

A Failure to Protect. Resolving the Battered Mother's Dilemma

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Draft:12.27.99

INTRODUCTION

On September 11, 1992, based on injuries observed on the hands of 7 year old Daniel Lazarra, the principal of the Sandy Hook school reported a case of suspected child abuse to the Newtown police department and the Connecticut Department of Children and Families (DCF). Further investigation revealed numerous bruises on the boy's back, buttocks, legs and arms. Daniel told police that he had been struck recently with a belt and slapped by his mother, Lavonne Lazarra, and her life-in boyfriend, Miguel Sabastian, after he was found playing with a B.B. pistol.

When Daniel failed to return home as usual, Lavonne called the school and was told he had missed the bus. Shortly afterwards, the police arrived at the house, accompanied by a caseworker from Connecticut's DCF. Lavonne's four other children were taken into custody, including a new born, and she and Mr. Sabastian were placed in the back of a police car and taken to the station for questioning.

The same DCF investigator had visited the home a week earlier. She found the baby in the basement washroom. The picture painted in her report had the poignancy of Victorian melodrama.

The baby, Candy, age 1 year, was lying on the mattress with a bottle in her mouth. She had a variety of blankets around her. She was noticeably dirty, has a smell about her. Diaper (cloth) soaked completely. A small bowl with bits of food on it lay on the mattress next to her. She cried a bit. Advised mother that child can't be left alone down here....Mother said "Ok, I

respect your opinion, if that's what you think, then I'll take her out." When the mother didn't move...I moved aside the bed frame and mattress and lifted the baby out.

Most tellingly, the cellar was only accessible from an outside bulkhead. The caseworker accompanied Lavonne around the house and into the first floor. Here again, she described the squalor in Dickensian terms.

In the one bedroom, door closed, 3 year old Maria was playing in closet. She appeared fairly clean and dressed. The room was dark, with dirty smell, dirty sheets and bunk beds. Smelled of feces, although none were visible. Mother acknowledged she could not provide for Candy's needs.

No action or services were recommended.

At Waterbury Hospital, an examination of the children revealed numerous bruises on the 3 and 4 year old girls, almost certainly due to physical abuse. Particularly appalling were the marks on the back and legs of the 3 year old girl, Maria.

During questioning by detectives, Lavonne admitted hitting Daniel with a belt in the B.B. gun incident. She was the only one to "discipline" her children she insisted, defending her actions as "how I was treated when I was a girl." Miguel also admitted hitting the children and using a belt on Maria. The couple was charged with four counts of risk of injury to a minor, offenses related to the alleged abuse of Daniel, Stephanie and Maria Lazzara and the neglect of Candy Lazzara.

By the time the public defender contacted me to assess whether domestic violence played a role in Lavonne's criminal acts, she had made bail and was staying at a battered woman's shelter. Lavonne's five children were in foster care, including the newborn whose father was Miguel. Mr. Sabastian had been sentenced to "time served" (75 days) and deported back to Mexico. Lavonne's charges carried a possible sentence of eight years. The State's Attorney was offering three.

Even before I became involved in the case, my eye had been drawn to a news headline declaring Lavonne a "Modern Day Medea." I reviewed the grizzly photos of the children's injuries, then searched medical records, police reports, witness interviews and DCF files, hoping to find references to domestic violence. What I did learn was that each of her five children had been fathered by a different man, the four youngest by illegal immigrants from Mexico. An earlier apartment had left in complete shambles. When her water had been turned off, according to a neighbor, Lavonne had stolen water.

The pictures in my mind were not pretty. What scenario could justify the harms these children had suffered? I thought of Hedda Nussbaum. When Lisa Steinberg was murdered by her adaptive father, Hedda was widely condemned for failing to protect the girl even though, at the time of her death, Joel Steinberg's abuse had rendered her barely recognizable (). Once, after Steinberg had ruptured Hedda's spleen, she had literally crawled out of the apartment to catch a cab to the hospital. Despite the abuse, the feminist idol

Susan Brownmiller () wrote a semi-fictional track portraying Hedda as a moral monster and she was treated like a pariah by large segments of the battered woman's movement. Prosecutors ultimately withdrew the murder charge against Hedda, allegedly because of her appalling physical condition (). But insiders guessed the real motive was to use her as the chief witness against Michael Steinberg. Steinberg was convicted of the child's murder, but never charged with assaulting Hedda.

But Lavonne Lazarra's case was different. For one thing, Hedda had never abused her child. And where there was extensive evidence that Hedda had been abused in police and CPS reports, apart from a brief police notation, there was nothing in the official records to support the public defender's hope that Lavonne would benefit from a battered woman's defense. If the medical findings, Daniel Lazarra's statements to police and Lavonne's admission of guilt held up, she would be well advised to accept the plea bargain.

This article uses the history of Lavonne Lazarra to provide a narrative framework for cases where domestic violence and child abuse and/or neglect are involved. Although Lavonne suffered atypical levels of physical abuse and her partner was an unregistered alien, her story typifies the patterns commonly found in such cases. My analysis contrasts the current approach, which emphasizes physical abuse and psychological victimization, with an emphasis on the deprivation of personal liberties through coercion and control.

Background

Society's response to violence against women by their partners has been revolutionized since the first battered women's shelters opened in the 1970's¹. A problem that was hidden from public view for centuries is now an important hub for a broad range of health, justice and social services. There are now over one million arrests for domestic violence crimes annually; an even larger number of women and children are being serviced annually by community-based shelters; and countless numbers of men, women and children are involved in administrative, civil or family court proceedings in which domestic violence is an issue. In addition, each year hundreds of thousands of persons are charged with crimes in which domestic violence may be a mitigating factor, including prostitution, embezzlement, drug sale, larceny, risk of injury, assault and homicide. With an estimated prevalence at somewhere between 20 and 30% of the female population, domestic violence is the single most important source of police calls (Bard, 1969); the major cause of injury for which women seek medical attention (Stark & Flitcraft, 1996); and a significant contributor to divorce, homelessness, absenteeism and other problems in the workplace, as well as to substance use, suicidality and a range of other behavioral or mental health problems. These facts make domestic violence an important concern of attorneys whatever their venue.

¹ For an excellent summary of these developments, see R. & E. Dobash, Women, Violence and Social Change, Routledge, 1992.

A vast knowledge base about domestic violence has developed alongside the network of services for battered women, including an extensive legal literature.² Although much has now been written about the co-occurrence of domestic violence and child abuse, there is no consensus about how best to approach these cases (). In addition to the obvious problem of deciphering and organizing a complex set of facts, the human drama of situations where victimized mothers may also have victimized their children tests our emotional and moral fortitude. Punishing someone who commits a criminal act in the throes of their own victimization offends our sense of justice. And yet, as the reaction to Hedda Nussbaum suggests, we are wont to remove all culpability for wrong-doing from a caretaker whose charge is seriously harmed on her watch, regardless of the circumstances. In the norms judges and juries bring to bear in such cases, these conflicting feelings converge with confusion about when, if ever,

² For example, see "Spouse/Partner Abuse: A categorized bibliography and reference list" compiled by R. Geffner, M.G. Milner, K.A. Crawford and S.K. Cook 3rd printing (1990) updated annually, available from Family Violence & Sexual Assault Institute, 1310 Clinic Drive, Tyler TX 75701. For recent legal views on the problem, see in particular: Ann Jones, Next time, she'll be dead, Beacon:Boston, 1994); Daniel J. Sonkin, ed. Domestic Violence on Trial: Psychological and legal dimensions of family violence Springer, NY 1987; Mrtha A. Fineman and Roxanne Mykitiuk, The public nature of private violence, Routledge:New York, 1994; Donald A. Downs, More than Victims:battered women, the syndrome society and the law, U. of Chicago, 1996. Ronald E. Cohen and James Neely, ed., Lawyer's Manual on Domestic Violence: Representing the victim, Supreme Court of the State of NY, Appellate Division, First Department. 2nd edition, 1998. E. Buzawa and Carl G. Buzawa, Domestic Violence: the criminal justice response 2nd edition, Sage, 1996).

women's rights to safety and autonomy supercede their responsibilities as mothers. Lacking an objective standard to weigh the relative degrees of moral responsibility, legal accountability and justice in these cases, we are left with subjective factors to confront our own ambivalence, let alone ambivalence in a finders of fact.

Until recently, the wife batterer was presumptively seen as a good and loving father in custody proceedings, even when the spouse had killed the children's mother.³ By contrast, over three-quarters of the states now have statutes making domestic violence at least a factor in deciding which parent should be given custody and every state now has case law allowing courts to consider domestic violence in their custody decisions (DV Report, 1:1, 1995, p.3).⁴ But if it is no longer necessary to point out that children are harmed by

³ Only a few cases decided before 1983 held that a father's violence towards the mother was even relevant in determining custody of their children. See, for examples, *Runsvold v. Runsvold*, 61 Cal. App.2d 731 (1943); *George v. George*, 266 Ala.190 50 Sol 3d 744 (1951); *Thames v. Thames*, 233 Miss. 24, 100 So. 2d 868 (1958); *McCurry v. McCurry* 223 Ga, 334m k55 S.E.2d 378 (1967); *George v. Anderson*, 135 Ga. App. 273m 217 S>E>2d 609 (1975); *In Re Welfare of Scott*, 244 N.W.2d 669 (Minn., 1976); *Williams v. Williams*, 104 Ill. App.3d 16, 432 N.E.2d, 375 (1982).

⁴ For example, North Dakota Cent. Code § 14-09-06.2(1)(j) (1993) which was amended in 1993, creates a rebuttable assumption in child custody cases that a parent who has perpetrated domestic violence may not be awarded sole or joint custody of a child. In **Heck v. Reed** 529 N.W. 2d 155 (N.D., 1995), the North Dakota Supreme Court reversed the lower court's award of custody to a father who had abused the child's mother and held that the recent amendment significantly heightened the burden of proof required to rebut the presumption against awarding custody to an abusive parent.

domestic violence, the progress in this area has been uneven.⁵ Domestic violence services typically include support for children, domestic violence education for family court judges is increasingly widespread and CPS workers workers are increasingly expected to assess for domestic violence and to provide appropriate services.⁶ But how these changes have affected the status of battered mothers or their children is unclear. Juvenile or family courts, child protective services and other agencies statutorially responsible for children's safety get little guidance on how to respond from existing accounts of how child abuse fits into the overall pattern of woman battering. The empirical evidence on how the problems overlap has not been matched by a conceptual map that allows the chain of causation to be clearly delineated and shaped into the sort of intelligible 'story' that guides intervention and legal judgement

⁵ For example, few states provide protections for battered women who flee domestic violence situations, particularly if they take their children with them (Zorza, Protecting a battered woman's whereabouts from disclosure, DVR, 1:1, p.3) Moreover, in states where there is neither a statutory presumption or requirements that domestic violence is a statutory factor in custody determinations, appellate courts are reluctant to disturb discretionary custody rulings. For instance, in **Whitman v. Whitman**, 1995 Ohio App. LEXIS 206 (1995), the court affirmed the award of custody to the father in a divorce action despite evidence that the mother was the primary caretaker and the father was convicted of domestic assault against her.

⁶ Nass. employs domestic violence advocates in their regional offices. Michigan has developed a separate track of family preservation services that work closely with the state's domestic violence shelters and innovative programs for "dual" victims (mother and child) have been initiated in New Haven, Ct., Dayton, Ohio and in the state of Washington.

(). As importantly, even assuming appropriate training, CPS, law guardians, other child or family-oriented professionals, filter the information they receive about domestic violence through the relatively narrow child-focused missions for which they are publicly accountable. The result is that, when domestic violence and child abuse occur in the same context, the overriding issue remains the danger the battering poses to children and whether the mother is capable of buffering the threats posed (). If the child has not been physically harmed, cases are typically closed and the mother's predicament minimized, whatever the overall level of violence or coercion in the home ().⁷ Where a risk to the child is identified with domestic violence, the emphasis remains on placement of the children rather than support for "dual victims."⁸ CPS workers routinely use their acquired knowledge of domestic violence to require mothers to separate from their abusive partners or find other means to end the violence as a condition for keeping her children while courts generally support petitions to place these children or terminate parental rights when battered mothers fail to comply with

⁷ But cf. *Courtney v. Courtney*, 60 LW 2484, February 11, 1992 where the West Virginia Court of Appeals held that a child can recover damages for severe emotional distress, in the absence of physical injury to him, as a result of the child witnessing the father's verbal and physical abuse of the mother.

⁸. Despite judicial notice of domestic violence, the same standard is still used on the civil side to determine whether a man who has battered his partner should get custody or visitation of his children. The fact that O.J. Simpson had not hit his children was the strongest argument he had for custody in his suit against the parents of his murdered ex-wife Nicole Brown.

these 'contracts.'⁹ Intervention focuses on 'mothers' even when they do not know about the abuse or are absent when the abuse occurs.¹⁰

Gender bias shapes the entire spectrum of research, writing and intervention in the child abuse field. Despite compelling evidence that fathers or father surrogates are responsible for the vast majority of serious child assaults and homicides, for example, males are virtually invisible to researchers and practitioners in child protection, at least until there is a serious injury or death().¹¹

⁹ Ironically, child-savers at the turn-of-the-century routinely saw violence against women and children as part of a single pattern flowing from the power of the abusive male and recommended his arrest or removal from the home (Gordon, 19). But by the 1920's, abuse had been "pathologized," i.e. turned from a male crime into a female "sickness," and re-educating mothers and/or removing children had become the order of the day. In the 1960's, when the states assumed responsibility for child protection, domestic violence had all but disappeared as a concern. In the Nussbaum case, for instance, CPS investigators responding to a report of possible child abuse by school personnel found Lisa safe, though they noted without further comment "a dark figure huddled in the corner" of the Steinberg apartment, i.e. Hedda Nussbaum ().

¹⁰. See Marie Ashe and Naomi Cahn, Child abuse: a problem from feminist theory. In Fineman and Mykitiuk. supra nota p.181-184. Prosecutors are given broad discretion criminal cases involving child protection by statutes such as the one in the District of Columbia where an abused child is defined as: a child whose parent, guardian or custodian inflicts or fails to make reasonable efforts to prevent the infliction of physical or mental injury upon the child. (DC Code Ann §16-2301 (23) (Supp. 1990)

¹¹. The exception is child sexual abuse (CSA), a specialized subarea in CPS. In the 1970's, under pressure from Rape Crisis Programs, CPS acknowledged that fathers and father-surrogates were the primary offenders in CSA, not strangers. Importantly, like CSA, woman battering is a power crime, is highly gendered (i.e. the typical perpetrator is a male, the typical victim is female), both involve extreme levels of manipulation, and the typology of the sexual abuse

There is no evidence that this situation has changed since the early 1980's, when Martin's (1983) review of the child abuse literature uncovered only two individual case reports about males. In New York, Connecticut and other states, child abuse cases are classified under the mother's name even if she is deceased. Amazing as it may seem given the link of battering to child abuse, apart from therapeutically focused interventions for men who commit child sexual abuse, there are virtually no programs in the U.S. for male perpetrators of child abuse. Throughout the field, "parents" is used as a euphemism for "moms" and typical recommendations involve parenting services for the mother, irregardless of who is hurting or threatening the child.¹²

Gender bias extends to how cases involving children are adjudicated. When they force their partners to chose between their own submission and subjecting their children to risk--an example of the dilemmas battered mothers face-- batterers exploit legal expectations that women will place their children's well-being before their own.¹³ Statutes like the one used to prosecute Lavonne

perpetrator closely resembles the typology of the batterer. Although research has yet to establish the link, it is likely that CSA, like child abuse generally, often falls on a continuum that begins with coercive control over the mother.

¹² A marked exception is a program for abusive fathers run by the Victim Services Agency in New York City.

¹³ The experience of Terry Traficonda is hardly an isolated one. That his threat should be taken seriously is suggests by Johnny Satterwhite, a 37 year old millworker from Laurens, South Carolina who shot his son and 3 step-children after his wife of 15 years finally left him. He then called to tell his wife he had a "package" for her.

Lazarra define an abusing parent as one who "allows to be created a substantial risk of physical injury to the child"(), theoretically applying equally to men and women. But, the general impression is that they are "gendered," i.e. used almost exclusively against women¹⁴.¹⁵() Battered mothers are held to the standard of strict liability simply because they are aware of the child's abuse. In hundreds of jurisdictions, women are regularly prosecuted for "allowing" a child to become a co-victim during a domestic violence assault on themselves.¹⁶ In the lexicon of child protection, if a man

¹⁴ A recent Connecticut case is instructive. Santos Miranda, moved in with his girlfriend and her two children in September 1992. Four months later, he called 911 when his girlfriend's 4-month-old daughter was choking on milk. At the hospital, it was discovered the baby had broken ribs, two skull fractures and other injuries. Miranda's girlfriend was sentenced to 7 years in prison under a plea deal. The trial court found that Miranda had a responsibility to protect the children from abuse and he received a 10 year sentence for risk-of-injury and a 30-year prison sentence on six counts of assault in the first degree. But the state Appellate Court threw out the assault charges and sentence concluding that Miranda's constitutional rights to due process had been violated since "he couldn't be expected to know he was violating the law when he failed to protect the victim, secure medical attention for her or to report the situation to authorities."

¹⁵. An important exception is the Honorable Arnold Hauser, a judge in Fairfield County Superior Court in Connecticut. Judge Hauser routinely insists that, if a child is present when a batterer assaults his partner, he be charged with "risk of injury" as well as "domestic violence."

¹⁶ This action is based partly on the fact that state statutes criminalize omissions: only 12 states require an overt act to constitute child abuse ("commission statutes"). And only three states (Minnesota, Iowa and Oklahoma) have statutorily adapted an affirmative defense to the charge of failure to protect a child, based on the parent's reasonable fear of severe injury to him-or-herself or to the child (E. Pualani Enos, Prosecuting battered mothers: state laws' failure to protect battered women and their children, 19 Hav Women's

harms the child, this is because the mother is not present when the child returns from school, because adults other than the mother care for the child when ill, because she made unsatisfactory care arrangements when she is working or because she has become involved with abusive men (Garbarino & Sherman, 1980; Robertson & Juritz, 1979).¹⁷ In Connecticut, where "live-in" boyfriends who were also battering the mother were responsible for 8 of 17 child homicides in a recent yearⁱ, the Attorney General is only one of many who have asked the legislature to extend the definition of child abuse to include domestic violence and to impose tougher penalties on mothers who "allow" their partners to hurt their children (). Implicit in this reasoning are poorly supported psychological theories of women's distinctive character and/or of mother-child bonding which ideologically bolster normative views of women's appropriate role. In addition to biasing professional assessments of children in cases involving domestic violence, these attitudes may shape a courtroom atmosphere in which the existential dilemmas confronted by women like Lavonne Lazarra or Hedda Nussbaum carry little weight.

L. J. 229, 1996.

¹⁷. This approach characterizes England as well. In a London survey, Moore and Day (1979) are explicit"

In the 20 cases where the father or step-father had hit the child, the following pattern emerged...In 7 of these cases, the mother's behavior acted as a trigger for the assault. Either she had provoked her husband in some way and then made sure--perhaps by going out--that the child got the full weight of the anger produced, or she had complained to her husband about the child's behavior (sometimes, perhaps, to take the spotlight off herself in an explosive situation). (quoted by Martin 1983, p.300)

The Battered Woman's Defense

At present, whether the case is civil or criminal, legal representations of battered women are constructed to show that physical abuse has elicited specific psychological consequences, usually summarized as "battered woman's syndrome" (Walker, 1979)¹⁸. This "traumatization model" offers a diminished standard of liability in failure to protect and other criminal cases if one or both of two conditions are met: the domestic violence was severe enough to prevent a "normal" mother from acting on her children's behalf and/or so traumatized the woman that she was rendered incapable of acting on her own or her children's behalf by battered woman's syndrome, PTSD or a similar syndrome.

The the seriousness of assault is typically supported by evidence of injury, police reports, medical records or personal testimony using a 'calculus of harms:' the more severe the injury, the worse the battering. Evidence of psychological victimization, meanwhile, may be offered through expert testimony, test results, or testimony from treating counsellors.¹⁹ In its classic formulation

¹⁸ Alternate frames include "revised battered woman syndrome" (Dutton) "post-traumatic stress disorder" () or "complex post-traumatic stress disorder," (Hermann)

¹⁹ States have used different criteria to determine who qualifies as an expert on battering and what types of testimony they may offer (). Although a broader range of professionals--including shelter staff-- may qualify if testimony is limited to general facets of the syndrome rather than a specific mental health assessment of battered woman's syndrome, as a general rule, the witness should derive their expertise of domestic violence from specialized training or case exposure.

by psychologist Lenore Walker (1979;1989), the battered woman's syndrome consists of two primary components: the 'cycle of violence' and 'learned helplessness.' According to Walker, domestic violence passes through repeated cycles in which a period of tension buildup is followed by an explosive episode of abuse and then by a period when the batterer apologizes, promises to reform, and begs for forgiveness. In this "honeymoon phase," a battered woman may drop charges, reverse earlier testimony, misrepresent the source of her injuries to helpers or authorities and, most important, decide to stay in the abusive relationship. As the cycle is repeated, the victim develops a form of depression known as 'learned helplessness:' subjected to repeated acts of severe violence, she 'learns' there is no escape, shifts her attention to sheer survival, and suffers sustained feelings of helplessness that lead her to exaggerate her partner's power and to resist or refuse help even when it is offered. Walker's work rests on an extremely weak empirical foundation and has been the target of increasing criticism (Downs, 1996), particularly since her service to the defense in the O.J. Simpson cases. But if the battered woman's syndrome and is no longer universally accepted as the sole model for understanding domestic violence by experts in the field, it has been enshrined as the mainstay of how battered women are represented in court in numerous appellate decisions.

Domestic Violence and Child Abuse

The same **traumatization model** has been applied to harms

suffered by children exposed to domestic violence or when battered women harm their children or allow them to be harmed(). The calculus of physical harms suffered by the mother provides a convenient gauge for how to weigh the children's risk as well as to balance it against the mother's culpability when children are also hurt. Learned helplessness has also been used to explain why a mother delays reporting child abuse or fails to seek help for her child as well for herself().

The literature on children emphasizes three sources of risk in domestic violence situations: direct physical abuse, witnessing partner violence, and modelling or what is sometimes called 'the intergenerational transmission of abuse.'" (Jaffe, Stark, Edelson, etc.).²⁰

Children are co-victims of deliberate and/or inadvertent violence in an estimated 17% of domestic violence episodes, though the extent of injury in these instances is unclear.²¹²² Extrapolating

²⁰ Also see **Rohan v. Rohan** 623 N.Y.S.2d 390 (1995) where the Appellate Division overturned a family court's award of custody to the father, holding that father's acts of physical abuse should have been accorded significant weight because such behavior demonstrates his unfitness to be a parent and provide the child with moral and intelligent guidance. The court was concerned the child might become a victim of his father's abuse or may learn to become an abuser himself.

²¹ The data on how domestic violence affects children is generally of very poor quality and almost always based on second hand sources such as population surveys with adults, adult record reviews, police files, interviews with mothers in shelters and child protective service reports. There are only a few control studies which compare outcomes among children exposed and not exposed to domestic violence and none of these consider the differential effects of nonphysical strategies of coercion. There are no longitudinal studies tracking the

from the estimated prevalence of woman battering to to how many children are at risk at a given time suggests why we can confidently identify domestic violence as the single most common context for child abuse.²³ A Yale study (Stark & Flitcraft, 1986) also revealed that, in the typical case, domestic violence precedes the onset of child abuse and the male partner is abusing both mother and child(). Although male partners are responsible for the vast majority of child homicides, battered women are more likely than nonbattered women to abuse their children as well().

Virtually all children of abused partners are exposed to the ongoing stress of witnessing physical abuse, the widely documented second source of children's risk in battering relationships (). It remains unclear whether witnessing violence against their mother causes more psychological damage to children than actually suffering physical abuse. What research does show is that witnessing is associated with low self-esteem in girls, aggression and behavioral problems in boys and girls and reduced social competence, depression and anxiety. Reported emotional and psychological disturbances

unique effects of domestic violence (or coercive control) over time.

²² In an early study of 100 battered women in a British shelter, 54 of the women charged the husband had extended the violence to the children and 37 mothers admitted that they were discharging frustration on their offspring. (Gayford, 1975).

²³ A study at Yale-New Haven Hospital revealed domestic violence as the background in 45% of all child abuse cases, a finding that has been replicated in Boston (). Meanwhile, studies of the CPS records in New York City suggest that battering is present in 60 percent of these cases ().

suffered by children whose mothers are abused by their partners include feelings of helplessness, powerlessness, fragmentation, depression, anger and anxiety. Problems differ depending on the age and developmental stage at which witnessing occurs ().²⁴ Children exposed to severe and/or ongoing violence may evidence trauma-related syndromes or attempt to salve their sense of impotence with denial that any abuse has occurrences. Importantly, many of these problems abate after a woman and her children enter a shelter for battered women or are offered ongoing and genuine safety from the batterer().

Modelling is the third frequently identified source of risk to children whose mothers are battered. Perhaps as many as a third of the children who are abused or exposed to abuse in the context of domestic assault become abusive adults (). In the shorter term, according to longitudinal research by Cathy Spatz Widom (1989), abused children are also more likely than nonabused children to

²⁴Preschool children in particular are frightened and sometimes terrified, are almost always confused by the violence, and express their insecurity through clinging, crying, nervousness and a constant vigilance over where their mothers are. They display a range of somatic problems including insomnia and other sleep disorders, eating disorders, bed-wetting, ulcers and chronic colds. Preschool children have also been found to suffer from a failure to thrive, developmental delays and socialization deficits. By contrast, adolescent witnesses may become runaways, act out sexually or with violence, or, as in several instances in my caseload, transfer their fear of the batterer to their mother (because she 'causes' the problem) and "identify with the aggressor", e.g. by adapting his view of their mother, seeking his protection or by playing the "good child" to magically protect themselves or their mother from abuse.

become "delinquent" as teens, though differences are small and the progression is by no means automatic. Indeed, the belief that intergenerational transmission is the primary cause of adult violence remains widespread despite two well established facts: the vast majority of abused children (at least 70%) do not become violent adults and the vast majority of men who batter their partners (80% or more) were neither abused or exposed to abuse as children ().

The Limits of a Traumatization Model

Major weaknesses of legal strategies based solely on traumatization models have become apparent in both conventional domestic violence cases and in those involving children.

To start, traumatization models greatly exaggerate the extent to which domestic violence renders victims passive or helpless and so incapable of making rational choices to protect themselves and their children. The problem is magnified when 'leaving' an abusive relationship or failing to report the problem to authorities is used as a litmus test for the victim's protective capacity, autonomy or even her 'sanity.' Courts (as well as CPS) have interpreted evidence that battered women suffer BWS or PTSD to explain why they fail to leave the abusive relationship--and will return to the abuser in the future--why they fail to report child abuse or otherwise collude in harm to their children (). Additionally, the concept of learned helplessness has been used to justify placement of her children ().

A single case example must suffice. J.B. Wilson beat and tried

to sexually abuse his daughter.ⁱⁱ On the first occasion, the mother, Mary Wilson, reported the abuse to the appropriate agency, but she did so only after a delay of several days, because she could not get away from J.B. Wilson. On another occasion, when she interceded, she was beaten and threatened with a knife. Nevertheless, the West Virginia trial court found that Mary Wilson failed to protect her children by failing to keep J.B. Wilson away and by not separating from him. Her perceived inability to break from the pattern of abuse was described by the court specifically in terms of Walker's theory. Its decision read, in part:

Men who abuse their wives classically follow that pattern and the family follows that pattern. A man beats his wife, makes promises and they kiss and make up, and there is a period psychologists call 'the honeymoon.' At some point following the honeymoon, there is a cycle of abuse and the cycle starts over again.

Believing that Mary W. was suffering BWS, the court concluded she would continue to reconcile with her abusive husband, thereby further endangering her children, and placed the children in foster care. Fortunately, the West Virginia Supreme Court overturned the case on appeal ().

The equation of women's failure to separate and to report with their 'helplessness' is equally problematic. In fact, most battered women separate from their partners on multiple occasions, hoping against the odds that this will ameliorate the situation. More

important is mounting evidence that formal helping encounters are of limited use, that the risk to women remains unchanged or even escalates when they leave their abusive partners, and that women who reject formal protections often utilize informal resources quite effectively (). That the offender's continued access to his partner is the issue, not her dependence, is highlighted by the fact that 75% of abuse occurs when women are single, separated or divorced. The picture of battered women as helpless obscures the nuances of rational choice involved in thousands of relationships where victims calculate the risks involved in reporting, leaving or staying and select what they believe to be the best option (and often the safest for themselves and their children), a situation I have called "control in the context of no control" ().

The emphasis on severe violence in the traumatization model contributes to the picture of 'women who stay' as irrational or helpless. In fact, while many battered women are subjected to periodic explosions of severe assault, the vast majority of cases involve routine, relatively minor force (pushing, shoving, grabbing, holding, slapping and the like) that is insufficient to elicit the symptoms of traumatic disorders, even when the intimidating effects of chronic, low-level abuse are considered. In all probability only a small percentage of battered women suffer trauma-induced syndromes.

The reliance on traumatization models can effectively deny a battered woman's defense to women who have not experienced

life-threatening violence, the cycle of violence, learned helplessness or other post-traumatic reactions. In New Jersey, for example, a woman must have experienced the 'cycle of violence' at least twice to qualify as a battered woman on the civil side²⁵ () Conforming to the prevailing stereotype of battered women as dependent, passive and helpless is even more difficult if victims have employed violence themselves and or belong to a group jurors are likely to stereotype as innately "aggressive" (e.g. African-Americans, hispanics).

A related set of problems arises because BWS, PTSD and other trauma induced reactions are widely understood as mental health problems. At best, an ecologically minded expert will describe the syndrome as a time-limited adaptation which any normal person would develop if exposed to similar oppression. But the majority view, reflected in the description of PTSD in DSM IV, is that post-traumatic syndromes are chronic psychiatric dysfunctions whose symptoms include emotional, perceptual and behavioral problems that can undermine good parenting or an accurate presentation of events().

From Domestic Violence to Coercive Control

Given the absence of empirical evidence supporting

²⁵ In a recent Connecticut case, my client alleged that her former husband had extended the physical abuse during the marriage through numerous strategems designed to constrain and control her afterwards, offering extensive documentation to support her claims. Testifying for the husband (though without interviewing either party), Dr. Walker argued that, since my client was representing herself in the case, she obviously lacked the learned helplessness essential to proof of battering.

traumatization models of woman battering, the pragmatic problems they raise for legal strategy suggests the need for an alternative representational strategy.

The types of cases involving battered mothers and children differ markedly. Like Hedda, the mother (and, very occasionally, the father as well) may be charged because s/he failed to protect from harm someone for whom s/he has legal responsibility. As in Lavonne's case, the battered mother may have hurt the child directly. Or the mother may attempt to protect her child and be seriously hurt or killed as a consequence. Illustrating this last circumstance is the following sketch of a wrongful death suit against the city of Waterford, Connecticut in which I was involved.

On the evening of June 3rd, 1989, Philip Traficonda chased his wife

Terry across their yard to a neighbor's house, where she took refuge with their infant son. He had been drinking heavily all afternoon. Philip started back home, changed his mind, then turned and approached the modified mobile home to which his wife had escaped. He peeked in several windows, walked around the house once, then burst through the screen door into the neighbor's kitchen. "Get home," he commanded. When she sat still, he grabbed their son from her arms, carried the boy back across the yard, got into his pickup truck and peeled out of the driveway. Terry called "911." She told the dispatch operator her husband had "kidnapped" their child, was drunk, driving at a dangerous rate of speed, and that she wanted police to return

the child. The operator sent two police officers to the address, but continued to question Terry about her relationship with Philip. During this conversation, Philip Traficonda returned, having just driven a short distance, and took the child into the house. Fearing he might hurt their son, Terry suddenly became "hysterical" and begged the operator to recall the police. "If they come, he'll kill me," Terry reportedly said, more than once. Whatever her exact words, dispatch now instructed the police officers they were no longer needed. Terry ended the call and returned to her house. Two hours later, at 2 am, she was fatally shot in the head. She was found on the couch, naked from the waist down.

At the trial, Philip Traficonda claimed he and his wife were watching a film about hunting, Terry asked how it was done, he had shown her the shot-gun and it had gone off accidentally. In addition to two bullet wounds, the coroner's report identified numerous bruises on Terry's arms, legs and back. Nick Traficonda was convicted of murder and sentenced to life in prison. However, during the sentencing, the judge lectured Terry in absentia for "staying with this brute so long."

Different strategies may be required depending on the client, the acts alleged or the type of proceeding involved. Despite these differences, three common dynamics are shared in most dual victim cases: "coercive control; "the battered mother's dilemma," and "tangential spouse abuse."

Coercive control refers to the overall course of conduct batterers use to subjugate their partners and includes, at a minimum, strategies of domestic violence, isolation, intimidation and control. In marked contrast to cases involving simple domestic violence, where the degree of physical assault, fighting and associated fears and injuries are the primary issues, coercive control strategies infringe on a range of personal liberties and can induce a murderous rage or, alternately, a hostage-like state of material and psychological dependence. Even where physical abuse is frequent and severe, as it was in Lavonne's relationship with Miguel Sebastian, isolation, intimidation and control may be the most salient issue for the victim and offer the best explanation for her behavior. Coercive control may disable a woman's capacity to mother, contributing to neglect as well as abuse. Additionally, it highlights the need to look at the overall level of power and control in a relationship to assess children's risk, not merely at physical abuse.

The battered mother's dilemma, one consequence of coercive control, refers to the choice many victims are forced to make between their own safety and the safety of their children. While the offending partner is the major source of these dilemmas, they are often reproduced and extended by the agencies to which the victim turns for help, particularly those responsible for child protection. A dilemma may be brought into sharp focus by a particular event--as it was on the night of the Traficonda homicide. Typically, however, it describes an ongoing dynamic in the abusive relationship where

it may be confounded by alternating feelings of dependence, love, hope (that the relationship will work, e.g.) and fear. In most (though not all) cases where a battered mother decides to hurt her child or allow her child to be hurt, she perceives the alternative courses of action as equally or even more dangerous to herself or the child. In responding to the 'battered mother's dilemma, the victim attempts to preserve her rationality in a world where choices have been severely constrained.

Finally, **tangential spouse abuse** identifies the harm threatened or inflicted on children as an extension of the strategies of coercive control directed at their mother, e.g. as spouse abuse by means of child abuse. Contextualizing the child's risk as a function of the mother's allows for global assessments (e.g. where the risk to either is determined by the overall pattern of entrapment) and helps the court link (or understand why a mother links) protective strategies for herself and her child into a single safety plan.

The alternative narrative built from these components reframes woman battering from the standpoint of its survivors as a course of oppressive conduct calculated to dominate them (coercive control), limit their options by playing their safety off against their child's (the battered woman's dilemma), and further hurt and control them by extending coercive control to children (tangential spouse abuse). This framework subdivides what is commonly called domestic violence into cases where hitting or fighting by either or both parties is the primary dynamic and risk factor for children ("simple domestic

violence"), and true battering. True battering subordinates women to an alien will by violating their physical integrity ("domestic violence"), denying them respect or autonomy ("intimidation"), depriving them of social connectedness ("isolation") and appropriating or denying them access to the resources required for personhood and citizenship ("control") others, including their children.²⁶ Taken together, these strategies make woman battering a liberty crime that is closer in its dynamics and effects to indentured servitude and hostage taking than to assault and objectively disables a woman's capacity to effectively protect herself or others in her charge without resort to acts that fall beyond the pale of what our community can or should tolerate. While true battering can most assuredly have devastating and long-lasting psychological effects, its most dramatic consequence is that the victim is forced to survive in a universe where choice is constrained by the objective denial of basic rights and resources. This emphasis stands in marked contrast to the **traumatization model** because it assumes that the deprivation of liberty (a situation called "entrapment") is the source of women's vulnerability to escalating violence, to the range of psychological and behavioral problems identified disproportionately among battered women, and to the harm of her

²⁶ The pattern of coercive control evident in true battering situations appears to be gender specific. At present, there are no reports in the literature of any substantial subpopulation of women who isolate, intimidate, control and physically abuse their partners or of men who suffer the complex profile of physical, psychological and behavioral problems associated with true battering.

children. In place of a woman suffering a 'learned helplessness' that distorts her perception, the coercive control model presents the victim as a rational decision-maker (indeed, often hyper-rational) faced with a devil's choice in which all alternative courses of action may have disastrous consequences. Recognizing that the child abuse in battering situations is really 'tangential spouse abuse' clearly identifies accountability with the offender, an issue which the syndrome defense skirts.

Analysis of the Lazarra will illustrate how an emphasis on coercive control reshapes our approach where children are involved. Currently, dual victim cases typically hinge on the narrow evidentiary issue of whether a child has also been abused or exposed to physical abuse and by whom ²⁷. This approach often penalizes battered women because domestic violence may be deemed irrelevant to custodial assignment or because, where the less tangible facets of coercion are invisible, a mother's behavior (or the child's fear) may seem "exaggerated" or inexplicable given little or no documented instances of severe abuse. ²⁸.²⁹

²⁷ See Whiteman v. Whiteman op. cit

²⁸In a recent custody case in which I assessed the mother, for instance, an 8 year old boy was arrested, handcuffed and taken to a shelter for homeless and delinquent youth until he agreed to cooperate with court orders to visit his father. Since the couple had been separated for over a year, the court appointed psychologist concluded that the mother had instilled an extreme fear of the father in her boy, causing his "parental alienation syndrome." She recommended giving custody to the father. I was prepared to testify that the mother's fear was a realistic response to a range of intimidating and coercive acts by her former husband, that these were as much a part of his "battering" behavior as his physical assaults during the marriage, and that these

A Failure to Protect? State of Connecticut vs. Lavonne Lazarra

My preconceptions of Lavonne Lazarra left me unprepared for the tall, striking, impeccably dressed and articulate 27 year old woman who was waiting at the Women's Center in the working class valley town of Shelton. Like me, she brought negative expectations to the encounter.

Lazarra: My therapist holds you in very high esteem. To be honest, I thought "another psycho guy." I had a really bad outlook after dealing with Dr. Johnson.

During her court ordered evaluation at the Yale Child Study Center in New Haven several weeks earlier, the psychiatrist had refused to interview Lavonne unless Miguel Sabastian was also in the room. Her excited description of the encounter revealed a deep-seated anger at professionals (could this have been directed at her children?) and a surprising level of critical judgement.

acts of coercive control affected the boy as well as his mother. I might have broadened the judge's understanding of domestic violence. But, it was equally likely, the woman's attorney felt, that the court would interpret the mother's testimony as a sign that she was uncooperative and vindictive, thereby providing grounds for the psychologist's naive conclusion.

²⁹ In several divorce cases in which I have been involved, judges have awarded custody to the battering husband based on expert psychological testimony that the child suffered "parental alienation syndrome" (PAS) as a result if the mother's hostility towards her ex. Evidence of PAS was that the child's fear of the father seemed exaggerated given the incidents of physical abuse witnessed. In fact, the children's fear in these cases, like the mother's, reflected nonviolent dimensions of the battering not considered relevant by the court.

Lazarra: He said Miguel would be handcuffed to the chair. I said "I don't care if he's handcuffed to the wall." And I told him in no uncertain terms that I didn't even want to be in the same building with this man. It was already court-ordered that it be separate. I made him call my attorney...I spoke to him on the phone...and he told him "they are to meet separately." So, the psychiatrist changed his tone.

Lavonne was anxious that Miguel would return--an accurate fear as it turned out-- and extremely upset about the loss of her children. But there was no symptoms of depression, delusion or other psychiatric disorder. The mystery was how this strong-willed 27 year old woman could have deteriorated to the point of stealing water from neighbors, abusing Maria, beating her son Danny with a belt or abandoning a one year old in a basement to which there was no access from the house.

(a) **Family Background**

The youngest of three children, Lavonne Lazarra no longer saw her father, an alcoholic, whom she remembers telling her "I had my son and daughter. I didn't need you." Her mother still lives in the area, but their relationship is also tense. Lavonne left home at 14, when her parents moved "yet again," this time out of town, and completed high school while living with her boyfriend's family. She remains close to this family despite the fact that the boyfriend raped her and persisted in forcing himself on her sexually. She completed school without telling the family what had happened, then moved out.

At 18, when she met Joe, Danny's father, she was living independently in a condo, had a car, was working at a bank in the affluent town of Westport, earning \$400 a week, and caring for her sister's daughter. The couple discussed marriage, Joe put a deposit on a ring, then he walked out, in January, 1985. Lavonne learned she was pregnant, though she was on birth control pills. Shortly thereafter, apparently because of the pregnancy, she lost her job and moved back home. She decided to have the baby because she was opposed to abortion on religious grounds. But this wasn't the only basis for the decision.

Lavonne: Religion was part of it. That and I thought if I don't have Joe, at least I have a part of Joe. And when I told Joe, he said well that's your problem. And I said I wasn't asking anything of you. I just wanted you to know you're going to be a father whether you're happy with it or not.

Lavonne suffered from toxemia and her son was born two months premature.

Lavonne's mother and sister worked at a diner where she frequently brought Danny in the evenings. Across the street was a rooming house where illegal Mexican workers boarded. Thousands of miles from their homes and families, the young men gravitated naturally to the already bilingual mother. Stephanie was born two years after Danny, in 1987, the child of an illegal immigrant Lavonne met at the diner. Lavonne insisted this pregnancy was also accidental, since she was using the sponge for birth-control.

Stephanie was also premature and suffered from colic and a milk allergy that made her difficult to train and moody. Her father returned to Mexico when she was 3.

When Lavonne became pregnant yet again, this time with a younger man, his older brother immediately ordered him to return to Mexico, which he did. He returned shortly after his daughter's birth and gave her some financial support. The girl was named Katerina.

When Lavonne met David, Candy's father, her own father had moved out and she and her children were living with her mother (who worked nights). Lavonne and David dated for some time, lived together, discussed marriage and planned to have a baby. Based on her prior experience, Lavonne insisted that David inform her in advance if he had to return home. However, shortly after Lavonne became pregnant, in February of 1991, David left suddenly for Mexico. Lavonne later learned that he had gone home to break a prior engagement which he kept from her. When he left, however, she felt abandoned and angry.

In retrospect, it seems ironic that what attracted Lavonne most about these men was their gentleness and their interest in children. Undoubtedly the chaos in her own family of origin affected her interest in their "family orientation." However, she did not live with either Danny or Stephanie's fathers.

Stark: So when you say 'family,' what do you have in mind?

Lavonne: I guess the family I was trying to create. Trying to establish. And that's the first thing that started me talking to most of these people is they started talking to my children and doing

things for the children.

An element of rebellion against her father also prompted Lavonne's relationships with the Mexican men. Her father had embraced Joe as a "perfect Italian boy,"--even the beer that was always in his hand felt familiar-- but was openly contemptuous of Hispanics and blacks, the men to whom Lavonne was subsequently drawn. In addition, Lavonne relies heavily on external cues to establish trust (the 'wedding ring' she and Joe picked out; the 'words of love' spoken by the men in her life). This too reflects her home environment. Lavonne's father was a quiet drunk and she has no memory of his being rowdy or violent. Nevertheless, with her mother, "it was either absolute silence or I'm going to sit here and yell at you." Neither parent was affectionate (indeed, her father openly rejected her) and from an early age she hungered for signs that she was loved. It is also common for children of alcoholics to become hypersensitive to external cues in order to "keep the lid on."

Nothing in her background explains what happened in Lavonne's relationship with Miguel, however. Lavonne's need for affection from men was clearly aggravated by the self-doubts evoked by her being a single woman with a premade family. But if she lacked a certain self-esteem, this must be balanced against the capacity for self-care evident in her determination to finish school and other signs of independence against formidable odds. Indeed, Lavonne seemed to have chosen boyfriends whom she could dominate, at least emotionally, in

obvious contrast to her tumultuous relationship with her father. In any case, Lavonne cannot be held accountable for the difficulty men have with commitment, or for structural arrangements that make it difficult at best for illegal immigrants to remain here permanently. As Lavonne put it, "unfortunately, the only man who stuck around was the one I wanted to get rid of."

Apart from having been raped by her teenage boyfriend, up until she met Miguel, Lavonne had not been struck by a man. Admittedly, she treated her children as she had seen the children in her family network treated, using physical punishment to discipline her older children, including spanking and an occasional slap. She "over-reacted" when she had difficulty toilet training Stephanie, yelling at her a good deal, and was apparently unaware of the physical problems created by her allergy. Although she wishes she had alternative models of control available to her, there is no evidence of her having physically abused or neglected her children prior to meeting Miguel. Conversely, although Daniel reported having once been slapped by David, an incident Lavonne cannot confirm, there is no evidence that the children were hit or otherwise mistreated by any of the men whom Lavonne dated. To the contrary, the men in her life treated the children more kindly than they did her.

The Relationship with Miguel

Before David left for Mexico, he introduced Lavonne to his cousin, Miguel, who began working at the diner. David asked Lavonne to teach Miguel English and they met almost daily. When David left,

Miguel spent time with the children, attended birthing classes, and gave Lavonne general support in a difficult time. She was attracted to Miguel. When David returned in April, 1991, she kept her distance, not wanting to be hurt again. David began "harassing" Lavonne, making threatening phone calls and warning he would come for his baby after she was born. Miguel offered to move into Lavonne's house to "protect" her, treating her with "respect" and initially sleeping on the living room couch. He was, she reports, "my knight in shining armor." Shortly afterwards, her "knight" moved into her bedroom.

In terms of the battering, Lavonne's relationship with Miguel can usefully be divided into three phases, each typified by somewhat different dynamics. During the two years they were together, Miguel assaulted Lavonne several hundred times. Because abusive episodes became so common that they form a continuing pattern in her mind, detail is provided only of episodes I believe are particularly significant or typical.

Phase I: The Onset of Abuse April, 1991 - September, 1991.

During the first phase of their relationship, Miguel pressured Lavonne to remain at home and adapt a traditional female role. There was sporadic violence, often without warning, usually accompanied by heavy drinking, followed by apologies and promises to reform.

We have seen that Miguel was initially "respectful" of Lavonne's feelings, particularly her ambivalence about David.

Lavonne: Actually I think I had an instant attraction to him. Because

he did something for me right off. I met him when he first came into the country. It was my birthday and I was upset at David because David wasn't going to spend my birthday with me. And here we were at the check out. Miguel, who I knew didn't have anything to speak of, when he found out it was my birthday, he bought me a rose. Because that's out of custom, because one man doesn't buy another's man's woman a gift.

Miguel's initial suggestions for Lavonne strengthened her belief that he was concerned about her and her family.

Lazarra: David was hassling me and he made suggestions about how to handle it. "You shouldn't really hang around the dinner, it doesn't look good for you and your kids, you should keep them at home....Better to have cooked meals at home, than out at the diner. You'll feel better about yourself if you take care of the house ...and your kids..".

Stark: So he had a real idea of what a traditional woman was like?

Lazarra: Yeah.

Stark: And alot of those things did make sense?

Lazarra: Yeah. And I did feel better. Because the kids and I would be home.

Shortly after they began living together, Miguel suggested that Lavonne change the name of her daughter Katalina to Maria (his grandmother's name), a move which her family opposed. Lavonne now recognizes how this isolated her from friends and her family. At the

time, however, she felt "it made us more like a family."

The first episode of assault occurred several months later. She had asked Miguel not to drink around her and he had agreed to do his drinking at the boarding house where David and the other Mexican men lived. One evening, when Lavonne went to pick Miguel up at the boarding house, David also came down and tried to talk to her. She asked Miguel's permission and he replied "you do what you think is right." Lavonne was 6 months pregnant at the time. But an argument ensued during which Miguel told David "she's mine, she does what I tell her," and ordered Lavonne into the car. Then, Miguel told David "I can do anything to her and she's still mine." He told her to relax and stop crying, then suddenly slapped her across the mouth. Lavonne was shocked. Then, he told Lavonne to kiss him, which she did. On the way home, he broke both the dashboard and the windshield with his fist. Miguel passed out when they arrived home. But the next day Miguel apologized and blamed his behavior on the alcohol. She told him if he hit her again, they were through.

Another incident with David led to a repeat assault by Miguel two weeks later. David called late one night. Although Lavonne did not talk to him, Miguel began to cry, then became furious, slapped Lavonne and then hit her with the back of his hand until she bled. Lavonne called a cab and threw Miguel out of the house.

After only two weeks, Miguel was calling every day, crying, telling her he "made a mistake" and promising not to drink. Lavonne's experience with her brother and uncle, both alcoholics who become

violent when drunk, made Miguel's interpretation of his "loss of control" credible. She believed he was one of the few men who really wanted her. So she allowed him to return.

Within days, pushing, shoving and slapping became routine. The most common context for a fight now involved reports by Miguel that he had been "hassled" at work by David or other Mexicans because of their relationship. He was constantly correcting her behavior and the behavior of the children, explaining after beatings that "if your father had disciplined you and raised you to be a decent woman, you wouldn't be where you are in life today. Somebody has to do it."

Ironically, apart from the abuse, Lavonne felt her life was generally "calm." Danny and Stephanie were in Head Start and Lavonne had only Maria with her during the day. She was not going out "at all" any longer and spent her days cleaning the house and cooking for Miguel. She was treating him "like a king" and "giving him what he wanted before he wanted it," following an exact schedule that he required.

Lavonne and the children were now on AFDC. She would cash her check, turn the money over to Miguel and he would give her money, as he thought appropriate, for food or clothes. In addition to having to account for every penny, she was not permitted to go to the store alone. If he couldn't go with her, her mother would do the shopping for her. She was learning to be a "Senora."³⁰

³⁰ (though it would be several years after they separated, and she married, that he would use this term of respect for her.

During this phase of their relationship, Miguel only hit Lavonne when her mother was out of the house or when she and the children were in bed. Miguel played no role in disciplining the children and never hit them. Nevertheless, Daniel and Stephanie were aware of the fights.

Phase II. The Escalation of Violence and Control September, 1991 - January, 1992.

In September, 1991, Miguel raped Lavonne, 8 months pregnant, shortly after she began spotting. At this point, "fights" (pushing, slapping, etc.) became less common than "beatings" in which Miguel punched, kicked, and whipped Lavonne to "discipline" her. Lavonne's mother, Miguel's friends and the children were now aware of and exposed to Miguel's abuse of Lavonne. Lavonne's methods of disciplining the children did not change. But Miguel attempted to control how the children behaved and directed Lavonne in their discipline. Lavonne grew increasingly depressed, particularly after Candy's birth, became completely isolated from her former friends and family and attempted suicide.

Miguel and Lavonne had sex at least once a day, often two or three times. One night after intercourse, when Lavonne was 7 and a half months pregnant with Candy, she began to bleed. The doctor proscribed sex until after the birth. But several weeks later, Miguel returned from work, demanded sex and, when Lavonne told him "I can't," he raped her, telling her he didn't care what happened to "David's baby." Immediately following the assault, Lavonne experienced

contractions and bleeding. Miguel accompanied her to the hospital, staying with her "even to the bathroom", and attended the birth. This showed, she felt, that "he loved me more than anybody ever had." But, when the doctor handed him a girl "who looks just like his father," he hissed "I'd like to throw her right in the garbage because that's what she is, just like you." Within hours of her returning from the hospital after Candy's birth, Miguel insisted on having sex. From this point on, he simply demanded sex, forcing her if she refused, then assaulting her.

There were still "good times." When Miguel and Lavonne went away for a weekend, they planned to move to Mexico, buy a house and create a "real family," a dream Lavonne held dear.

Violence escalated one evening when Miguel came home, upset because someone had taunted him about Lavonne at work. She was in the process of changing. She knew she would be hit because "his eyes were black." "When he's like that," she says, "once he gets started, he doesn't stop." Although she begged him to "just talk," he pushed her around the bedroom. He punched her and "backhanded" her. Then he did something he would do frequently in the future: he removed his belt and began snapping it in a taunting way. He started off by hitting her lightly with the belt. Then he hit her harder and harder. When she tried to get away, he kicked at her, hitting her in the face, blackening her eye. She fell to the floor and he began to kick her. When her nose started bleeding, he stopped. This incident occurred just one month after Candy's birth.

As a result of this beating, Lavonne had problems with her ear. She saw a doctor who recognized the injury had resulted from a beating, but did not counsel her or otherwise intervene.

At this point, Lavonne stopped responding when she was hit, neither crying nor begging Miguel to stop, both of which had "infuriated" him in the past. Although Miguel always blamed his drinking and promised to stop, Lavonne insists he was abusive whether or not he was drunk. Then, one night, two weeks later, Miguel and his "best friend" returned home drunk and Lavonne served them dinner. When his friend asked why Lavonne had a black eye and was covered with bruises, pointing out that Miguel had everything a Mexican man could want ('she waits on you like a king'), Miguel brutally beat the man, "turning the house into "a holocaust" with blood and broken furniture everywhere. Lavonne intervened to save the man's life and was herself struck. When Miguel realized when he had done, they washed the man up and drove him home. They took him to a doctor several days later.

In November, 1991, when Candy was two months old, Lavonne found out she was again pregnant, this time as the result of a rape. That night, Miguel punched her repeatedly in the stomach, causing her to miscarry. He said the miscarriage was her fault because she aggravated him. He demanded sex immediately after the miscarriage.

Lavonne was now completely isolated from her friends whom Miguel believed were not good for her or else were jealous of what they had. He had gotten her a car for her birthday which she taught him how

to drive and he occasionally drove himself to work. In general, however, she drove him to work, picked him up and drove the children to school, but was not allowed to drive the car alone or for any other purpose. He carefully monitored what she and the children ate, where they went, how they dressed, forcing Lavonne, for example, to only wear dresses, "never pants."

Miguel had started to spank and slap the children. At first they argued about whether this was right, Miguel insisting that since he was their father, he should discipline them. Lavonne soon stopped protesting.

Concerned about Stephanie not having appropriate clothes, the Director of Head Start talked to Lavonne about abuse and warned that it could "overflow" and affect the children. Apparently the discussion was couched in such vague terms, Lavonne was not sure what the Head Start Director was talking about. In any case, her own need for help was not addressed.

Lavonne became increasingly depressed after Candy's birth, sensing she was "trapped" with Miguel and that "there was no way out." One night, when he insisted she drink with him, he put a tattoo of his name on her arm, to show the world she was his "now and always." That night, she felt completely degraded and cut her wrist in a suicide attempt, stopping only when Candy, who was in her room, began to cry. When Miguel saw what she had done, he grabbed for the knife, they struggled, and her hand was cut. He called her crazy and bandaged her up. Looking back, Lavonne realizes that when she attempted to

hurt herself, she was barely aware of the children.

On Christmas day, 1991, Lavonne had Miguel arrested. She had driven him to work, but he needed to take a cab home because the brakes on the car were not working. When he returned, she was leaving to go to her grandmother's house for Christmas dinner with her mother and brother. Her mother and Miguel fought and Miguel threatened Lavonne who knew she would be beaten whether she stayed or left with her family. Then her mother put her in the car, as a way to protect her she realizes now. Miguel tried to follow in her new car, but was drunk and wrecked it. He left the car, then called her to come home, saying he had a knife, threatening suicide and talking about them both dying. Terrified, she called the police and returned home. They arrested him for "evading responsibility" for the accident. But the police also asked Lavonne to accompany Miguel to jail and to court the next day to help translate for him. When he was released, Miguel sent the children to their rooms, turned up the radio and told her "You said you were afraid--I'm going to teach you to be afraid now." He beat her severely, then acted "as if nothing had happened."

Shortly after Christmas, 1991, they moved out of her mother's into a house of their own.

Phase III. January, 1992 - September 1992.

Getting their own place completed the process of isolating Lavonne and her children from potential sources of support. In the new house, Miguel Sabastian exercised total control over Lavonne and beatings with objects and threats with weapons alternated with

physical abuse, including burning her with cigarettes. The birth of Miguel's son proved only a minor interlude in this escalating pattern of assault and intimidation. Meanwhile, Miguel extended his abuse to the children both directly, by slapping, beating, burning and whipping them, and indirectly, by forcing Lavonne to escalate her own disciplinary practices. Afraid that Lavonne might leave or kill him, Miguel ensured that she was never with all the children alone. Meanwhile, Lavonne became less and less able to function as an autonomous adult, neglecting basic household chores, losing state assistance and living for a time without basic comforts. The focus of her life shifted to sheer survival: living like a virtual hostage, every element of her life was oriented towards placating or resisting Miguel, minimizing the hurt he could do to her and the children. Lavonne reached out for help, investigating foster care for Candy for example. She also began to save money to plan their escape.

The beating by Miguel when they returned from court convinced Lavonne that Miguel could easily kill her. She writes:

"After that, I listened to his every command...I shower the children at certain times. I shower when he allows. I go to the bathroom when he allows. I have my hair styled how he wants. I sleep when he wants. Get up when he wants."

While he was at work in the afternoon, she and the children would occasionally visit neighbors who report her being frequently bruised.

Assaults increasingly involved objects and/or weapons and were characterized by behavior that directly threatened Lavonne's life and sanity. Miguel would throw knives at Lavonne and threaten her with a knife. One evening, when he held a knife to her throat, she kned him in the groin. She had pushed him away before, but this was the first time she had physically retaliated against his assaults. Miguel doubled up and cut her throat with the knife. He dropped the knife and she picked it up. He told her "If you're going to use it, make sure I'm down for good."

Miguel put his cigarettes out on Lavonne's hand or arm. He would touch her skin with cigarettes to taunt her because she was only allowed to smoke at his discretion. And he hit her with bottles. The first few times he burned her with cigarettes she fought back. But then she realized that "if he doesn't get a reaction, he doesn't win." She bears scars from these types of assaults.

After she had threatened Miguel with the knife, he became fearful that she might kill him in his sleep or poison him. He insisted that she taste all food first, something his father at taught him. By this time, Miguel had destroyed or disposed of all possessions that in any way reminded him of Lavonne's past.

Miguel was stricter with the children. He was still concerned with what they ate, when they slept and that they took showers. However, he would occasionally hit Daniel, Stephanie and Maria with his belt. In addition, he instructed Lavonne when and how to hit the children. She believed that if she did as she was told, the children

would suffer less than if he hit the children.

While they were living on Chestnut Street, Lavonne would take the children next door after Miguel went to work in the evenings. Her neighbor, who had been abused in her first marriage, frequently saw Lavonne with black eyes, cuts and bruises and understood the situation, though Lavonne was too fearful to talk to her about it. She never saw similar bruises on the children, but knew Lavonne was not allowed to go out. In February, 1992, after a beating, Lavonne ran to her house at 11:30pm, banging on the door to wake her up. But Miguel grabbed her ("tackled") on the lawn and Lavonne left the children with her neighbor while they "talked it out." Neighbors had already complained to DCF and Miguel threatened that the state would take her children if she left him, because she would be seen as "unstable." He also threatened to hurt her family and friends as well as to take the children himself. At this point, Lavonne lived in fear for her life. But she was also afraid that he might kill her or her children if she left.

When Lavonne was five months pregnant, Miguel told her to report David to the police for making harassing phone calls. When Lavonne was talking to the detective, she mentioned David's name. Because of this, when she hung up, Miguel beat her with a wooden board that had metal brackets attached. She still bears the scars on her back from this assault.

Miguel played a game with Lavonne's mind. He would wake her up whenever he pleased. Sometimes he would do this by initiating sex

while she slept. On other occasions, he would place his hand over her face and mouth, so that she would awaken gasping for air. When she awoke, he would feign sleep, so that she would think she was sick or crazy. Or he would just slap her suddenly in her sleep. Eventually, she would only pretend to sleep. As a result, she was constantly fatigued.

When Lavonne was 7 months pregnant, in August, they moved again, Lavonne doing almost all of the physical work. At this point, the house on Chestnut Street in which they had been living was a shambles. The family that rented the house in which they stayed described finding filth everywhere, faucets broken, walls with holes--this from a family whose mother had prided herself in her homemaking skills.

Shortly after they moved, Miguel beat Lavonne so severely she went into labor, 6 and a half weeks early. At the hospital, they gave her medication to control the contractions. She was "covered with bruises," but no one said anything about them. Despite the contractions, he continued to push and hit her.

During the second week in August, Lavonne called a DCF caseworker and asked about foster care, explaining that she wanted to report someone for abuse. Two weeks later, she called the caseworker again, this time saying she wanted to place Candy in foster care because she needed medical help. The caseworker gave Lavonne the number of a foster placement agency. No assistance was offered or further information solicited.

In the summer of 1992, Miguel worked nights. When Lavonne drove him to work, he would insist that the children be left behind to assure she would return home. She knew Danny was too young to watch his sisters, but rationalized that it might be better for the children to stay home than watch her get beaten or be slapped and yelled at themselves in the car. This terrified Lavonne. After Miguelito was born, he would come with them in the car. Lavonne believes this was because he was Miguel's son.

When Miguel came home from work in the morning, he wanted sex. So Lavonne would lie down with him and the children would "nap" or play in their bedrooms. Then she would get up with the children and try to keep them quiet. Sometimes the children would play in the bedroom and he wouldn't mind. But at other times, if they made noise, he would yell at Lavonne or punish her or the children. They would usually play outside.

Miguel would call frequently from work, sometimes several times an hour. Or he would come home suddenly to check on her.

Meals often sent Miguel into a rage. He frequently threw the food in Lavonne's face. On other occasions, if a meal didn't satisfy him, he would put hot chili peppers and lots of salt on the food and force Lavonne to eat it.

When Miguel was sleeping, the children would sometimes come down to the basement with Lavonne and play when she was drying clothes. Lavonne was particularly fearful for Candy whom Miguel regarded as "David's child," because she was the special object of his anger and

because, she felt, she was too young to be hit. So, if Miguel was home, even if he was sleeping, Lavonne made sure that Candy was always with her when she went to the basement.

When she was 8 months pregnant, Miguel tied Lavonne's hands together and raped her. He would have her shower the children two to three times a day. When he came home from work the house had to be spotless. But given Lavonne's state of exhaustion, this was impossible.

Lavonne's attitude towards her abuse changed. She was no longer openly resisting. She was deeply depressed. She told Miguel, "I don't care what you do to me. Just get it over with." This infuriated him even more, she believes, because he wanted "reaction."

When contractions were 4 minutes apart, he demanded sex, she protested and he raped her. When contractions were 2 to 4 minutes apart, Miguel refused to take her to the hospital, apparently wanting to make sure the children stayed with him. Lavonne wanted the children to stay with her mother, but Miguel knew this might give her an opportunity to escape. He said "Let them stay here. I'll know where they are. I'll know where you are." But she insisted.

Once again he accompanied her to the hospital and never let her out of his sight, even going to the bathroom with her. Lavonne's extensive bruises, both recent and old, were obvious.

Stark: Let me ask you this. If when you were in the hospital, a nurse had said to you, "you shouldn't be taking this" or had asked you questions about what was going on at home, do you think you could

have heard this?

Lazarra: I think I could have.

Stark: Because earlier....

Lazarra: At that point, I think I would have. If somebody had said, you know there's a way out, I would have.

There were no questions, however.

When Miguel told Lavonne he wanted yet more children ("three boys and three girls"), she asked to be "fixed."

Miguel had long since stopped apologizing to Lavonne after he beat her. But he would apologize to the children after he beat them.

Miguel's excitement about having a son was shortlived. When she came home from the hospital, Lavonne realized something fundamental had changed in his attitude towards her and that her life was now in grave danger. The change was driven home when he beat her with the 4 day old baby in her arms. Something had also changed in the way he yelled at the children. She determined to get out, but felt Miguel could read her mind.

The children simply tried to stay out of Miguel's way. Maria was particularly fearful and spent hours alone in her bedroom. This was when Lavonne laid the mattress in the basement for Candy. At first, the idea was to provide a place for Candy so she wouldn't crawl on the cement floor while she was doing a wash and the other children were down there with her. Later, however, Lavonne began putting Candy there when Miguel wanted her to, because he wanted her "out of his sight," for instance, or because he didn't want to be disturbed while

he slept, and when she went to pick up Stephanie at the bus and Miguel was in the house. On one occasion, according to Danny, when Miguel had been playing with the children and Candy started crying, "Poppy hit her with the belt." Lavonne confronted Miguel, but he denied it, claiming "you think I'm too rough with her because she's David's daughter." Nevertheless, Lavonne believed Candy was fearful of Miguel and tried to keep them apart.

Just days after Lavonne returned from the hospital, she confronted Miguel about his treatment of the children. "They're not my kids," he told her. It was his day off. They had a fight and Miguel beat Lavonne. That day, because she was afraid Lavonne now realizes, Maria refused to come out of her room. Although Maria had been potty trained for over a year, she had a bowel movement in her pants. Miguel went into the room and yelled "Your bedroom smells." Discovering the reason, he determined to "teach her a lesson," and told Lavonne to undress Maria, clean her up and put her in the shower. Then, he turned the cold water on. Lavonne grabbed Maria out and screamed at Miguel "Are you crazy?" Miguel wouldn't allow Lavonne to dress Maria and started snapping his belt, something he had only done with Lavonne until that point. He hit Maria repeatedly with the belt, until you could see the bumps. Maria said nothing despite the beating and Miguel yelling at her to "say something." This was how Lavonne had come to respond to Miguel's assaults. Finally, Lavonne tried to intervene. At that point, Maria turned to her and said "Mommy, please make him stop. Tell Pappy I'm sorry." Miguel apologized, Lavonne and he argued

and he hit Lavonne.

This fight prompted a neighbor's call to DCF and a worker came to the house to investigate on September 4, 1992. The DCF report notes that Lavonne is "overwhelmed," that the children appeared cared for and that she has a "very supportive ally in her boyfriend." Another DCF case worker, who had visited earlier in the year, made a followup visit several days later, submitting the report excerpted at the beginning of the article. Lavonne repeated that she felt overwhelmed and could not care properly for Candy. To reiterate, the worker noted that Lavonne had difficulty responding to her request to remove Candy from the basement, that Candy was wet and had a bottle with sour milk and described Maria's bedroom as having dirty sheets and smelling of feces. Despite the multiple bruises that were obvious to police later in the day, many of them long-standing, no questions were asked about abuse, no attempts were made to interview Lavonne's "supportive ally" and no protective interventions were recommended for Lavonne or Candy.

On a previous occasion, Danny had taken some scissors out of a drawer and Miguel had beaten him with a belt. A neighbor observed bruises and marks on Danny's arms and legs and reported hearing the children "scream" at night. Danny had already been questioned by another neighbor, whom he told "Miguel gets upset when people ask questions." Miguel had "accidentally" shot Danny with the beebie gun in the rear when he had mistakenly crossed the line of fire. A few days later, on September 10th, Miguel again caught Danny with the

beebee gun. He had been told not to touch it. Miguel was furious. Fearing that he would hit Danny the way he had beaten Maria, Lavonne hit him twice in the back with a belt. Lavonne simply wanted to make it to the weekend, hoping that her mother would give her the money to leave. Miguel took the belt from Lavonne and told her he would show her "the proper way to discipline." He hit Danny repeatedly in the back of the legs. When Lavonne protested and told Miguel to stop, Danny replied "Its ok mommy, I deserve it." Miguel took Danny over near the stove. Then, he placed his hands on the electric burner.

It was the next day that Danny failed to return from school. Lavonne was terrified. Several hours after she was told that Danny would be driven home by the principal, the police arrived with the DCF worker who had visited most recently. Lavonne's first thought was that Danny had been in an accident. The social worker said they were taking her children and she would see them Monday. When the police entered the house, Miguel stuck fast to Lavonne. While she was nursing Miguelito in the bedroom, with a police officer only yards away, Miguel grabbed her hair and told her she had better say all the right things or she'd have worse problems when she was released. The officer passed outside the open door during this incident, but said nothing. Although the officer observed the bruises on Lavonne the police put her next to Miguel in the car. On the way to the station, Miguel reiterated his threats, telling her what to say and threatening her (in spanish) if she did anything else.

When they arrived at the station, the detective showed Lavonne

pictures of the children's injuries, told her she was a terrible mother and that, unless she cooperated, she would never see her children again. One officer observed multiple bruises on Lavonne, including bruises on her face, arms, legs and thighs, and drew the logic conclusion. The children had already told police Miguel beat them. Instead of charging Miguel with these assaults, a detective pounded his fist on the desk and demanded that Lavonne admit Miguel had battered her. The detective then stood, started pacing, and returned to the table and again pounded on the desk. Just before a beating, Miguel also would pound on a table and yell. Lavonne became numb with terror. It was at this point that she admitted to beating the children, insisted she alone was responsible for their discipline, that Miguel was "supportive," and that she had sustained the bruises during childbirth.

Lavonne's "confession" contradicted what the children had told the police, what Miguel had already told the police and what was obvious to detectives who directly observed her physical condition. But she was arrested along with Miguel and both were charged with risk of injury to the children. She was then placed in cell next to Miguel for 72 hours. During this time, he instructed her on how to behave and what to say and threatened to hurt her again if she didn't do as she was told.

From Domestic Violence to Coercive Control

The experience of being battered takes unique meaning from the

particular strategies the batterer employs "behind closed doors." For this reason, a positive outcome requires that finders of fact (judges, jurors, experts and other professionals) "walk in the shoes" of the victim. But how can we garner this level of empathy given the many obstacles that discourage identification with the victim or, conversely, which encourage empathy with a child whose best interests may be defined in direct opposition the mother's?

At first reading, Lavonne's the prevailing statutory emphasis on physical violence seems justified. A calculus of harms could array Miguel's assaults along a continuum of increasing severity, from slaps to cigarette burns, kicking and beating with the board. This emphasis creates several problems, however. Lavonne's experience was that Miguel's abuse was "continuous" ("every day," with "one incident flowing into another") a marked contrast with the statutory emphasis on discrete episodes of violence. In this respect, Lavonne's experience confirms interview and crime data showing that in an estimated 75% of all cases, victims accumulate an "adult trauma history," i.e. the abuse continues after an initial episode, and that approximately 40 percent of these cases involve "serial" abuse, where an offender assaults his partner once a week or more over a considerable period (). The idea that domestic violence is typically ongoing is gradually taking hold in the issuance of permanent restraining orders, increased penalties for second or third offenses, and in the admission of expert testimony on the

"history" of domestic violence in a relationship.³¹ Without a specific crime that involves a course of abusive conduct, however, judges frequently exclude evidence of past abuse as irrelevant to the immediate problem before the court.³²

A second problem involves basing the seriousness of the abuse claimed on the level of violence inflicted and the presence of injury, the equation that currently dominates every decision-point in the legal and criminal justice process. While even a single assault by a partner technically constitutes a domestic violence crime and may harm children present, a justice system desensitized by repeated exposure to serious harms is unlikely to be impressed by the generally

³¹ Since the victim is assumed to be a formally free adult, however, a strong counter-tendency persists to attribute repeat assaults to a woman's psychological propensity to 'stay' rather than to the crime itself or, more immediately, to the failure of the criminal justice system to effectively deny a known abuser continued access to his victim. Whether we focus on the offender's continued access, the victim's psychological state or the actual pattern of criminal conduct has important implications for custodial and protective service decision-making as well as for how defenders and/or victims are charged and defended.

³² In **Zack v. Zack**, 184 Cal App. 3D 409, 229 Cal. Rptr 317 (1986), the California Supreme Court held that when the defendant is charged with a violent crime and had a previous relationship with the victim, prior assaults upon the same victim are admissible when offered to prove disputed issues, such as identity, intent or motive. However, subsequent to **Zack**, the Supreme Court decided **People v. Ewoldt** 27 Cal. Rptr.2d 646 7 Cal. 4th 380, 867 O,2d 757 (1994) holding that evidence of prior offenses had to be sufficiently similar to the charged offense to support the inference that they were part of a common scheme or plan. **People v. Linkenauer** 32 Cal. App. 4th, 1603, 38 Cal. Rptr.2d 868 (1995), the California Supreme Court affirmed the admission of domestic violence evidence against a defendant on trial for the murder of his wife.

low level of abuse that characterizes most battering episodes.³³ Against the imagined background of "real trauma," courts frequently misinterpret the cumulative terror claimed by victims of chronic low-level physical intimidation as "exaggerated" or, worse, an example of their psychological weakness.³⁴

As an expert defense witness in the Lazarra case, the court allowed me to testify in detail about Miguel's frequent and often appalling assaults on Lavonne. Using a "dangerousness assessment" scale to classify the abusive incidents in Lavonne's case, I argued that she had experienced most of the factors that predicted risk for homicide, including serial violence, sexual assault, violence with objects, alcohol abuse, threats to kill, violence in public or against others, and violence during pregnancy. Extending from his initial assault on Lavonne within months of their living together to the day the couple was arrested, Miguel pushed, slapped, punched, choked and kicked Lavonne. He pulled her hair, stomped on her, "beat her up," threw food in her face, and forced fed her "hot" food. He

³³ The combination of low level domestic violence and the episodic focus helps explain why only a minority of incidents result in police calls, only a tiny proportion of calls (certainly fewer than 5%) result in arrest, and why the vast majority of criminal charges are nollied or dropped, even where mandatory arrest policies in place. Ironically, the emphasis on severe violence against women that helped to mobilize public sympathy has also helped turn the average case of woman battering into a second class misdemeanor, virtually guaranteeing that most offenders will have continued access to their victims, hence that the battering will be ongoing.

³⁴ But see NYS Appellate decision, *op. cit.* where evidence of abuse taken to indicate mother did not willingly consent to child living with father.

threw knives at her, cut her with a knife, whipped her with a belt on numerous occasions, burned her with cigarettes, hit her with bottles and a board and put his hand over her nose and mouth until she gagged while she slept. These assaults occurred during sleep, in the car, during dinner and before, and during and after sexual intercourse. Miguel assaulted Lavonne throughout her last three pregnancies, dozens of times, punching her in the stomach, burning her, and raping her just before and just after she delivered. Because he regarded Candy as "David's child," his assaults during this pregnancy were particularly vehement. On one occasion, when Lavonne attempted to escape from Miguel with the children, Miguel "tackled" her on the lawn outside. Miguel beat Lavonne in the presence of David, her mother, her children and beat his "best friend" for questioning his violence. Rape was a common facet of Miguel's assaults on Lavonne. The first rape occurred in September, 1991, while Lavonne was 8 months pregnant with Candy. A similar episode occurred just prior to the birth of Miguelito when he tied her hands behind her back with a belt. Miguel demanded sex once or twice a day, regardless of Lavonne's wishes or physical condition. Thus, Miguel "had his way with her" when she was 4 centimeters dilated, immediately after she returned from the hospital and at night, while she was sleeping. While these assaults may not have technically constituted rapes, they dramatized Miguel's claim that he could "do with you what I want," a threat she knew meant that he could take her life. Prior to many of these assaults, if not the majority, Miguel had been drinking. When she

and Miguel were arrested, I concluded, Lavonne was suffering a slow death to which she might eventually have succumbed.

There was little evidence corroborating my assessment, however. Miguel pushed Lavonne and pulled her hair while police were in the house and threatened her on the way to the police station and while they were in adjacent holding cells. During her questioning by detectives, police berated Lavonne for not naming Miguel as the source of the recent bruises they observed on her body. Neighbors, family members, police, DCF case-workers, hospital staff, and the teacher at Head Start all observed the physical results of Miguel's assaults. Lavonne has several permanent marks and scars from Miguel's assaults with objects. The miscarriage she suffered shortly after Candy's birth and the hospital visit for labor six and half weeks before Miguelito's birth both followed beatings. Lavonne sustained black eyes, bruises, abrasions, contusions and burns. Despite this, Miguel was never charged or arrested for battering Lavonne, domestic violence was mentioned only once in police reports (see below) and not at all on her medical records, and the children had not mentioned Miguel's violence when they were interviewed. In fact, apart from speculation by neighbors and several helping professionals about the source of Lavonne's physical symptoms, there was no direct evidence whatsoever that Miguel ever laid a hand on Lavonne Lazarra. Lavonne's description of Miguel's frequent and varied assaults met the standards for both internal and external validity. Still, she had visited a doctor only after Miguel injured her ear by kicking her

in the head and sought no medical treatment even after she cut her wrist in response to an attack.

A related dilemma was created because Lavonne lacked frank psychological symptoms consistent with widely accepted models of traumatization. She described herself as having been depressed and had refrained from sharing her situation with the Head Start teacher, hospital staff or police. But she was not depressed when I interviewed her and her failure to seek professional help was a situationally appropriate reaction to the threats she and her children faced as well as to the response when she had sought help from police and DCF. The court was willing to believe that Miguel had beaten Lavonne. But the relevance of this for the crimes with which she was charged was unclear. If the abuse had been severe, why were there no obvious psychological consequences? Conversely, if she was in command of her rational faculties, how could we explain, mitigate or excuse the bizarre series of events for which she was indicted?

Reframing the Failure to Protect

Lavonne Lazarra presented the same enigma as Hedda Nussbaum and the thousands of less dramatic cases where battered mothers are charged with hurting or failing to protect their children. Why would a reasonably intelligent and otherwise normal woman commit, tolerate and/or confess to these heinous crimes? The mystery is solved only by rooting the logic behind Lavonne's in the dynamics of coercive control.

Absent the threat posed by documented severe violence, one

wonders whether the victim's personality or family history predisposes her to stay in an abusive relationship.³⁵ Lavonne lacked such commonly cited predisposing factors as witnessing or experiencing abuse as a child or a previous abusive relationship. Still, her dysfunctional family history nurtured a romantic ideal in which she played housewife, mother and caretaker to a nuclear family with Miguel at the center.³⁶ At first, she writes, he worked twelve hours a day and spent all of this free time with her and her children. She continued:

"...by mid-May, he and I had a complete relationship, friendship, intimacy; he was helping me with my children, he started making suggestions that he felt were beneficial to us, I shouldn't hang around the diner, keep the house cleaner, the ways I fed the kids and what I fed them, the times they went to bed. (I promised no contact with David since he was no good for me and the kids and only upset me.). I had never felt so loved and cared for as I did then."

In hindsight, Lavonne's realizes that Miguel's "suggestions" were the initial steps in her entrapment. Still, he continued to play a role in her ideal long after the abuse began. Even his jealousy,

³⁵ Such a history may be offered to disprove the claim that current problems were caused by the abusing defendant (to limit damages in a civil dispute, e.g.), though though offender may be liable if he knowingly exploited a pre-existing vulnerability.

³⁶. Richie (pp.56-58) describes the commitment of battered women to this ideal part of "gender entrapment."

resentment of David (whom she also loved) and his difficulties with alcohol seemed plausible explanations for his "outbursts." But while Lavonne's ideas of romance may have been distorted, she responded to each of the problems Miguel posed in a rational and strategic way: demanding he drink only at the boarding house, promising not to see or talk to David, eliciting promises of reform, and forcing Miguel to leave when he broke his promise and assaulted her a second time. Lavonne appreciated the dilemmas their relationship created for Miguel among his Mexican friends and hoped to compensate for the embarrassment her pregnancy with "David's baby" caused him by ending her questionable social behavior and providing other proofs of loyalty. When Miguel cried and begged for forgiveness, she was convinced he loved her.

Irrespective of why Lavonne restricted her activities, she was already isolated from her social network when Miguel returned to her house after the second assault. Now, in place of "outbursts," he initiated a regime of routine, but relatively minor physical assaults, pushing Lavonne or shoving and grabbing her for instance, supported by dramatic acts of intimidation: Miguel smashed the car windshield and dashboard, removed and snapped his belt as a warning, beat his friend "bloody" and called from work at all hours to check up on her. He also destroyed objects that had personal significance for Lavonne. Since he often smashed things as a preamble to assault, when he broke her property, she was terrified, even when no physical attacks followed.

Lavonne's entrapment is inconceivable apart from Miguel's physical abuse. Yet, what made the ongoing domestic violence possible, what made her ultimately 'a battered woman,' was her prior isolation from her mother, sister and friends at the diner and his assumption of control over every facet of her life, from her means of survival and support through the microdynamics of everyday existence.

Control

Building on the substructure of isolation and fear, Miguel used control over such basic resources as money, food, and clothing for personal support and to impoverish Lavonne and increase her dependence. Lavonne was receiving AFDC when she met Miguel, getting a small supplement from Maria's father and sharing household expenses with her mother. Since Miguel knew "best" how to reorganize her life, he took her monthly check and dispensed only what he thought she needed. Like many other women in my caseload, Lavonne was regularly questioned about all expenditures, never allowed to go shopping alone and hit if Miguel thought she spent money frivolously. When they moved out of her family home, Lavonne also stopped receiving state assistance and the couple survived on Miguel's meager wages, reduced substantially by his expenditures for alcohol. A letter from the new tenants at Chestnut street reveals there was no running water in the bathroom, no heat, broken windows and little electric. Illustrative of their desperate state is a neighbor's accusation that they were stealing bottled water and the alarm at Head Start over the children's

clothes.

Miguel's control over food and clothing was particularly significant since these areas of decision-making were identified with her ideal role as housewife. Miguel demanded she fix complete Mexican meals like a "Senora."³⁷ When he was dissatisfied with the food, he threw it on the floor, hit Lavonne in the face with it or else spiced it hot and forced her to eat it. When he became convinced Lavonne was trying to poison him, he forced her to taste everything first. Miguel determined how Lavonne and the children would dress, telling her what to put on when he was home. Because he disapproved of women wearing pants, she could only wear dresses. He also told Lavonne how to wear her hair.

Miguel's control extended to Lavonne's basic bodily functions, including eating, sleeping, sex, going to the bathroom or moving about the house. In addition to the mental games he played while she slept, he regularly interrupted her sleep by calling her from work throughout the night, returning home suddenly or awakening her on his days off or while they were napping by slapping her, putting his hand over mouth and nose or by initiating sex. Lavonne became too fearful to sleep while Miguel was awake. As a result, she was chronically fatigued, depressed and regressed to an almost childlike state of dependence.

³⁷ It was only after the couple had been apart for some years and Lavonne had remarried and ran into Miguel in a store where she was shopping with her sister-in-law that he first used this term of respect to address her directly. At that moment, she says, she felt "vindicated."

Miguel demanded sex even when Lavonne was forbidden to have sex by the doctor, when she was four centimeters dilated, when she returned from the hospital having just given birth and when she began spotting. Miguel demanded sex irregardless of whether the babies were present. His demands that they take a "nap" when he came home from work in the morning meant the children too had to nap or remain unattended, making it extremely difficult to properly prepare Danny or Stephanie for Head Start or, later, Danny for school. Miguel enforced his rule over when, where and how the couple had sex through rape and beatings. Aside from Lavonne's fear, the most significant consequences of Miguel's sexual assaults were two unwanted pregnancies and the loss of one baby. Sexual assault (rape) extended Lavonne's sense of physical violation, undermined her will and was part of the process of objectification that eventually led Lavonne to attempt suicide.

Miguel told Lavonne when she should or could shower and insisted that the children take two or three baths or showers a day. By this time, Lavonne asked permission to go to the bathroom.

In each case, the particular interplay of violence, isolation, intimidation and control defines the particular dynamic and effects of battering. In a homicide case, for example, my client was made to keep a log book in which she recorded everything she did during the day, an instance of control. In an embezzlement case, intimidation and complete isolation (with minimal violence) were used to enforce a series of 'rules' about how my client should dress,

clean, cook, keep her apartment, and so forth. Given the complex strategic arsenal Miguel Sabastian employed to dominate Lavonne Lazarra, it may seem gratuitous to ask which facet of the battering was most important. Nevertheless, Lavonne's behavior towards the children is greatly illuminated when we realize that, alongside violence, intimidation and control, Miguel's use of isolation most directly undermined her grasp on reality.

Isolation

From the day he moved in, Miguel pressured Lavonne to stay home, not go to the diner, cook at home and to stop seeing friends whom he felt were either no good for her or jealous of her good fortune. At first, his concern seemed to provide the organization the family lacked. Lavonne soon realized that she was restricted to the house. According to an anonymous call to police, Miguel molested Lavonne's niece (for whom she was sitting), resulting in a break with her sister. Miguel interpreted the time Lavonne spent with her mother or other family members as "disloyalty" to him, the issue that came to a head on Christmas day, 1991, when he tried following her to her grandmother's house, wrecked the car, then threatened to kill himself (and her) if she didn't return immediately. An interview with a male neighbor reveals that Miguel forbade Lavonne to talk with other men because this was not something Mexican women did. she was also forbidden to drive her car except to transport him to work or the children to school; she was forbidden to shop by herself; and she was expected to remain in the house all day, while Miguel was

sleeping. Jealousy of David and other Mexican men played a role in the restraints Miguel placed on Lavonne. His desire to make her his personal property and servant was equally important, however.³⁸

A vicious cycle developed in which Lavonne's deteriorating functioning reinforced her fear of what would happen if others discovered the battering to isolate her as powerfully as Miguel's explicit restraints. She initially confused Miguel's possessiveness with caring, but quickly realized that the best way to deal with his unpredictability was to restrict her own activity, irregardless of whether he was present. After Miguel beat his "best friend" bloody for criticizing his behavior, Lavonne was terrified of what he would do to her or to family members or neighbors who intervened. These fears were reawakened when the Head Start teacher or a neighbor offered to help, causing her to appear alternately "anxious" or reticent. Lavonne took the children to a neighbor's in the evening and allowed them to play in another neighbor's yard. But she was fearful of talking about her situation. This fear made her increasingly immobile, until she left the house only to get Stephanie at the bus or to drive Miguel to work. When the couple moved a second

³⁸ Monitoring a woman's behavior by constant telephone contact, having her wear a beeper, and enlisting others (including family members) to watch or track her, often extends to the use of the children to spy on the mother, report on her whereabouts, and record her telephone calls, particularly after a couple separates. In one recent case, the battered wife threw a shoe at her teenage son, causing a bruise on his foot, after she found tapes of her telephone calls the boy had made at his father's request. The school reported the injury to CPS and custody was shifted to the abusive father.

time, Lavonne's isolation became complete. She now had a car--and there were often two or three at the house. But she was not allowed to drive by herself. When she drove him to work, he insisted she leave the children (except, later, Miguelitto), ensuring she would not go anywhere but straight home. If DCF became involved, Miguel warned, they would find out she was "crazy" and take her children. This possibility was communicated to the children--as an interview with a neighbor reveals--and kept them from honestly discussing the situation with neighbors, friends or at school.

Lavonne was also isolated by the consistently inappropriate professional response to her predicament. As domestic violence became more obvious--because neighbors heard screams or observed bruises--Lavonne's anxiety increased about what would happen if Miguel's behavior was disclosed. As a formerly battered woman herself, a neighbor, Mrs. Rapari, understood the situation and comforted Lavonne and the children without demanding that they discuss the abuse. By contrast, police, the Head Start teacher, the nurses at the hospital and others to whom the abuse was transparent believed her reticence signalled Lavonne's complicity in the situation and either did nothing or actively exacerbated her isolation by insisting she admit to the abuse. After Miguel beat Lavonne for the first time with a belt, he kicked her in the head, injuring her ear. The physician recognized the signs of assault, but did nothing to indicate concern. On the one occasion when Lavonne might have escaped, when she was with her family and had had Miguel

arrested, the police used her as an interpreter, leading to a rape and beating. Lavonne had abrasions and bruises on her face, arms, back, trunk, legs and thighs when she came to the hospital in premature labor and when she was admitted to deliver Miguelito. Again, there were neither inquiries about abuse nor referrals. On September 11, police investigating allegations of child abuse and neglect observed Miguel pushing Lavonne and pulling her hair and using coercive language and saw her multiple bruises. Officer Kehoe's report details the bruises he observed and concludes "Lazarra was being abused (beaten) by her boyfriend Sabastian." Although this evidence constituted probable cause that a domestic violence crime had been committed and should have resulted in an arrest under Connecticut's policy of "mandatory arrest," no such charges were filed. Instead, police placed Lavonne and Miguel together in the back seat of the cruiser and in adjacent cells (where he continued to intimidate her), badgered her to implicate Miguel in her injuries and then, when this failed, told her she was a "bad mother" who would never see her children again. Finally, there was the response of DCF. Caseworkers with the Department of Children and Families are given directives requiring them to assess for domestic violence in cases of suspected child abuse or neglect. Moreover, Lavonne had requested help with Candy. During two investigative visits to the house, however, the caseworker ignored physical and circumstantial evidence of woman battering and offered no assistance. Instead, Lavonne was chided for inappropriate parenting and Miguel was described as

"supportive." By denying the abuse, minimizing its significance and then focusing blame for both the children's problems and her own on Lavonne, professionals involved in this case reinforced Miguel's strategy of isolation, compounded her sense that he could do what he wanted to her without sanction, and reinforced his warning that if the battering was exposed, she would be blamed, not him.

Entrapment

Over time, isolation reduced the parameters of Lavonne's universe to those Miguel defined as real even as the rules he laid down became her moral compass. Miguel's narrow and obsessive emotional frame set the boundaries within which it was safe for her to think about the children. So, for example, she came to define them as "bad" (or, at least, to conclude punishment was "for their own good") if they disturbed Miguel's sleep, excited his ire by violating one of his many rules, or failed to comply with his beliefs about dress, food, or cleanliness. However, Miguel's rules were erratic, contradictory and designed to calm his inner anxiety, gratify an obsession or to create the appearance of a "family" that conformed to the rigid ideas he had internalized through his own abuse as a child. This was illustrated by the "rule" that the children shower and change their clothes several times a day. What initially felt to Lavonne like an attempt to create order in her household quickly degenerated into chaos, weakening any genuine authority she had had with her children, exposing her and the children to even tighter (and more irrational) controls by Miguel, increasing her own

anxiety about the consequences of violation, and reducing her disciplinary repertoire to more extreme forms of punishment.

If Lavonne felt "trapped" after Candy's birth, it was only just before she entered the hospital with Miguelito (when she told Miguel "I don't care what you do to me") and when she returned from the hospital after his birth that she fully realized he had no regard for her life and would eventually kill her if she didn't escape. Moreover, when Miguel beat Maria with the belt and she refused to cry, imitating Lavonne's response, and burned Danny's hand on the stove, she realized his violence against the children was following the same path as his violence towards her. When she was arrested, Lavonne was preparing to escape with money borrowed from her uncle.

Had Lavonne Lazarra killed Miguel Sabastian, we could have confidently argued that her acts comprised what the criminologist Marvin Wolfgang (19) calls, somewhat sardonically, "victim precipitated homicide." Instead, she was charged with harming the children, not Miguel, and with failing to protect them from his assaults. How does the fact that Lavonne was deprived of basic liberties help us reframe the instances of abuse and neglect?

Like so many of the other battered women in my forensic caseload, Lavonne's predicament at the time of her alleged crimes became clear when the coercive control model was used to highlight the progressive erosion of basic liberties she suffered due to Miguel's battering.

Domestic violence contributed to Lavonne's entrapment. But the duration, frequency and effects of Miguel's assaults were a direct function of the "nonviolent" strategies he used to intimidate, control and especially to isolate her. These strategies deprived Lavonne of the social, psychological and material resources she needed to protect herself and her children, not merely of the opportunity to do so without risking grave harm to herself.

The Battered Mother's Dilemma

Lavonne's case illustrates how the 'story' woven to prosecute battered women in child abuse cases is a peculiar mix of gender bias and compassion for children. The child protection narrative is framed so as to exclude the male batterer (an example of sexist bias). But once the unifying source of power and subjugation is erased, any compassion caseworkers feel for children is displaced to reinforce their anger at the battered mother as the primary cause of harm to the child. Without understanding how Miguel's coercion and control constrained Lavonne's choices, the DCF workers drew what seemed a natural connection between the sorry state of the household (symbolized by the odor of feces in Maria's room), the pathetic condition in which Candy was found in the basement, Lavonne's psychological state and her capacity to parent. To set the stage for outside intervention, the report reconstructed a dialogue in which Lavonne validated the classic vignette of the abusive mother as "depressed" and "overwhelmed." Referring to the basement, the caseworker wrote:

"Advised mother that child can't be left alone down here...Mother said 'ok, I respect your opinion. If that's what you think, then I'll take her out.'" When mother didn't move...I moved aside the bed frame and mattress and lifted the baby out."

To the caseworker, Lavonne's decision to keep Candy in the basement was irrational and her reluctance to remove the child when advised to do so was a sign she was generally sluggish, overwhelmed, depressed and unable to cope. In reality, of course, Lavonne was 'frozen' not by depression but by the dilemma described above: should she follow the worker's dictate and put Candy at risk from Miguel or should she refuse and be defined as a "bad mother" by the worker? There was another facet as well to Lavonne's dilemma at this moment, whether to reveal Miguel's abuse--and risk both his rage and the caseworker's punitive response-- or to appear "crazy." Lavonne could not protect Candy unless she was protected herself. But if she asked for protection for herself, her child might be removed and she--or the children--might be badly hurt. In the matrix of power in which she found herself, Lavonne chose a dangerous gambit: she sought aid by drawing attention to her problems with Candy although given the range of problems in her life at the moment (including the probability she would be killed), these were not the most significant. By projecting an image of herself as "unable to cope," she hoped to accommodate the preconceptions of child protection and so, indirectly, to garner the supports needed to protect herself and her

children.³⁹ Lavonne strategically used her depression to seek resources for her daughter, an example of 'control in the context of no control.'

The police posed an identical dilemma to Lavonne when they demanded she accuse the man they had put next to her in the squad car and in an adjacent cell. When she refused to comply with this untenable request, they became abusive and threatening, telling her she was a "bad mother" and that "you will never see your children again." Since this was the same argument Miguel used to get his way, Lavonne understood instantly that 'being depressed' was of no strategic use. Besides, the gambit had failed with child protection.

The agencies designed to provide protection and support often reinforce the battered mother's dilemma by placing women like Lavonne in what psychiatrists call a "double bind." In the classic case, a parent makes their love contingent on the young child assuming a disorted sense of reality. To avoid the pain of separation implied by the withdrawal of love, the child adapts a "false self" in accord with this distortion. Since implicating Miguel evoked an unbearable sense of existential risk, Lavonne assumed the "false self" of "bad mother" that was projected onto her by the police and DCF.⁴⁰ In the

³⁹. This may seem too deliberate. To the contrary, battered women are often expert at reading what others expect of them, even if they decide not to comply.

⁴⁰ Importantly, once Lavonne was out of her relationship with Miguel, the anxiety dissipated and she was able to frankly discuss her dilemma and avoid being placed in a double-bind. Thus, when the psychiatrist assigned to assess her case at the Yale Child Study Center insisted on interviewing her with Miguel present, she unhesitatingly

psychiatric literature, communication that put children in a double-bind was traced to pathology in the so-called "schizophrenogenic" mother. In Lavonne's case, the pathology that infected communication derived from the gendered frame within which she was perceived and the children's abuse was interpreted. With the major source of external constraint, Miguel's coercive control, obscured, the scope of plausible interpretations of why the children had been harmed was considerably narrowed. A third alternative, asking for help, had ended disastrously, confirming Miguel's warnings about what would happen if she "talked." Thus, when Lavonne was arrested, the power of CPS and the police converged with Miguel's coercive control to narrow the cognitive frame through which she was perceived by the world and through which she perceived herself and the world around her, including her children. To this extent, the institutional response became part of her entrapment.

Closing the Safety Zone

In a pioneering study, Elaine (Carmen) Hilberman identified a "homicidal rage" in many of her battered mental health clients. Ideally, we would like a battered parent to separate their commitment to nurture a dependent child from the mounting rage they feel as their needs for autonomy, personal power, empathy, and social connection are denied or suppressed by a malevolent other. Family attorneys and judges despair of clients who use the courtroom to "spew their venom"

explained the situation this put her in. When the psychiatrist was incredulous, she called her attorney to ensure she would be kept safe.

at one another. But this is clearly preferable to taking the anger out on the children, an all too common alternative, or somatizing it in depression or other psychiatric symptoms.

In terms of psychic economy, to control or appropriately discharge anger, persons require a "safety zone," a private and relatively conflict-free space in their lives where they can reflect objectively on their situation, experience a reality that they recognize as uniquely theirs, or express feelings they have about their lives with a minimum of risk. Such spaces may be social, involving work, school, religion, friends, children or other family members for instance, or 'private,' involving diaries, collections, photos or other artifacts that symbolize a life before or outside the relationship, or even rituals (e.g. vacuuming, putting on makeup, watching a favorite TV show, making the bed, practicing piano, exercising, eating, having sex) during which victims can 'space out' to temporarily remove themselves from the situation. An important difference between 'true battering' and 'simple domestic violence' is that, in the former, direct expressions of angry thoughts or feelings with the partner put the victim at extremely high risk and so must be constantly censored or repressed and displaced. This suggests the importance of safety zones for abused women. Lavonne came close to expressing her rage at Miguel only once, when she held the knife, but would have had to stab him to prevent further harm, something she wisely chose not to do. Batterers typically perceive the safety zones their partners establish as

threatening, monitor their appearance, and will do everything in their power to make them unavailable. Men in my practice have climbed trees, followed their partners with their headlights off, hidden under beds or in closets to spy on their partners, forbidden partners to go to gym or church, called them repeatedly or stalked them at work, listened to the answering machine and returned calls to persons they don't recognize, pulled out phones, ransacked drawers, read through or stolen diaries, destroyed photo albums, burned address books, cut up their clothes (so they couldn't go out), blocked in their car, stolen their keys, and so forth.⁴¹

After she stopped going to the diner and Miguel had destroyed the personal objects she had in the house, Lavonne sought to meet her need for a world apart in the relationship with the children and by maintaining her household to the "real family" she hoped for. As Miguel undermined any sense of self derived from household work, Lavonne's attempts to maintain autonomy became increasingly limited to and confused (or fused) with her childcare. Gradually, her relations with the children became the only safe place to express a range of needs and feelings denied expression by Miguel, including

⁴¹ The 'battle' over the 'safety zone' is often the watershed even in an abusive relationship, determining when a woman finally leaves for good or when a homicide occurs, for example. In one case, a trucker would come home from a long trip in the middle-of-the night, awaken his partner, insist on sex and food, then beat her in a jealous rage. But it was only when he forbid his wife to go to church that she finally left. In the well-known case of 'the burning bed,' Francine Hughes set the fire that killed her husband after he burned her school books. For Hughes, school was a safety zone because it allowed her to think of a life beyond the relationship and to make friends.

her anger. Lavonne continued to care for her children. But her caring was increasingly filtered through the dynamics of Miguel's battering until it too became a function of his coercion and control, an example of what I have called "patriarchal mothering." In Lavonne's case, this pattern was quite direct, as when, behind threats and intimidation, Miguel commanded her to discipline the children in specific ways. But patriarchal mothering also occurred indirectly, as when Lavonne hit the children or took other inappropriate measures (such as leaving Candy in the basement) to 'protect' them from more severe punishment by Miguel. There were also times when Lavonne took out the fear and anger evoked by the battering on the children. Ironically, contrary to the belief that she had abandoned her interest in parenting, in these instances, she had defined motherhood as the only viable arena for self-expression.⁴² That Lavonne's efforts to protect Candy from Miguel took on the perverse form of "neglect" was a function of objective constraints over which she had no control.

Child Abuse as 'Tangential' Spouse Abuse

Ironically, the same women who are defined as "helpless" or

⁴². From the beginning, the most progressive elements of the Battered Woman's Movement have insisted that women become better mothers when they are treated as independent adults with needs of their own. The contrasting view, commonly promoted in the child psychology and child protection literature, is that mother's who seek personal gratification or seem to put their own needs before the needs of their children are "narcisstic" or otherwise self-indulgent. It is hard to novice caseworkers to imagine the resentment women feel (towards their children as well as providers) when they are offered resources to meet their children's needs, but not their own.

"overwhelmed" by CPS are nonetheless held fully responsible by the criminal law for harms their batterers inflict on their children. This is possible because state statutes criminalize omissions; only 12 states require an overt act to constitute child abuse ("commission statutes"). Note the irony implied by the omission standard. The law implicitly requires that a woman act to protect her child, even if the result may be that she is disabled or killed, thus depriving the children of even more fundamental protection. Only three states (Minnesota, Iowa and Oklahoma) have statutorily adopted an affirmative defense to the charge of failure to protect a child based on the parent's reasonable fear of severe injury to him-or herself or to the child.ⁱⁱⁱ

Earlier, we reviewed the weaknesses of countering 'risk of injury', 'failure to protect', and related charges by arguing that severe, long-lasting physical abuse caused a mother to lose her capacity for protective action or decision-making.

Interestingly, the picture of Lavonne constructed by the DCF caseworker and used as one basis for removing her children closely resembled the portrait of learned helplessness suggested by traumatization theories. Given this framework, it is unclear whether the response by police, CPS and other professionals involved in the case would have changed substantially had the domestic violence become an explicit part of the case. The police were clearly aware of Lavonne's condition, for example, but continued to berate her as

a "bad mother." Even had there been evidence of severe physical injury and long-lasting psychological damage, the ingrained normative assumptions about mothering and the extent of child abuse before the court make the evidentiary standard employed to assess her battering very difficult to satisfy. Presenting an impressive image of victimization was less the problem in the Lazarra case than providing the court with a conceptual framework that both mitigated Lavonne's culpability and provided a clearer picture of how the children could or should have been protected. Without such a 'story' neither CPS nor the courts have any incentive to treat a battered mother differently than any other mother who fails to protect their children, withholds medical care, or willingly exposes them to the untoward influences of violence, drugs or alcohol.

To reiterate: the narrative built from coercive control shifts the focus of legal attention in failure to protect cases from the physical harms and psychological trauma the woman has suffered to objective restraints on liberty which have deprived her of her rights to autonomous (self-protective) decision-making and effective action (to prevent harm to her child). To this extent, it offers a more exacting variation of the duress defense. If Lavonne perceived her options as limited and made a choice that harmed her child, this was, first and foremost, because her options had been limited to the battered mother's dilemma by Miguel's strategies. In place of psychological dysfunction and victimization, we seek 'justice' by emphasizing that Lavonne repeatedly made the best, the most

protective choices **available** to her. The court is not offered a victim, but asked to imagine what it took to reduce this strong, intelligent, independent woman to the sorry state in which she was found. The last step in constructing the argument is to provide a more credible depiction of exactly why and how child abuse or neglect emerge as part of the dynamics of woman battering.

In contrast to conventional empirical accounts of how domestic violence and child abuse 'overlap,' the concept of 'tangential spouse abuse' establishes the sequence of child abuse in relation to other coercive strategies, fixes accountability with the batterer and explains why child abuse occurs when and how it does. We have already cited the research showing that the onset of child abuse or neglect typically postdates the onset of domestic violence;⁴³ and that the battering partner is the typical child abuser. We must return to the case material to illustrate how these facts interrelate.

In "tangential" spouse abuse, hurting the children is secondary to dominating their mother. The child abuse and woman battering may begin together. More often, as with Miguel, the batterer extends his

14. Unfortunately, the sample selection process Dr. Flitcraft and I used to study battering among the mothers of abused children at Yale-New Haven Hospital precludes any definitive conclusions about the relative onset of these events overall. In the 45% of the child abuse and neglect cases where domestic violence occurred, it preceded the onset of identified harms to the child. However, because our study involved a retrospective record review of cases "darted" by the hospital staff, we have no way to know whether domestic violence occurred in other cases after the study period ended.

coercive control to the child in response to a woman's threats to leave or other signs that direct forms of control are no longer effective in subordinating her will. The key is that the types and extent of child abuse the batterer employs are shaped by their effects on the partner rather than on the children. What is true of woman battering generally is also true here: the harms children suffer because of intimidation, isolation and control directed at them or their mother may be as great as the effects of violence. Thus, the risk to children in battering relationships is a direct function of the absolute level of coercive control irregardless of the immediate presentation of injury or neglect by the child.

Like woman battering generally, it is helpful to conceive of tangential spouse abuse as a staged experience which unfolds in tandem with the strategies used against the mother. In most abusive relationships where children are present, the mother's relationship to her children is a primary arena for her sense of selfhood, hence an early target of the batterer's control. Common themes in this first stage are the batterer's obsession with his partner's loyalty and his jealousy of alternative attachments, including those she feels towards her children as well towards future children during pregnancy. Violence during pregnancy illustrates child abuse as tangential spouse abuse. Tangential spouse abuse, like battering generally, can be conceived of as a staged experience which unfolds in tandem with the strategies used against the mother. In most abusive relationships where children are present, the mother's relationship

to her children is a primary arena for her sense of selfhood, hence an early target of the batterer's control. Common themes in this first stage are the batterer's obsession with his partner's loyalty and his jealousy of alternative attachments, including those she feels towards her children as well towards future children during pregnancy.

In the early phase of their relationship, Miguel showed little interest in the children's discipline. Instead, he used the children's care as a pretext to isolate and control Lavonne and to support her transformation into a traditional "senora." Miguel suggested Lavonne not take the children to the diner, the major source of her social connections, and, at home, managed how she dressed, fed and cleaned them.

The second phase of tangential spouse abuse involves holding the mother accountable for the children's behavior. Because of intimidation and fear, the battered woman attempts to enforce the partner's wishes, however irrational they may be. Because he is also gradually disabling her, her accountability to the batterer for the children is a pretext for escalating violence and control.

Lavonne adapted Miguel's suggestions because she believed they showed he cared about them as a "family." In Miguel's mind, compliance signified Lavonne's consent to "rules" that had the force of domestic law. The transition to the second stage occurred when Miguel wanted Katalina's name changed to Maria, his grandmother's name. A secondary function of the name change was to further isolate

Lavonne from her mother, who refused call her granddaughter anything but Maria. The first assault occurred shortly afterwards. Now, Miguel directly oversaw her enforcement of "rules" for how the children should dress, behave, eat and wash, what they should say and to whom they should talk. Miguel would yell at the children occasionally or order them about. But when they failed to meet the standards he set, Lavonne was the primary target of his anger, not the children. Lavonne, in turn, attempted to regiment the children's behavior according to Miguel's rules, adapting new means of discipline that conformed to a new level of required domestic order which she initially thought reasonable. Since Miguel's expectations and rules were constantly changing, however, consistent enforcement was impossible and discipline futile.⁴⁴ Lavonne's "failure" to control the children quickly became an occasion for Miguel to further intimidate and isolate her. To the extent that there were real and serious consequences for Lavonne if children violated Miguel's rules (e.g. made noise while he slept), she had a profound self-interest in assuming his disciplinary project as her own. In fact, Miguel's coercive behavior had little to do with how the children behaved. As this became clearer to Lavonne, her discipline became less rather than more flexible because 'anything might set him off.'

The third phase of tangential spouse abuse is characterized by two concurrent and contradictory themes, pressure on the mother to

⁴⁴Note, this is the opposite of traditional family situations in which rules are set, consequences of violation are clear, and one parent is expected to be the enforcer.

escalate her discipline of the children and use of the children to intimidate the mother. If the mother separates or shows other signs of independence, the children may be enlisted in the mother's intimidation or isolation through 'spying', may be held 'hostage' either literally or indirectly or may be intimidated and isolated directly. In the latter cases, the batterer may initiate physical abuse of the children.

Shortly after Candy's ("David's child") birth, Lavonne stopped reacting to Miguel's assaults and even fought back on several occasions. In response, Miguel escalated the rules she was to enforce with the children--requiring that they wash three times daily for instance. He also demanded that Lavonne discipline the children more harshly, leading on one occasion to Lavonne hitting Danny on the back with a belt. In addition, Miguel used the children against Lavonne, asked them about her whereabouts, presented them with "proof" that she was crazy, and restricted her access to them unless he was present. Each of these maneuvers further undermined Lavonne's authority, making it necessary, for her own safety, to escalate discipline. While some of the earlier forms of discipline orchestrated by Miguel seemed merely pointless, the choices now confronting Lavonne involved steps she viewed as wrong, even dangerous, though not obeying Miguel could be even more so. For example, Miguel insisted that Danny (who was 7 at the time) was old enough to watch Candy, Stephanie and Maria while Lavonne took the baby and drove him to work. Lavonne knew this was "crazy," but she

acquiesced nevertheless, rationalizing that it was better than if the children saw her assaulted in the car or were hit themselves. She had few alternatives, since Miguel insisted on being driven and wanted to separate her from the children so she would not try to escape. Danny claims Miguel also hit Candy during this period, though this was never confirmed.

In the final stage of tangential spouse abuse, the batterer extends the full force of coercive control to the children to enforce their loyalty and obedience. This may include escalating or serial physical abuse, the cycle of violence, frequent threats, the micromanagement of their everyday lives, including their relationships to friends and family, their sexuality, and deprivation of vital resources, including food, clothing, sleep or money. Frequently, the batterer now defines mother and children as a single unit in opposition to himself and interprets signs of independence (from children or their mother) or mutual affection between mother and children as betrayal. If the mother succeeds in separating, the batterer may respond with a dramatic act of violence that includes the children (burning the house, e.g.) or, as often, attempt to completely alienate the children from their mother, often with the court's assistance.

After Miguelito's birth, Miguel reenacted with the children the same cycle of violence and apology that initially typified his abuse of Lavonne. His assault on Maria has already been described. Importantly, the hospital stay served as a safety zone for Lavonne,

giving her space to think about her life. Not only was she able to get the hysterectomy he opposed but, when she returned home with 4 day old Miguelito in her arms, she confronted Miguel about his mistreatment of the children and he beat her, terrifying Maria. Still, when Miguel turned on the cold water in the shower, Lavonne pulled Maria out and again confronted him. Miguel undoubtedly now saw Maria and Lavonne as part of a joint resistance and so turned the anger at Maria he had only shown to Lavonne until now, snapping and using his belt. Maria too sensed the affinity with her mother and, like Lavonne, refused to cry or say she was sorry. It was only after Lavonne intervened and Miguel turned to hurt her that Maria conceded, telling her mother to "tell pappy I'm sorry."

By his own admission, Miguel had beaten Danny with the belt on a previous occasion for taking some scissors out of a drawer. A neighbor observed bruises and marks on Danny's arms and legs and reported hearing the children "scream" at night. These "fights" were often provoked when the children resisted Miguel's rule that they shower three or more times daily. Miguel also admitted "accidentally" shooting Danny in the rear with the beebee gun when the boy had mistakenly crossed "the line of fire."

Lavonne's loss of control over the children and basic household maintenance was certainly aggravated by her depression and exhaustion. But it was the sheer number and absurdity of Miguel's rules that ultimately made it impossible to devise a general code of behavior for the children, even a very strict one. Since the only

external reference for the rules was Miguel's perception of how they controlled Lavonne, the children could not have followed them **even if they had set their minds to doing so**. In order to ensure her own and the children's safety, therefore, Lavonne was forced to focus her discipline on obedience for its own sake, no matter how irrational the dictate, and to micromanage their every move, an impossible chore even had their been no new born and Miguel had not required continual servicing. The result was that Lavonne simply let the children do as they pleased, fulfilling Miguel's accusation that she was a bad mother, and only intervened when the children's behavior was extreme or Miguel threatened to intervene himself. In these situations, hitting seemed appropriate either to protect the children from Miguel's even harsher punishments or because, unable to control Miguel, she struck out at the only other source of chaos she could safely blame, hoping to "keep the lid on" until she had the money to escape. A third motive, to protect herself from being hurt, remained beneath the surface. The older children recognized that their being hit by their mother had little to do with their behavior and that the alternatives were worse.

Fearing that Miguel would beat Danny the way he had beaten Maria, Lavonne hit him in the back twice with the belt. Miguel was not satisfied. He took the belt from Lavonne, said he would show her "the proper way to discipline," then hit Danny repeatedly in the back of the legs. When Lavonne protested and told Miguel to stop, Danny replied, hoping to protect his mother in the only way he knew how.

"Its ok mommy." he said. "I deserve it." Miguel then took Danny to the stove and placed his hands on the electric burner.

Conclusions

Unlike the traumatization model, the coercive control perspective does not require an assessment of parenting skills to reframe situations in which woman battering coexists with child abuse. The working assumption is that the battered mother possesses the "average level of parental competence" needed to care for and protect her children, but that this competence, expressed only indirectly into the poor choices she is forced to make, fully emerges only when she is protected from coercion. From this assumption, two things follow.

First, unless proved otherwise, where battering is present, child abuse and neglect are assumed to arise because of the domestic violence, intimidation, isolation and control strategies of the batterer, whether the mother or the children have been their primary focus. Thus, while Lavonne left Danny home to care for his younger sibs, this was not her choice, but Miguel's, to ensure she would return home promptly after dropping him at work. When restraints on the mother's liberty are recognized as the key element in battering, accountability for harming the children falls squarely with the batterer and is "shared" only if there is a history of child abuse prior to the onset of coercive control.⁴⁵

⁴⁵. Thus battering offers a history of coercive control as an affirmative defense for the battered mother charged with "failure to protect". This is not meant as an absolute standard, however, since there are cases where evidence of harms to the children is grossly

Secondly, the assumption of "average maternal competence" helps the court reframe behaviors that appear dysfunctional (or malevolent) as protective of self and child given the limited range of realistic choices afforded in the battering situation. In marked contrast to the "learned helplessness" theory of Lenore Walker, we have identified a psychologically healthy logic of maternal resistance to battering underlying even such apparently pathological behaviors as attempted suicide. In Lavonne's case, this helped us reframe the decision to take Candy to a basement room that was inaccessible from the house while Miguel was home. What appeared to the DCF worker as clear evidence of "neglect" was, within a context governed by Miguel's jealous rages, the best way Lavonne could imagine to protect "David's child". That Candy's health might have been jeopardized in the damp cellar was preferable to exposing her to Miguel's anger.

The law focuses on accountability and that is the thrust of the narrative built around coercive control. But nothing I have said is meant to suggest that Lavonne is free of responsibility for what happened to her children. Many battered mothers lack adequate parenting skills, are mentally ill or become addicted to substances for reasons that have nothing to do with coercion or control. Many of Lavonne's inappropriate acts cannot be reframed as rational, even within the context of control. Her growing subordination to Miguel

disproportionate to the level of constraint on the woman. In a subsequent book, I plan to deal with the implications of this framework in civil proceedings involving child placement or custody decisions.

clearly had a psychological dimension, for example, which distorted her sense of judgement, damaged her self-esteem, and caused her to regress to a time when the approval or disapproval of significant adults was a primary basis for her self-worth. This dynamic contributed to her capacity to rationalize levels of violence and neglect of the children--her own and Miguel's-- that were incompatible with her basic sense of responsibility, let alone her notions of right and wrong. She attempted to manage her growing rage at Miguel in the safest way she could, by directing it against herself and attempted to control it through passive-aggressive means-- the process we term "control in the context of no control." But the result of this rational choice was that she adapted a depressive mode of reacting (though I never found her clinically depressed). A direct response to Miguel's tattooing his name on her body, the suicide attempt was an example of this adaptation rather than of underlying psychiatric disease.⁴⁶ Nevertheless, her mode of reacting reinforced her increasing immobility in the face of harm, her chronic fatigue and a certain resignation to her fate, endangering the children.

Lavonne's suicide attempt was an active attempt to control her fate compared to the hopelessness that overtook her after Candy's birth. External evidence of this feeling comes from the Chestnut

⁴⁶ The Yale Trauma Studies revealed that 29 percent of female suicide attempts are made by battered women, Lest there be any doubt about the context of this behavior, consider this: fully 36.5% of the battered women who attempted suicide did so on the same day that they presented a domestic violence complaint to the hospital (Stark & Flitcraft, ;1996).

Street House where garbage accumulated, basic conveniences were absent and the couple stole drinking water from neighbors. Unable or afraid to openly resist Miguel or show her anger, Lavonne adapted passive modes of resistance, pretending to sleep, refusing to react to Miguel's assaults and, finally, telling Miguel, "you can do anything you want, just get it over with." Even elements of this reaction were functional since crying or begging Miguel for mercy made him more violent, not less, a lesson not lost on Maria. Lavonne's physical state during the relationship should be kept in mind: during almost two years of serial assault, Lavonne had given birth twice and had one miscarriage. In other words, she was pregnant during all but one or two of the months the couple was together.

The point remains. Until she was a free agent, it was impossible to objectively assess Lavonne's culpability, determine her educational needs as a parent, or to distinguish any clinical symptoms or moral deficits from protective, survival-oriented adaptations to battering.⁴⁷ For instance, Lavonne adapted to the violence, and particularly to the multiple rapes, by distancing herself from her physical self, stepping outside her body and functioning through significant phases of the two year ordeal as if none of this was trully happening to her or her family. While this adaptation reduced her capacity to evaluate danger, it also had

⁴⁷ This assumption in no way prevents CPS from removing children from situations where danger is imminent. Instead, it requires, to the extent possible, that the decision to use placement to keep a child safe be based on joint decision-making with the mother and be part of an ongoing strategy of enhanced advocacy on behalf of battered women.

protective effects, keeping her from exposing the abuse and so risking severe harm to herself and the children. Distancing also allowed Lavonne to keep cool at moments when a more "normal" mother would have lost it, such as when Miguel beat Maria with the belt, and might have provoked even more serious and perhaps lethal violence. That Lavonne was in at least partial denial is evident from reports that she concentrated on "the good times" and that, "apart from the beatings, everything was going smoothly." However fantastic it may seem, the positive attitude that results from a kind of psychic splitting is a common survival mechanism employed by childhood victims of sexual abuse, hostages or prisoners-of-war. Lavonne's positive attitude towards even the most devastating moments in her life helps explain why Miguel's terrorism did not damage her children even more fundamentally.

Lavonne Lazarra unquestionably internalized a good deal of the world as Miguel presented it, a world in which the assaults were provoked by her own failures as mother, housekeeper, money manager, cook and sexual partner. Ironically, however, as with so many other battered women, Lavonne actually gained a sense of control through the process of internalizing blame: if her shortcomings caused Miguel's violence, then by altering her behavior she might prevent it. By contrast, as it became clear that nothing she did affected Miguel and that her limited attempts to present her problems to others were similarly ineffectual, she withdrew into herself, losing touch with some basic protective instincts. Through this process, Lavonne

became a dysfunctional caretaker, a fact that she denied because she felt an overwhelming guilt about failing in her maternal responsibilities.

The coercive control model neither minimizes the psychological effects of battering on victims nor the personal responsibility women like Lavonne must bear for behaving shamefully with those they love. Its claim, to reiterate, is that, absent a detailed working knowledge of the dynamics of a battering situation, it is often impossible to demarcate where behavioral adaptations to external constraint end and psychopathology or moral culpability begins. Given this, the most parsimonious assumption, and the only rational or ethical assumption on which protective or justice services can precede, is that the child's safety and the mother's capacity to protect the child are compromised by the same source, the strategies employed by the batterer.

i. "More and more child abuse cases involve mothers' boyfriends," Valerie Finholm, The Hartford Courant 7.10.97 p.A1 and a10.

ii. In the interest of Betty J.W., Borothy NJ W., James E.W., Sandra K.W. and Cassie A.W., vited Supreme Court of Appeals, West Virginia, opinion filed Jul 1, 1988 #17482. Reversal opinion written by Justice Miller.

iii. E. Pualani Enos, Prosecuting battered mothers: state laws' failure to protect battered women and their children. 19 Harv Women's L. J. 229, 1996)