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BORDEN, J., with whom NORCOTT and PALMER, Js., join, concurring. I agree with the conclusions of the per curiam opinion of this court that: (1) Judge Fracasse had the authority to preside over the resentencing proceeding of the defendant, Santos Miranda, despite the fact that Judge Fracasse had reached the mandatory retirement age of seventy; and (2) the defendant's conviction on counts five and ten of the substitute information for assault in the first degree must now be reversed, despite the fact that we previously affirmed those convictions in *State* v. *Miranda*, 245 Conn. 209, 715 A.2d 680 (1998) (*Miranda I*). I, along with the justices joining me in this concurring opinion, write separately to explain the analytical route by which we reach the first conclusion, and to explain why we have now changed our minds and votes regarding the second conclusion.

I

The defendant claims that Judge Fracasse did not have authority, pursuant to General Statutes § 51-183g,[1] to resentence the defendant. Specifically, the defendant claims that the resentencing proceeding was not an ''unfinished [matter]'' within the meaning of that statute.[2] I disagree. I conclude, to the contrary, that Judge Fracasse did have that authority under § 51-183g.

As both this concurring opinion and the concurring opinion of Justice Vertefeuille indicate, the question of statutory interpretation presented by this issue is which of two statutes, namely, § 51-183g or General Statutes § 52-434 (a) (1),[3] applied to the resentencing of the defendant following our remand after *State* v. *Miranda*, 260 Conn. 93, 794 A.2d 506, cert. denied, 537 U.S. 902, 123 S. Ct. 224, 154 L. Ed. 2d 175 (2002) (*Miranda II*). If § 51-183g applied, Judge Fracasse was authorized to resentence the defendant because the resentencing constituted an ''unfinished [matter], pertaining to [a cause] theretofore tried by him . . . .'' If, however, the resentencing constituted the ''refer[ral]'' of a ''criminal case'' within the meaning of § 52-434 (a) (1), Judge Fracasse was not authorized to resentence without the defendant's consent, because the matter did not come within any of the instances provided for in § 52-434 (a) (1) for such a referral without such consent.

This tension between the potential applicability of two statutes, with different outcomes, presents a classic case of statutory interpretation. ''The process of statutory interpretation involves a reasoned search for the intention of the legislature. . . . 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 mean-

ing, 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.'' (Citation omitted; internal quotation marks omitted.) *State* v. *Courchesne*, 262 Conn. 537, 562 n.20, 816 A.2d 562 (2003).[4]

Because, subsequent to our decision in *Courchesne*, the legislature enacted General Statutes § 1-2z; see footnote 4 of this opinion; I next address the relationship of that statute to the task of interpretation presented by this case. Section 1-2z provides: ''The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.'' Thus, pursuant to § 1-2z, we are to go through the following initial steps: first, consider the language of the statute at issue, including its relationship to other statutes, as applied to the facts of the case; second, if after the completion of step one, we conclude that, as so applied, there is but one likely or plausible meaning of the statutory language, we stop there; but third, if after the completion of step one, we conclude that, as applied to the facts of the case, there is more than one likely or plausible meaning of the statute, we may consult other sources, beyond the statutory language, to ascertain the meaning of the statute.

It is useful to remind ourselves of what, in this context, we mean when we say that a statutory text has a ''plain meaning,'' or, what is the same, a ''plain and unambiguous'' meaning. This court has already defined that phrase. ''By that phrase we mean the meaning that is so strongly indicated or suggested by the language as applied to the facts of the case, without consideration, however, of its purpose or the other, extratextual sources of meaning . . . that, when the language is read as so applied, it appears to be *the* meaning and appears to preclude any other likely meaning.'' (Emphasis in original.) *State* v. *Courchesne*, supra, 262 Conn. 573–74 n.30. Put another way, if the text of the statute at issue, considering its relationship to other statutes, would permit more than one likely or plausible meaning, its meaning cannot be said to be ''plain and unambiguous.''

Although I ultimately conclude that § 51-183g, rather than § 52-434 (a) (1), applies to this case, I do not think that that meaning is plainly and unambiguously required by the language of § 51-183g to the exclusion of § 52-434 (a) (1). As I indicate later in this opinion, the argument that § 52-434 (a) (1), rather than § 51-183g, applies to this case *is* reasonable and plausible, and, therefore,

neither statute plainly and unambiguously applies to this case.[5]

I note that *both* the state and the defendant claim that the plain meaning of the applicable statutory language favors their respective interpretations. ''[W]e have stated that statutory language does not become ambiguous merely because the parties contend for different meanings. . . . *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.'' (Internal quotation marks omitted.) *State* v. *Courchesne*, supra, 262 Conn. 571–72. In my view, that is the case here.

First, linguistically § 52-434 (a) (1) requires the consent of both parties before the Superior Court may ''refer'' any criminal case to a judge trial referee. Among the dictionary definitions of ''refer'' that could reasonably apply to a case allotted to a judge trial referee for resentencing are ''to send or direct for treatment, aid, information, decision,'' and ''to direct attention.'' Webster's Third International Dictionary. As a procedural matter, upon our remand for resentencing, someone—either a clerk or perhaps the presiding judge for criminal matters—must ''send or direct'' the file to the judge trial referee for that resentencing, or ''direct [the] attention'' of the judge trial referee to the file.[6] Under this dictionary definition, it would be reasonable to conclude that § 52-434 (a) (1) applies to this case, rather than § 51-183g.

Second, § 51-183g was enacted in 1929,[7] whereas the particular parts of § 52-434 (a) (1) involved here were enacted in 1994 and 1998.[8] Furthermore, § 51-183g applies to all cases, civil and criminal, whereas the particular part of § 52-434 (a) (1) that is at issue here, namely, the consent provision, applies only to criminal cases. Thus, it is plausible to read the latter, more explicit statute, § 52-434 (a) (1), as applying specifically to criminal cases, as differentiated from the situations contemplated by the earlier, more general statute, § 51-183g.

Finally, reading § 52-434 (a) (1) in its entirety, it is plausible to conclude that the legislature was quite specific about which types of cases could or could not be referred to judge trial referees, and this specificity reflected carefully considered policy choices. For example, with respect to civil cases: civil nonjury cases and demands for trials de novo pursuant to General

Statutes § 52-549z may be so referred without the parties' consent; but civil jury cases in which the pleadings have been closed may only be so referred with the parties' consent.

With respect to criminal cases, the legislature was even more explicit. The parties' consent is required for the referral of "any criminal case," with the following specific exceptions: a criminal nonjury case may be referred without consent to a judge trial referee assigned to a geographical area court; and criminal cases, other than Class A or B felonies or capital felonies, may be so referred for jury selection only, "unless good cause is shown not to refer." General Statutes § 52-434 (a) (1). Thus, it is plausible that the legislature was seriously concerned with the referral of criminal matters to judge trial referees, and made a considered policy choice to limit those referrals without the consent of the parties to very limited classes of cases. The present case does not come within any of those limited classes, and it is plausible to interpret the two statutes so as not to countermand that considered policy choice of the legislature.

I conclude, therefore, that the meaning of neither § 51-183g nor § 52-434 (a) (1) is plain and unambiguous as applied to the facts of this case. Therefore, I proceed to the question of statutory interpretation unconfined by the provisions of § 1-2z to textual sources of meaning alone. Applying this method of statutory interpretation, I conclude that § 51-183g applies to the present case and, therefore, that Judge Fracasse had the authority to resentence the defendant.

I look first to the language of the statute. That language is broad and inclusive in nature: "any other unfinished matters . . . ." General Statutes § 51-183g. That language is broad enough to include a resentencing following a remand by this court for that purpose, and that breadth strongly suggests that it does include such a remand. In this connection, the word "unfinished" as used in this context is capable of such a broad meaning: "not brought to an end or to completion." Webster's Third New International Dictionary.[9] Furthermore, the language in § 51-183g, "as if he were still such a judge," is also broad enough to include a resentencing following an appellate remand, because if Judge Fracasse were still a judge, rather than a judge trial referee, he undoubtedly would have had that power.

Additionally, that language must be read in light of the fundamental jurisprudential notion that "[t]he trial of a criminal case, and the ensuing appeal from the judgment of conviction, are not separate and distinct proceedings divorced from one another. They are part of the continuum of the process of adjudication." (Internal quotation marks omitted.) *Bunkley* v. *Commissioner*, 222 Conn. 444, 459, 610 A.2d 598 (1992). Therefore, when a case, following an appeal, is

remanded to the trial court for resentencing, the resentencing hearing is not a totally new proceeding; it is a continuation of the adjudicatory process that began in the trial court and was left incomplete by the subsequent remand after determination of the appeal. This jurisprudential notion also strongly suggests that the resentencing proceeding in this case was appropriately considered an ''unfinished matter'' within the meaning of § 51-183g.

In addition, this interpretation is consistent with the state constitutional provision regarding the powers of state referees. Article fifth, § 6, of the constitution of Connecticut, as amended by article eight, § 2, of the amendments, provides in relevant part: ''No judge shall be eligible to hold his office after he shall arrive at the age of seventy years, *except that . . . a judge of the superior court . . . who has attained the age of seventy years and has become a state referee may exercise, as shall be prescribed by law, the powers of the superior court . . . on matters referred to him as a state referee*.'' (Emphasis added.) The emphasized language was added to the constitution as part of the 1965 constitution, in order to make our system more efficient by granting referees, who prior thereto did not have the full powers of judges in cases referred to them, those full powers. See Conn. Constitutional Convention, Constitutional Committee Hearings, Resolutions and Rules, (August 24, 1965) p. 35, remarks of former Justice Abraham S. Bordon, then judge trial referee (''I have a feeling that for the future efficiency of our court system that it would be preferable for judges who reach the age of seventy to retire but remain as judges . . . . I have a feeling that there has been a lot of waste in the energies of the State Referees in that they have no power to enter any orders which may come during the trial of a case before a State Referee.''); see also Conn. Joint Standing Committee Hearings, Judiciary, Pt. 2, 1967 Sess., p. 485, remarks of former Chief Justice Raymond E. Baldwin, then judge trial referee (proposed language ''gives the additional powers of a state referee in a matter referred to him, to render a judgment, so that any attempt to attack the finding or any effort at an appeal, requires the same procedure as it requires . . . in an appeal from a Judge of the Superior Court or Court of Common Pleas so that we avoid all this procedural rigamarole that we used to have and it also gives him the right to decide questions of law as well as to resolve issues of fact''). Although § 51-183g predates that constitutional provision, and although its statutory predecessor had been held to be constitutional before the adoption of that provision; see *Johnson* v. *Higgins*, 53 Conn. 236, 1 A. 616 (1885); it is consistent with the purpose of that provision to interpret § 51-183g to include the power to resentence following an appellate remand.

Finally, given this analysis, which strongly suggests

that, prior to the enactment of the consent provisions of § 52-434 (a) (1) in 1994 and 1998, § 51-183g included the power to resentence upon remand, it is unlikely that when the legislature did enact those provisions it intended implicitly to amend § 51-183g by carving out an exception for criminal resentencing on a remand. There is nothing in the legislative history of that subsequent legislation to suggest that, and not enough in its language to compel such a conclusion. Our ordinary presumptions are strongly against amendment by implication. *Commission on Human Rights & Opportunities* v. *Board of Education*, 270 Conn. 665, 718, 855 A.2d 212 (2004). Indeed, the legislative history of the 1998 legislation suggests a legislative intent that a criminal trial to the court, rather than the jury, could be referred to a judge trial referee without the defendant's consent. See 41 H.R. Proc., Pt. 15, 1998 Sess., pp. 5081–82. This suggestion undermines the contention implicit in the defendant's argument, that the legislative policy regarding the necessity of such consent in the specified cases was so strong that it should be held to be inconsistent with a concomitant authority to resentence under § 51-183g.

Thus, I disagree with the defendant's suggestion that giving § 51-183g this construction may lead to a conflict with both article fifth, § 6, of the constitution of Connecticut, and with § 52-434 (a) (1) itself. As I have indicated, I see no conflict with article fifth, § 6, of the constitution of Connecticut, as amended by article eight, § 2, of the amendments, which permits the exercise by a referee of powers of a judge ''as . . . prescribed by law . . . .'' Section 51-183g is such a law. Furthermore, I see no necessary conflict in concluding, as I do, that a resentencing following a remand comes within the ''unfinished matters'' language of § 51-183g, and not within the ''refer[ral]'' of criminal matters language of § 52-434 (a) (1). Although, as I indicated previously, ''referral'' could bear such a meaning, I do not think it does have that meaning in the context of a resentencing following an appellate remand. The reasons to the contrary are simply more persuasive.

II

I turn now to the principal question in the case, namely, whether the defendant's convictions under counts five and ten of the information for assault in the first degree must now be reversed. Again, I agree with the result reached by this court in part II of its per curiam opinion, namely, that the convictions must be reversed. I now conclude, however, that the provisions of General Statutes § 53a-59 (a) (3),[10] under which the defendant was convicted in counts five and ten of the information, do not apply to the defendant's conduct.[11]

The defendant was not the perpetrator of the physical assaults on the victim. *Miranda I*, supra, 245 Conn. 211. The perpetrator was the victim's mother. Id. The

defendant, however, who was the boyfriend of the child's mother, ''had established a family-like relationship with the mother and her two children . . . had voluntarily assumed responsibility for the care and welfare of both children, and . . . had considered himself the victim's stepfather . . . .'' Id., 218. On the basis of these facts, the court in *Miranda I* concluded that ''there existed a common-law duty to protect the victim from her mother's abuse, the breach of which can be the basis of a conviction under § 53a-59 (a) (3).'' Id. The court's chain of reasoning was that: (1) parents may be criminally liable for assault by inaction, as opposed to action, based on common-law duties to protect their children; id., 214–17; (2) recognition by the courts of such a duty and the criminal consequences of its breach is permitted by General Statutes § 53a-4; id., 219–20; (3) this duty has been recognized as applying, in addition to biological and adoptive parents and legal guardians, to other adults who establish familial relationships with and assume responsibility for the care of a child; id., 222–26; (4) there is a continuing demographic trend reflecting a significant increase in nontraditional alternative family arrangements; id., 228; and (5) to ascribe such a duty to the defendant under the facts of the case would be harmonious with the public policy of preventing children from abuse and with the concomitant general policy underlying General Statutes § 53-21, the risk of injury statute that applies to *any* person. Id., 228–30. Thus, the linchpin of the court's reasoning was that there is a recognized common-law duty of a parent or legal guardian to protect his or her child from abuse, the breach of which may constitute assault under our Penal Code pursuant to § 53a-4; and the defendant, although neither a parent nor legal guardian, was subject to the same duty because he had established a familial relationship with the victim's mother, had assumed the responsibility for the victim's care, and considered himself the victim's stepfather.

In my view, it is not necessary to decide in the present case whether a parent or legal guardian can be held criminally liable under § 53a-59 (a) (3) for failing to protect his child from physical abuse by another. I would leave that question to a case that squarely presents it. I conclude, instead, that, assuming without deciding that a parent or legal guardian could be held so liable, a person in the defendant's position—neither a parent nor a legal guardian—may not be so held criminally liable.[12]

Contrary to the concurring opinion of Justice Vertefeuille, I do not think that the question of whether there can be criminal liability for a failure to act necessarily can be decided solely by reference to the language and legislative history of the assault statutes. Section 53a-4, which is entitled ''Saving clause,'' provides: ''The provisions of this chapter shall not be construed as preclud-

ing any court from recognizing other principles of criminal liability or other defenses not inconsistent with such provisions.'' Although, as Justice Vertefeuille's opinion indicates, a strong case may be made that our assault statutes preclude any criminal liability based on the omission of conduct, as opposed to active conduct, a strong case may also be made that, consistent with the great weight of authority elsewhere, as our opinion in *Miranda I* indicated, § 53a-4 would permit this court to recognize the principle of criminal liability based on the failure to act where there is a clear legal duty to act, such as where parents or legal guardians are concerned.

Contrary to my earlier vote in this case, however, I do not now think that such potential parental liability should be extended, on a case-by-case basis, beyond the clearly established legal categories of a parent or legal guardian. Section 53a-4 permits this court to recognize ''other principles of criminal liability . . . .'' Whether to do so, however, poses a question of policy for this court. I am now of the opinion that it would be unwise policy to make such an extension.

First, as I have already indicated, parents and guardians fall into clearly recognized legal categories, and their duty to protect their children and wards are clearly recognized in the law. The same cannot be said for someone like the defendant. It simply goes too far to say that he should be treated precisely the same as a parent or legal guardian for purposes of criminal liability, because he had established a ''familial relationship'' with the victim's mother, had assumed responsibility for the victim's care, and considered himself her stepfather. It will be difficult to cabin this precedent to these precise facts, and the temptation will always be there, in a case of egregious injuries—as this case is—to extend it to other members of the extended family, to longtime caregivers who are not related to either the parent or victim, to regular babysitters, and to others with regular and extended relationships with the abusing parent and the abused victim.

Second, and closely related to the first reason, the emerging demographic trend toward nontraditional alternative family arrangements, which we cited as support in *Miranda I*, now strikes me as a counter argument. Precisely because of that trend, and the concomitant difficulty of determining in advance where it will lead and what its ultimate contours will be, the boundaries of this duty-based criminal liability will be too amorphous, and too fact-based and based on hindsight, to fit comfortably within our Penal Code.

Third, this amorphousness in where the outer limits of liability lie will discourage others, such as volunteers and close friends, from establishing ''familial relationships'' with the children who are likely to be the most in need of them. Child abuse is often associated with such demographic factors as single parent status, low

socioeconomic status, inadequate education, and low intelligence. J. Cordone, ''Protecting Or Handicapping Connecticut's Children: *State* v. *Miranda*,'' 32 Conn. L. Rev. 329, 348 (1999). Thus, the children who are the most at risk for abuse are likely to suffer the greatest harm from this amorphous criminal liability, because it will discourage well-meaning relatives, friends of the family and other members of the community from taking an active and intense interest in them, for fear of being caught in a web of criminal liability for the egregious conduct of another.

Finally, I think that *Miranda I* places too much power in the hands of the state to use as a bargaining chip in plea negotiations. Precisely because its boundaries are so amorphous, it gives the state the power to threaten its use in a different but similar case, in order to extract a plea that the state might not otherwise be able to secure.

I conclude, therefore, that the defendant cannot, as a matter of law, be convicted of assault in the first degree, and that the judgments of conviction on counts five and ten of the information must reversed, and a judgment of acquittal be rendered on those counts.

[1] General Statutes § 51-183g, formerly § 51-46, provides: ''Any judge of the Superior Court may, after ceasing to hold office as such judge, settle and dispose of all matters relating to appeal cases, as well as any other unfinished matters pertaining to causes theretofore tried by him, as if he were still such judge.''

[2] The state does not claim that the resentencing proceedings constituted ''matters relating to appeals'' within the meaning of § 51-183g. Consequently, the only question presented is whether those proceedings constituted ''unfinished matters'' as used in § 51-183g. In this connection, although in his brief in this court the defendant contended that ''unfinished matters'' was limited to ''ministerial actions with respect to a case tried by [the judge] before retirement,'' at oral argument before this court the defendant abandoned that contention.

[3] General Statutes § 52-434 (a) (1) provides: ''Each judge of the Supreme Court, each judge of the Appellate Court, each judge of the Superior Court and each judge of the Court of Common Pleas who ceases or has ceased to hold office because of retirement other than under the provisions of section 51-49 and who is an elector and a resident of this state shall be a state referee for the remainder of such judge's term of office as a judge and shall be eligible for appointment as a state referee during the remainder of such judge's life in the manner prescribed by law for the appointment of a judge of the court of which such judge is a member. The Superior Court may refer any civil, nonjury case or with the written consent of the parties or their attorneys, any civil jury case pending before the court in which the issues have been closed to a judge trial referee who shall have and exercise the powers of the Superior Court in respect to trial, judgment and appeal in the case, and any proceeding resulting from a demand for a trial de novo pursuant to subsection (e) of section 52-549z may be referred without the consent of the parties to a judge trial referee who has been specifically designated to hear such proceedings pursuant to subsection (b) of this section. The Superior Court may, with the consent of the parties or their attorneys, refer any criminal case to a judge trial referee who shall have and exercise the powers of the Superior Court in respect to trial, judgment, sentencing and appeal in the case, except that the Superior Court may, without the consent of the parties or their attorneys, (A) refer any criminal case, other than a criminal jury trial, to a judge trial referee assigned to a geographical area criminal court session, and (B) refer any criminal case, other than a class A or B felony or capital felony, to a judge trial referee to preside over the jury selection process and any voir dire examination conducted in such case, unless good cause is shown not to refer.''

[4] As we have previously stated, General Statutes § 1-2z ''legislatively overruled that part of *Courchesne* in which we stated that we would not require

a threshold showing of linguistic ambiguity as a precondition to consideration of sources of the meaning of legislative language in addition to its text.'' *Paul Dinto Electrical Contractors, Inc.* v. *Waterbury*, 266 Conn. 706, 716 n.10, 835 A.2d 33 (2003). Thus, the legislature did not purport to overrule our judicial definition of the task of statutory interpretation.

[5] Thus, I disagree with the approach taken by Justice Vertefeuille in her concurring opinion. Instead of first determining whether there is any contrary interpretation of the two statutes that is reasonable and plausible, she has conflated two separate analyses: (1) whether the meaning of a particular statutory text, taken together with other statutes is plain and unambiguous; and (2) what the more likely or probable—or even the strongly suggested—meaning of that text is after a full textual analysis. The two are simply not the same. This conflationary flaw results in a transformation of the plain meaning rule from a threshold determination of ambiguity into the following result: once the court has examined the statutory texts and arrived at a conclusion as to the meaning on the basis of those texts, that meaning becomes ex post facto, plain and unambiguous, and resort to extratextual sources of meaning are then barred. That is contrary to the mandate of § 1-2z.

That approach to the threshold issue of determining whether the statutory language is plain and unambiguous effectively treats that task as one aimed merely at discerning the more, or perhaps, most *plausible* meaning based on the analysis of the statutory text and the statute's relation to other statutes. This recasting of the requirements of § 1-2z effectively sets the bar to consideration of extratextual sources of statutory meaning higher than the legislature itself intended in the enactment of § 1-2z and ignores our own precedent setting forth the meaning of ''plain and unambiguous'' statutory language.

[6] The concurring opinion of Justice Vertefeuille, rather than explaining why this interpretation is not even plausible, simply asserts that § 52-434 (a) (1) ''contemplates the referral of a criminal case to a judge trial referee *prior to trial* and authorizes the judge trial referee to preside over the trial and all subsequent proceedings.'' (Emphasis in original.) Although this assertion may—or may not—be correct as a matter of statutory interpretation, a question that we need not answer in the present case, it certainly cannot be gleaned just from looking at the language of § 52-434 (a) (1). The words, ''*prior to trial*,'' emphasized by that opinion, do not appear anywhere in the statutory language.

In addition, that concurring opinion concludes that ''[§] 51-183g applies to situations where the judge trial referee was a judge at the time the trial started and became a judge trial referee at a subsequent time. Section 52-434 (a) (1) applies to matters referred to a judge trial referee for trial when he or she already is a referee.'' It may well be that these two conclusions are correct. It cannot be, however, that either conclusion is so obvious that the statutes plainly and unambiguously have those meanings, because nowhere in the language of either statute does either conclusion appear. Thus, to the extent that this analysis by that concurring opinion supports the inapplicability of § 52-434 (a) (1), it certainly does not come from the plain text of that statute.

[7] See Public Acts 1929, c. 301, § 10.

[8] See Public Acts 1994, No. 94-63 and Public Acts 1998, No. 98-245.

[9] This is not to say, however, that this is ''the'' meaning of the term ''unfinished.'' ''A dictionary is nothing more than a compendium of the various meanings and senses in which words have been used in our language. A dictionary does not define the words listed in it in the sense of stating what those words mean universally. Rather it sets out the range of meanings that may apply to those words as they are used in the English language, depending on the varying contexts of those uses.'' *Northrop* v. *Allstate Ins. Co.*, 247 Conn. 242, 250, 720 A.2d 879 (1998).

[10] General Statutes § 53a-59 (a) provides: ''A person is guilty of assault in the first degree when . . . (3) under circumstances evincing an extreme indifference to human life he recklessly engages in conduct which creates a risk of death to another person, and thereby causes serious physical injury to another person . . . .''

[11] Although I was one of four members of this court to have voted to affirm the defendant's convictions in *Miranda I*, upon careful reconsideration I am now persuaded that my vote at that time was wrong and that it is better to correct the error now, while it still benefits the defendant in the present case, than to wait for the issue to present itself in a future case. ''Wisdom too often never comes, and so one ought not to reject it merely because it comes late.'' *Henslee* v. *Union Planters National Bank & Trust Co.*, 335

U.S. 595, 600, 69 S. Ct. 290, 93 L. Ed. 259, reh. denied, 336 U.S. 915, 69 S. Ct. 601, 93 L. Ed. 1078 (1949) (Justice Frankfurter, on changing position he had taken in earlier case).

[12] I would leave the criminal liability of the defendant to the risk of injury statute, namely, § 53-21, the applicability of which the defendant has never challenged.