decisions of the United States Supreme Court.

The dissent also suggests that judges, by employing a purposive approach to statutory interpretation rather than the plain meaning rule, will substitute our own notions of wise and intelligent policy for the policy of the legislature. We agree that this may happen; any court *may* be intellectually dishonest in performing *any* judicial task, whether it be interpreting a statute or adjudicating a dispute involving only the common law. We suggest, however, that the risk of intellectual dishonesty is just as great, or as minimal, in employing the plain meaning rule as in employing the method of interpretation that we articulate. If a court is determined to be intellectually dishonest and reach the result that it *wants* the statute to mandate, rather than the result that an honest and objective appraisal of its meaning would yield, it will find a way to do so under any articulated rubric of statutory interpretation. Furthermore, by insisting that *all* evidence of meaning be considered and explained before the court arrives at the meaning of a statute, we think that the risk of intellectual dishonesty in performing that task will be minimized. Indeed, resort to and explanation of extratextual sources may provide a certain transparency to the court's analytical and interpretive process that could be lacking under the employment of the plain meaning rule. In sum, we have confidence in the ability of this court to ascertain, explain and apply the purpose or purposes of a statute in an intellectually honest manner.

The dissent also contends that the plain meaning rule is based on the constitutional doctrine of the separation of powers. Our only response to this assertion is that there is simply no basis for it. In our view, contrary to that of the dissent, there is nothing in either the federal or the Connecticut constitutional doctrine of the separation of powers that compels *any* particular method or rubric of statutory interpretation, that precludes a court

from employing a purposive and contextual method of interpreting statutes, or that compels the judiciary to employ the plain meaning rule, in performing its judicial task of interpreting the meaning of legislative language. Simply put, the task of the legislative branch is to draft and enact statutes, and the task of the judicial branch is to interpret and apply them in the context of specific cases. The constitution says nothing about what type of language the legislature must employ in performing its tasks, and nothing about what method or methods the judiciary must employ in ascertaining the meaning of that language.[32]

The dissent also makes the points that legislative history should be considered only if ''the other tools of interpretation fail to produce a single, reasonable meaning,'' and that, in any event, it is an unreliable method of ascertaining legislative intent and facilitates '' 'decisions that are based upon the courts' policy preferences, rather than neutral principles of law.' '' See A. Scalia, A Matter of Interpretation: Federal Courts and the Law (A. Gutmann ed., 1997) p. 35. Thus, the dissent regards the use of legislative history as unreliable evidence of legislative intent, and as insidious in the sense that it permits the court to interpret a statute to reach a meaning that the court *wants* it to have, based on the court's own policy preference, rather than that of the legislature. As a result, in the dissent's five step formulation of the plain meaning rule, consideration of legislative history is relegated to the fourth, or penultimate, step.

In response, we note first that it is difficult to understand why the dissent would consider the use of legislative history at all in its formulation, given that it regards such use as both unreliable and insidious. More importantly, it appears to us that, under the dissent's formulation, only the most difficult cases of statutory interpretation would reach the fourth step of its analysis. Thus, the dissent reserves what it regards as an unreliable and insidious source of statutory meaning to act as the tiebreaker in the most difficult cases of interpretation. This strikes us as a curiously important role for what the dissent regards so negatively as a source of the meaning of legislative language.

On the merits of the use of legislative history, we simply disagree with the dissent's characterizations of it. The general experience of this court demonstrates to us that legislative history, when reviewed and employed in a responsible, discriminating and intellectually honest manner, can constitute reliable evidence of legislative intent. See, e.g., *Genovese* v. *Gallo Wine Merchants, Inc.*, supra, 226 Conn. 481–82; *Wright Bros. Builders, Inc.* v. *Dowling*, 247 Conn. 218, 230–31, 720 A.2d 235 (1998) (legislative history of General Statutes § 20-429 indicated that ''technically perfect compliance with each subdivision'' is not required); *Seal Audio,*

Inc. v. *Bozak, Inc.*, 199 Conn. 496, 512, 508 A.2d 415 (1986) (legislative history of General Statutes § 52-434 indicated that legislature did not intend appointment of attorney trial referees without consent of parties). In addition to legislative hearings and debate, legislative history includes official commentary to various statutory codifications, such as our Penal Code and title 42a of the General Statutes, which is Connecticut's version of the Uniform Commercial Code. We routinely have cited these commentaries as reliable evidence of legislative intent. See, e.g., *Washington* v. *Meachum*, 238 Conn. 692, 711, 680 A.2d 262 (1996) (official commentary to Penal Code suggested that eavesdropping statutes were not intended to penalize nonconsensual monitoring and recording of communication if at least one party to communication is aware of monitoring and recording); *Flagg Energy Development Corp.* v. *General Motors Corp.*, 244 Conn. 126, 136–39, 709 A.2d 1075 (1998) (applying official comment 1 to § 42a-2-503 of the Uniform Commercial Code). Still another aspect of the legislative history of a statute is its genealogy, which is its historical development over time. We often have found consideration of a statute's genealogy useful in determining its meaning, as applied in the case before us, and have been able to do so without substituting our own view of its policy for that of the legislature. See, e.g., *Southington* v. *Commercial Union Ins. Co.*, 254 Conn. 348, 362–63, 757 A.2d 549 (2000) (genealogy of General Statutes § 8-26c [c] regarding discretionary authority of municipality to call subdivision performance bond); *Doe* v. *Doe*, 244 Conn. 403, 424–27, 710 A.2d 1297 (1998) (genealogy of use of term ''child of the marriage'' in marital dissolution statute).

As for the insidious nature of the use of such history, our response is the same as that we made to the same argument of the dissent regarding the general aim of ascertaining the purpose of a statute. If a court is determined to be intellectually dishonest and result-oriented in its decision-making, it does not need any particular stated rubric of interpretation—whether purposive, plain meaning, or some other method—to be so. Furthermore, we have confidence in this court's ability to employ legislative history in a responsible, discriminating and intellectually honest manner, so as to determine the legislature's purpose or purposes, and not our own. We think that our history in doing so bears this out, and we are confident that we can continue to do so.

Ultimately, as Justice Cardozo acknowledged, the process of statutory interpretation requires ''a choice between uncertainties. We must be content to choose the lesser.'' *Burnett* v. *Guggenheim*, 288 U.S. 280, 288, 53 S. Ct. 369, 77 L. Ed. 748 (1933). Furthermore, as Justice Frankfurter stated, in making those choices we cannot avoid ''the anguish of judgment.'' F. Frankfurter, supra, 47 Colum. L. Rev. 544. The *Bender* formulation recognizes these realities.

The ruling of the trial court requiring the state to prove that both murders were committed in the aggravated manner is reversed and the case is remanded for further proceedings according to law.

In this opinion NORCOTT, PALMER and VERTEFEUILLE, Js., concurred.

[1] General Statutes (Rev. to 1997) § 53a-54b, as amended by P.A. 98-126, § 1, provides: "A person is guilty of a capital felony who is convicted of any of the following: (1) Murder of a member of the Division of State Police within the Department of Public Safety or of any local police department, a chief inspector or inspector in the Division of Criminal Justice, a sheriff or deputy sheriff, a constable who performs criminal law enforcement duties, a special policeman appointed under section 29-18, an employee of the Department of Correction or a person providing services on behalf of said department when such employee or person is acting within the scope of his employment or duties in a correctional institution or facility and the actor is confined in such institution or facility, or any fireman, while such victim was acting within the scope of his duties; (2) murder committed by a defendant who is hired to commit the same for pecuniary gain or murder committed by one who is hired by the defendant to commit the same for pecuniary gain; (3) murder committed by one who has previously been convicted of intentional murder or of murder committed in the course of commission of a felony; (4) murder committed by one who was, at the time of commission of the murder, under sentence of life imprisonment; (5) murder by a kidnapper of a kidnapped person during the course of the kidnapping or before such person is able to return or be returned to safety; (6) the illegal sale, for economic gain, of cocaine, heroin or methadone to a person who dies as a direct result of the use by him of such cocaine, heroin or methadone; (7) murder committed in the course of the commission of sexual assault in the first degree; (8) murder of two or more persons at the same time or in the course of a single transaction; or (9) murder of a person under sixteen years of age."

Unless otherwise indicated, references in this opinion to § 53a-54b are to the 1997 revision, as amended by P.A. 98-126, § 1, which was in effect at the time the crimes here were committed. The legislature subsequently amended § 53a-54b to eliminate subdivision (6) of the capital felony statute, which included a death resulting from the sale of drugs to the victim. Public Acts 2001, No. 01-151, § 3.

[2] General Statutes (Rev. to 1997) § 53a-46a provides: "(a) A person shall be subjected to the penalty of death for a capital felony only if a hearing is held in accordance with the provisions of this section.

"(b) For the purpose of determining the sentence to be imposed when a defendant is convicted of or pleads guilty to a capital felony, the judge or judges who presided at the trial or before whom the guilty plea was entered shall conduct a separate hearing to determine the existence of any mitigating factor concerning the defendant's character, background and history, or the nature and circumstances of the crime, and any aggravating factor set forth in subsection (i). Such hearing shall not be held if the state stipulates that none of the aggravating factors set forth in subsection (i) of this section exists or that any factor set forth in subsection (h) exists. Such hearing shall be conducted (1) before the jury which determined the defendant's guilt, or (2) before a jury impaneled for the purpose of such hearing if (A) the defendant was convicted upon a plea of guilty; (B) the defendant was convicted after a trial before three judges as provided in subsection (b) of section 53a-45; or (C) if the jury which determined the defendant's guilt has been discharged by the court for good cause, or (3) before the court, on motion of the defendant and with the approval of the court and the consent of the state.

"(c) In such hearing the court shall disclose to the defendant or his counsel all material contained in any presentence report which may have been prepared. No presentence information withheld from the defendant shall be considered in determining the existence of any mitigating or aggravating factor. Any information relevant to any mitigating factor may be presented by either the state or the defendant, regardless of its admissibility under the rules governing admission of evidence in trials of criminal matters, but the admissibility of information relevant to any of the aggravating factors set forth in subsection (i) shall be governed by the rules governing the admission of evidence in such trials. The state and the defendant shall be

permitted to rebut any information received at the hearing and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any mitigating or aggravating factor. The burden of establishing any of the aggravating factors set forth in subsection (i) shall be on the state. The burden of establishing any mitigating factor shall be on the defendant.

"(d) In determining whether a mitigating factor exists concerning the defendant's character, background or history, or the nature and circumstances of the crime, pursuant to subsection (b) of this section, the jury or, if there is no jury, the court shall first determine whether a particular factor concerning the defendant's character, background or history, or the nature and circumstances of the crime, has been established by the evidence, and shall determine further whether that factor is mitigating in nature, considering all the facts and circumstances of the case. Mitigating factors are such as do not constitute a defense or excuse for the capital felony of which the defendant has been convicted, but which, in fairness and mercy, may be considered as tending either to extenuate or reduce the degree of his culpability or blame for the offense or to otherwise constitute a basis for a sentence less than death.

"(e) The jury or, if there is no jury, the court shall return a special verdict setting forth its findings as to the existence of any factor set forth in subsection (h), the existence of any aggravating factor or factors set forth in subsection (i) and whether any aggravating factor or factors outweigh any mitigating factor or factors found to exist pursuant to subsection (d).

"(f) If the jury or, if there is no jury, the court finds that (1) none of the factors set forth in subsection (h) exist, (2) one or more of the aggravating factors set forth in subsection (i) exist and (3) (A) no mitigating factor exists or (B) one or more mitigating factors exist but are outweighed by one or more aggravating factors set forth in subsection (i), the court shall sentence the defendant to death.

"(g) If the jury or, if there is no jury, the court finds that (1) any of the factors set forth in subsection (h) exist, or (2) none of the aggravating factors set forth in subsection (i) exists or (3) one or more of the aggravating factors set forth in subsection (i) exist and one or more mitigating factors exist, but the one or more aggravating factors set forth in subsection (i) do not outweigh the one or more mitigating factors, the court shall impose a sentence of life imprisonment without the possibility of release.

"(h) The court shall not impose the sentence of death on the defendant if the jury or, if there is no jury, the court finds by a special verdict, as provided in subsection (e), that at the time of the offense (1) he was under the age of eighteen years or (2) his mental capacity was significantly impaired or his ability to conform his conduct to the requirements of law was significantly impaired but not so impaired in either case as to constitute a defense to prosecution or (3) he was criminally liable under sections 53a-8, 53a-9 and 53a-10 for the offense, which was committed by another, but his participation in such offense was relatively minor, although not so minor as to constitute a defense to prosecution or (4) he could not reasonably have foreseen that his conduct in the course of commission of the offense of which he was convicted would cause, or would create a grave risk of causing, death to another person.

"(i) The aggravating factors to be considered shall be limited to the following: (1) The defendant committed the offense during the commission or attempted commission of, or during the immediate flight from the commission or attempted commission of, a felony and he had previously been convicted of the same felony; or (2) the defendant committed the offense after having been convicted of two or more state offenses or two or more federal offenses or of one or more state offenses and one or more federal offenses for each of which a penalty of more than one year imprisonment may be imposed, which offenses were committed on different occasions and which involved the infliction of serious bodily injury upon another person; or (3) the defendant committed the offense and in such commission knowingly created a grave risk of death to another person in addition to the victim of the offense; or (4) the defendant committed the offense in an especially heinous, cruel or depraved manner; or (5) the defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value; or (6) the defendant committed the offense as consideration for the receipt, or in expectation of the receipt, of anything of pecuniary value; or (7) the defendant committed the offense with an assault weapon, as defined in section 53-202a."

[3] Pursuant to General Statutes § 52-265a and Practice Book §§ 83-1 and

61-6 (c), the Chief Justice granted the state's request to appeal from the interlocutory ruling of the trial court that, in order for the death penalty to be imposed, the state must prove that both murders were committed in the aggravated manner.

[4] The information contained four counts. In the first count, the state charged the defendant with intentionally murdering Demetris Rodgers in violation of General Statutes § 53a-54a (a). In the second count, the state charged the defendant with intentional murder in violation of § 53a-54a (a) under a transferred intent theory, namely, that, with the intent to kill Demetris Rodgers, he killed a second person, namely, Antonia Rodgers, by causing her to be deprived of oxygen. In the third count, the state charged the defendant with capital felony under § 53a-54b (8) by murdering both Demetris Rodgers and Antonia Rodgers in the course of a single transaction. In the fourth count, the state charged the defendant with capital felony in violation of § 53a-54b (9) under a transferred intent theory, namely, that, with the intent to kill Demetris Rodgers, the defendant murdered Antonia Rodgers, who was under sixteen years of age. In connection with this information, prior to trial, the state filed a notice of the aggravating factor that it intended to prove, that the defendant committed the capital offense in an especially heinous, cruel or depraved manner under § 53a-46a (i) (4).

The trial court found the defendant guilty on all four counts. This appeal, however, involves only the applicability of the aggravating factor to the third count, under which the defendant was found guilty of the murder of two persons in the course of a single transaction.

[5] The defendant has elected to have the penalty phase heard by a jury. That proceeding awaits our decision in this appeal.

[6] The defendant moved to dismiss the capital felony counts and the murder count involving Antonia Rodgers on the ground that, because she had been in utero when the defendant stabbed Demetris Rodgers, Antonia was not a ''person'' within the meaning of the homicide provisions of the Penal Code. The trial court, *Damiani, J.*, denied that motion. That ruling is not before us in this appeal.

[7] The additional requirements are that either no mitigating factor exists, or the aggravating factor or factors outweigh the mitigating factor or factors. General Statutes (Rev. to 1997) § 53a-46a (f).

[8] General Statutes (Rev. to 1975) § 53a-54b provided: ''A person is guilty of a capital felony who is convicted of any of the following: (1) Murder of a member of the state police department or of any local police department, a county detective, a sheriff or deputy sheriff, a constable who performs criminal law enforcement duties, a special policeman appointed under section 29-18, an official of the department of correction authorized by the commissioner of correction to make arrests in a correctional institution or facility, or of any fireman, as defined in subsection (10) of section 53a-3, while such victim was acting within the scope of his duties; (2) murder committed by a defendant who is hired to commit the same for pecuniary gain or murder committed by one who is hired by the defendant to commit the same for pecuniary gain; (3) murder committed by one who has previously been convicted of intentional murder or murder committed in the course of commission of a felony; (4) murder committed by one who was, at the time of commission of the murder, under sentence of life imprisonment; (5) murder by a kidnapper of a kidnapped person during the course of the kidnapping or before such person is able to return or be returned to safety; (6) the illegal sale, for gain, of cocaine, heroin or methadone to a person who dies as a direct result of the use by him of such cocaine, heroin or methadone, provided such seller was not, at the time of such sale, a drug-dependent person.''

[9] General Statutes (Rev. to 1975) § 53a-46a (g) provided in relevant part: ''If no factor set forth in subsection (f) is present, the court shall impose the sentence of death on the defendant if the jury or, if there is no jury, the court finds by a special verdict as provided in subsection (d) that . . . (4) the defendant committed the offense in an especially heinous, cruel or depraved manner . . . .''

[10] Public Act 80-335 provided: ''A person is guilty of a capital felony who is convicted of any of the following: (1) Murder of a member of the division of state police within the department of public safety or of any local police department, a chief inspector or inspector in the division of criminal justice, a sheriff or deputy sheriff, a constable who performs criminal law enforcement duties, a special policeman appointed under section 29-18, an official of the department of correction authorized by the commissioner of correction to make arrests in a correctional institution or facility, or of any fireman, as

defined in subsection (10) of section 53a-3, while such victim was acting within the scope of his duties; (2) murder committed by a defendant who is hired to commit the same for pecuniary gain or murder committed by one who is hired by the defendant to commit the same for pecuniary gain; (3) murder committed by one who has previously been convicted of intentional murder or murder committed in the course of commission of a felony; (4) murder committed by one who was, at the time of commission of the murder, under sentence of life imprisonment; (5) murder by a kidnapper of a kidnapped person during the course of the kidnapping or before such person is able to return or be returned to safety; (6) the illegal sale, for gain, of cocaine, heroin or methadone to a person who dies as a direct result of the use by him of such cocaine, heroin or methadone, provided such seller was not, at the time of such sale, a drug-dependent person; *(7)* MURDER COMMITTED IN THE COURSE OF THE COMMISSION OF SEXUAL ASSAULT IN THE FIRST DEGREE; *(8)* MURDER OF TWO OR MORE PERSONS AT THE SAME TIME OR IN THE COURSE OF A SINGLE TRANSACTION.''

[11] As in *State* v. *Breton*, supra, 235 Conn. 206, in our prior cases involving death penalties imposed by application of the pertinent aggravating factor to capital felonies involving underlying sexual assault-murders and kidnapping-murders, it was not necessary to confront the question posed by the present case, because in each case the evidence supported application of the aggravating factor to both underlying felonies. See *State* v. *Cobb*, 251 Conn. 285, 449–50, 743 A.2d 1 (1999), cert. denied, 531 U.S. 841, 121 S. Ct. 106, 148 L. Ed. 2d 64 (2000); *State* v. *Webb*, 238 Conn. 389, 485–88, 680 A.2d 147 (1996); *State* v. *Ross*, supra, 230 Conn. 262–65.

[12] The dissent criticizes this reasoning on the basis that, because, prior to 1980, the legislature had included kidnap-murder as a capital felony but had not included two murders within the definition of capital felony, ''the system of deterrence that the legislature adopted in 1973 is exactly the system that the majority now suggests [would be] irrational.'' The dissent asserts, therefore, that our reasoning is ''inexplicable.'' The dissent misconstrues our reasoning. Under the legislative capital felony scheme as enacted in 1973, the legislature had made the policy choice not to include multiple murders within the definition of capital felony. Therefore, the question of whether that was a rational choice never was presented to this court. The question that *has* been presented to us in this case is whether, when it did decide to include multiple murders in the capital felony scheme in 1980, the legislature intended for the state to have a heavier burden with respect to the aggravating factor as applied to that crime than every other offense, including kidnap-murder, already included in that scheme. We answer that question in the negative.

[13] Section 53a-54b (5) defines the capital offense of kidnap-murder as ''*murder by a kidnapper* of a kidnapped person *during the course of the kidnapping* or before such person is able to return or be returned to safety . . . .'' (Emphasis added.) Subsection (7) of § 53a-54b similarly defines sexual assault-murder as ''murder *committed in the course of the commission of* sexual assault in the first degree . . . .'' (Emphasis added.)

[14] The defendant argues, however, that, in any event, the aggravating factor must apply to the murder, and not to the other underlying felony. The state contends that it may apply to either underlying offense. The interpretation offered by the dissent would, in effect, agree with the state. We need not resolve that issue, however, in the present case, because the facts of the case present only the question of whether the claimed aggravating factor applied to *both murders*. To adopt the interpretation offered by both the state and the dissent would require an expansion of the definition of ''especially heinous, cruel or depraved manner,'' which heretofore has focused solely on the killing, and not on any other conduct.

[15] Thus, we disagree with the conclusion of the dissent, namely, that there is a reasonable doubt about the intended scope of the statute. The dissent's conclusion implies that the rule of lenity would apply in every case in which the defendant was able to muster a plausible, albeit erroneous, interpretation of a criminal statute.

Indeed, that is precisely how the dissent in fact applies the rule of lenity. Although it disagrees with the defendant's interpretation, namely, ''that the state must prove . . . that both murders were committed in a cruel manner,'' the dissent nonetheless ''would uphold the trial court's application of the rule of lenity and require that the state prove beyond a reasonable doubt that both murders were committed in a cruel manner . . . .'' This is solely because, in the dissent's view, the defendant's interpretation appears to be

plausible. This use of the rule of lenity would mean that, as a practical matter, in all but the rarest of cases of statutory interpretation of criminal statutes, the defendant would necessarily prevail. We disagree that the rule of lenity has such a broad scope and overarching function.

[16] In this category, the defendant puts murder for hire, murder by a previously convicted murderer, and murder by one under a life sentence. General Statutes (Rev. to 1997) § 53a-54b (2), (3) and (4).

[17] In this category, the defendant puts murder of a law enforcement officer, murder of a kidnap victim, murder of a sexual assault victim, and murder of a person under sixteen years of age. General Statutes (Rev. to 1997) § 53a-54b (1), (5), (7) and (9).

[18] We note that, although Justice Katz has filed a partial dissenting opinion regarding the application of the death penalty, she joins part II of this opinion. Thus, this court, by a vote of five to two, endorses the process of statutory interpretation that we outline herein. We clarify our approach at this time, in this en banc decision, because, as is indicated by the majority opinion and the concurring and dissenting opinion, the appropriate approach to the process of statutory interpretation presents questions that have divided the court. Thus, resolution of those questions will affect, not only the present case, but other pending and future cases, and will give guidance to the bench and bar.

[19] We acknowledge at the outset that the particular approach to the judicial process of statutory interpretation, as formulated and explained herein, that we now specifically adopt, has not been adopted in the same specific formulation by any other court in the nation. Alaska, however, specifically has rejected the ''plain meaning rule,'' which we discuss later in this opinion in further detail, and has, in effect, adopted much the same comprehensive approach to determining the meaning of legislative language that we now adopt. See *Wold* v. *Progressive Preferred Ins. Co.*, 52 P.3d 155 (Alaska 2002); *State* v. *Alex*, 646 P.2d 203 (Alaska 1982); *State Dept. of Natural Resources* v. *Haines*, 627 P.2d 1047 (Alaska 1981); *North Slope Borough* v. *Sohio Petroleum Corp.*, 585 P.2d 534 (Alaska 1978). In addition, by statute, Texas specifically provides that, ''[i]n construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the: (1) object sought to be attained; (2) circumstances under which the statute was enacted; (3) legislative history; (4) common law or former statutory provisions, including laws on the same or similar subjects; (5) consequences of a particular construction; (6) administrative construction of the statute; and (7) title (caption), preamble, and emergency provision.'' Tex. Gov't Code Ann. § 311.023 (Vernon 1998).

It is evident, therefore, that both Alaska and Texas, by judicial decision and statute, respectively, view the process of statutory interpretation in much the same way as we do. In any event, despite our numerically minority status, we conclude that the approach we outline herein most appropriately accomplishes the judicial task of ascertaining the meaning of legislative language.

[20] For purposes of both clarity and emphasis, we repeat here the *Bender* formulation: ''The process of statutory interpretation involves a reasoned search for the intention of the legislature. *Frillici* v. *Westport*, [supra, 231 Conn. 431]. In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. In seeking to determine that meaning, we look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter. . . . Id.; *Carpenteri-Waddington, Inc.* v. *Commissioner of Revenue Services*, [supra, 231 Conn. 362]; *United Illuminating Co.* v. *Groppo*, [supra, 220 Conn. 755–56]. . . . *United Illuminating Co.* v. *New Haven*, [supra, 240 Conn. 431–32].'' (Internal quotation marks omitted.) *Bender* v. *Bender*, supra, 258 Conn. 741.

[21] We need not enter a semiotic debate with the dissent about whether a group such as a legislature can have an ''intent,'' as opposed to a ''purpose,'' in enacting legislation. Both this court and courts throughout the nation have long employed the language of ''legislative intent,'' both within and outside the confines of the plain meaning rule, without any apparent confusion about what it means. Furthermore, our own legislature has no difficulty with the notion that it can have and express an ''intent.'' See, e.g., General Statutes § 47-210 (a) (''[i]t is the *intent* of the General Assembly that this section is remedial and does not create any new cause of action to invalidate

any residential common interest community lease, but shall operate as a statutory prescription on procedural matters in actions brought on one or more causes of action existing at the time of the execution of such lease'' [emphasis added]).

[22] We say ''ordinarily'' because, of course, in any given case not all of the extratextual sources will be relevant or available. For example, in any given case there may not be any legislative history available, or what is available may not shed any light on the question of interpretation. The same may be said of the other sources noted. In sum, we will examine those extratextual sources to the extent that they are ascertainable.

[23] We do not think that there is any reasonable dispute about the proposition that the meaning of language depends on its context. See, e.g., *Grayned* v. *Rockford*, 408 U.S. 104, 110, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972) (''condemned to the use of words, we can never expect mathematical certainty from our language''); *Towne* v. *Eisner*, 245 U.S. 418, 425, 38 S. Ct. 158, 62 L. Ed. 2d 372 (1918) (''a word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used''); *National Labor Relations Board* v. *Federbush Co.*, 121 F.2d 954, 957 (2d Cir. 1941) (''[w]ords are not pebbles in alien juxtaposition; they have only a communal existence; and not only does the meaning of each interpenetrate the other, but all in their aggregate take their purport from the setting in which they are used, of which the relation between the speaker and the hearer is perhaps the most important part''); F. Frankfurter, ''Some Reflections on the Reading of Statutes,'' 47 Colum. L. Rev. 527, 528 (1947) (''[J]udicial construction ought not to be torn from its wider, non-legal context. Anything that is written may present a problem of meaning, and that is the essence of the business of judges in construing legislation. The problem derives from the very nature of words. They are symbols of meaning. But unlike mathematical symbols, the phrasing of a document, especially a complicated enactment, seldom attains more than approximate precision.''); F. Frankfurter, supra, 537 (process of statutory construction requires consideration of ''*[t]he context*—[because] [l]egislation is a form of literary composition'' [emphasis in original]).

[24] We note, in this connection, that we have not been consistent in our formulation of the plain meaning rule. Compare *Sanzone* v. *Board of Police Commissioners*, supra, 219 Conn. 187–88, with *State* v. *Cain*, 223 Conn. 731, 744–45, 613 A.2d 804 (1992).

In *Sanzone*, we began with the statement that, if the statutory ''language is plain and unambiguous, we go no further.'' *Sanzone* v. *Board of Police Commissioners*, supra, 219 Conn. 187. We then set up a multistep process, as follows. If the statute is ambiguous, defined as either opaque or susceptible to different meanings, we would seek guidance from '' 'extrinsic aids,' '' such as the legislative history. Id. If that history, and the legislative purpose are ambiguous, we would then resort to '' 'intrinsic aids,' '' such as the rules of statutory construction. Id. We then stated that, in that case, because both the language and legislative history were ambiguous, we would ''seek guidance . . . *from the traditional rules of English grammar* and of statutory construction.'' (Emphasis added.) Id., 189. Indeed, one would have thought that resort to the traditional rules of English grammar would have been near, at least, to the starting point of the interpretive process, rather than at the end.

In *Cain*, we employed a different, multistep version of the plain meaning principle. We began with the statement, similar to that articulated in *Sanzone*, that ''[i]f a statute is clear and unambiguous, there is no room for statutory construction.'' *State* v. *Cain*, supra, 223 Conn. 744. We then qualified this statement with the proviso that this rule, requiring only application of the language to the facts of the case and prohibiting resort to other aids, ''only applies . . . where the language is *absolutely* clear and unambiguous'' and where there is no ambiguity disclosed by reference to those facts. (Emphasis in original.) Id. Furthermore, we stated, even if the language was clear on its face, resort to extratextual sources would be appropriate to determine legislative intent ''if a literal interpretation . . . would lead to unworkable results . . . .'' Id.

The dissent proposes a different multistep formulation of the plain meaning rule. Under that formulation, the first step is to look only at the language and, if it is plain and unambiguous, to stop there, unless that analysis produces an absurd result. If that analysis does not produce a plain and unambiguous meaning, or if it produces an absurd result, the court then, and only then, proceeds to the second step. The second step is to ''eliminate

all possible interpretations that render the statutory scheme incoherent or inconsistent.'' If that step produces more than one reasonable interpretation, the court then proceeds to the third step. The third step is to consider the statute's relationship to other legislation and relevant common-law principles, and to eliminate any interpretations incompatible with that legislation and those principles. If, after that step is performed, ambiguity still remains, the court proceeds to the fourth step. The fourth step is to examine the legislative history of the statute and the circumstances surrounding its enactment. If, after that step is performed, an ambiguity remains, the court proceeds to the fifth step. The fifth step is to ''apply any applicable presumptions in reaching a final interpretation.''

We note, in connection with all of these formulations, that a rigid threshold-passing requirement as a route to determining the meaning of statutory language is simply counter to any ordinary way of determining the meaning of language. We know of no other instance in which the reader of a written text undertakes, or is required to undertake, such a multistep, threshold-passing analysis in order to determine the meaning of the text. We see no persuasive reason why legislative language should be regarded as unique in this respect.

[25] There are, however, directly contradictory statements about this method of approach in our jurisprudence. In *Doe* v. *Institute of Living, Inc.*, 175 Conn. 49, 57, 392 A.2d 491 (1978), for example, we stated: ''Legislative intent is to be found *not in what the legislature meant to say, but in the meaning of what it did say*.'' (Emphasis added.) In that same case, however, we also stated: ''Indeed, [t]he particular inquiry is *not what is the abstract force of the words or what they may comprehend, but in what sense were they intended to be understood* or what understanding do they convey as used in the particular act.'' (Emphasis added; internal quotation marks omitted.) Id.

[26] Although we have not confronted it in our jurisprudence, another commonly recognized exception to the plain meaning rule is that the rule will not be applied where resort to the legislative history discloses a drafting error in the statutory language as enacted. See, e.g., S. Breyer, supra, 65 S. Cal. L. Rev. 850–51, discussing *United States* v. *Falvey*, 676 F.2d 871 (1st Cir. 1982). This exception demonstrates a fundamental flaw in the dissent's methodology. If the court is precluded from examining legislative history where the statute appears unambiguous, it will not discover such a drafting error.

[27] Under the dissent's formulation of the plain meaning rule, for example, there are four thresholds of ambiguity that must be surmounted in order to render a final interpretation of the language at issue; see footnote 24 of this opinion; and, as a result, a failure to pass any of those thresholds would bar consideration of any evidence of meaning that would lie beyond it.

[28] As Justice Stevens of the United States Supreme Court aptly stated: ''Justice Aharon Barak of the Supreme Court of Israel . . . has perceptively noted that the 'minimalist' judge 'who holds that the purpose of the statute may be learned only from its language' has more discretion than the judge 'who will seek guidance from every reliable source.' Judicial Discretion 62 (Y. Kaufmann transl. 1989). A method of statutory interpretation that is deliberately uninformed, and hence unconstrained, may produce a result that is consistent with a court's own views of how things should be, but it may also defeat the very purpose for which a provision was enacted.'' *Circuit City Stores, Inc.* v. *Adams*, 532 U.S. 105, 133, 121 S. Ct. 1302, 149 L. Ed. 2d 234 (2001) (Stevens, J., dissenting).

We emphasize here that we do not contend that any of this court's applications of the plain meaning rule in the past, or that any current adherence to it, involves such result-oriented decision-making. Our point, drawing from Justice Stevens' remarks, is, rather, twofold: (1) attempting to follow the rule necessarily has led to dubious analytical methods and distinctions, which in turn may give the appearance of such result-oriented decision-making; and (2) the more evidence that a court consults about the meaning of legislative language, the more constrained it will be in arriving at a conclusion about that meaning.

[29] It is not the intention of the author of this majority opinion to avoid the charge of engaging in dubious distinctions and statements, since it should be noted that, with the exceptions of *Glastonbury Co.* v. *Gillies*, supra, 209 Conn. 175, and *State* v. *Delafose*, supra, 185 Conn. 517, the author either participated in or authored the opinions referred to in part II B of this opinion.

[30] It is important in this connection to define what we mean in this context by the phrase, ''what may be regarded as the plain meaning of the language.'' By that phrase we mean the meaning that is so strongly indicated or sug-

gested by the language as applied to the facts of the case, without consideration, however, of its purpose or the other, extratextual sources of meaning contained in the *Bender* formulation, that, when the language is read as so applied, it appears to be *the* meaning and appears to preclude any other likely meaning.

In the present case, we do not regard the defendant's proposed interpretation of the language of the capital felony statute as meeting this standard. In part I of this opinion, we describe that interpretation as ''probably carr[ying] more weight than that of the state,'' and as ''linguistically appealing,'' and we also refer to ''the language of the statute, viewed literally and in isolation, [as] suggest[ing] a conclusion consistent with'' the defendant's interpretation. That is not the same, however, as appearing to be *the* meaning and appearing to preclude any other likely meaning. Indeed, it is difficult to see how the language at issue in this case could be regarded as plain and unambiguous in any realistic sense, given that it has produced three different but plausible interpretations. These three interpretations are that of: (1) the defendant and the trial court; (2) the state and the majority; and (3) the dissent.

[31] Alaska has adopted a similar sliding scale approach. See *Wold* v. *Progressive Preferred Ins. Co.*, 52 P.3d 155, 161 (Alaska 2002).

[32] In this connection, we also reject the dissent's suggestion that, by employing the plain meaning rule, we will give the legislature an incentive to write clear statutes and, presumably, therefore, also give it a disincentive to write poorly drafted statutes. We do not regard it as appropriate for the judiciary, by creating incentives or disincentives, to instruct the legislature on how to write statutes, any more than it would be appropriate for the legislature, directly or indirectly, to instruct the judiciary on how to write opinions. We presume that the legislature, within the constraints of time and other resources, does the best it can in attempting to capture in legislative language what it is attempting to accomplish by its legislation. No legislature, or legislative drafter, has the ability to foresee all of the questions that may arise under the language that it employs. Our task is to do the best we can in interpreting its language, within the context of specific factual situations presented by specific cases and within the limits of that language, so as to make sense of the statute before us and so as to carry out the legislature's purpose or purposes in enacting that statute.