

# Coerced Debt: The Role of Consumer Credit in Domestic Violence

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*After decades of advocacy by the modern domestic violence movement, institutions such as police departments, hospitals, and family law courts—although far from perfect in their responses—are now engaged in a conversation about domestic violence as a social problem, rather than denying its existence or significance. Despite this growth in awareness, a new form of domestic violence has developed, one which has not yet been recognized and which needs to be addressed: financial abuse through consumer credit. As consumer lending has permeated American life, violent partners have begun using debt as a means of exercising abusive control, making the consumer credit system an unknowing party to domestic violence. This abuse is known as coerced debt.*

*Coerced debt can take a variety of forms. It ranges from abusers taking out credit cards in their partners' names without their knowledge, to forcing victims to obtain loans for the abuser, to tricking victims into signing quitclaim deeds for the family home. This Essay presents original, empirical data on the nature and scope of coerced debt, and explains how abusive partners use the complex consumer credit system to leave many victims of domestic violence with hundreds or thousands of dollars of coerced debt.*

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## INTRODUCTION

When one pictures domestic violence (DV), consumer debt probably does not come to mind. Rather, one likely pictures the physical and sexual abuse in intimate relationships that have become acknowledged realities, as decades of

research have demonstrated their existence.<sup>1</sup> Structural abuse, which includes such tactics as isolating victims from other relationships and cutting off access to transportation, has also made headway in the public consciousness.<sup>2</sup> Even forms of economic abuse that depress victims' income have been well documented.<sup>3</sup> But there is another facet of domestic violence that has not yet been recognized: financial abuse through consumer credit. As consumer lending has permeated American life, violent partners have begun using debt as a means of exercising abusive control, making the consumer credit system an unknowing party to domestic violence. This Essay analyzes original, preliminary data that demonstrate the existence of coerced debt and will be followed by further empirical research as well as by a separate article addressing the policy implications of these findings.

Over the past several decades, the modern domestic violence movement has had some success in reforming the systems on which victims must rely to achieve safety for themselves and their families.<sup>4</sup> Police departments, hospitals, and family law courts are at least now engaged in the conversation about DV as a social problem, rather than denying its existence or importance.<sup>5</sup> These changes have been accompanied by a shift in legal thought, where much of the presumption of marital unity has been overcome.<sup>6</sup> The law now regards husband and wife as separate legal entities for purposes of prosecuting marital

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1. PATRICIA TJADEN & NANCY THOENNES, U.S. DEP'T OF JUSTICE, NCJ 181867, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE, at iii, 13–14 (2000), available at <http://www.ncjrs.gov/pdffiles1/nij/181867.pdf>.

2. EVAN STARK, COERCIVE CONTROL: THE ENTRAPMENT OF WOMEN IN PERSONAL LIFE 257–67 (2007).

3. Adrienne E. Adams & Megan R. Greeson, *Economic Abuse in the Lives of Women with Abusive Partners* (2006) (unpublished report based on the same study published in Adams et al., *infra* note 36) (on file with the author) (studying the forms of economic abuse suffered by domestic violence victims in a homeless shelter); Susan Lloyd & Nina Taluc, *The Effects of Male Violence on Female Employment*, 5 VIOLENCE AGAINST WOMEN 370, 370 (1999) (reviewing the negative effects of male violence on women's labor force participation and economic independence); Richard M. Tolman & Hui-Chen Wang, *Domestic Violence and Women's Employment: Fixed Effects Models of Three Waves of Women's Employment Study Data*, 36 AM. J. COMMUNITY PSYCHOL. 147, 147 (2005) (outlining the negative impact of domestic violence on victims' employment regardless of their mental and physical health).

4. ELIZABETH M. SCHNEIDER, BATTERED WOMEN AND FEMINIST LAWMAKING (2000); Patricia Tjaden, *Defining and Measuring Violence Against Women: Background, Issues, and Recommendations*, 22 STAT. J. U.N. ECON. COMMISSION FOR EUR. 217, 218 (2005) (stating that a “paradigmatic shift [in the approach to violence against women] resulted in more and more cooperation between U.S. criminal justice and public health agencies to conduct research on violence against women and to develop effective prevention and intervention strategies and policies”).

5. See SUSAN SCHECHTER, WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN'S MOVEMENT 29–32 (1982); Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 WIS. L. REV. 1657, 1668–75.

6. ELIZABETH M. SCHNEIDER ET AL., DOMESTIC VIOLENCE AND THE LAW: THEORY AND PRACTICE 13 (2d ed. 2008) (citing ELIZABETH PLECK, DOMESTIC TYRANNY: THE MAKING OF SOCIAL POLICY AGAINST FAMILY VIOLENCE FROM COLONIAL TIMES TO THE PRESENT (1987)).

assault and rape,<sup>7</sup> deciding whether to end a pregnancy,<sup>8</sup> granting restraining orders,<sup>9</sup> and even finding intramarital tort liability.<sup>10</sup>

But in a manner reminiscent of how the law formerly failed to recognize that a husband could physically abuse his wife because she was part of his legal identity, it currently does not recognize that a husband can destroy his wife's credit, because for credit purposes, spouses are frequently considered one financial unit.<sup>11</sup> A large part of the problem of coerced debt arises from legal uncertainty about whether a couple constitutes one economic unit or two—and to the extent that it is one, about when one partner has the final authority to make economic decisions for the couple. This has complex implications for the credit status of couples that later divorce.

I use the term “coerced debt” to describe all nonconsensual, credit-related transactions that occur in a violent relationship, not just matters that depend on the express application of force. Because intimidation and control pervade the type of abusive relationships in which coerced debt emerges,<sup>12</sup> the line that separates fraudulent transactions from those of a coercive nature is blurry at best.

Coerced debt ranges from abusers taking out credit cards in their partners' names without their knowledge, to forcing victims to obtain loans for the abuser, to tricking victims into signing quitclaim deeds for the family home. One of this Essay's primary goals is to provide a richly textured account of the many ways abusers have found to coerce, deceive, and manipulate their victims into debt. Using new, qualitative research, I explore how abusive relationship dynamics interact with a complex consumer credit system to leave many

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7. See, e.g., *Warren v. Georgia*, 336 S.E.2d 221 (Ga. 1985). For examples of cases decided under the previous regime, see *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130, 141 (1873) (denying women “legal existence separate from [their] husband[s], who [were] regarded as [their] head[s] and representative[s] in the social state”); *Bradley v. Mississippi*, 1 Miss. (1 Walker) 156, 158 (1824) (upholding the right of a husband to “exercise the right of moderate chastisement”).

8. *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 69 (1976).

9. E.g., Violence Against Women Act of 1994, 108 Stat. 1902 (1994) (requiring states to give full faith and credit to protection orders issued in other courts, and making the crossing of state lines while violating a protective order a federal crime); Pennsylvania Protection from Abuse Act, 23 PA. CONS. STAT. §§ 6101–6122 (2010). See generally SCHNEIDER ET AL., *supra* note 6, at 210–13.

10. For a comprehensive summary of the modern status of interspousal tort immunity in personal injury and wrongful death actions, see Wayne F. Foster, Annotation, *Modern Status of Interspousal Tort Immunity in Personal Injury and Wrongful Death Actions*, 92 A.L.R.3d 901 (1979). See also *Self v. Self*, 376 P.2d 65 (Cal. 1962) (in bank) (abandoning the rule of interspousal immunity for intentional torts); *Townsend v. Townsend*, 708 S.W.2d 646 (Mo. 1986) (en banc) (finding that the common-law doctrine of interspousal immunity is not a bar to claims for personal injuries inflicted by one spouse against another).

11. Spouses can apply for credit jointly and be authorized users on each other's credit accounts. When assessing creditworthiness, creditors are required by law to consider the credit history of all joint and authorized-user accounts in the name of a credit applicant's spouse. 12 C.F.R. § 202.6(b)(6)(i) (2012).

12. See *infra* Part III.B.

victims of domestic violence with hundreds or thousands of dollars of coerced debt.

This debt then becomes a major obstacle to escaping abusive relationships. Victims who attempt to leave the relationship encounter not only the traditional challenges—continued threats to their family’s safety, the establishment of economic self-sufficiency, the difficulties of relocation<sup>13</sup>—but also the credit consequences of domestic abuse. They face liabilities that absorb income needed for starting a new household.

A further complication is that the debts will frequently be in default by the time the victim learns of their existence, and will have already affected the victim’s credit score.<sup>14</sup> Because of the rise of the nontraditional use of credit reports,<sup>15</sup> the resulting unfavorable credit scores can have profound, negative consequences for victims of coerced debt. The scores lead landlords, utility companies, and employers to refuse to do business with newly single survivors, making it extremely difficult for them to find housing and jobs. This credit-based bar to starting a new life may, in turn, contribute to the current overcrowding in DV shelters, resulting in some victims returning to their abusers, and discouraging others from leaving abusive relationships in the first place.

Addressing coerced debt is one of the final frontiers of the multicentury legal project of securing women’s financial independence. It has been over 150 years since the first married women’s property acts began chipping away at the previous regime. Under the old legal order, commonly known as coverture,<sup>16</sup> a married couple comprised one economic unit, with the husband firmly at the helm. Upon marriage, a woman’s financial identity merged with that of her husband. As Blackstone wrote, “the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband . . . .”<sup>17</sup> At common law, a husband not only had exclusive control over the marital estate, but he also had extensive rights in his wife’s property

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13. Janet M. Bowermaster, *Relocation Custody Disputes Involving Domestic Violence*, 46 U. KAN. L. REV. 433, 449–56 (1998).

14. See *infra* Part II.

15. Jonathan D. Glater, *Another Hurdle for the Jobless: Credit Inquiries*, N.Y. TIMES, Aug. 7 2009, at A1 (exploring the use of credit reports in hiring); Katie Porter, *More Supreme Court Action on Credit Issues*, CREDIT SLIPS (Sept. 28, 2006, 12:39 AM), [http://www.creditslips.org/creditslips/2006/09/more\\_supreme\\_co.html](http://www.creditslips.org/creditslips/2006/09/more_supreme_co.html) (discussing Supreme Court cases that considered the use of credit reports for purposes other than granting credit); *Background Checking: Conducting Credit Background Checks SHRM Poll*, SOC’Y FOR HUM. RESOURCE MGMT. (Jan. 22, 2010), <http://www.shrm.org/Research/SurveyFindings/Articles/Pages/BackgroundChecking.aspx>.

16. 1 WILLIAM BLACKSTONE, COMMENTARIES \*430; BLACK’S LAW DICTIONARY 422 (9th ed. 2009).

17. 1 BLACKSTONE, *supra* note 16, at \*430.

and income.<sup>18</sup> The minority system of community property also gave husbands exclusive managerial control.<sup>19</sup>

In the mid-1800s, states began enacting married women's property acts,<sup>20</sup> which started the slow process of recognizing women as independent economic actors. The law has since undergone a tremendous evolution; it is no longer constitutionally permissible for the state to award economic rights on the basis of gender.<sup>21</sup> Regardless of marital status, women can now make contracts, own property, and earn wages without their gender functioning as a legal disability. But although the law retreated from its *de jure* commitment to male economic supremacy, it does not monitor the *de facto* economic rights husbands and wives conferred on each other within their marriages.<sup>22</sup> Thus, the legal system depends to a large extent on male cooperation in the project of female economic independence, or at least on the willingness of both parties to reach some kind of compromise.

In addition, granting married women economic autonomy is in tension with the continued endowment of the marital partnership with economic rights of its own. Marriage continues to exist as an economic institution. Husbands and wives act as financial partners. They enter into contracts, finance homes and other major purchases, and even declare bankruptcy together.<sup>23</sup>

Deposing the husband as the *de jure* economic decision maker left a power vacuum. What happens now when a married woman and her spouse make, or want to make, conflicting financial decisions? Who prevails? In a healthy relationship, this problem can be averted through delegation, negotiation, and compromise. In an abusive relationship, however, one partner may seize control and have substantial power to bind the other economically. Domestic violence thus throws into sharpest relief the unresolved tensions between women's equality and marital unity: it is the ultimate antiresponse to female financial autonomy. The project of dismantling coverture will not be complete until the law can better reconcile these competing goals.

The legal system creates room for this usurpation by leaving a crucial gap between family and debtor-creditor law. While many states have detailed family laws that specify when creditors can collect from marital property, as

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18. LESLIE J. HARRIS ET AL., FAMILY LAW 36–37 (3d ed. 2005).

19. *Id.* at 48–49.

20. *Id.* at 38–39.

21. *See, e.g.*, *Califano v. Westcott*, 443 U.S. 76 (1979) (finding gender differentiation in the provision of benefits to children of unemployed parents not “substantially related” to any valid statutory goal); *Califano v. Goldfarb*, 430 U.S. 199 (1977) (finding a violation of equal protection in the distinction between widows and widowers, and male and female wage earners under the Social Security Act).

22. *See, e.g.*, *McGuire v. McGuire*, 59 N.W.2d 336 (Neb. 1953) (holding that, while a marriage was intact, a woman could not use the law to force her husband to allocate the family's economic resources differently).

23. 11 U.S.C. § 302 (2006).

opposed to collecting from individual property held by the spouses, these laws typically do not consider domestic violence.<sup>24</sup> And while some states' rules for property distribution upon divorce enable the consideration of domestic violence,<sup>25</sup> for practical purposes, divorce decrees only have the authority to divide assets, not debts. Even if a divorce court decides that an abusive spouse is responsible for paying a debt he<sup>26</sup> has fraudulently or coercively incurred in the survivor's name, creditors still consider the survivor liable, so a division of debt favoring her will be only a paper victory.<sup>27</sup> Thus, debt generated by domestic violence falls in the gap between these two systems of law.

Coerced debt affects unmarried couples as well. Though their financial affairs can become entangled by coerced debt, unmarried couples do not have even the rudimentary protection of divorce. A key problem is that creditors rely on personal information to verify identity. If an abuser knows his partner's personal information, it is all too easy to convince financial institutions he is acting on her behalf, resulting in coerced debt through fraud.

The urgency of this problem has increased as debt has grown in its share of the average consumer's balance sheet.<sup>28</sup> As more families have a negative net worth,<sup>29</sup> family courts' ability to address the problem of coerced debt has diminished. In these cases, courts cannot compensate for coerced debt by allocating the victim additional assets, because there are not enough assets to cover the debts.

This Essay presents empirical data that document the role of consumer credit in domestic violence. Because this is an entirely new area of research, this analysis is necessarily preliminary, but it can begin to flesh out the contours of the problem and provide a guide for future research and policy discussion. The research into the problem of coerced debt began with a small, quantitative substudy within the Consumer Bankruptcy Project (CBP), which has been the leading national study on consumer bankruptcy for thirty years.<sup>30</sup> I worked with a psychologist to ask bankruptcy filers about domestic violence.<sup>31</sup>

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24. See, e.g., TEX. FAM. CODE ANN. § 3.202(a)–(c) (West 2009).

25. See, e.g., *id.* §§ 9.203(a), 9.204 (charging courts to divide marital property “in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage”).

26. In this Essay, I attempt to use gender-neutral pronouns when possible, but for reasons discussed later in the Essay, when I cannot avoid them, I use female pronouns for victims and survivors of domestic violence and male pronouns for abusers. See *infra* Part II.B.

27. A court could award the victim additional assets to compensate for the debt, but this is only possible in families that have assets.

28. Brian K. Bucks et al., *Changes in U.S. Family Finances from 2004 to 2007: Evidence from the Survey of Consumer Finances*, 95 FED. RES. BULL., at A1, A49–A50 (2009).

29. *Id.* at A51.

30. I was a co-Principal Investigator on the 2007 CBP, along with Melissa Jacoby, Robert Lawless, Katherine Porter, John Pottow, Deborah Thorne, and Elizabeth Warren.

31. Margret Bell, Ph.D., Boston College, Department of Counseling Psychology. Dr. Bell is currently affiliated with the Veterans Administration Boston Healthcare System.

We found that the rate of partnered, female bankruptcy filers who had experienced domestic violence within the year before bankruptcy was 17.8 percent, which is much higher than the most comparable national, annual baselines.<sup>32</sup>

The precise DV rate uncovered by the CBP substudy is more suggestive than definitive, because there are many potential causal links that could account for the association between domestic violence and bankruptcy. The CBP research does, however, open up room for further inquiry about the complex interaction between the factors underlying this relationship. The survey also illustrates the type and severity of domestic violence that occurs in one debt-related context.

The CBP DV survey also triggered the qualitative research that followed. After analyzing the CBP data, I began informally interviewing domestic violence experts to better understand the CBP results. A new potential cause of the relationship between DV and bankruptcy emerged from these discussions: the possibility that consumer credit has become a tool of domestic abuse. As the importance of coerced debt became apparent, I expanded this informal interviewing process into a full-fledged qualitative research project. I conducted systematic interviews with a total of fifty-five domestic violence lawyers and advocates from twenty states about their clients' experiences with credit. These interviews provide the basis for this Essay's qualitative exploration of coerced debt.

This research suggests that it is time to find new legal approaches that account for coerced debt. The family law system does not have the authority to adjudicate the rights of creditors along with claims resulting from abusive

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32. The CBP rate was 17.8%. The most comparable national rate ranges from 1.5% to 9.8%. Compare TJADEN & THOENNES, *supra* note 1, at 9 ex.1 (1.5%), with MICHELE C. BLACK ET AL., NAT'L CTR. FOR INJURY PREVENTION & CONTROL, CTRS. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT 38 tbl.4.1 (2011), available at [http://www.cdc.gov/ViolencePrevention/pdf/NISVS\\_Report2010-a.pdf](http://www.cdc.gov/ViolencePrevention/pdf/NISVS_Report2010-a.pdf) (5.9%), and John Schafer et al., *Rates of Intimate Partner Violence in the United States*, 88 AM. J. PUB. HEALTH 1702, 1702 (1998) (9.8%). Although the 9.8% figure is not explicitly reported in the cited article, I obtained it by combining the DV rates found in the study's two mutually exclusive categories of female-reported, male-to-female violence. *Id.* at 1703 tbl.1. This study included 1635 heterosexual, married and cohabitating couples. The researchers interviewed each member of the couple separately and then compared instances of domestic violence reported by one member of the couple with instances reported by the other. This enabled the study to report three statistics for each violent act they measured: acts reported by both members of the couple, acts reported by the female member but not the male, and acts reported by the male member of the couple but not the female. Because I am using this study for purposes of comparison to the female-reported violence in the CBP, I added together the study's two statistics for woman-reported, male-to-female violence. In the general category of "any violence," the study found a rate of 5.4% for incidents reported by both members of a couple and a rate of 4.4% for incidents reported by the female member but not the male. I added this 5.4% and 4.4% to obtain the 9.8% rate of female-reported domestic violence that I use throughout this Essay. (In this same general category, the rate of violence reported by the male member of the couple but not the female was 3.8%, while 86.4% of couples reported no male-to-female violence of any kind.)

relationships. And the consumer credit system has few mechanisms for acknowledging that domestic violence exists. This Essay takes as its premise that we cannot contemplate the process of reform without basic information about coerced debt and its operation. It provides an empirical map of coerced debt with the goal of laying the groundwork for future policy exploration, a task I undertake in a second, companion article.

This Essay proceeds in four parts. Part I analyzes the empirical evidence for the existence of coerced debt, providing data from the DV subsection of the 2007 CBP as well as from the qualitative research and reviewing the one other study that has begun to document credit-based financial abuse. Part II explores the “how” of coerced debt. It begins by stepping back to examine the literature on domestic violence generally and formulates an account of how abusive relationship dynamics can lead to coerced debt. It then documents the many facets of coerced debt, exploring the range of ways abusers have found to steal victims’ credit. Part III analyzes the longer-term effects of coerced debt, exploring how the credit reporting system prolongs domestic violence. Part IV concludes and outlines directions for future research.

## I.

### EMPIRICAL EVIDENCE OF COERCED DEBT

Coerced debt is a new issue. By definition, it could only arise as consumer credit became widespread throughout the U.S. market. As it became increasingly easy for consumers to obtain, first, credit cards, and then mortgages, the opportunities for abuse grew by leaps and bounds.<sup>33</sup> Several of the DV advocates with whom I spoke said that awareness of the problem is only now beginning to surface in the domestic violence community.<sup>34</sup>

Not surprisingly then, research on coerced debt is almost nonexistent. The problem simply has not been addressed in the legal literature,<sup>35</sup> and there has been only one prior empirical study, conducted by psychologists.<sup>36</sup> This Part begins by reviewing the prior literature, which consists of that one study, and

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33. Angela Littwin, *Beyond Usury: A Study of Credit-Card Use and Preference Among Low-Income Consumers*, 86 TEX. L. REV. 451, 453 (2008); see also David A. Lander, “It ‘Is’ the Best of Times, It ‘Is’ the Worst of Times”: *A Short Essay on Consumer Bankruptcy After the Revolution*, 78 AM. BANKR. L.J. 201, 203–05 (2004) (tracing the increase in credit card availability for low-income consumers over time); David A. Moss & Gibbs A. Johnson, *The Rise of Consumer Bankruptcy: Evolution, Revolution, or Both?*, 73 AM. BANKR. L.J. 311, 336 (1999) (observing that an increasing spread between credit card interest rates and other interest rates during the 1980s enabled credit card issuers to charge risk premiums to borrowers at decreasing income levels).

34. See, e.g., Interview 36. I cite my subjects by interview number rather than name in order to better preserve their clients’ confidentiality.

35. A LexisNexis search on the intersection of the term “debt” with “domestic violence,” “domestic abuse,” “battered wife,” or “battered woman” generated no results.

36. See Adrienne E. Adams et al., *Development of the Scale of Economic Abuse*, 14 VIOLENCE AGAINST WOMEN 563, 563 (2008) (discussing various forms of economic abuse and recommending a scale for measuring such abuse).

then documents the original, empirical research conducted for this Essay. It explains the methodologies of the studies I conducted and presents my findings on coerced debt.

*A. Review of the Prior Literature on Coerced Debt*

Like the original research presented in this Essay, the one previous study of coerced debt was preliminary. In *Development of the Scale of Economic Abuse*, psychologists at Michigan State University created an instrument to measure economic abuse and tested its internal consistency.<sup>37</sup> The Michigan State University (MSU) study suggests high rates of credit-related financial abuse. Although many previous studies have tested for general economic abuse,<sup>38</sup> this was the first one to include questions about coerced debt.<sup>39</sup> The researchers interviewed 103 female residents at five domestic violence services centers in a Midwestern state.<sup>40</sup> All but two of the respondents had experienced physical domestic violence within the previous six months, with nearly two-thirds having experienced abuse as severe as strangling.<sup>41</sup> Of the 103 participants, 99 percent reported some form of economic abuse.<sup>42</sup> While the survey included measures of more “traditional” economic abuse, such as sabotaging a victim’s employment and stealing cash, it also asked about matters related to coerced debt.<sup>43</sup> The results suggest a high rate of credit-related financial abuse.

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37. *Id.* at 569–80. In addition to publishing the study in a peer-reviewed journal, the authors elaborated on their findings in a report to local service providers. Data from that report are cited as well. Adams & Greeson, *supra* note 3, at 13–16.

38. *See, e.g.*, STARK, *supra* note 2, at 269–72 (surveying the ways in which batterers limit their victims’ ability to work and their access to money); Lloyd & Taluc, *supra* note 3, at 385–87 (reviewing the negative effects of family violence on victims’ labor force participation and economic independence); Maureen Outlaw, *No One Type of Intimate Partner Abuse: Exploring Physical and Non-Physical Abuse Among Intimate Partners*, 24 J. FAM. VIOLENCE 263, 265–68 (analyzing nonphysical forms of abuse against women).

39. I conducted an exhaustive search of the psychology, sociology, and domestic violence databases. I also reviewed the citations from the articles on general economic abuse. I found no other research that measured coerced debt.

40. Adams et al., *supra* note 36, at 571–72.

41. *Id.* at 571.

42. *Id.*

43. *See* Adams & Greeson, *supra* note 3, at 7 tbl.4.

**TABLE 1: Coerced debt among a sample of recipients of DV services<sup>44</sup>**

<i>Survey question<sup>45</sup></i>	<i>Percent endorsing</i>
Decide when and how you could use your cash, bank accounts, or credit cards.	84
Force you to give him money or let him use your checkbook, ATM card, or credit card.	68
Build up debt under your name by doing things like use your credit card or run up the phone bill.	59
Keep you from building credit by doing things like put your property in only his name, not let you get a credit card of your own or keep you from having your own bank account.	57
Demand that the lease or mortgage be in his name only.	54
Use your checkbook, ATM card, and/or credit card without your permission and/or knowledge.	53
Keep you from using your credit cards.	52
Damage your credit by doing things like put property in your name and then refuse to pay the bill or prevent you from paying the bill.	51
Keep you from having access to your bank account(s).	48
Keep you from getting a credit card of your own.	42
Build up debt under your name by doing things like putting a car, apartment/house, or credit cards in your name.	39

The extent to which some of these items are measuring credit-related behavior is currently unclear. For example, for the item that asks about forcing “you to give him money or let him use your checkbook, ATM card, or credit card,”<sup>46</sup> it would be useful to know how many of the 68 percent of participants who endorsed this item would have done so if it included only credit cards. The next excerpted item, which asks about running up debt in the victim’s name via credit cards or cell phones,<sup>47</sup> could be divided in an analogous way. In addition, this survey touches only tangentially on coerced mortgage debt. Future research should also ask about the dollar value of any coerced debt found. But taken

44. *Id.* The table excerpts the study’s findings on coerced debt. It shows the percentage of respondents who endorsed each credit-related measure. *See also* Adams et al., *supra* note 36 (publishing other findings from the same study).

45. Participants rated “the frequency with which their partners had employed each of the economic abuse tactics according to a 5-point scale . . . .” Adams et al., *supra* note 36, at 569.

46. *Id.* at 576.

47. *Id.*

together, the MSU study's high endorsement rates for a variety of items that include credit products are suggestive of a widespread coerced debt problem.

Additional research is also needed among survivors situated in a greater variety of economic circumstances. The MSU study included primarily low-income women, which raises questions about how generalizable its results may be to other populations.<sup>48</sup> On the other hand, some of the participants may have had low incomes at the time of the study because of the economic abuse. More than three-quarters reported that their abusive partner was in large part responsible for their economic problems, and this self-identification correlated with the degree of economic abuse reported elsewhere.<sup>49</sup> Thus, the study may have included women who were previously members of the middle and upper classes and became impoverished recently in connection with the abuse.<sup>50</sup>

### *B. The Current Research*

The heart of the current research is the qualitative study that explores the problem of coerced debt directly, which will be discussed in detail in Part II. But it is useful to begin by briefly describing the CBP DV study, because it provides a starting point for examining the association between debt and domestic violence. It also provides a detailed portrait of the type and severity of physical and sexual abuse that occurs in one debt-related context.

#### *1. Measuring the Rate of Domestic Violence: The Consumer Bankruptcy Project*

The domestic violence section of the 2007 Consumer Bankruptcy Project found that 17.8 percent of married or cohabitating female participants may have experienced domestic abuse in the year before filing for bankruptcy.<sup>51</sup> This compares to a national, annual domestic abuse rate among women that has ranged from 1.5<sup>52</sup> to 5.9<sup>53</sup> to 9.8<sup>54</sup> percent in the studies most comparable to the CBP.<sup>55</sup>

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48. *Id.* at 581.

49. *Id.* at 581–82.

50. A dramatic drop in financial status around the time of the event that would qualify someone for inclusion in an empirical study also occurs in research on consumer bankruptcy filers. *See generally* TERESA A. SULLIVAN ET AL., *THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT* (2000) [hereinafter SULLIVAN, *FRAGILE MIDDLE CLASS*]. Bankruptcy researchers have addressed this issue by asking about more enduring indicators of socioeconomic status, such as education and occupational prestige. This approach may be useful in future studies on economic abuse.

51. Appendix I to this Essay provides a thorough discussion of the CBP's prevalence results, the methodology I used to obtain them, and a detailed comparison to the national studies.

52. TJADEN & THOENNES, *supra* note 1, at 9 ex.1.

53. BLACK ET AL., *supra* note 32, at 38 tbl.4.1.

54. Schafer et al., *supra* note 32, at 1702.

55. Appendix I.C contains an in-depth analysis of these studies.

*a. Methodology of the CBP Substudy*

The CBP screened 258 married or partnered women for domestic violence.<sup>56</sup> Of these, forty-six participants, or 17.8 percent, screened positive for having experienced domestic violence within the year prior to filing for bankruptcy. The 95 percent confidence interval for the 17.8 finding was between 13.1 percent and 22.5 percent, meaning that the lowest 95 percent confidence interval is still more than 3 percent higher than the highest national rate of 9.8 percent.

I also reanalyzed the data to include the participants who declined to answer the DV questions. When I added the nonresponders to the participants who screened negative for DV, I obtained a DV rate of 13.4 percent, which is again higher than the highest national rate of 9.8 percent. When I added the nonresponders to the participants who screened positive for DV, I obtained a DV rate of 38.2 percent. These data suggest that domestic violence victims may be overrepresented in bankruptcy.

*b. Challenges in Interpreting the Results of the CBP Substudy*

Drawing conclusions from the CBP substudy regarding the link between domestic violence and bankruptcy is challenging for several reasons. First, it is difficult to definitively interpret the significance of the nonresponders. Second, it is possible that participants answered the survey questions untruthfully or inaccurately. Finally, finding a higher rate of domestic violence among female bankruptcy filers does not constitute direct evidence of coerced debt.

It is impossible to know why a given respondent declined to participate in a segment of a survey, but there are important reasons why both participants who had experienced domestic violence and those who had not might have declined. For participants who had experienced domestic violence, the obvious concern would be safety. The survey was given over the telephone; if the batterer overheard the victim answering questions about domestic violence, a participant could be in physical danger.<sup>57</sup> Respondents also may have been in denial about the abuse, may have been embarrassed, or may have simply found the subject matter too emotionally charged or too sensitive to discuss with a

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56. These participants were drawn from the group of 1032 people who completed the CBP's written questionnaire and telephone survey. Of the 1032 completing the questionnaire and survey, 343 were married or cohabitating women who were thus eligible for the DV screen. Eighty-one of the participants who met these criteria declined to answer the DV questions without specifying a reason, and four others declined on safety grounds. This left a pool of 258 to screen for DV.

57. See, e.g., STARK, *supra* note 2, at 209 (describing an incident in which a battered wife's divorce attorney "foolishly" called the wife at home, and the abusive husband listened on another extension, confronted the wife with the fact that she was seeking a divorce, and beat her severely). The CBP did ask participants if it was safe to discuss their relationships at that moment, but the safety question came after the general question asking whether they were willing to discuss domestic violence at all. So a respondent concerned about safety would not have known that the safety question was next and might have preemptively declined to participate on safety grounds.

stranger. As for respondents who had not experienced domestic abuse, they might have been uncomfortable with the subject matter, thought it stigmatizing, or considered it inappropriate for discussion. Or they may have found such questions uninteresting or irrelevant to a study about bankruptcy.

Examining questions that the nonresponders did answer and comparing their responses with those of the participants who completed the DV segment can shed some light on these possibilities. I conducted a response-bias analysis that compared these two groups in terms of fifty-three variables, and there were, in fact, some major differences between them. The most important difference was that the women who answered the DV questions (“the DV responders”)—regardless of whether they had experienced DV within the year before bankruptcy—appeared to have more debt-related conflict in their intimate relationships than those who declined to answer the DV questions. The DV responders were statistically significantly more likely to argue with their partners about money, to report that financial pressures had a negative impact on their relationships, and to consider divorce as a result of financial pressures.<sup>58</sup> This suggests that the DV responders may have had higher rates of economic conflict within their marriages than the nonresponders, which may have placed them at higher risk for domestic violence.

An analysis of the two groups’ financial variables complements this picture. Although there were no statistically significant differences between the DV responders and the nonresponders in terms of numerical variables such as their total household income, whether they had assets,<sup>59</sup> or the amount of debt they listed in their bankruptcy court records, their recent financial experiences were quite different. The DV responders (again, regardless of whether they reported DV) were statistically significantly more likely than the nonresponders to say that their families had experienced negative consequences of financial distress. For example, their families were more likely to have missed rent or mortgage payments, to have had debt-collection lawsuits brought against them, or to have gone without prescription medications for financial reasons.<sup>60</sup>

There are at least two interpretations of these analyses. It could be the case that the DV responders experienced something, such as higher rates of domestic violence, that both created marital stress and caused these families to experience a given amount of financial distress more severely than those families not experiencing DV. Or it could be the case that, despite their similar balance sheets, the financial circumstances of the responders are somehow

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58. A detailed statistical analysis of these and related variables is available upon request.

59. The participants who completed the DV questions had statistically significantly higher asset levels than DV nonresponders when asset levels were converted into logs ( $p < .05$ ). Median assets among DV responders and DV nonresponders were \$93,831 and \$72,350, respectively. This result is somewhat surprising, considering that the two groups’ incomes and debt levels were quite similar and that the DV responders struggled more with privations and debt-collection issues.

60. A detailed statistical analysis of these and related variables is available upon request.

genuinely worse than those of the nonresponders and that this, rather than domestic violence, is driving the higher levels of privations and marital financial conflict. One potential explanation for the latter is the presence of children in their households. DV responders were statistically significantly more likely than nonresponders to be financially responsible for at least one child (60.7 percent versus 45.7 percent), and supporting children has been previously linked with financial distress.<sup>61</sup>

In addition to the challenges of imperfect participation, all surveys are vulnerable to the criticism that respondents may answer questions inaccurately.<sup>62</sup> They may lie, shade their answers, or misremember. Some surveys address this issue by collecting documentary evidence as well, but in the case of domestic violence prevalence studies, that does not resolve the problem. It is difficult to verify survey results through a comparison with documentary evidence because DV surveys consistently find higher rates of domestic violence than are obtained from counting police reports or medical records,<sup>63</sup> and many DV experts believe that this is because victims frequently do not report incidents to the police or medical personnel.<sup>64</sup> There is no foolproof way to determine whether the discrepancy exists because surveys are overcounting or the documentation studies are undercounting. It is also possible that both are undercounting, with the surveys doing so less severely.<sup>65</sup>

DV researchers have sought to address this concern by designing screening tools that are as neutral as possible. The standard instrument, which

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61. Elizabeth Warren, *Bankrupt Children*, 86 MINN. L. REV. 1003, 1006 (2002) (finding that “households with children are much more likely to file for bankruptcy”).

62. See WILLIAM FODDY, *CONSTRUCTING QUESTIONS FOR INTERVIEWS AND QUESTIONNAIRES: THEORY AND PRACTICE IN SOCIAL RESEARCH* 2–4 (1993) (examining how participants may give invalid answers or suggest behaviors that differ from what they actually do); W. Edwards Deming, *On Errors in Surveys*, 9 AM. SOC. REV. 359, 359–60 (1944) (listing the principal sources of errors in survey data, including “variability in response”); see also Rikuma Ito, *An Analysis of Response Errors: A Case Study*, 36 J. BUS. 440 (1963) (measuring discrepancies between respondents’ replies to surveys on car loan payments and the actual payments made).

63. Carole Kennedy Chaney & Grace Hall Saltzstein, *Democratic Control and Bureaucratic Responsiveness: The Police and Domestic Violence*, 42 AM. J. POL. SCI. 745, 747 (1998) (“Slightly more than half of all domestic violence incidents revealed in victimization surveys today are reported to the police . . .”).

64. See, e.g., Richard B. Felson & Paul-Phillipe Paré, *The Reporting of Domestic Violence and Sexual Assault by Nonstrangers to the Police*, 67 J. MARRIAGE & FAM. 597, 601 (2005) (finding that the “most common reason victims give for not reporting . . . assault is that it was too minor”); Richard B. Felson et al., *Reasons for Reporting and Not Reporting Domestic Violence to the Police*, 40 CRIMINOLOGY 617, 617 (2002) (finding that though DV victims are less likely to report violence because of privacy concerns, DV victims are ultimately just as likely as other victims to call the police).

65. It is unlikely that the documentation studies are overcounting because that would require an implausible scenario in which police departments or medical personnel were forging records of DV incidents that did not occur.

we used in this study,<sup>66</sup> avoids loaded terms such as “domestic violence” or “abuse” and instead asks about a detailed list of specific behaviors. This technique can help with both potential overreporting and underreporting. Asking about individual behaviors leaves less room for broad declarations of abuse by participants who, for example, want to paint themselves as victims or believe that that is what the interviewers want to hear.<sup>67</sup> Similarly, the survey frames questions in terms of whether a “former or current intimate partner” engaged in the behavior, without asking the participant to name or describe that partner. That form of question lowers the incentive for a participant to vindictively claim abuse by a nonabusive partner. On the other end, behavior-specific questions can help decrease potential underreporting. A participant who does not see her relationship as generally abusive may still be willing to acknowledge that her partner has, for example, pushed or shoved her within the previous year. More generally, specific questions encourage more reliable recall.

There is still, however, potential for inaccuracy, which could work in either direction. On one hand, participants could be trying to convince themselves of abuse in order to bolster the idea in their own minds for possible later use, such as in a divorce hearing. Or they might believe that the interviewer is looking for a positive response. On the other hand, domestic violence is still stigmatized, and participants may be embarrassed or might want to provide the more socially acceptable response by reporting that abuse has not occurred.<sup>68</sup> In addition, some respondents with safety concerns may have decided to participate in the DV segment but deny that any violence had taken place, either because their safety situation changed during the interview (i.e., the abuser came home) or because they felt that a denial was the overall safest choice.

Conducting research in an area as intimate and controversial as domestic violence always poses certain difficulties. Investigators must be careful in designing their methodologies and presenting their findings. But when one considers that the alternative is to abandon domestic violence as a research topic, the importance of proceeding, albeit cautiously, becomes clear.

Even if one accepts the survey’s finding that the rate of domestic violence appears to be higher among bankruptcy filers than the general population, it still does not necessarily suggest the existence of coerced debt. There are almost certainly multiple causal associations between domestic violence and bankruptcy, of which coerced debt is just one possibility. Domestic violence

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66. See Murray Straus et al., *The Revised Conflict Tactics Scales (CTS2): Development and Preliminary Psychometric Data*, 17 J. FAM. ISSUES 283, 285–86 (1996).

67. Philip M. Podsakoff et al., *Common Method Biases in Behavioral Research: A Critical Review of the Literature and Recommended Remedies*, 88 J. APPLIED PSYCHOL. 879, 882–83 (2003).

68. See *id.* at 881.

can lead to medical problems, job instability, and divorce,<sup>69</sup> which are three of the events that researchers have identified as contributing factors to personal bankruptcy.<sup>70</sup> In the other direction, the stress that comes with economic instability may exacerbate domestic violence. A third possibility is that there are additional factors that contribute to both domestic abuse and bankruptcy.

Coerced debt may be an independent causal link between domestic violence and bankruptcy, but it also may interact with some of the factors mentioned above in ways that have yet to be understood. For example, as discussed below, coerced debt can make it more difficult for DV survivors to find employment, which exacerbates job instability. Another possibility is that an abuser's determination to maintain financial control over the victim may cause him to make financial decisions that negatively impact the family's overall economic health. These are speculations, however, and further research is needed to analyze these and other factors. Although the association of bankruptcy with domestic violence does not imply the existence of coerced debt, it does open up room to explore a complex and interlocking set of causal relationships.

### *c. Types of Domestic Violence Reported in the CBP Substudy*

The CBP DV study is additionally important because it documents the kinds of physical and sexual violence that are occurring in one credit-related context and helps illustrate their seriousness. It provides data on the types of abuse participants experienced within the year before bankruptcy. Slightly more than two-thirds of participants (68 percent) who had screened positive for domestic violence reported at least one type of relatively "minor" physical abuse, which included having something thrown at them that could hurt, having their arm or hair twisted, being pushed or shoved, being slammed against a wall, being grabbed, or being slapped.<sup>71</sup>

For severe violence, the numbers were slightly lower but still high, with 41.2 percent of domestic violence participants having experienced at least one behavior that included having a knife or gun used on them, being choked, being punched or hit with something that could hurt, being beaten up, being burned or scalded on purpose, or being kicked. Slightly under one-third (32 percent) of participants had experienced some form of sexual abuse in the year before

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69. Kristin L. Anderson, *Who Gets Out? Gender as Structure and the Dissolution of Violent Heterosexual Relationships*, 21 GENDER & SOC'Y 173, 177–78 (2007) (divorce); Ann L. Coker et al., *Physical and Mental Health Effects of Intimate Partner Violence for Men and Women*, 23 AM. J. PREVENTIVE MED. 260 (2002) (medical problems); Jennifer E. Swanberg & T.K. Logan, *Domestic Violence and Employment: A Qualitative Study*, 10 J. OCCUPATIONAL & HEALTH PSYCHOL. 3 (2005) (job instability).

70. See SULLIVAN, FRAGILE MIDDLE CLASS, *supra* note 50, at 15–22.

71. We asked about each behavior separately. The 68 percent figure is the total number of participants who responded positively to any of these questions. The same is true of the other categories of abuse discussed in this subsection.

filing bankruptcy.<sup>72</sup> Nearly half (47 percent) of the participants experienced at least one form of stalking.<sup>73</sup> Table 2 provides a detailed breakdown of these results.

**TABLE 2: Number and percentage of follow-up study participants who experienced specific abusive behaviors within the year before bankruptcy**

<i>Abusive behavior</i> <sup>74</sup>	<i>Number</i>	<i>Percent</i>
Throw something at you that could hurt	12	34
Twist your arm or hair	7	20
Push or shove you	21	60
Use a knife or gun on you	2	6
Punch you or hit you with something that could hurt	12	34
Choke you	6	17
Slam you against a wall	11	31
Beat you up	2	6
Grab you	19	54
Slap you	10	29
Burn or scald you on purpose	2	6
Kick you	3	9
Insist on sex when you did not want to, but did not use physical force	10	29
Insist that you have oral or anal sex, but did not use physical force	5	14
Make you have sex without a condom	2	6
Use threats to make you have vaginal sex	2	6
Use threats to make you have oral or anal sex	0	0
Use force (like hitting, holding down, or using a weapon) to make you have vaginal sex	1	3
Use force (like hitting, holding down, or a weapon) to make you have oral or anal sex	1	3

72. Sexual abuse was defined to include using force, using threats, or insisting upon any type of sex when the participant did not want to engage in the sexual act. More severe sexual violence was much less common, with slightly under 6 percent being coerced into sex via threats and only one participant via physical force.

73. Stalking included behaviors such as following or spying on the participant, standing outside her home or workplace, leaving unwanted items for her to find, communicating with her against her will, or vandalizing her property. Importantly, these behaviors counted as stalking only if the participant “fe[lt] frightened or fear[ed] bodily harm as a result.” *Infra* Appendix II. If, for example, a participant had been spied upon or followed, but did not experience fear, such acts were not counted as stalking.

74. The text of each question was: “In the year before you filed for bankruptcy, did a current or former intimate partner [insert behavior from Table 2]?” For the stalking questions (the last eight rows of the table), we counted a response as positive only if the participant also answered yes to the follow-up question, “Did you feel frightened or fear bodily harm as a result?”

Follow or spy on you, causing you to be frightened or fear bodily harm	9	26
Send you unsolicited letters or written correspondence, causing you to be frightened or fear bodily harm	9	26
Make unsolicited phone calls, causing you to be frightened or fear bodily harm	10	29
Stand outside your home or school, causing you to be frightened or fear bodily harm	5	14
Show up at places you were even though he or she had no business being there, causing you to be frightened or fear bodily harm	4	11
Leave unwanted items for you to find, causing you to be frightened or fear bodily harm	1	3
Try to communicate in other ways against your will, causing you to be frightened or fear bodily harm	6	17
Vandalize your property or destroy something you loved, causing you to be frightened or fear bodily harm	7	20

*N* of participants = 35

Unfortunately, there is no major, national study with which to compare the CBP's breakdown of specific abusive incidents,<sup>75</sup> but this data should provide readers with a sense of the type of abusive behaviors the CBP participants experienced in the year before bankruptcy.

## 2. *The Qualitative Study*

After analyzing the general DV data from the CBP, I conducted a set of informal interviews that introduced me to the issue of coerced debt and led me to expand my interviewing process into a full, qualitative investigation of the phenomenon. In this investigation, I interviewed fifty-five lawyers and other advocates who represented or otherwise directly worked with victims and survivors of domestic violence. Because domestic violence research requires extensive safety planning and procedural safeguards, I did not have the resources or expertise to interview DV victims directly again. Thus, the goal of this research is not to determine the frequency of coerced debt, but rather to document its existence and understand how it operates in a variety of circumstances.

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75. The *NIPSVS Summary Report* does provide this breakdown, but only in terms of the percentage of all U.S. women who have experienced a given behavior, not in terms of the percentage of women who screened positive for DV who have experienced it. BLACK ET AL., *supra* note 32, at 9. The CBP DV Substudy data on specific behaviors cannot be shown as a percentage of all cohabitating, female bankruptcy filers because the specific questions were asked in follow-up interviews that had slightly different participation levels than the initial screening.

*a. Methodology*

I chose to interview advocates and lawyers because they have direct experience working with their clients on a variety of DV-related issues and frequently have a sense of the economic problems they are facing. I used a snowball sample, in which I started with contacts I already had and then sought additional referrals after each interview.<sup>76</sup> I also posted on two email lists used by DV advocates, and several interviewees who worked at domestic violence coalitions forwarded my interview request to the membership in their organizations. A snowball sample of diverse experts is an ideal way to begin understanding an issue about which it is difficult to locate information.<sup>77</sup>

I was able to interview respondents in twenty states and the District of Columbia,<sup>78</sup> with a plurality of the interviewees working in Texas.<sup>79</sup> In addition to state-level diversity, the respondents' practices were geographically diverse in other ways. Their client bases were located in large metropolises, mid-sized cities, small towns, and rural locations.<sup>80</sup>

A majority of the participants were lawyers, although I also interviewed social workers, psychologists, financial-education counselors, nonprofit executives, and general lay advocates. Among the lawyers, the largest number were legal aid lawyers practicing in family law units.<sup>81</sup>

The lawyers' and advocates' practices covered a variety of issues, such as seeking restraining orders, handling property distributions in divorces, obtaining divorces without addressing property-distribution issues, litigating under consumer-protection statutes and the Bankruptcy Code, offering training for pro se litigants, providing financial education, managing DV shelters, aiding clients in the transition from shelters to permanent housing, and helping clients establish economic self-sufficiency after separation and divorce.

Since these interviews are second-hand reports, they are not as reliable as research conducted directly with victims and survivors. Facts are more likely to be misremembered or misunderstood as they pass through two people. In

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76. See Ronald J. Mann & Katherine Porter, *Saving Up for Bankruptcy*, 98 GEO. L.J. 289, 302 (2010); see also Littwin, *supra* note 33, at 456–57.

77. Mann & Porter, *supra* note 76, at 302.

78. These states were California, Connecticut, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New Mexico, New York, North Carolina, Ohio, Tennessee, Texas, and Washington.

79. I conducted most of the interviews by telephone, with a few in-person meetings. I recorded the interviews by typing notes during the conversations, and I double-checked any exact quotes with the participants.

80. For example, within Texas, I interviewed advocates who worked in Houston, Austin, El Paso, rural areas in North Texas, and the border region near Mexico.

81. The other lawyers included those working in other divisions of legal aid offices, such as consumer law; lawyers at DV-oriented nonprofits; nonprofit lawyers who focused on related areas, such as disability law or LGBT issues; clinical professors; private practitioners at small firms; one government attorney; and two legal aid fellows who had obtained funding for projects on economic issues within domestic violence.

addition, because there is not an organized bar or lay practice that aids accused DV abusers,<sup>82</sup> all of my interviewees represented or worked with victims. Thus, in any situation discussed, there could very well be another side to the story. In addition, lawyers—whose success in an individual case can be related to the strength of the evidence for abuse—may be particularly vulnerable to being convinced by their own arguments. Thus, I do not rely on detailed numerical generalizations, such as the number of interviewees who discussed credit card problems versus mortgage issues or the amount of money at stake. Those precise numbers are in any case irrelevant, because each lawyer I interviewed has numerous clients.

That said, the interviewees did not appear to be pursuing a coerced debt agenda. Many also discussed other DV-related credit problems their clients faced, such as medical debt incurred from treating domestic violence injuries or the reliance on credit after a divorce. Moreover, few of them were in a position where they would be more likely to obtain professional success—for example, by winning cases—if they could show coerced debt.

In many situations, coerced debt was actually a burden on the interviewees' practices. They often did not have the resources to address it directly because their organizations considered it secondary to addressing basic safety issues. For example, one legal aid lawyer explained that she represented clients in divorces but that she rarely had time to do property distributions, because they were so labor-intensive in her state.<sup>83</sup> Another stated that her agency is one of the few organizations in the entire populous state where she practices that handles complex, DV-related property-distribution cases.<sup>84</sup> While this may give her a professional interest in the problem of coerced debt, it suggests that most of her colleagues at other agencies do not have one.

In addition, some of the lawyers who addressed coerced debt were using DV-neutral legal tools, such as consumer-protection statutes or bankruptcy, and thus would not have a professional bias in favor of the existence of coerced debt.<sup>85</sup> Similarly, many advocates, particularly the financial-education counselors, were more likely to take an educational empowerment approach, rather than one based on determining fault.<sup>86</sup> Although they observed these credit problems, they were more interested in helping clients repair their credit than in apportioning liability.<sup>87</sup>

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82. One possibility for future research would be to interview counselors who work with batterers in abuse-prevention programs. Another strategy would be to contact lawyers in private practice who frequently represent alleged abusers.

83. Interview 7.

84. Interview 35.

85. See Interview 45.

86. See Interview 8.

87. This process was fraught with difficulty. See *infra* Part IV.B.

*b. Documentation of Coerced Debt*

An examination of the entire body of interviews provides persuasive evidence that the problem of coerced debt exists. Of the fifty-five advocates interviewed, fifty-one discussed at least one form of coerced debt. While this figure cannot serve as a numerical characterization of the extent of the problem, it does suggest that the issue occurs with enough regularity to be taken seriously and addressed. A look at how the advocates I interviewed discussed its prevalence is illustrative of how frequently the problem seems to emerge.

One lawyer who staffs a family law hotline said that she sees a case of coerced debt approximately once per day.<sup>88</sup> Another lawyer, who practiced formerly in the Northeast and is now a clinical professor in the Southwest, said, “There’s definitely a manipulation of finances that happens in almost all of the cases.”<sup>89</sup> A third, whose organization provides technical assistance to other domestic violence lawyers nationally, stated that many of the cases in which she is asked for help involve the “sabotage of people’s credit.”<sup>90</sup>

A social worker who advocates for clients with disabilities said that about 70 percent of her clients have been abused in some way related to credit, stating that “[t]heir credit info is stolen more often than not.”<sup>91</sup> A lawyer who handles divorces, custody issues, and restraining orders in the Northeast stated, “I can just tell you that the financial abuse is pervasive. I think every case that we have has some element of financial abuse.”<sup>92</sup> Similarly, a lawyer in private practice in the Northwest said that coerced debt was the number-one issue in her practice.<sup>93</sup> A lawyer who conducted a focus group with consumer advocates in her state said that coerced debt “keeps coming up as a big one.”<sup>94</sup> A Texas lawyer who had experience in private practice and legal aid stated that “95 percent of [her] cases have an element” of financial abuse.<sup>95</sup>

In contrast, of the fifty-one interviewees who discussed coerced debt, only one said that it did not arise regularly in her practice. A Southern legal aid lawyer stated that she saw it “some” but not often, although she had begun to see it emerge more frequently, especially in the mortgage context.<sup>96</sup>

In the next Part, I will explain in detail how coerced debt operates, but the interviews discussed here should provide a sketch of the magnitude of the problem.

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88. Interview 1. She said that approximately three-quarters of the calls involve some kind of domestic violence. *Id.*

89. Interview 12.

90. Interview 20.

91. Interview 29.

92. Interview 40.

93. Interview 13.

94. Interview 36.

95. Interview 45.

96. Interview 7.

## II.

## THE “HOW” OF COERCED DEBT

At this point, the reader may be wondering how somebody ends up with hundreds or thousands of dollars of debt about which she did not know or to which she did not consent. How is a person kept in the dark about something so seemingly essential to one’s existence in a market culture? In a free society, what mechanisms of control exist that enable one person to force another to take out loans against her will? Is it really not possible for DV victims to leave these relationships when faced with the ruination of their financial lives?

This Part begins to answer these questions. It starts by considering the operation of coercion in domestic violence generally, reviewing the empirical literature on how one type of DV abuser works systematically to take control over every aspect of his victim’s life and substantially impair her agency. It then briefly addresses the controversial issue of how this type of coercion intersects with gender. Next, it analyzes the more specific question of how coercive control enables the destruction of someone’s credit. In that Section, I use the qualitative interviews to provide a thick description of how coerced debt comes into existence, as well as of the variety of ways in which it manifests. Finally, I consider the possible reasons why coerced debt has emerged as a form of abuse.

*A. The Dynamics of Domestic Violence That Enable Coerced Debt*

The latest research suggests that there are two major types of domestic violence. Although different researchers use different terminology, the important distinction is between violence that is situational and violence that is about control.<sup>97</sup> Situational DV, also known as “common couple violence,”<sup>98</sup> occurs when couples use violence as a problem-solving strategy.<sup>99</sup> Control-oriented DV—termed “coercive control”<sup>100</sup> or “intimate terrorism”<sup>101</sup>—is when one partner uses violence to undermine the other’s autonomy. Coercive control is the situation in which coerced debt can flourish.

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97. STARK, *supra* note 2, at 198–203; Michael P. Johnson, *Conflict and Control: Gender Symmetry and Asymmetry in Domestic Violence*, 12 VIOLENCE AGAINST WOMEN 1003, 1003, 1006 (2006) [hereinafter Johnson, *Gender Symmetry*] (identifying four types of DV: intimate terrorism, violent resistance, situational couple violence, and mutual violent control); Michael P. Johnson, *Patriarchal Terrorism and Common Couple Violence: Two Forms of Violence Against Women*, 57 J. MARRIAGE & FAM. 283, 283 (1995) [hereinafter Johnson, *Patriarchal Terrorism*]. For my purposes, violent resistance and mutual violent control can be viewed in relation to intimate terrorism. Violent resistance is a victim response to intimate terrorism, and mutual violent control occurs when both partners in a relationship attempt to control each other. Johnson, *Gender Symmetry, supra*, at 1006. The research thus far suggests that the latter is quite rare. *Id.* at 1010 ex.1. Stark’s work in this area focuses primarily on intimate terrorism, which he calls coercive control. See STARK, *supra* note 2.

98. Johnson, *Patriarchal Terrorism, supra* note 97, at 284–85.

99. *Id.* at 285.

100. STARK, *supra* note 2, at 198–227.

101. Johnson, *Gender Symmetry, supra* note 97, at 1005.

These two types of domestic violence have different characteristics. Situational violence tends to involve relatively minor violent incidents<sup>102</sup> that erupt occasionally from both partners in a relationship<sup>103</sup> and sometimes “get[] out of hand.”<sup>104</sup> It is a form of two-sided, less-than-ideal conflict resolution, rather than an assertion of dominance.

In contrast, coercive control originates with one partner, occurs more frequently, and is more likely to result in injury.<sup>105</sup> In coercive control, the violence is accompanied by what I refer to as “structural abuse,”<sup>106</sup> which consists of behaviors designed to limit the victim’s agency.<sup>107</sup> This includes acts such as isolating the victim from friends and family, denying her access to transportation, and establishing strict rules that “microregulate”<sup>108</sup> her behavior. The objective of these tactics is to limit a victim’s ability to interact with the outside world and undermine her attempts to maintain an identity.

Anecdotal accounts can help illustrate how this process works. Evan Stark, whose book *Coercive Control*<sup>109</sup> is the definitive text on the subject, describes several. His accounts include a husband who forced his wife to wear only thin, cotton clothing when they lived in a cold climate;<sup>110</sup> a husband who confined his wife to their bedroom suite for most of the day;<sup>111</sup> a woman whose husband banned her from the upstairs of their home and removed the toilet paper from the downstairs bathroom;<sup>112</sup> several men who stole their partners’ car keys<sup>113</sup> and destroyed their telephones;<sup>114</sup> partners who assaulted their victims’ families<sup>115</sup> and accosted their bosses;<sup>116</sup> a husband who required his wife to record everything she did during a given day in a logbook that he would review each night;<sup>117</sup> as well as a husband who bought three cars in his wife’s name, knowing that she could not drive them since she could not operate a standard transmission.<sup>118</sup>

Although social scientists have only recently developed the theory of coercive control, empirical research has already begun to document the phenomena. Professor Stark relies heavily on two midsized studies that

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102. Johnson, *Patriarchal Terrorism*, *supra* note 97, at 285.

103. *Id.* at 283.

104. *Id.* at 285 (internal quotation marks omitted).

105. Johnson, *Gender Symmetry*, *supra* note 97, at 1010.

106. *See* STARK, *supra* note 2, at 11.

107. *Id.* at 13.

108. *Id.* at 274–75.

109. *Id.*

110. *Id.* at 238–39.

111. *Id.* at 268.

112. *Id.* at 2.

113. *Id.* at 260, 269.

114. *Id.* at 271.

115. *Id.* at 264.

116. *Id.* at 258.

117. *Id.* at 294–95.

118. *Id.* at 272.

surveyed a combined total of 707 female victims in the United States and Britain as well as 407 American male abusers.<sup>119</sup> All participants were receiving domestic violence services, so DV itself was not in question.<sup>120</sup> The goal was to measure the prevalence of coercive control within abusive relationships. Large numbers of women in both studies reported experiencing behaviors associated with intimate terrorism. These included incidents in which their abusers monitored their time (85 percent in the U.S. study and 82 percent in the British), kept them from medical care (29 and 42 percent, respectively), prohibited socializing (79 and 89 percent), kept them from seeing family (60 and 73 percent), restricted car use (54 and 42 percent), forbade them to leave the house (62 and 81 percent), and prevented them from working (35 and 58 percent).<sup>121</sup>

It is important to emphasize that these structural restraints are backed by the use of violence. It is not just that somebody is isolated socially; it is that, if she does make contact with other people, she—or they—may be subject to assault.<sup>122</sup> It is not just that someone is required to record her every activity in short increments; it is that she will be violently interrogated about these records on a nightly basis.<sup>123</sup> Coercive control involves severe and frequent violence. Over the course of a relationship, this can mean hundreds or thousands of violent incidents.<sup>124</sup> In the British study discussed above, credible threats of violence and other harms were pervasive: 79.5 percent of the women reported that their partner threatened to kill them at least once, and 43.8 percent did so often or all the time. In addition, 60 percent of the men threatened to have the children taken away at least once, 36 percent threatened to hurt the children, 32 percent threatened to have the victim committed, 63 percent threatened the victim's friends or family, and 82 percent threatened to destroy things the victim cared about.<sup>125</sup>

One sign of coercive control's growing prominence as a theory of domestic violence is that it was included in the most recent major national study of domestic violence. Unfortunately, the study may have simultaneously exaggerated coercive control's prevalence and understated its severity. The 2010 National Intimate Partner and Sexual Violence Survey (NIPSVS)<sup>126</sup>

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119. *Id.* at 274.

120. *See id.* at 275.

121. *Id.* at 277 tbl.8.1. Interestingly, the abusive men in the American study also admitted to engaging in these behaviors, although their reported rates were not as high. They reported: monitoring time (59%), keeping their partners from seeing friends (37%), keeping them from seeing family (20%), limiting their use of the car (21%), and preventing them from leaving the house (26%). *Id.* at 275.

122. *Id.* at 263–65 (describing abusers who “waited outside with the car running during family visits, raped a victim’s sister, [and] put warning notes on a victim’s car when she attended church with her family”).

123. *Id.* at 294–95.

124. *Id.* at 375.

125. *Id.* at 250.

126. BLACK ET AL., *supra* note 32, at 46–47.

provides an important source of data on coercive control, but I am skeptical of the study's findings in this area.

The study appears to have asked about the specific potentially coercive behaviors in isolation, as opposed to in a context of violence and patterns of behavior. In addition, some of the items on the survey's coercive control scale could easily be noncoercive if enacted as a single incident or without violence. For example, the coercive control question to which the highest number of participants answered positively asked whether an intimate partner had ever "kept track of you by demanding to know where you were and what you were doing."<sup>127</sup> This is a behavior that can be coercive when it occurs regularly and is backed by violence,<sup>128</sup> but without these additional characteristics, it could also occur in noncoercive relationships.

Using this methodology, the NIPSVS found that 41.1 percent of its female participants had experienced coercive control within the previous year,<sup>129</sup> even though only 5.9 percent of all female NIPSVS participants had experienced intimate partner violence, rape, or stalking within that time period.<sup>130</sup> The NIPSVS, however, did ask about behaviors that could be symptomatic of coercive control, even without repetition. These include actions such as threatening a loved one or preventing someone from leaving the house.<sup>131</sup> An analysis of the NIPSVS data that cross-tabulated its findings on these types of behaviors with its data on intimate partner violence, rape, and stalking could significantly advance our understanding of coercive control.<sup>132</sup>

As rates of coercive control become better documented, it is also necessary to examine other factors that lead to its prevalence. Because it represents a densely woven pattern of behaviors and is backed by the threat of violence, coercive control is extremely difficult to escape. Arrest is largely ineffective because, when abuse is so frequent and its harms cumulative, the decision to call the police is more closely related to the victim's opportunity to

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127. *Id.* at 107 (reprinting of text of question). Approximately 61.7% of women and 63.1% of men who had experienced any form of coercive control endorsed this item. *Id.* at 47 tbls.4.3 & 4.4. The next-most-endorsed items received many fewer responses. Among women who screened positive on the NIPSVS's coercive control scale, this was receiving threats of physical harm (45.5%). Among men, it was having a partner making decisions that "should have been yours to make" (35.5%). *Id.* at 8.

128. *See, e.g.*, STARK *supra* note 2, at 294–95.

129. BLACK ET AL., *supra* note 32, at 46 tbl.4.9.

130. *Id.* at 38 tbl.4.1.

131. *Id.* at 47 fig.4.3. The first is unambiguously coercive and, on its face, implies a threat of violence. On the other hand, while the second would be indicative of a coercive relationship if backed by force, it is easy to imagine some participants thinking that this item included simple verbal entreaties to stay at home.

132. The CDC expects to release additional analyses of this data in 2012. Letter from Linda C. Degutis, Dir., Nat'l Ctr. for Injury Prevention & Control, Ctrs. for Disease Control & Prevention, to Colleagues (Dec. 14, 2011), available at [http://www.cdc.gov/ViolencePrevention/pdf/NISVS\\_Deaf\\_Colleague-a.doc](http://www.cdc.gov/ViolencePrevention/pdf/NISVS_Deaf_Colleague-a.doc).

do so than to the severity of the particular incident.<sup>133</sup> This means that, when the police arrive, the extent of the violence and control will not be immediately apparent. The chances that an abuser will go to jail as a result of a given incident are, in a generous estimate, slightly more than one in ten thousand.<sup>134</sup>

The other main alternative, leaving the situation, is dangerous and frequently ineffective. Numerous studies have documented the existence of what law professor Martha Mahoney has termed “separation assault.”<sup>135</sup> One study found that women who are separated are twelve times more likely to be assaulted than are married women.<sup>136</sup> Others have put this rate at one to four<sup>137</sup> and one to twenty-five.<sup>138</sup> There is also more direct evidence that leaving an abusive relationship is dangerous. One study found that more than half of DV assaults took place after separation.<sup>139</sup> Another researcher studied restraining orders and found that nearly half mentioned some form of separation assault in their affidavits.<sup>140</sup>

Separation does not necessarily end the abuser’s ability to perpetuate intimate terrorism either. Stalking is pervasive in these relationships,<sup>141</sup> and technology has increased the ability of abusers to monitor behavior over longer distances.<sup>142</sup> As Professor Stark describes, control can be exerted through “a spatially diffuse pattern of rules, stalking, cyber-stalking, beepers, cell phones, and other means that effectively erase the difference between confinement and freedom.”<sup>143</sup>

The difficulty of escaping intimate terrorism adds to the coercive dimension. The harder it is to exit a situation, the less choice someone has about remaining in it. As Professor Stark posits, the question is not why victims stay in these relationships, but rather why abusers seem so intent upon maintaining them.<sup>144</sup>

Coercive control is the type of domestic violence that enables coerced debt. Without the element of control, much of the credit abuse reported in this

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133. STARK, *supra* note 2, at 62.

134. *Id.* at 63.

135. Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 6 (1991).

136. STARK, *supra* note 2, at 56.

137. TJADEN & THOENNES, *supra* note 1, at 37.

138. Mary P. Brewster, *Power and Control Dynamics in Prestalking and Stalking Situations*, 18 J. FAM. VIOLENCE 207, 209 (2003) (quoting RONET BACHMAN & LINDA E. SALTZMAN, BUREAU OF JUSTICE STATISTICS, NCJ 154348, VIOLENCE AGAINST WOMEN: ESTIMATES FROM THE REDESIGNED SURVEY 1 (1997), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/FEMVIED.PDF>).

139. STARK, *supra* note 2, at 115.

140. Brewster, *supra* note 138, at 212.

141. STARK, *supra* note 2, at 256 (citing TJADEN & THOENNES, *supra* note 1, at 11).

142. *Id.* at 208.

143. *Id.*

144. *Id.* at 130.

Essay could not occur. Even without the direct application of force, the underlying climate of intimidation in a violent relationship creates a context in which the victim has a decreased ability to prevent transactions to which she does not consent.

Consequently, the forms of coerced debt that rely more on fraud or theft than outright coercion are also dependent on control. The existence of coercion in a given financial transaction is not an on-off switch, but a matter of degree. In many cases, control is what prevents a victim from discovering a hidden debt, questioning a fraudulent transaction, or acquiring the basic financial skills necessary to stop the credit abuse.

For example, at first glance, the scenario in which an abuser secretly obtains a credit card in the victim's name appears to be a matter of theft, not coercion. However, signs may emerge of this credit card's existence, such as bills or phone calls from the issuer. In a nonabusive relationship, the victim of this identify theft could confront his or her partner, but in a violent relationship, this approach is dangerous, and the fraud continues by force of intimidation. Similarly, in the situation where an abuser tricks a victim into signing a financial document detrimental to her interests, we can envision a spectrum of coercion and fraud. Even without direct threats, a victim may be afraid to read the document or ask questions about it, resulting in a transaction that looks like fraud but that has overtones of duress. That is why I include credit fraud and theft under the umbrella of "coerced debt" when they occur in violent relationships.

### *B. The Gendered Nature of Coercive Control*

The empirical research suggests that coercive control—the category of abuse that includes coerced debt—is a gendered phenomenon.<sup>145</sup> Although gender is extremely controversial in the social science literature on domestic violence,<sup>146</sup> the best reading of the available data suggests that, while domestic violence as a whole may have some gender-neutral aspects, every dimension of domestic violence associated with coercive control implicates gender.

Much of the debate among social scientists can be explained by the fact that the four major national surveys of domestic violence have obtained radically different results on this issue. The National Family Violence Survey (NFVS) has consistently found that, among heterosexual couples, men and women perpetrate domestic violence at roughly equal rates.<sup>147</sup> In contrast, the National Crime Victimization Survey (NCVS) has found that 85 percent of domestic violence is perpetrated by men against women. Similarly, the

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145. See *infra* Part III.A.

146. See generally Mary E. Gilfus et al., *Gender and Intimate Partner Violence: Evaluating the Evidence*, 46 J. SOC. WORK EDUC. 245 (2010).

147. Murray A. Straus & Richard J. Gelles, *Societal Change and Change in Family Violence from 1975 to 1985 as Revealed by Two National Surveys*, 48 J. MARRIAGE & FAM. 465, 470 (1986).

National Violence Against Women (NVAW) Survey found that women are more likely to be victims of domestic violence than men.<sup>148</sup> The National Intimate Partner and Sexual Violence Survey (NIPSVS) found that women are a little more likely to be victimized by domestic violence than men (annual rates of 5.9 percent versus 5 percent),<sup>149</sup> but that the types of abuse experienced by each gender are quite different.<sup>150</sup> Not surprisingly, these discrepancies have sparked major controversy<sup>151</sup> that still divides the field.

Proponents of the typologies of domestic violence have changed the terms of this discussion by attempting to reconcile the two lines of research. They argue that the DV found by the NFVS consists mostly of gender-neutral common couple violence,<sup>152</sup> while the studies reporting gender disparities are finding more coercive control.<sup>153</sup>

The first findings on coercive control to be generated by a major national study appear to bear out this hypothesis.<sup>154</sup> Although the NIPSVS found that slightly more men (42.5 percent) than women (41.1 percent) had experienced coercive control within the previous twelve months,<sup>155</sup> the only specific coercive behavior that more men than women endorsed was having a partner keep track of where they were and what they were doing,<sup>156</sup> which, as discussed in the previous subsection, could be a relatively benign behavior when enacted without repetition and violence. For all of the most severely coercive items such as threats of physical harm to participants,<sup>157</sup> their loved

148. TJADEN & THOENNES, *supra* note 1, at 17.

149. BLACK ET AL., *supra* note 32, at 38 tbls.4.1 & 4.2.

150. *Id.* at 41. Among participants who had experienced DV during their lifetimes, 56.8 percent of women experienced physical abuse only, with the other 43.2 percent experiencing rape, stalking, or combinations of any of the three. In contrast, over 90 percent of the male participants experienced physical abuse only. *Id.* at 41 figs.4.1 & 4.2.

151. E.g., Murray A. Straus, *The Controversy over Domestic Violence by Women: A Methodological, Theoretical, and Sociology of Science Analysis*, in VIOLENCE IN INTIMATE RELATIONSHIPS 17, 18 (Ximena B. Arriaga & Stuart Oskamp eds., 1999) (“In the mid 1970s my colleagues and I made the disturbing discovery that women physically assaulted partners in marital, cohabiting, and dating relationships as often as men assaulted their partners . . . . This finding caused me and my former colleague, Suzanne Steinmetz, to be excommunicated as feminists.”).

152. Common couple violence occurs when couples use violence as a problem-solving strategy. Johnson, *Gender Symmetry*, *supra* note 97, at 1010; Johnson, *Patriarchal Terrorism*, *supra* note 97, at 284–86.

153. Coercive control is when one partner uses violence to undermine the other’s autonomy. Johnson, *Gender Symmetry*, *supra* note 97, at 1005, 1010. Both common couple violence and coercive control are discussed in further detail *infra* Part III.A.

154. But see my criticisms of this study’s methodology for measuring coercive control *supra* Part II.A.

155. BLACK ET AL., *supra* note 32, at 46 tbls.4.9 & 4.10.

156. *Id.* at 47 figs.4.3 & 4.4.

157. *Id.* (endorsed by 45.5 percent of female and 20.1 percent of male respondents who screened positive for having experienced coercive control).

ones,<sup>158</sup> or their pets,<sup>159</sup> more than twice as many women than men answered positively.<sup>160</sup>

More generally, the empirical research suggests that the gender skew of domestic violence increases as more elements of coercive control are involved. The more severe the violence and the more control oriented it is, the more likely it is to be perpetuated by men. Even though the jury is still out on the question of gender in domestic violence generally, common ground can be found when one focuses on severe DV. There is much empirical evidence to support the proposition that men perpetuate and women experience the bulk of severe domestic violence.<sup>161</sup> Interestingly, the NVAW Survey's research on same-sex cohabitants suggest that the common denominator is that men are more likely to be perpetrators rather than that women are more likely to be victims.<sup>162</sup> The study's authors state that their research suggests that DV "is perpetrated primarily by men, whether against male or female partners."<sup>163</sup>

Women are also more likely to be injured by domestic violence than men.<sup>164</sup> It is not entirely surprising, then, that when men do experience intimate partner violence, they are unlikely to express fear as a result.<sup>165</sup> Finally, recent

158. *Id.* (endorsed by 14.5 percent of female and 4.0 percent of male respondents who screened positive for having experienced coercive control).

159. *Id.* (endorsed by 11.4 percent of female and 4.2 percent of male respondents who screened positive for having experienced coercive control). This question was not precisely parallel to the other two because it covered both direct threats to pets and threats to take them away from the participant.

160. *Id.*

161. For example, despite finding that men and women experienced similar rates of physical domestic abuse, the NIPSVS reported women as experiencing significantly higher rates of being beaten, burned or scalded intentionally, and threatened with a gun or knife. BLACK ET AL., *supra* note 32, at 38 tbls.4.1 & 4.2 (for the similar rates of overall violence); *id.* at 44–45 tbls.4.7 & 4.8 (for the contrasting rates of the most severe violent behaviors). The NVAW Survey also found that the gender differential in DV increased as the severity of the violence increased. TJADEN & THOENNES, *supra* note 1, at 17. The study found that women were two or three times more likely than men to have experienced relatively minor forms of assault, such as being grabbed or shoved. But for behaviors such as choking, attempted drowning, or threatening with a gun or knife, the gender ratio increased so that women were experiencing seven to fourteen times as many of these behaviors.

162. TJADEN & THOENNES, *supra* note 1, at 29–31.

163. *Id.* at 31.

164. The NIPSVS found the lifetime rate of injury-inducing DV to be at 14.8 percent for female participants and 4 percent for male. BLACK ET AL., *supra* note 32, at 54–55 tbls.5.1 & 5.2. Another study screened for domestic violence among hospital patients and found that 84 percent of those reporting DV-related injuries were women. STARK, *supra* note 2, at 237 (citing MICHAEL R. RAND, BUREAU OF JUSTICE STATISTICS, NCJ 156921, VIOLENCE-RELATED INJURIES TREATED IN HOSPITAL EMERGENCY DEPARTMENTS (1997), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/VRITHED.PDF.PDF>). The NVAW Survey also found that women were more than twice as likely as men to be injured as a result of domestic violence and much more likely to seek medical treatment. TJADEN & THOENNES, *supra* note 1, at 41–42 ex. 12.

165. Even in the NFVS, the study that has consistently found gender equality in battering, 87 to 90 percent of men who reported experiencing even severe violence were not afraid of their partners. STARK, *supra* note 2, at 234 (citing Barbara J. Morse, *Beyond the Conflict Tactics Scale: Assessing Gender Differences in Partner Violence*, 10 VIOLENCE & VICTIMS 251 (1995)); see also BLACK ET AL., *supra* note 32, at 54–55 tbls.5.1 & 5.2 (finding that 22.2 percent of female respondents had

research has found that much of the domestic violence committed by women is in the context of relationships in which they are not the primary aggressors.<sup>166</sup> There appears to be little empirical research about coercive control in gay and lesbian relationships (with the notable exception of the NVAW Survey findings discussed above).<sup>167</sup> This is probably partly because the empirical understanding of coercive control grew out of a social science debate over whether men were victimizing women. It is also almost certainly because the researchers at the forefront of studying coercive control argue that it is a patriarchal phenomenon, characterizing it as a last-ditch attempt on the part of a small number of men to wage a personal war on women's growing equality.<sup>168</sup> Regardless of the reason for this omission, this is an area in need of further study.

The research discussed in this Section is the gender context that guided the CBP's DV study as well as the follow-up qualitative study. In the CBP, all but two of the women we interviewed had had male partners. Neither of the participants who referenced same-sex relationships had experienced domestic violence within the past year. For the qualitative research, I was able to interview two lawyers whose practices focused on domestic violence in gay and lesbian relationships. But most of the advocates with whom I spoke served women almost exclusively and discussed their clients' relationships in terms of heterosexuality, frequently referring to victims and survivors as female and abusers as male. Although I have sought to use gender-neutral language in this Essay, the empirical research on gender and coercive control convinced me that in places where it was difficult to avoid male or female pronouns, following the advocates' lead on this issue was the best choice.

### C. Financial Control: The Foundation of Coerced Debt

If coercive control is the broad context within which coerced debt takes place, financial control is its intimate surrounding. Without a foundation of financial control, coerced debt could not exist. Financial control is different

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experienced DV that made them concerned for their safety over the course of their lifetime, compared to 4.5 percent of male respondents).

166. Johnson's work has found that women tend to perpetuate DV in two circumstances: as relatively equal aggressors in relationships with common couple violence and as "violent resist[ors]" when they are being subjected to intimate terrorism. Johnson, *Gender Symmetry*, *supra* note 97, at 1010–11. Other studies have found that female-perpetuated DV is primarily committed in self-defense. Gilfus et al., *supra* note 146, at 249 (citing JOANNE BELKNAP & HEATHER MELTON, NAT'L ELEC. NETWORK ON VIOLENCE AGAINST WOMEN, ARE HETEROSEXUAL MEN ALSO VICTIMS OF INTIMATE PARTNER ABUSE? (2005), *available at* <http://www.bisemi.org/aquila/Male%20Victims%20NO--Belknap.pdf>; SHAMITA DAS DASGUPTA, NAT'L ELEC. NETWORK ON VIOLENCE AGAINST WOMEN, TOWARDS AN UNDERSTANDING OF WOMEN'S USE OF NON-LETHAL VIOLENCE IN INTIMATE HETEROSEXUAL RELATIONSHIPS (2001), *available at* [http://snow.vawnet.org/Assoc\\_Files\\_VAWnet/AR\\_womviol.pdf](http://snow.vawnet.org/Assoc_Files_VAWnet/AR_womviol.pdf)).

167. TJADEN & THOENNES, *supra* note 1, at 29–31.

168. STARK, *supra* note 2, at 196.

than other forms of economic abuse—such as sabotaging employment or education—that have already been widely documented in the literature.<sup>169</sup> In this Essay, I use the term to refer to abusers' efforts to cut off their partners' access to and knowledge of the family's finances.

The fundamental importance of financial control to abusers can be seen in a telling comment by an interviewee who litigates divorces that include property distributions. She explained that, although abusers typically make threats throughout the proceedings, those threats tend to reach their peak during discovery about financial matters.<sup>170</sup>

Seizing financial control in a relationship is a basic way that abusive men have reassumed the mantle of coverture. By excluding their partners from the most basic aspects of financial life, they accomplish in fact what the doctrine of coverture used to achieve by law.

There appear to be three categories of actions that enable abusers to achieve dominance over a family's financial life: depriving the victim of access to the family's bank accounts, requiring the victim to turn over to the abuser any income she receives, and putting the victim on an allowance. These measures are often accompanied by forced financial naïveté, in which the abuser attempts to prevent the victim from learning even the most basic facts about how the family's finances, or the financial world in general, operate.

The bank account issue arose in numerous interviews.<sup>171</sup> In some cases, the family bank account would be a sole account in the abuser's name.<sup>172</sup> One lay advocate explained how, in her work with military families, some abusers would have their paychecks deposited into sole checking accounts and then leave for Iraq or Afghanistan without changing account ownership, leaving their families with no access to funds.<sup>173</sup> In other cases, the family's money would be in a joint account, but the victim would be unable to access it.<sup>174</sup> One lawyer stated that although the couple's money might be in a joint bank account, if the victim tried to access it, the abuser would drop her name from the account.<sup>175</sup> Another lawyer told of how she had counseled a middle-class, professional woman to remove half the funds in the family's joint checking account. The woman was initially afraid to do so, and once she had, she knew that she could not go home for fear of being killed.<sup>176</sup>

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169. See, e.g., Adams & Greeson, *supra* note 3; Lloyd & Taluc, *supra* note 3; Tolman & Wang, *supra* note 3.

170. Interview 2.

171. See, e.g., Interview 14.

172. Interview 48.

173. Interview 15. The advocate said that the military frowns on this practice and that the situation could usually be rectified through the chain of command if no other options were available, although going through the chain of command could risk making the abuser angry. *Id.*

174. Interviews 1 & 2.

175. Interview 54.

176. Interview 30.

Barring access to the family's bank accounts is an incomplete control strategy if the victim has access to other sources of funds. Thus, many abusers demand control over any earnings, child support, or government benefits their partners receive. Some participants described abusers who took victims' paychecks before they could cash them.<sup>177</sup> One advocate said that she frequently had clients who made statements like, "I had to turn my paycheck over."<sup>178</sup> Others discussed abusers who used manipulation to achieve the same end. For example, one financial counselor explained that one negative effect of payday lending was that, when the victim's salary was pledged to the lender before it was received, the abuser would no longer have an incentive to treat the victim well on the day the paycheck arrived.<sup>179</sup>

One of the most frequent strategies abusers use to gain control over victims' income is through the manipulation of direct deposit. Abusers will have their victims' paychecks,<sup>180</sup> child support funds,<sup>181</sup> or government benefits<sup>182</sup> directly deposited into an account that the victim cannot access. In some cases, the abuser will arrange to become a beneficiary payee for the victims' government benefits.<sup>183</sup> One lawyer with whom I spoke argued that the push toward direct deposit in the Supplemental Security Income (SSI) program had enabled more of this type of abuse to take place.<sup>184</sup> Another advocate said that this type of manipulation was so common that she encouraged her clients to structure their work lives around it, for example, by taking jobs that operate on a tip system.<sup>185</sup>

Despite a lack of access to funds, victims were frequently expected to cover certain household expenses. These were usually homemaking-related items, such as the family's groceries, toiletries, and clothing. This was frequently handled through an allowance,<sup>186</sup> which typically worked in one of two ways. Either the victim would be allotted a certain amount of money each week or month,<sup>187</sup> or the abuser would provide her with money on an expense-by-expense basis, such as for each trip to the grocery store.<sup>188</sup> One lawyer in private practice described an interesting variation on the first scenario. She had several clients where their allowance was in the form of a maxed-out credit card, which the abuser would pay down by a certain amount at the beginning of

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177. Interviews 16, 17 & 20.

178. Interview 16.

179. Interview 8.

180. Interview 48.

181. Interview 1.

182. Interviews 16 & 17.

183. Interview 54.

184. *Id.*

185. Interview 15.

186. Interviews 2, 12, 13, 15, 20, 24, 27, 41 & 46.

187. Interviews 12, 24 & 41.

188. Interview 12.

every month. That amount would then constitute the victim's money for the next few weeks.<sup>189</sup>

The allowance system enhances an abuser's power in a relationship, not only by enabling him to maintain control over the family finances, but also by forcing the victim into a position of supplication. The allowances were often grossly inadequate to meet the needs they were expected to cover,<sup>190</sup> leaving the victim to ask for more funds or to risk hiding money from the abuser. In some cases, victims are expected to cover the household expenses without being allocated any of the family's money.<sup>191</sup>

The use of an allowance can lead to situations where the two spouses in a marriage have radically different standards of living. One lawyer described a case where the family was well off, but the wife was not allowed to purchase basic necessities, such as toiletries, for herself. Meanwhile, her husband would buy her extravagant presents, like designer handbags, but intentionally break her personal belongings.<sup>192</sup> The system can also have surprising consequences. Another lawyer had a middle-class client whose husband changed the locks on their house. Because she had no access to any of the family's funds or credit, she could not call a locksmith and ended up spending a night in a shelter.<sup>193</sup>

These circumstances evoke the famous family law case *McGuire v. McGuire*,<sup>194</sup> in which the Supreme Court of Nebraska declined to intervene when a husband refused to purchase more than the most basic necessities for his wife. Though it was decided more than half a century ago, *McGuire* rests on the doctrine of marital privacy, rather than on the husband's role as head of the household,<sup>195</sup> and thus is still representative of the law today. The court did, however, seem to consider it natural that the husband was the one making the purchasing decisions, even though the family's income derived from the family farm, on which the wife worked with the husband.<sup>196</sup>

Although there was no allegation of abuse in *McGuire*, it is similar to the abuse cases just described in that the wife had no ability to simply seize any of the family's money for herself. Indeed, even at the level of the trial court, which ruled in the wife's favor, the court charged the husband with spending more money on her behalf,<sup>197</sup> rather than ordering that the wife have access to

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189. Interview 13. This system has an additional advantage for the abuser. If the couple divorces and there is a contested property division, he can claim that he was paying off a credit card that she used.

190. Interviews 12 & 24.

191. Interview 42.

192. Interview 12.

193. Interview 2.

194. 59 N.W.2d 336 (Neb. 1953).

195. *Id.* at 342 ("The living standards of a family are a matter of concern to the household, and not for the courts to determine.").

196. *Id.* at 337.

197. *Id.* at 336-37.

the family's funds. In other words, the lower court required the husband to make different, court-ordered spending decisions, but the husband was still the one actually spending the money. The Nebraska Supreme Court reversed, holding that the legal system could not interfere with the family's financial decision making, when it was clear that it was the husband, rather than the "family," making the decisions.

Abusers today resort to manipulation and violence in order to achieve the financial power that Charles McGuire obtained by gendered legal default rules. The results are analogous, although perhaps the amount of work it takes abusers to achieve this state of affairs is itself a small sign of progress.

Although financial control was the primary issue in *McGuire*, there was also indication that the wife was deprived of information about the family's finances.<sup>198</sup> This is the case in many current abusive relationships as well. Many abusers prohibit their partners from asking about the family's financial affairs,<sup>199</sup> especially about matters related to debt.<sup>200</sup> They will frequently prevent victims from even seeing the household's bills.<sup>201</sup> In one extreme case, the victim was instructed to move money among various bank accounts. When she asked why, she was told that she was too dumb to understand and that the family business was outside her purview. She found out later, upon her arrest, that she had been engaging in money laundering.<sup>202</sup>

Often batterers will take advantage of the sometimes large gap between their own degree of financial sophistication and that of their partners. For example, many victims are much younger than their abusers,<sup>203</sup> with some couples having started dating when the victims were in their early teens and the abusers were as much as twenty years older.<sup>204</sup> For immigrants, differences in the amount of time each member of a couple has spent in the United States can have a similar effect.<sup>205</sup>

This forced financial ignorance can reach remarkable levels. Many victims will have little idea about what assets the family owns.<sup>206</sup> Others will not know, or be allowed to know, how much their partners earn.<sup>207</sup> The advocate who worked with military families stated that many victims did not know their husbands' salaries until they spoke with other wives on the base.<sup>208</sup>

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198. *Id.* at 337 (“[He] would not inform her as to his finances or business.”).

199. Interview 44.

200. Interview 23.

201. Interviews 7, 45 & 51.

202. Interviews 16 & 17.

203. Interview 15.

204. Interview 7.

205. Interview 30.

206. Interview 45.

207. Interviews 7 & 55.

208. Interview 15.

In some cases, a wife will not even know what her husband does for a living<sup>209</sup> or whether the family is renting or owns its home.<sup>210</sup> In one case, an abuser convinced his partner that she was not an owner of the home they had jointly purchased.<sup>211</sup>

Imposing financial naïveté buttresses the abuser's control, which is abusive in and of itself. As one advocate stated, "Part of the battering was complete control of the finances."<sup>212</sup> It also lays the groundwork for coerced debt.

#### *D. Methods of Coercing Debt*

Coerced debt comes in a variety of forms; one of its most startling aspects is the sheer number of ways it is possible to abuse someone's credit. According to one advocate, the methods of appropriating an intimate partner's credit include "anything you can think of."<sup>213</sup> Another stated that coerced debt techniques ran "absolutely the whole gamut."<sup>214</sup> These statements appear to be an accurate description of the matter. Although there are generalizable trends, it is also crucial to document the complicating factors that make generalization difficult. A failure to do so risks inviting simplistic policy reform that may help in one situation but cause harm in another. This Section details the complex web of ways batterers use the consumer credit system to further the abuse.

##### *1. Coercing Debt Through Fraud*

The increasing use of personal information to identify consumers is one of the reasons that coerced debt has become a problem. As consumer credit has penetrated every aspect of American life, the system by which it is managed has become depersonalized.<sup>215</sup> Before the mass distribution of credit cards, banks used to require face-to-face meetings in order to authorize personal lines of credit.<sup>216</sup> These meetings enabled banks to assess creditworthiness before the widespread use of the credit-reporting system, and they also limited the ways in which one person could fraudulently obtain a loan in the name of the other. A would-be identity thief would need to use physical impersonation or another cumbersome device. As consumer lending became speed driven and information based, the system has become so impersonal that a major problem

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209. Interview 23.

210. Interview 43.

211. Interview 30.

212. Interview 43.

213. Interview 31.

214. Interview 22.

215. DAVID S. EVANS & RICHARD SCHMALENSSEE, PAYING WITH PLASTIC: THE DIGITAL REVOLUTION IN BUYING AND BORROWING 78 (1999) ("Instead of the conventional personalized approach to credit management, credit card lending relied on a more systematic objective (i.e., computerized) approach.")

216. *Id.*

in the current foreclosure crisis is that consumers cannot find the correct bank representative with whom to speak about their mortgages.<sup>217</sup>

This information chaos helps enable identity theft. Impersonation can occur with as little as a forged signature or a social security number. And the types of information that lenders currently require to prevent identity theft are only useful in screening out strangers, not intimate relations.

Moreover, the screening that does occur is often done inconsistently and by low-level employees. For example, in-store credit card purchases require the signing of a receipt, but it is rare for a cashier to compare this signature to the one on a consumer's credit card, and the cashier is unlikely to have any expertise that would allow her to do so effectively.<sup>218</sup> In addition, many stores have moved to having the customer enter the signature into a keypad using a stylus. This system has the advantage of storing signatures electronically for easier after-the-fact review, but using a stylus can be physically awkward and may distort customer signatures.<sup>219</sup> Telephone transactions eliminate even this minimal safeguard. There, low-level employees who may be physically located in another country use personal information and perhaps the gender of the speaker to verify identity. Internet purchases and banking strip the transactions to a bare reliance on personal information, although as with the in-store stylus system, computerization at least enables later review.

Given the consumer credit system's dependence on personal information, it is not surprising that the first tool at an abuser's disposal is knowledge of the types of information that lenders use to verify consumers' identities.<sup>220</sup> Intimate partners have access to their significant others' dates of birth, bank account numbers, and social security numbers, and having that information greatly simplifies the process of obtaining credit in that person's name. In my interviews, I found that the simplest way of using this information was to obtain a credit card in the partner's name online.<sup>221</sup> As one advocate explained, the most common credit products for coerced debt are cheap, easy-to-obtain

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217. Robert G. Gibson, *Advising Distressed Homeowners*, DCBA BRIEF, Feb. 2011, at 24, 27 n.8, available at <http://www.dcbabrief.org/flipbook/0211/index.html> ("Critics correctly suggest that lender's [sic] current practices result in confusion as to who actually owns the mortgage, which in turn frustrates the Making Home Affordable Program, as well as the possibility of contacting the lender to get a short sale approved."); William Alden, *Man Makes Ridiculously Complicated Chart to Find Out Who Owns His Mortgage*, HUFFINGTON POST (May 25, 2011, 7:10 PM), [http://www.huffingtonpost.com/2010/11/16/mortgage-security-chart\\_n\\_784274.html](http://www.huffingtonpost.com/2010/11/16/mortgage-security-chart_n_784274.html).

218. See Adam J. Levitin, *Private Disordering? Payment Card Fraud Liability Rules*, 5 BROOK. J. CORP. FIN. & COM. L. 1, 18 (2010) ("Card network rules do generally require merchants to compare the signature on the charge slip with the specimen signature on the card, but signature matching is an art, not a science, at least when practiced by store clerks, and is of little use in preventing fraud . . . . In a typical commercial context, the store clerk never examines the card in any way.")

219. *Id.* at 20–22.

220. Interviews 9, 41 & 44.

221. Interview 19.

credit cards, many of which can be acquired over the Internet.<sup>222</sup> Personal information was also used to access credit cards in the names of the couple's children,<sup>223</sup> which has negative consequences for the partner who ultimately obtains custody of the children in the event of a divorce.

Domestic violence abusers also perpetrate forgery,<sup>224</sup> frequently in the form of filling out credit card offers that arrive for their partner in the mail.<sup>225</sup> The process could be as simple as forging the victim's signature on one of the preauthorized checks that credit card issuers send customers.<sup>226</sup> In other cases, it could mean forging her signature on the documents for a home equity loan on the couple's home.<sup>227</sup> One interviewee mentioned that lenders rarely examine signatures carefully.<sup>228</sup>

Another option for abusers was immigration-related fraud. One lawyer who advised women in a domestic violence shelter described how, for clients who were undocumented, their abusers might obtain an illegal social security number under which they could work, but then the abusers would also acquire credit cards for themselves with it.<sup>229</sup>

In many cases, fraud is supplemented by the use of old-fashioned impersonation.<sup>230</sup> This was particularly problematic in gay and lesbian relationships.<sup>231</sup> One advocate pointed out that financial institution employees rarely examine photo identification closely.<sup>232</sup> This permitted same-sex partners to take their significant others' passports or driver's licenses to the bank for the purpose of stealing their funds and changing all of their financial information and settings. Another lawyer who represented LGBT clients who had experienced domestic violence observed that customer service representatives do not question a same-gendered voice on the telephone.<sup>233</sup>

Abusers in heterosexual relationships also used impersonation, although it usually involved an additional step. For immigrants and others whose first names were not readily identifiable by English speakers, telephone impersonation was relatively easy because customer service employees would not be certain of the consumer's gender.<sup>234</sup> In other cases, abusers brought their sisters<sup>235</sup> or other women<sup>236</sup> to sign documents as the victim. One advocate said

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222. Interview 27.

223. Interview 42.

224. Interviews 1, 12 & 31.

225. Interviews 13, 19 & 31.

226. Interview 18.

227. Interview 13.

228. Interview 27.

229. Interview 30.

230. Interviews 1, 13 & 48.

231. Interviews 38, 46 & 47.

232. Interview 38.

233. Interview 47.

234. Interviews 24 & 48.

235. Interview 42.

she saw “a ton” of cases where the abuser brought his sister to impersonate the victim when purchasing cars or furniture on credit.<sup>237</sup>

## 2. Coercing Debt Through Force

An additional segment of coerced debt is obtained by force rather than fraud.<sup>238</sup> This might include forcing a victim to sign a financial document against her will<sup>239</sup> or threatening that she would be unwise to question a given transaction.<sup>240</sup> One lawyer who handled a number of cases with mortgage fraud said that some of her clients would refuse to sign documents that were against their financial self-interest. Their abusers would react by lashing out physically, and the victims would then sign.<sup>241</sup>

In some situations, coercion could be combined with fraud. One lawyer described a scheme in which the abuser would apply for a credit card in the victim’s name over the phone and then would put the victim on the line at the end of the call, with the instruction to “let them know it’s okay.”<sup>242</sup>

Sometimes the intimidation would be a background threat more than a direct application of force.<sup>243</sup> As one advocate who worked in a Massachusetts shelter stated: “Everything that doesn’t go the way the batterer wants has a consequence.”<sup>244</sup> Knowing that, victims are “very, very careful” in picking their battles.<sup>245</sup> Similarly, the lawyer who described abusers becoming violent when victims would not sign documents stated, “That’s just the fairly new abusers. As a DV relationship progresses, it usually means that the threat of violence is enough to control the victim. The abuser no longer has to hit.”<sup>246</sup> Another advocate elaborated that, “It’s safe to [assume that] most of the financial transactions that take place in a violent relationship involve some degree of coercion.”<sup>247</sup>

In other cases, the threat was not of direct violence, but of other extremely negative consequences. One advocate stated that basic necessities were frequently used as bargaining chips. She explained that an abuser might say: “I’m the one earning the money right now, so if you want any groceries this week . . .”<sup>248</sup> Another interviewee mentioned the use of threats against the

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236. Interview 45.  
237. Interview 50.  
238. See Interviews 27, 35, 39 & 52.  
239. Interviews 12 & 31.  
240. Interview 21.  
241. Interview 13.  
242. Interview 2.  
243. Interview 51.  
244. Interview 38.  
245. *Id.*  
246. Interview 13.  
247. Interview 55.  
248. Interview 44.

couple's children.<sup>249</sup> Abusers also used immigration-related threats. One lawyer described seeing a client walk out of a DV shelter and be arrested by the immigration authorities because her abuser had called them. She stated, "The abusers turn them in often when they won't play ball,"<sup>250</sup> with "playing ball" referring to engaging in fraudulent financial activities.

Although much of the use of force just described was oriented toward pressuring victims to sign documents, some abusers took a more direct approach, coercing victims into purchasing things for them on credit.<sup>251</sup> In one case, when the abuser ran out of cash, he would force his partner to use her Wal-Mart credit card to buy gift cards or other items he could sell.<sup>252</sup>

### 3. Coercing Debt Through Misinformation and Other Means

In a different set of cases, victims would sign financial documents without knowing their contents.<sup>253</sup> This could be because the victim could not read English and so would sign without reading<sup>254</sup> or would sign after the abuser gave her an incorrect translation of the terms.<sup>255</sup> Sometimes the victim would know English but would not be given sufficient time to read the document.<sup>256</sup> One advocate referred to this as "blind signing."<sup>257</sup>

Another common technique for creating coerced debt was to take an initial grant of permission and borrow beyond the allowed scope.<sup>258</sup> Often, the victim would consent to his using her credit card at one point, but then be unaware that he was continuing to borrow on it.<sup>259</sup> Advocates also frequently described manipulations in which the abuser would make the case for putting the couple's debts under the victim's name, either because his credit was bad<sup>260</sup> or because he wanted to keep his credit record clean.<sup>261</sup> As one interviewee stated, the abuser would say, "Let's keep my credit good" and then proceed to ruin hers.<sup>262</sup> Another advocate said she encountered cases where the abuser had no credit, so the couple bought everything on the victim's credit cards. The abuser would then not pay the bills and prevent the victim from accessing money to do so.<sup>263</sup>

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249. Interview 13.

250. Interview 30.

251. Interview 31.

252. Interview 45.

253. Interview 1.

254. Interview 35.

255. Interview 42.

256. Interview 35.

257. Interview 21.

258. Interviews 8, 31 & 41.

259. *E.g.*, Interview 8.

260. Interview 7.

261. Interview 25.

262. Interview 25.

263. Interview 39.

In a variation on this scenario, an abuser might persuade his partner to take out loans for him by promising to pay her back.<sup>264</sup> Many consumers are unaware of the reality that an oral promise like this is rarely enforceable.<sup>265</sup>

Another category of coerced debt was unique to married couples. It was generated by the abuser borrowing in his own name with the knowledge that his partner would also be liable for the debt. A Washington state lawyer in private practice, who litigated against abusers who tended to be more financially sophisticated, described seeing batterers who had run up debt in their own names with the goal of having it attributed to the community.<sup>266</sup> Others discussed abusers who acquired joint debt after the couple had separated, but before the divorce.<sup>267</sup> Part of the problem is that, in many situations, joint debt is disproportionately harmful to the victim. This debt may be motivated by spite, particularly when it is acquired after separation, and the abuser will be neutral as to whether the creditors pursue him—as long as they also pursue her.<sup>268</sup> In other cases, the victim was more financially stable, so the abuser expected lenders to collect more aggressively from her.<sup>269</sup>

Utility debt was also relatively easy to generate in a partner's name. In some cases, the abuser would put the couple's utilities under the victim's name and then leave without contributing to the bill.<sup>270</sup> In other cases, the victim would leave the relationship, and the abuser would refuse to remove her name from the utilities account.<sup>271</sup> One interviewee worked with a woman who had acquired \$7000 worth of utility debt this way.<sup>272</sup> The couple moved frequently, and at each new residence, the abuser would open a new utility account in the victim's name without turning off the utilities at the previous residence. The victim would thus have several utility accounts open in her name at one time.

Finally, there were several simple and direct methods for creating nonconsensual debt. These techniques included stealing a partner's credit card from her wallet<sup>273</sup> or destroying property she had bought on credit, for example, from a rent-to-own store.<sup>274</sup> Or it might be as simple as stealing the cash the victim was saving to pay her debts or other bills.<sup>275</sup>

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264. Interview 31.

265. Interview 35. This interviewee also mentioned that victims often believe that the abuser will voluntarily pay them back, because "there's an idea that people honor their debts." *Id.*

266. Interview 13.

267. Interviews 13, 16, 17 & 44.

268. Interviews 16 & 17.

269. Interview 44.

270. Interviews 44 & 53.

271. Interviews 32–34.

272. Interview 5.

273. *See* Interviews 4 & 31.

274. Interview 31.

275. Interview 28.

*E. Issues Specific to Secured Debt*

A substantial portion of the problems in the previous Sections involved credit cards, which were the most common lending device the interviewees discussed.<sup>276</sup> This may reflect the fact that my sample included many legal aid lawyers, whose clients may have not been eligible for car loans or home mortgages, but it may also reflect the fact that many more U.S. households have credit cards than mortgages.<sup>277</sup> It is also possible that specific features of credit cards make these devices particularly vulnerable to fraud.

Although less common among my participants' clients, coerced secured debt does occur and raises a distinct set of issues. The defining feature of secured debt is that there are assets involved. This means that victims are vulnerable, not only to ending up with coerced debt in their names, but also to losing the assets being used as collateral or their equity in them. Most consumer secured debt is in the form of home mortgages and car loans, which means that coercion around secured debt can leave victims without housing or transportation. In addition, if one excludes the assets of the very rich, most U.S. consumer wealth is in the form of homes,<sup>278</sup> so home mortgage coercion can strip victims of any wealth they may have accumulated prior to or during the abusive relationship.

Many victims lost substantial wealth through refinancing and home equity fraud. Several of the lawyers I interviewed had cases where the abuser had refinanced or taken out a home equity loan without the victim's knowledge or consent.<sup>279</sup> One interviewee stated that the nonconsensual withdrawal of equity from the family home was "actually alarmingly common."<sup>280</sup> Before speaking with me, she brainstormed with two of her colleagues, and among them they had a dozen cases where this had occurred.<sup>281</sup> Another lawyer said that this "happened quite frequently" during the housing boom, but that she saw it less now that banks were being stricter about refinancing.<sup>282</sup> One lawyer had a case

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276. See, e.g., Interviews 25, 41, 45, 48, 52, 54 & 55.

277. See Bucks et al., *supra* note 28 at A42, A45–46.

278. A. Mechele Dickerson, *The Myth of Home Ownership and Why Home Ownership Is Not Always a Good Thing*, 84 IND. L.J. 189, 191–92 (2009) (citing ERIC BELSKY & JOEL PRAKKEN, NAT'L ASS'N OF REALTORS, HOUSING WEALTH EFFECTS: HOUSING'S IMPACT ON WEALTH ACCUMULATION, WEALTH DISTRIBUTION AND CONSUMER SPENDING 8 (2004), available at <http://www.realtor.org/libweb.nsf/pages/fg302> (follow hyperlink to pdf file under "Wealth Effect" heading); Courtney Schlisserman & Joe Richter, *U.S. Metropolitan Home Values Drop Most in Six Years (Update 4)*, BLOOMBERG (June 26, 2007, 2:55 PM), <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aDPbZ0uuxP6E>; see also BELSKY & PRAKKEN, *supra*, at 4 (noting that in recent years, housing consumption and related expenditures have accounted for nearly one quarter of the gross domestic product; over the past fifty years, housing has accounted for between one-fifth and one-quarter of the gross domestic product).

279. Interviews 13, 22, 41 & 49.

280. Interview 22.

281. *Id.*

282. Interview 13.

where the abuser had refinanced the home three times and removed all the equity.<sup>283</sup> The victim did not know how he had spent the funds, although she suspected gambling.<sup>284</sup> Another interviewee described a client who had just learned that the family was \$1 million in debt because her husband had triple-mortgaged their home.<sup>285</sup>

In other cases, the victim lost her ownership interest in the family home altogether. Three interviewees described situations in which the victim was forced to turn over her interest in the family home, usually through a quitclaim deed.<sup>286</sup> Another three had seen the same end accomplished through fraud.<sup>287</sup> In one of the fraud cases, the lawyer suspected forgery.<sup>288</sup> Another lawyer had a few cases where English was not the victim's first language, and she thus did not understand the document she was signing; in one case, the abuser told the victim that she was signing was a refinancing agreement, rather than a quitclaim deed.<sup>289</sup>

These transfers were difficult to challenge, because courts tended to rely on the existence of the victim's signature without looking at the possible fraud or coercion behind it.<sup>290</sup> External evidence tending to corroborate the existence of an involuntary transfer was often interpreted in a different light. For example, one lawyer said that the victim continuing to pay the mortgage might be interpreted as her paying rent.<sup>291</sup> In addition, some of the lawyers suggested that courts are willing to define consideration broadly in these cases, depriving victims of the alternative argument that the transfer was invalid because she received no consideration for it. For example, one lawyer stated that courts would find consideration when removing the victim from the title to the house made it easier for the couple to refinance their mortgage.<sup>292</sup> Another said that it was difficult to argue lack of consideration if the abuser had made any mortgage payments while the victim continued to live in the house.<sup>293</sup>

Coercive title transfer is a subtype of a broader category of fraud that involves manipulation around which partner's name is on the family's assets and debts. A number of lawyers said that clients would show up in their offices with all the couple's debts in the victim's name and all the assets in the abuser's name.<sup>294</sup> One interviewee elaborated that the house, car, retirement

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283. Interview 41.

284. *Id.*

285. Interview 13.

286. Interviews 13, 22 & 31.

287. Interviews 23, 35 & 48.

288. Interview 48.

289. Interview 23.

290. *See* Interviews 13 & 35.

291. Interview 35.

292. Interview 23.

293. Interview 13.

294. Interviews 5, 8, 19, 26, 35, 38 & 52.

accounts, and bank accounts would all be in the abuser's name.<sup>295</sup> A financial education counselor said she frequently saw this situation with automobiles: "The car will be in his name, and the loan will be in her name."<sup>296</sup>

One advocate described another form of this problem. She had a client whose husband arranged it so that, when the family needed a new car, the wife borrowed the money for the purchase. The wife took the family's old car because she had the shorter commute. When the new car arrived, the husband departed with it, leaving the wife making payments on a car she never saw.<sup>297</sup>

It is not in the financial interests of secured lenders for a debt and its associated collateral to be under different names. A party that owns the collateral may be less likely to preserve its value when the debt belongs to someone else, and a debtor who does not hold title to the collateral has less incentive to pay. Nevertheless, many interviewees had been unsuccessful at correcting the situation where the client's name was on the debt and the abuser's was on the asset. One lawyer stated that her office had tried being creative within the legal system, but without success. She had obtained better results by negotiating with the abuser, amplifying the credit risks he was incurring by being on the deed to the home while his former partner was struggling with the mortgage.<sup>298</sup> A financial counselor said that her organization had tried to do advocacy on this issue, but the title companies would refuse to discuss adding her client to the deed because her client was not already on the deed. "It becomes circular," she stated.<sup>299</sup>

This type of entanglement means that victims often cannot get control over the relevant assets, even when they are the only ones making payments. One lawyer described how she had difficulty getting the names on titles switched, even with a court order.<sup>300</sup> She had cases in which car dealerships would not allow her client to trade in a car that was under both partners' names, even though the lawyer had a divorce decree showing that her client had been awarded the car in court.<sup>301</sup>

With home loans, often the only way the title company will transfer ownership is if the mortgagee agrees to a refinance. One lawyer explained that this means that her clients will be unlikely to keep the family home after a divorce, even if they can afford the payments. The bank will frequently refuse to refinance, which leaves both parties on the mortgage and title, an untenable

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295. Interview 35.

296. Interview 8.

297. Interview 44.

298. Interview 52. Although being on the title to a home when someone else is responsible for the mortgage technically should not affect one's credit rating, it is easy to envision a scenario in which an ex-spouse who is the owner of the house but not the debtor would end up with a negative mark on his credit report if the mortgage went into default.

299. Interview 19.

300. Interview 24.

301. *Id.*

situation after the breakup of an abusive relationship.<sup>302</sup> Another lawyer described a case illustrating one potential problem with such an arrangement. This lawyer had a client who tried to continue paying the mortgage under such circumstances. Because her abuser was still on the mortgage, he was able to call the mortgage company and have the bills sent exclusively to him, causing the client to miss payments.<sup>303</sup>

A related phenomenon involves abusers who arranged the family's finances so that neither debts nor assets were under the victim's name.<sup>304</sup> Although this approach meant that the victim would not be liable for debts to which she did not consent, it left her at the abuser's mercy in different ways. A social worker at a legal aid office described how many abusers would keep the utilities solely under their names. If the couple separated, the abuser could turn them off, and the victim would be unable to have them turned on again because she would not be on the account.<sup>305</sup> This interviewee stated that the abuser would know that this meant his children would be without electricity, but that this was part of the control.<sup>306</sup> One lawyer described an analogous situation in which the abuser would be the only party on the family's lease.<sup>307</sup> She said that abusers would use this situation to evict their partners from the family apartment. She explained that family and housing courts would usually refuse to sanction this practice, but that it could take time to have the matter resolved in court.<sup>308</sup>

This manipulation around strategically placing debts and assets in different partner's names also enables abuse during repossession and foreclosure. A few advocates had encountered abusers who cooperated with repossession agents in order to spite their partners. One financial education counselor had clients whose abusers cooperated with home foreclosures in order to prevent the victims from staying in the family home.<sup>309</sup> A lawyer described batterers who called the automobile repossession agents, telling them where the victim kept her car.<sup>310</sup>

Some abusers used the bankruptcy system for this type of manipulation.<sup>311</sup> One lawyer had seen cases where the abuser would file for individual bankruptcy while the couple was still married<sup>312</sup> in order to obtain control over

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302. Interview 12.

303. Interview 6.

304. *See, e.g.*, Interview 11.

305. Interview 53.

306. *Id.*

307. Interview 22.

308. *Id.*

309. Interview 8.

310. Interview 22.

311. *See, e.g., id.*

312. Married couples may choose to file bankruptcy jointly or as individuals. *See* 11 U.S.C. §§ 301(a), 302(a) (2006).

the family's assets.<sup>313</sup> She explained that filing for bankruptcy can give that partner control over how assets and debts are eventually divided in the divorce. For example, by the time the family court reaches the question of which partner should receive the couple's home, the house may have already been lost in bankruptcy.<sup>314</sup> This lawyer had also seen cases in which the abuser would surrender "his" car in bankruptcy, when in fact, that car belonged to his spouse.<sup>315</sup> Another lawyer had encountered an abuser who filed for bankruptcy without telling his soon-to-be-ex spouse and then attempted to waive his exemptions<sup>316</sup> because the spouse was the one with possession of the house and car.<sup>317</sup>

In addition to these more sophisticated forms of secured-debt fraud and coercion, some abusers took a straight-forward approach: they simply refused to make payments on the couple's secured debt, even when they controlled the family's finances or were receiving money from the victim for this purpose. One lawyer described a case illustrative of this pattern: "The abuser, even though he was the moneyed spouse, would not pay the mortgage and would not tell her that the mortgage was not being paid."<sup>318</sup> Another advocate discussed a situation where the home was in the victim's name because the abuser did not have good credit, but the abuser was the primary earner and had control over whether the mortgage was paid.<sup>319</sup> In another case, a victim who was trying to leave the relationship discovered that the abuser had not paid the mortgage in six months.<sup>320</sup> The victim did not know anything about the mortgage and could not pay it. The lawyer explained that this was partly a result of the abuser not allowing the victim to have any involvement in the family's finances and partly because the couple simply could not afford the house.<sup>321</sup>

This refusal to pay the couple's mortgages or car loans occurred even when the victim was turning over all her income to the abuser. One lawyer said that she has several clients facing home foreclosures, many of whom had been giving their abusers money to pay the family's mortgage.<sup>322</sup> Another lawyer elaborated on the expenses on which she had seen abusers use her clients' mortgage money, citing drugs, gambling, other women, and "you name it."<sup>323</sup>

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313. *See, e.g.*, Interview 6.

314. *Id.*

315. *Id.*

316. Exemptions enable debtors to protect limited amounts of property from unsecured creditors. They vary greatly across states and are incorporated into the Federal Bankruptcy Code. *See* 11 U.S.C. § 522 (2006).

317. Interview 48.

318. Interview 12; *see* Interview 37.

319. Interview 39.

320. Interview 41.

321. *Id.*

322. Interview 41.

323. Interview 39.

Abusers may also use the refusal to pay off debt as a fear tactic. A psychologist described an instance in which the husband was the sole breadwinner and kept complete control of the family's finances. Even though the family could afford its mortgage, every few months, he would stop paying it, letting it reach the point where the bank was about to foreclose. The husband always stepped in at the last minute to save the house from foreclosure, but each time he would threaten his wife with the prospect that he was going to let the bank take their home.<sup>324</sup>

#### *F. Finding Out About Coerced Debt*

Victims frequently did not discover the existence of the debt in their names until it was too late to handle the situation effectively. This lack of knowledge was obviously more common in situations where abusers generated the debt via fraud. But even when the debt was created by force, the coercion was often applied at only one key point in the transaction, and much of the debt would be acquired without the victim's knowledge. For example, if a victim was forced to sign an application for a credit card in her name, she would then know that the credit card existed, but she would usually not know how much the abuser was charging on it or whether he was repaying the loan when due.

In the best-case scenario for the victim, she would learn of the coerced debt's existence when the bills for it arrived.<sup>325</sup> But often, she would miss the original bills—in many cases because the abuser would prevent her from seeing them—and not learn of the debt until the phone calls from debt collectors began.<sup>326</sup> As one advocate stated, “She usually finds out when the credit card company starts dunning her.”<sup>327</sup> This often meant that the debt was in collections, so it would be too late to rectify the situation by canceling the credit card<sup>328</sup> or to avoid a negative mark on her credit.

Occasionally, a victim will find out during a fight with the abuser.<sup>329</sup> One lawyer described a client who learned of a credit card in her name when she was asking the abuser for money, and he threw it at her saying, “Fine, go buy some food.”<sup>330</sup>

Often the victim will not find out until the couple separates, and a divorce process begins,<sup>331</sup> by which time the debt is frequently in default and her credit score has already been affected.<sup>332</sup> The damage to the credit report is itself one

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324. Interview 5.

325. Interviews 11 & 25.

326. Interviews 1 & 23.

327. Interview 39.

328. Interview 25.

329. Interview 25.

330. Interview 49.

331. Interviews 6 & 13.

332. Interview 40.

mechanism by which victims learn of coerced debt. Several interviewees reported that their clients learned of the loans only when they were turned down for future credit.<sup>333</sup> One lawyer who was herself a survivor of domestic violence said that she did not know about the funds her former partner had borrowed in her name until she attempted to obtain student loans for law school.<sup>334</sup> In many instances, this denial of credit takes place when the victim has just left the relationship and is looking for safe housing.<sup>335</sup>

One advocate described a case illustrative of this process. There, the abuser had taken out two cards in the victim's name. He would get the mail every day, so she never saw the bills. When bill collectors called, she would mistakenly tell them that they had a wrong number. It was only when she left the relationship and attempted to find housing that she learned of the debt. Because she no longer had good credit, she was unable to obtain an apartment and had to move into a shelter.<sup>336</sup>

Finally, many victims did not learn of the coerced debt in their names until they were sued,<sup>337</sup> and sometimes even the lawsuit would not alert them to the debt's existence.<sup>338</sup> An Iowa attorney explained how service of process can fail in a domestic violence situation. In Iowa, service can be made on any adult in the household. If the abuser answers the door, the victim may never receive notice of a lawsuit against her. This will usually result in a default judgment, which, in Iowa, is not challengeable after thirty days.<sup>339</sup>

Because of these problems, many lawyers and lay advocates have begun conducting routine credit checks for every client who enters their organizations' systems.<sup>340</sup> A lawyer explained that, "It's not something they're thinking about," and stated that if her organization did not run credit checks, the clients would not learn of coerced debt until they were turned down for credit.<sup>341</sup> These credit checks are often fruitful. One lawyer described a recent case in which she found four credit cards and a Verizon account in the client's name.<sup>342</sup> Another lawyer described finding three credit cards about which the client had no knowledge,<sup>343</sup> and a third lawyer recently had a case where the client had several unknown lines of credit in her name.<sup>344</sup>

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333. Interviews 19 & 48.

334. Interview 14.

335. Interview 21.

336. Interview 26.

337. Interview 6.

338. Interview 52.

339. *Id.*

340. Interviews 19 & 23.

341. Interview 14.

342. Interview 49.

343. Interview 22.

344. Interview 48.

### G. Why Coerced Debt?

The often horrifying details of coerced debt raise questions. Why are abusers doing this? What do they obtain from sabotaging their partners' finances? The most obvious answer to these questions—although not the most important one, according to the advocates I interviewed—is financial gain.<sup>345</sup> In many of its manifestations, coerced debt is a form of theft, and the abuser appropriates what he has taken from the victim. One advocate explained that sometimes the abuser wanted a loan, and the victim was the easiest way to obtain it.<sup>346</sup>

Although many interviewees did discuss financial benefit, the motivation that more of them seemed to find compelling was control.<sup>347</sup> One advocate explained that, although sometimes it will be clear that the abuser was simply using the victim for the money, usually coerced debt is a form of control.<sup>348</sup> Other interviewees echoed this theme. One lawyer stated that, “Financial abuse is an aspect of control, which is the underlying theme . . . .”<sup>349</sup> Another said that it “is all related back to that power and control.”<sup>350</sup> Another referred to “the exertion of power.”<sup>351</sup>

According to several advocates, the use of coerced debt was often a conscious attempt to create barriers that would prevent the victim from leaving the abusive relationship. A psychologist I interviewed explained that the goal is “to keep [the victim] from having alternatives to the relationship.”<sup>352</sup> A lawyer referred to coerced debt as “a deliberate attempt on the batterer’s [part] to destroy her economic circumstances so that she has fewer options and is more likely to be entrapped.”<sup>353</sup>

Some support for the advocates’ argument that coerced debt is a means of control can be found by analogy in other coercive contexts that use debt as a means of binding someone to a relationship. For example, a recent piece of investigative journalism alleged that the Church of Scientology uses debt to prevent its members from leaving.<sup>354</sup> The article described how some members who had decided to exit the organization were charged thousands of dollars for services they had received while in the Church, even though many had worked for the organization for less than minimum wage during the time the debts were

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345. Interviews 1, 12, 16, 17 & 54.

346. Interview 54.

347. *See, e.g., id.*

348. Interview 1.

349. Interview 14.

350. Interview 21.

351. Interview 46.

352. Interview 5; *see* Interview 46.

353. Interview 20.

354. Lawrence Wright, *The Apostate: Paul Haggis vs. the Church of Scientology*, NEW YORKER, Feb. 14, 2011, at 84, 103.

incurred.<sup>355</sup> In an even more extreme context, survivors of human trafficking often describe being “billed” for their room and board and told that one of the reasons for their continuing captivity is that they are in debt to their captors.<sup>356</sup>

These situations are distinguishable from coerced debt in DV relationships, in that domestic violence-generated coerced debt is owed to third parties, rather than to the abuser himself. Among other things, this suggests that the DV debt is less likely to be purely fictitious. But the Scientology and human trafficking scenarios provide examples of analogous ways in which debt can be used as a form of control. Or, as a legal clinical professor put it: “Keeping somebody economically down is a great way to keep them where you want them.”<sup>357</sup> The next Part explores the ways in which coerced debt does just that.

### III.

#### LONG-TERM EFFECTS

##### *A. Barriers to Housing, Employment, and Safety*

Coerced debt appears to have a major, negative impact on the financial lives of domestic violence victims and survivors. It can interfere with their ability to obtain jobs and housing and thus to become economically self-sufficient. And according to many of the advocates I interviewed, an inability to establish a financially viable household apart from the abuser creates barriers to leaving abusive relationships and increases the risk that survivors who have left will return.

Coerced debt has the obvious effect of burdening a survivor with economic obligations as she leaves an abusive relationship. Many of my participants’ clients found themselves saddled with hundreds or thousands of dollars of involuntary debt. But even more insidious problems grow out of credit reporting.

In recent years, the nontraditional use of credit reports has been increasing.<sup>358</sup> A consumer’s credit score used to only be relevant to traditional lending relationships, but it now affects her ability to obtain housing, employment, and insurance.<sup>359</sup> This makes a good credit report an essential tool for economic survival. As one advocate said, “The FICO [credit] score was

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355. *Id.*

356. *See, e.g.*, U.S. DEP’T. OF HEALTH & HUM. SERVS., FACT SHEET: HUMAN TRAFFICKING 2 (2008), [http://www.acf.hhs.gov/trafficking/about/fact\\_human.pdf](http://www.acf.hhs.gov/trafficking/about/fact_human.pdf) (“Victims of trafficking are often subjected to debt-bondage, usually in the context of paying off transportation fees into the destination countries.”).

357. Interview 48.

358. *See* Porter, *supra* note 15.

359. *Id.*

created for something very different than how it's used today."<sup>360</sup> This trend has had negative implications for survivors of domestic violence.

The advocates I interviewed overwhelmingly reported damage to their clients' credit scores.<sup>361</sup> As one lawyer who staffs a family law hotline stated, "My major concern is her credit report."<sup>362</sup> Another said, "Oh yeah, that's really common. There's no good way around it."<sup>363</sup> Other advocates said that it "absolutely"<sup>364</sup> was an issue and that they see it "over and over again"<sup>365</sup> or "all the time."<sup>366</sup> One social worker stated that her clients' credit ratings were ruined "almost across the board."<sup>367</sup>

Because of the rise in nontraditional use of credit reports, survivors' abuse-related credit problems prevented them from obtaining jobs, housing, utilities, car insurance, and other life necessities. More than a dozen of the advocates I interviewed reported this problem.<sup>368</sup> As one legal clinical professor stated, the combination of employer and landlord use of credit reports has "really hurt DV survivors."<sup>369</sup> Many advocates had seen clients denied housing because of their negative credit histories.<sup>370</sup> Other said that it limited where survivors could live.<sup>371</sup> Even when a survivor obtained housing, she could still encounter difficulties opening utilities in her name.<sup>372</sup> One lawyer had a client who was required to pay a \$1500 deposit to turn on the utilities in her apartment.<sup>373</sup>

A legal clinical professor described how her client's husband had borrowed forty thousand dollars on credit cards he fraudulently obtained in her name.<sup>374</sup> The client's car broke down in the middle of the divorce, and she was unable to have it repaired or replaced because she had no credit. As the professor said, "She can do nothing."<sup>375</sup>

Analogous problems plague survivors when they seek employment.<sup>376</sup> As a shelter director stated, "A lot of places today do a credit check, not just a

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360. Interview 31.

361. *E.g.*, Interviews 6, 23, 27, 28, 30, 32, 33, 34, 35, 36, 39, 43, 47, 50 & 53.

362. Interview 6.

363. Interview 27.

364. Interviews 30 & 47.

365. Interview 28.

366. Interview 39.

367. Interview 53.

368. Interviews 8, 16, 17, 18, 21, 22, 31, 35, 36, 37, 40, 42, 46, 51, 52, 54 & 55.

369. Interview 18.

370. *E.g.*, Interviews 21, 31, 35, 36, 40, 42 & 55.

371. Interview 8.

372. *E.g.*, Interviews 35 & 53.

373. Interview 21.

374. Interview 37.

375. *Id.*

376. *E.g.*, Interviews 31, 52 & 54.

[criminal record] check,” so victims have difficulty finding work.<sup>377</sup> Similarly, a lawyer commented that, “the stuff follows her around like a shadow.”<sup>378</sup>

Part of the problem is that survivors are frequently unaware of these broader consequences of negative credit. One advocate described how, when her clients learned of their coerced debt, they realized that they would not be able to obtain credit cards, but they had assumed their poverty would prevent them from doing so anyway. What they did not understand is that the coerced debt would prevent them from obtaining jobs, apartments, or telephones.<sup>379</sup>

Conversely, other survivors had difficulty obtaining housing and employment because they had no credit history.<sup>380</sup> In cases where abusers had refused to put their partners’ names on any financial document, positive or negative—“basically freezing her out”—the consequences could be almost as bad.<sup>381</sup> As one advocate explained, landlords look for at least two years of rental history, and a survivor in this circumstance will have none.<sup>382</sup> Another interviewee pointed out that this is particularly a problem for older survivors, many of whom were married for multiple decades.<sup>383</sup> Such a survivor might not have any credit or rental history over the course of her entire life.

Several interviewees believed that the difficulty survivors had obtaining housing had contributed to the problem of overcrowding in DV shelters.<sup>384</sup> One advocate who had worked in a Massachusetts shelter for several years explained that “it’s so hard” for survivors to leave shelters because of their credit problems.<sup>385</sup> Another stated that the average shelter stay in her area used to be thirty to sixty days; now it is six months.<sup>386</sup> As another lay advocate explained, “Often the emotional crisis issues and physical safety issues are in better shape after 30–90 days. But then she’s left living in this shelter situation longer than she needs it. Nobody will rent to her and her children, and nobody will open utilities in her name.”<sup>387</sup>

Moreover, these credit issues create barriers to leaving the abusive relationship in the first place.<sup>388</sup> A lawyer explained that one reason victims do not leave is that it is hard for victims to get an apartment when their credit is ruined: “If there were options for women getting their credit back, I think it would go a long way toward helping” them leave.<sup>389</sup> Another lawyer elaborated

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377. Interview 42.

378. Interview 52.

379. Interview 35.

380. *See, e.g.*, Interviews 33 & 54.

381. Interview 5.

382. Interview 11.

383. Interview 5.

384. *See, e.g.*, Interview 26.

385. Interview 38.

386. Interview 8.

387. Interview 31.

388. *See, e.g.*, Interviews 32, 46 & 48.

389. Interview 45.

on this issue, saying that it “seems just generally unfair when a victim has no control over the finances that she’s going to pay the price of having a bad credit score or record at the time when she’s trying to become financially independent. That creates even more barriers to her being able to successfully extract herself from that relationship.”<sup>390</sup>

A psychologist described a client whose abuser borrowed \$180,000 in credit card debt in her name.<sup>391</sup> The interviewee explained that the victim cited this as a major reason why she stays in the relationship, paraphrasing the client as saying, “My kids have what they need now, and if I leave, I’m going to take my kids, and they will have nothing.”<sup>392</sup> In summary, as another advocate explained, bad credit “really impacts her ability to stay safe.”<sup>393</sup>

### *B. Undoing the Damage—Or Not*

Because of the devastating consequences of negative credit, many of the advocates and lawyers I interviewed devoted a large portion of their practices to credit repair. But rehabilitating a credit report is a complex undertaking that requires intensive individual advocacy. And often, despite their best efforts, the advocates’ attempts at credit repair were ineffective.

Credit repair is a difficult, long-term process. A Texas lawyer explained that victims often believe that it will be easy to expunge coerced debt from their credit reports because it is so obviously fraudulent, but that this is not the case.<sup>394</sup> Unfortunately, as described by one financial education counselor, removing negative DV-related incidents from a client’s credit report is “near impossible.”<sup>395</sup> The counselor described one client whose abusive ex-husband had opened a business in her name without her knowledge, with the result that the client was sued by several of the business’s creditors. While some of the parties eventually dropped the client’s name from the lawsuits, the matter is still on her credit report.<sup>396</sup> Another lay advocate noted that even if a victim has a good attorney who has filed a note in her credit report explaining the circumstances behind the negative credit events, they still affect the victim’s credit score.<sup>397</sup>

And the process itself is time consuming. One financial counselor said that the year-long program at which she works is not long enough to clean up a

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390. Interview 40.

391. Interview 5. This was by far the highest figure for credit card coerced debt mentioned in the interviews. I include the dollar amount, not because I suspect that it is near the average, but because it illustrates a worst-case scenario.

392. Interview 5.

393. Interview 31.

394. Interview 1.

395. Interview 26.

396. *Id.*

397. Interview 34.

survivor's credit report.<sup>398</sup> A California attorney stated that, "Credit repair is a long process, and it's sort of baby steps."<sup>399</sup> The financial education counselor echoed this sentiment. She detailed a process by which she and her clients call or write the credit bureaus together, arguing that specific items are incorrect and should be changed. She said that sometimes the client will disclose the coerced nature of the debt if it seems like it might be helpful, but that the credit agencies usually do not find it relevant, eliminating one possible resolution to the time-consuming credit-repair process.<sup>400</sup>

One lawyer summarized that the process is "so difficult," even for experienced attorneys, and that survivors attempting to contact the credit agencies on their own would face significant barriers: "For some[one] who has been a financial prisoner for all these years, it's going to be very difficult."<sup>401</sup> Contacting the credit bureaus can also have negative consequences for a survivor. A Texas lawyer explained that the difficulty is that once a consumer alleges an error, the next step is for the reporting agency to contact the original creditor.<sup>402</sup> This gives the creditor the survivor's current contact information, which the creditor will often use to restart collections.<sup>403</sup>

Other interviewees stressed the long periods of time that must elapse before negative credit events "fall off" a credit report.<sup>404</sup> One lawyer stated that she had seen the process take ten to fifteen years.<sup>405</sup> Another advocate contended that the problem is compounded by the fact that negative information frequently stays on credit reports for longer than the system is supposed to allow.<sup>406</sup>

In addition to work with the credit bureaus, other advocates directly approached the entities from which survivors were seeking services, explaining that the survivor in question was actually a better credit risk or job candidate than her credit score would indicate. But this process is complex and time-consuming as well. Two nonprofit executives whose organization takes this approach explained that their staff must "spend a whole bunch of time doing case by case, person by person advocacy convincing each landlord or future employer or creditor that this one person is different."<sup>407</sup> They said that they try to advocate for changes in entire local systems, such as the local utilities, but that for employers and landlords, there is no centralized organization to

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398. See Interview 19.

399. Interview 14.

400. Interview 19.

401. Interview 44.

402. This procedure occurs under the Fair Credit Reporting Act. 15 U.S.C. § 1681i(a) (2006).

403. Interview 6.

404. See, e.g., Interview 31.

405. Interview 28.

406. Interview 19.

407. Interviews 16 & 17.

approach.<sup>408</sup> A national advocate whose organization provides backup services for DV lawyers said that she has seen a great deal of this type of advocacy, but that it is arduous.<sup>409</sup> As one Connecticut legal aid lawyer explained, credit-based denial of services “happens with so much regularity that we almost” cannot do anything about it.<sup>410</sup> She said that sometimes lawyers in her office write letters to landlords or employers, invoking the Violence Against Women Act,<sup>411</sup> but that other times, they just beg.<sup>412</sup>

The real need that emerged in my interviews was for a unified process for credit repair.<sup>413</sup> As a Texas lawyer stated, “There needs to be some kind of way to rehabilitate credit.”<sup>414</sup> A New Hampshire lawyer elaborated on this idea, saying that there should be a way for survivors to obtain a dispensation that would give them “a clean slate” so that they “could move forward without those very real barriers.”<sup>415</sup> A Massachusetts consumer lawyer agreed that the most helpful policy change would be the development of a means by which survivors could cut through the procedures the credit bureaus use to investigate.<sup>416</sup>

As one Texas lawyer stated, “Advancing measures that are beneficial for combating identity theft generally would have huge benefit for combating domestic violence.”<sup>417</sup> But not only do the identity theft procedures need to be improved, they also need to be better tailored to fit survivors’ circumstances. As another Texas lawyer explained, the difficulty is that the identity theft affidavits frequently do not fit the coerced debt situation.<sup>418</sup> This is especially true when the debt was obtained through coercion rather than fraud, because in that case, the survivor would have been party to the borrowing in her name, which limits her eligibility for identify theft relief.<sup>419</sup>

Given these obstacles, advocates were frequently unable to undo the damage to survivors’ credit reports, despite their best efforts. As one lawyer stated, “For the majority of the survivors in this country, they are the ones who ultimately bear the economic burden of the abuse.”<sup>420</sup> Another said, “Long after

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408. *Id.*

409. Interview 20.

410. Interview 22.

411. Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902 (codified as amended in scattered sections of 16, 18, and 42 U.S.C.).

412. Interviews 18 & 22.

413. *E.g.*, Interview 13.

414. Interview 49.

415. Interview 40.

416. Interview 36.

417. Interview 54.

418. Interview 6.

419. *Id.* The Fair Credit Reporting Act’s procedure for blocking fraudulent debt from one’s credit report requires the consumer to affirm that she did not transact the relevant debt. 15 U.S.C. § 1681c-2(a)(4) (2006). But in the case of a debt generated purely by coercion, the victim will in fact have been involved in the transaction, albeit without her consent.

420. Interview 20.

the bruises have healed, and they've dealt with the emotional part, they're still trying to put their financial house back in order."<sup>421</sup> This lawyer regularly handles coerced debt cases in her practice; she explained that many battered women enter abusive relationships poor, but economically stable. Then "the relationship[] devastates them not only physically and emotionally, but also financially."<sup>422</sup> A national advocate who addresses a variety of domestic violence issues underscored the intractability of the problem, stating that the issue of ruined credit is out of control and "getting worse and worse by the day."<sup>423</sup>

Advocates may attempt to address the situation with creativity and hard work, but the existing system leaves many survivors with the twin burdens of debt to which they did not consent and ruined credit scores.

#### CONCLUSION:

##### FUNDAMENTAL QUESTIONS AND POTENTIAL LEGAL REFORM

Coerced debt is a regressive force pressing up against the centuries-long campaign for women's economic emancipation. Although women have acquired significantly more legal autonomy in the financial sphere over the past several decades, the yawning gap between family law and the consumer credit system has created a new space for men to reassert economic supremacy through violence.

This type of domestic violence implicates two legal systems that rarely interact. Divorce courts do not have the ultimate practical authority over the division of a family's debt, because debt involves a third party, the creditor, and there is no procedure for joining a family's creditors to its divorce proceedings. The court presiding over the divorce can issue a decree attributing debt to the party responsible for it, but such an order does not bind the creditor, whose rights remain unchanged.

Moreover, family law courts have no authority over the even more urgent problem of credit repair, despite the fact that divorce directly implicates an individual's creditworthiness. Many of the DV advocates with whom I spoke argued that survivors were better credit, tenancy, and employment risks after a divorce, because their abusers would no longer have as much direct control over their economic lives.<sup>424</sup> But because credit reports are simply lists of events—and credit scores are simply numeric analyses of these events—there is no evaluative process that can unlink a survivor from her former abuser.

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421. Interview 28.

422. *Id.*

423. Interview 31.

424. Although of course many survivors may still be worse credit risks than if they had never been in abusive relationships. This is a question I will examine closely in the forthcoming policy article on coerced debt.

It is worth exploring whether family law courts could provide more substantive input on the question of whether a survivor's low credit rating reflected her true creditworthiness or merely the bad acts of her abuser. Family courts are already involved in the intimate details of divorcing families' lives and already make decisions about the parties' future economic rights. Family courts could become the site of a unified procedure in which they would issue a statement certifying that certain debts in a survivor's name were generated coercively. Currently, a judge could make such a statement, but it would have no impact on the decisions of potential creditors, landlords, or employers.

For its part, the credit reporting system is singularly unprepared to handle issues at the intersection of debt and domestic violence. In theory, a credit report should be an accurate testament to an individual's creditworthiness. But in practice, credit reports are notoriously error laden,<sup>425</sup> and there are three major reporting bureaus, each of which requires separate advocacy.<sup>426</sup> Most importantly, the forums available for resolving these errors lack any procedure by which a consumer can argue that an item on her report does not predict her future riskiness as a borrower, tenant, or employee.

In other words, marriage law does not allow for the resolution of coerced debt, because creditors and credit reporting agencies are involved. And the credit system—to the extent that it acknowledges family issues at all—operates under the assumption that family law has already settled any marriage or relationship-based questions of legal rights and duties. Thus, the legal forum that acknowledges domestic violence cannot effectively adjudicate matters of consumer debt, and the consumer credit system currently has no mechanism for addressing questions of domestic violence.

This combination of legal gaps has left victims of coerced debt in an untenable position. Debt of which they were unaware or to which they did not consent is marring their credit reports and increasing their already high barriers to housing and employment—two essential building blocks to economic self-sufficiency. In this way, coerced debt may be directly contributing to domestic violence by undermining victims' ability to leave and remain free of abusive relationships.

Addressing coerced debt has become all the more urgent in light of the continued growth of the market for consumer credit. As credit has penetrated ever more deeply into American economic life, debt has become a basic unit of

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425. See, e.g., Alison Cassady & Edmund Mierzwinski, NAT'L ASS'N OF STATE PIRGS, MISTAKES DO HAPPEN: A LOOK AT ERRORS IN CONSUMER CREDIT REPORTS (2004), available at <http://cdn.publicinterestnetwork.org/assets/BEevuv19a3KzsATRbZMZlw/MistakesDoHappen2004.pdf> (describing sloppy credit reporting practices that lead to significant errors in credit reports).

426. These are TransUnion, Experian, and Equifax. *Sharing Your Personal Information: It's Your Choice*, FED. TRADE COMM'N, <http://www.ftc.gov/privacy/protect.shtm#Credit> (last visited Mar. 16, 2012).

the family balance sheet.<sup>427</sup> Society has recently recognized the need for legal control over such an all-encompassing system of consumer credit, and Congress has passed two groundbreaking reforms that are transforming the legal landscape.<sup>428</sup>

But neither of the new statutes even contemplated the issue of coerced debt for the simple reason that legislators were unaware of its existence. The goal of this Essay has been to document the problem and persuade legal audiences of its urgency. Now that the basic information is available, it is possible to embark on further research and to start considering proposals for reform, a task I will begin in a second, companion article.

Coerced debt is so complex as to appear intractable, but it is worth remembering that domestic violence itself looked equally insurmountable forty years ago. Starting largely from scratch, the DV movement had to educate an entire society about an issue that affected a wide range of institutions and required the creation of new ones.<sup>429</sup> Viewed in this light, the tasks involved in addressing coerced debt seem a little more manageable. The educational undertaking involves increasing the understanding of one mechanism of domestic violence, rather than of an entirely new social issue. And it is only one system, consumer credit, that needs a full education about the existence of coerced debt. The institutions that currently handle domestic abuse need technical training about debtor-creditor issues more than a change in direction.

Within the field of consumer credit, two substructures require particular attention: the procedures for credit scoring and those for determining who is liable for the coerced debt. In the policy article, I will explore the feasibility of modifying these subsystems to bring them into alignment with the reality of coerced debt. Reforming the credit reporting system would be an immensely complex task. It would involve several bodies of law, from the Bankruptcy Code to identity theft regulations. Despite these difficulties, I have focused on credit repair in this Essay in part because improving the credit repair process would actually be the easier and less controversial reform evoked by the problem of coerced debt.

The more difficult questions center on the issue of liability. Should a survivor who did not know of or consent to a given loan be liable for the resulting debt in her name? If the creditor is also a wronged third party, is it any fairer for the creditor to bear the loss instead of the DV victim? In many ways, coerced debt mirrors the innocent-third-party problems that pervade all areas of commercial law. The issue may not be that different from the questions

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427. Bucks et al., *supra* note 28, at A49–50.

428. Credit CARD Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734; Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

429. For example, the movement had to start the domestic violence shelter system and develop the protective order. SCHNEIDER, *supra* note 4, at 20–21.

presented when a judgment-proof seller has sold the same piece of property twice or an insolvent debtor has double-collateralized an asset.

On the other hand, consumer lenders may not be entirely innocent in the current state of affairs. After all, it is recent industry trends from which lenders have benefited tremendously that have helped make coerced debt such a problem. Coerced debt would not be possible in the same way if the industry had not undergone massive automation in recent years, and its negative impact would not be as significant if issuers had not expanded operations so quickly across multiple segments of the market. This combination of automation and rapid expansion has engendered a certain sloppiness in lending practices that has been implicated in the broader recent financial crisis as well.<sup>430</sup> A return to more thoughtful underwriting might go a long way toward containing coerced debt.

There is much room for creative thought about how issuers could avoid making involuntary consumer loans in the first place and about how to apportion liability when coerced debt arises nonetheless. Although coerced debt is a new problem that implicates several complex areas of law, there is a wealth of legal concepts and traditions on which to draw in exploring solutions that may protect victims of domestic violence and allow them to leave abusive relationships without the additional burden of coerced debt.

#### APPENDIX I:

##### QUANTITATIVE METHODOLOGY AND COMPARISONS TO OTHER STUDIES

###### *A. Consumer Bankruptcy Project Methodology*

The quantitative data presented in this Essay are from the 2007 Consumer Bankruptcy Project (CBP), the fourth iteration of the CBP.<sup>431</sup> Beginning in 1981, the CBP has investigated empirically the conditions of consumer bankruptcy filers by examining their court records and other sources of data.<sup>432</sup> Over the past three decades, the study has grown in scope and size.<sup>433</sup> The 2007 study used a national, systematic sample of 2438 filers and collected data via court records, written questionnaires, and telephone surveys.<sup>434</sup>

Participants in the CBP were randomly selected from the population of consumers who filed for bankruptcy during February and March 2007.<sup>435</sup> We mailed the selected bankruptcy filers written surveys within days of their

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430. See, e.g., KATHLEEN C. ENGEL & PATRICIA A. MCCOY, *THE SUBPRIME VIRUS: RECKLESS CREDIT, REGULATORY FAILURE, AND NEXT STEPS* (2011).

431. See Robert M. Lawless et al., *Did Bankruptcy Reform Fail? An Empirical Study of Consumer Debtors*, 82 AM. BANKR. L.J. 349, app. I (2008).

432. See TERESA A. SULLIVAN ET AL., *AS WE FORGIVE OUR DEBTORS: BANKRUPTCY AND CONSUMER CREDIT IN AMERICA* (1989).

433. Lawless et al., *supra* note 431, at app. I.

434. *Id.* at 393.

435. *Id.* at 391.

filing.<sup>436</sup> Approximately 50 percent responded.<sup>437</sup> We then engaged law students to code the bankruptcy court records of the responding participants, as well as of a sample of nonresponders for comparison purposes.<sup>438</sup> There were no observable, relevant statistically significant differences between these two groups.<sup>439</sup>

On the written questionnaire, participants were given the option of participating in a follow-up telephone survey that provided fifty dollars compensation.<sup>440</sup> Approximately 87 percent of those who completed the written survey agreed to participate in the telephone interviews.<sup>441</sup> Interviews were completed with 51 percent of these volunteers, for a total 1032 telephone interviews.<sup>442</sup> Additional checks were conducted to test for differences between participants who completed the telephone interviews and those who volunteered but did not complete the telephone interviews.<sup>443</sup> No response bias was found among variables that included “filing status, filing chapter, total assets, total debts, total priority debts, monthly income, [or] home value.”<sup>444</sup> The telephone interview results were recorded via a computer program into which the interviewers entered participants’ responses during the call.<sup>445</sup> The interviewers were community women who received extensive training before this part of the project began.<sup>446</sup> The team leader had worked as an interviewer for the 2001 CBP as well as for several other empirical studies of this nature.<sup>447</sup> These interviews took place between September 2007 and February 2008.<sup>448</sup> A group of CBP investigators (of which I am a member) has published a detailed account of this methodology.<sup>449</sup>

### *B. Methodology for the DV Substudy*

The domestic violence research was conducted as a substudy within the 2007 CBP telephone survey. Information on domestic violence is obviously not available in bankruptcy court records, and we decided that it was unsafe to ask

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436. *Id.* at 391–92.

437. *Id.* at 392.

438. *Id.* at 394.

439. *Id.* at 394. The one difference was that Chapter 7 filers were overrepresented in the CBP sample. *Id.* at 393. Because there were not statistically significant differences in the major financial variables, this should not have affected the DV results.

440. *Id.* at 396.

441. *Id.*

442. *Id.* Men were interviewed as part of the general telephone survey. If a given telephone participant was male, the interviewer skipped the domestic violence questions.

443. *Id.*

444. *Id.* at 396 n.177.

445. *Id.* at 397.

446. *Id.* at 396 & n.178.

447. *Id.*

448. *Id.* at 396.

449. *Id.* at 388–97.

about DV on a written questionnaire that could be read by any member of a household, including an abuser. Toward the beginning of the telephone interview, female participants were asked whether, within the year before they filed bankruptcy, they were either in a committed relationship with a spouse or live-in partner. Participants who answered affirmatively were then formally screened for domestic violence.

The choice to ask only women about domestic violence was based on practical, safety, and methodological considerations. On the practical side, women are much more likely to experience DV than men, so it was a better use of project resources to ask only women.<sup>450</sup> Moreover, if the study screened men for domestic violence, it would be more likely to ask the DV questions to abusers, potentially triggering a violent incident after an interviewee hung up the phone.

Regarding the methodological consideration, there is currently an intense debate among DV researchers about the validity of the current screening measures as applied to men. The most widely used screening instrument for domestic violence is behavior based.<sup>451</sup> There are important reasons for this (discussed below), but behavior-based questions may have the effect of overestimating the severity of violence against the physically stronger sex. For example, a woman shoved by a male partner is more likely to sustain injury than a man shoved by a female partner, and women's domestic violence injuries account for the overwhelming majority of those reported.<sup>452</sup> In addition, there is concern that some men who screen positive as DV victims may actually be abusers reporting their partners' attempts at self-defense.<sup>453</sup>

The decision to screen formally only those who were married or cohabitating was based on the experience level and comfort of the interviewers we employed.<sup>454</sup> Because we limited the pool of participants who were formally screened for DV to married or partnered women, my analysis of the annual rate of domestic violence among bankruptcy filers necessarily applies only to married and partnered women.

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450. STARK, *supra* note 2, at 234–37.

451. See Murray A. Straus, *Measuring Intrafamily Conflict and Violence: The Conflict Tactics (CT) Scales*, 41 J. MARRIAGE & FAM. 75, 78–80 (1979); Straus et al., *supra* note 66, at 285–86.

452. STARK, *supra* note 2, at 237.

453. There is, of course, domestic violence among homosexual couples as well. TJADEN & THOENNES, *supra* note 1, at 29–31. The concerns about systematic differences in physical strength, however, apply only in heterosexual relationships. Among the group asked about DV in the current study, there were two participants in lesbian relationships, and neither of them screened positive for domestic violence.

454. Our interviewers were given domestic violence training as part of the 2007 CBP, but they did not have backgrounds in DV research and were nervous about this segment of the interview. To minimize their discomfort, we sought to minimize the number of DV questions as well as the number of participants to whom they would ask them.

I developed the domestic violence screen in partnership with a research psychologist who specializes in intimate partner violence.<sup>455</sup> Participants were asked about three forms of domestic violence: physical violence, sexual coercion, and stalking. We used standardized instruments for measuring domestic violence in order to make our findings as accurate as possible and to enable us to compare our results to those of previous studies.

### *1. The Prescreen*

Toward the beginning of the general CBP telephone interview, participants were asked an abbreviated version of the DV measure described in more detail below. This miniscreening device consisted of four questions that each included a few of the specific behaviors about which we asked in individual questions in the full screen. For example, in the full DV segment, there was one question about pushing, one about shoving, and a third about throwing objects at the participant. In the miniscreen during the general CBP interview, one question asked, “Did a current or former intimate partner, for any reason, push you, shove you, or throw something at you?”<sup>456</sup> The four questions included three about physical violence and one about sexual abuse. Unfortunately, there was not room to include any questions on stalking. The prescreen also included safety precautions, such as warning participants that the next section of the interview included some difficult material and asking them if it was safe for them to continue.

If a participant responded positively to one or more of these four questions, the interviewer asked if she was interested in participating in another interview on this topic for an additional fifty dollars. The interviewers then referred respondents who indicated interest to me. I had a separate team of domestic violence interviewers who were graduate students with significant experience in DV work. These interviewers called participants for a second interview comprised of the measures discussed below.

We used this two-interview approach in order to ensure that the bulk of each DV interview was conducted by interviewers with significant training in this area. Empirical research on domestic violence always raises safety concerns, and we wanted to take every precaution. In addition, the general CBP interviewers were reluctant to ask some of the more graphic, behavior-specific questions that are part of the standard DV protocol.<sup>457</sup>

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455. Margret Bell, Ph.D., Boston College, Department of Counseling Psychology. Dr. Bell is currently affiliated with the Veterans Administration Boston Healthcare System.

456. *Infra* Appendix II.

457. The disadvantages of this approach are discussed in Part I.B.1.b., *supra*, where I analyze the strengths and weaknesses of my results.

## 2. *The Full Screen*

The full DV screen consisted of two measures that have been tested in prior research.<sup>458</sup> We used the Conflict Tactics Scale-2 (CTS)<sup>459</sup> to assess whether participants had experienced specific acts of physical abuse and sexual coercion in the year before they filed for bankruptcy. The CTS is the gold-standard measure for assessing domestic violence and has been used in hundreds of studies.<sup>460</sup> This instrument asks detailed questions about specific abusive behaviors respondents have experienced. It refrains from general questions that use stigmatized terms such as “abuse” in order to avoid confusion about what exactly constitutes “abuse” and to better pinpoint participants’ actual experiences.<sup>461</sup> The physical abuse measure included questions such as, “Did a current or former intimate partner beat you up?” and “Did a current or former intimate partner burn or scald you on purpose?” The sexual abuse component was comprised of questions like, “Did a current or former intimate partner use force (like hitting, holding down, or using a weapon) to make you have vaginal sex?”

For the stalking section of the interview, we used the measure developed by the National Violence Against Women Survey conducted for the Department of Justice.<sup>462</sup> This segment included behavior-specific questions such as, “Did a current or former partner stand outside your home, school, or workplace?” and “Did a current or former partner vandalize your property or destroy something you loved?” If a participant responded positively to one of the stalking questions, she was asked the follow-up question, “Did you feel frightened or fear bodily harm as a result?” We counted a participant as experiencing a given stalking behavior only if she answered this second question positively as well.

Both the prescreen and the full instrument are reproduced in Appendix II.

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458. A copy of the full DV protocol is provided in Appendix II.

459. The CTS-2 is the second iteration of the Conflict Tactics Scale (CTS). Straus et al., *supra* note 66, at 284. The original CTS-1 was widely used (in more than 400 papers) from 1972 to 1995. *Id.* at 284. An updated version, the CTS-2, was released in 1996. *Id.* Since that time, the CTS-2 has replaced the CTS-1 as the standard instrument for measuring intimate partner violence. *See, e.g.*, TJADEN & THOENNES, *supra* note 1, at 306. The two versions are highly comparable. Straus et al., *supra* note 66, at 284 (“[T]he theoretical basis and mode of operationalization are fundamentally the same.”). The major changes consisted of revisions such as adding new scales for injury and sexual coercion, updating other scales, and improving wording. *Id.* at 285–90. Thus, when discussing the recent studies—which all use the later version rather than the earlier—I refer to the CTS-2 as the “CTS.”

460. Murray A. Straus, *The Conflict Tactics Scale and Its Critics: An Evaluation and New Data on Validity and Reliability*, in MURRAY A. STRAUS & RICHARD J. GELLES, *PHYSICAL VIOLENCE IN AMERICAN FAMILIES: RISK FACTORS AND ADAPTATIONS TO VIOLENCE IN 8,145 FAMILIES* 49, 49 (1990).

461. Straus et al., *supra* note 66, at 284–85.

462. TJADEN & THOENNES, *supra* note 1, at 6.

### 3. Participation

As described in the body of the Essay, I derived a 17.8 percent bankruptcy DV rate from the CBP data. The CBP screened 258 female, married or cohabitating participants for domestic violence, and 46 indicated abuse. In addition to this sample, forty-three unmarried, noncohabitating female participants were screened *informally* for DV by recent former partners. They were given the same protocol as the first group, but their selection for inclusion in the DV screen was based on a procedural mistake, so the rate at which they experienced domestic violence is not methodologically valid and hence not included in my analysis. Of these forty-three, fifteen participants had experienced domestic violence by former partners. Although this number is not useful for establishing a baseline DV rate, these fifteen participants still had experienced domestic violence prior to bankruptcy and so were included in the follow-up study. This left a total of sixty-one participants eligible for the in-depth DV interviews, fifty-three of whom agreed to participate. The project ultimately was able to interview thirty-five.<sup>463</sup>

The CBP may have undercounted domestic violence. Due to resource constraints, the CBP screened participants for DV using the four-question abbreviated instrument.<sup>464</sup> Although each of those questions included multiple abusive behaviors, they could not cover all of those for which the national studies screen and about which the CBP asked in the full DV substudy. There may very well be CBP participants who experienced a form of abuse that was covered on the full questionnaire, but not on the initial, four-question screen. These participants would have screened negative for domestic violence since they had to answer positively to one of the prescreen questions in order to be referred to the full DV substudy. This problem would apply to a participant who, for example, had been strangled but who had not experienced any of the other behaviors.

The other major possibility for distortion in the CBP's domestic violence prevalence rate is response bias. To reach the domestic violence screen, participants had to select into three levels of participation. DV respondents had to opt in, not only to the study itself via the written survey and then the telephone interview, but also to the DV portion of the telephone interview. The DV prescreen was conducted within the general CBP telephone interview, but for safety reasons, participants were specifically asked if they would like to skip the DV section.

At each stage of the study, we ran checks comparing those who elected to participate or continue with the study to those who did not. As discussed in the main body of the Essay, there were some potential response-bias problems with

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463. The interviewers were unable to reach or to schedule appointments with the other eighteen participants.

464. This abbreviated instrument is provided in Appendix II.A.

participation in the DV segment of the telephone interviews.<sup>465</sup> The CBP conducted a response-bias analysis comparing participants who completed the telephone survey with those who volunteered but did not complete it. The project analyzed the major financial variables and found no statistically significant differences.<sup>466</sup>

I ran additional analyses for this Essay that compared respondents who participated in the telephone survey with all of those who did not and found few statistically significant differences between the two groups. There were no such differences between them in the following respects: (1) bankruptcy chapter type, (2) whether they paid the filing fee up front, (3) case disposition, (4) whether they had any assets, (5) asset levels, (6) income, (7) debt levels (secured, unsecured, and total), (8) whether they bypassed the means test, (9) education, (10) age, and (11) number of children for whom they were financially responsible.

People who completed the telephone survey were, however, more likely to be employed than those who did not (79.3 percent versus 71.7 percent, a statistically significant difference). They were similarly more likely to have health insurance. The difference in these employment-related variables likely reflects the possibility that it is easier to reach consistently employed participants for follow-up interviews. If this affected the DV research, it would have been in the direction of underreporting since the stress of unemployment could exacerbate domestic violence. Race was also statistically significant, with 46.5 percent of non-Hispanic white participants completing the survey, compared to 36.7 percent of all other participants.

The other statistically significant variable was gender. Female participants were more likely to complete the telephone interview than male participants, though the difference was not numerically large (45 percent versus 44 percent). A gender difference might be a potential problem if women were not participating in the telephone survey. We might be concerned that DV victims were afraid to answer questions about their families' finances. A surplus of female respondents, however, is unlikely to affect the domestic violence results.

In addition, there is of course always the possibility that response bias could have occurred among omitted variables.

### *C. Comparisons to the National Studies*

There are four major national studies to which the CBP's preliminary prevalence rate of 17.8 percent can be compared. Unfortunately, despite large sample sizes, experienced researchers, and broad agreement on basic

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465. See *supra* Part I.B.1.b.

466. See Lawless et al., *supra* note 431, at 396 n.177 and surrounding text. I conducted additional response-bias analysis for this Essay.

methodological principles, these studies have obtained radically different results. Since I am in no position to resolve the disputes these findings have engendered, I treat the national DV prevalence rates as parameters rather than as definitive figures. I have also provided a detailed, lightly editorialized description of these studies in order to enable the reader to make his or her own tentative judgments about these findings.

The most recent of the major national studies is the National Intimate Partner and Sexual Violence Survey (NIPSVS), sponsored by the National Center for Injury Prevention and Control's Division of Violence Prevention.<sup>467</sup> The researchers conducted 16,507 telephone interviews with a national sample of women and men during 2010. The study found that 5.9 percent of female participants had experienced physical violence, rape, or stalking by an intimate partner within the previous year. The NIPSVS is based in part on the second-most-recent study, the National Violence Against Women Survey (NVAW),<sup>468</sup> although the NIPSVS made a few substantive changes and is housed in a different government agency.<sup>469</sup>

The NVAW Survey interviewed 16,000 respondents by telephone<sup>470</sup> and found a 1.5 percent annual rate of physical and sexual abuse among women.<sup>471</sup> An additional 0.3 percent of female participants reported experiencing stalking within the previous 12 months.<sup>472</sup>

The NVAW Survey and the NIPSVS employed similar screening instruments and asked the questions most comparable to those of the CBP. For physical abuse, both studies used a version of the Conflict Tactics Scale (CTS) similar to that used by the CBP in the full DV screen.<sup>473</sup> The NVAW Survey also included five questions about sexual assault that are similar to the seven questions the CBP asked about that topic.<sup>474</sup> The NIPSVS appears not to have published its intimate-partner sexual-abuse screening instrument, but in a separate section about sexual abuse generally, the study employed a broad screen that included more than twenty questions.<sup>475</sup> The NVAW included eight stalking questions, which the CBP imported directly into its full screen.<sup>476</sup> The NIPSVS used similar stalking questions, but updated them to cover relatively

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467. BLACK ET AL., *supra* note 32, at i.

468. *Id.* at 9.

469. The NVAW survey was sponsored by the Department of Justice and the Centers for Disease Control and Prevention. TJADEN & THOENNES, *supra* note 1, at iii.

470. *Id.* The researchers also interviewed 8000 men, but I am not using those data.

471. *Id.* at 9 ex.1.

472. *Id.* The total annual rate of stalking experienced was 0.5 percent, but 40 percent of this group (0.2 percent of total participants) were already counted among those who had experienced physical or sexual abuse within the past year. *Id.*

473. *Id.* at 6; BLACK ET AL., *supra* note 32, at 106–08.

474. TJADEN & THOENNES, *supra* note 1, at iii, 6.

475. BLACK ET AL., *supra* note 32, at 106.

476. TJADEN & THOENNES, *supra* note 1, at iii, 6.

new technologies such as GPS and text messaging that can be employed to enhance stalking.<sup>477</sup>

The third major study is the National Family Violence Survey (NFVS), which also uses the CTS and was conducted in 1975, 1985,<sup>478</sup> 1992,<sup>479</sup> and 1995.<sup>480</sup> The NFVS does not cover sexual abuse or stalking. The 1975 and 1985 versions found annual physical violence rates of 11 to 12 percent among married and cohabitating women. In 1992, the NFVS found that 1.9 percent of married and cohabitating women had experienced physical abuse,<sup>481</sup> while the iteration conducted in 1995 found an annual rate of 9.8 percent.<sup>482</sup> I use the findings from the most recent iteration of the study.

The final study is the National Crime Victimization Survey (NCVS),<sup>483</sup> conducted by the Bureau of Justice Statistics.<sup>484</sup> After years of criticism about its use of criminal-justice jargon in its survey questions, the NCVS substantially revised its DV methodology, switching to the behavioral question approach that the other major studies use.<sup>485</sup> With this new methodology, the NCVS found that 0.01 percent of female respondents had experienced rape by an intimate partner in the year before the study and 0.76 percent had experienced physical assault.

The surveys that are the most directly comparable to the CBP are the NIPSVS, the NVAW Survey, and the NFVS. All three of these studies use the CTS, which is the instrument on which the CBP based its questions. Although the NCVS began using a behavior-oriented measure in 1992,<sup>486</sup> its questions are still different enough from those in the CTS to make its results difficult to compare.<sup>487</sup>

While the NFVS and NIPSVS both use the CTS and thus are more comparable to the CBP, they suffer from one potential problem. The NFVS frames its questions in terms of *how many* incidents of DV a participant has experienced during the past year, rather than in terms of *whether* she has

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477. BLACK ET AL., *supra* note 32, at 107.

478. Straus & Gelles, *supra* note 147 (analyzing the findings of the 1985 NFVS).

479. Murray A. Straus, *Trends in Cultural Norms and Rates of Partner Violence: An Update to 1992*, in UNDERSTANDING PARTNER VIOLENCE: PREVALENCE, CAUSES, CONSEQUENCES, AND SOLUTIONS 30, 30 (Sandra M. Stith & Murray A. Straus eds., 1995).

480. Schafer et al., *supra* note 32, at 1702.

481. Straus & Gelles, *supra* note 147, at 30.

482. Schafer et al., *supra* note 32, at 1702. This study consisted of interviews with 1599 married or cohabitating couples. *Id.*

483. BACHMAN & SALTZMAN, *supra* note 138. This study used a rotating panel drawn from a sample of 50,000 households. CRAIG A. PERKINS ET AL., BUREAU JUSTICE STATISTICS, NCJ 151657, CRIMINAL VICTIMIZATION IN THE UNITED STATES, 1993: A NATIONAL CRIME VICTIMIZATION SURVEY REPORT (1996), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/cv93.pdf>.

484. BACHMAN & SALTZMAN, *supra* note 138; PERKINS ET AL., *supra* note 483.

485. BACHMAN & SALTZMAN, *supra* note 138, at 1.

486. *Id.*

487. See PERKINS ET AL., *supra* note 483, at 153 (providing a sample of some of the study's violence-related questions).

experienced DV at all.<sup>488</sup> Similarly, the NIPSVS asks respondents about *how many* of their intimate partners have committed the given behavior rather than *whether* any of them have.<sup>489</sup> This may inflate these surveys' results and may help explain why their DV rates are higher than those of the other studies.

The NVAW Survey does not have any of the drawbacks of the other studies. Indeed, we explicitly modeled the CBP domestic violence substudy on the NVAW Survey's methodology. The main difficulty with using the NVAW as a comparison rate for the CBP is that the CBP only formally screened married and cohabitating participants, whereas the NVAW—as well as the NIPSVS<sup>490</sup>—included participants of other relationship statuses.<sup>491</sup> This may have depressed the CBP's rate because its DV sample thus did not include couples who had recently separated, which is a high-risk relationship stage for domestic violence.<sup>492</sup> On the other hand, this may have increased the CBP's relative DV rate because it excluded individuals who have no recent relationship history. Along this dimension, the NFVS is a better comparison because the NFVS limits participation to married and cohabitating couples.

Because of these methodological variations, it is not possible to fully reconcile the NVAW, the NIPSVS, and the NFVS. This leaves us with three potential national, baseline rates of domestic violence with which to compare the CBP's results. The NVAW found an annual rate of 1.5 percent, the NIPSVS found a rate of 5.9 percent, and the most recent version of the NFVS found a rate of 9.8 percent. The CBP's finding of 17.8 percent thus suggests that female bankruptcy filers are somewhere between a little less than two and a little less than twelve times as likely to have experienced DV in the previous year as the rest of the female population.

## APPENDIX II: DOMESTIC VIOLENCE SURVEY INSTRUMENTS

### *A. Consumer Bankruptcy Project (2007) Domestic Violence Prescreen*

1) Next I would like to ask you just a few questions about something that many women have experienced at one time or another—conflict and other forms of violence in their relationships. We recognize that this is a very private subject, and if you feel that the questions are too

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488. Straus, *supra* note 151; *see also* TJADEN & THOENNES, *supra* note 1, at 23 (criticizing this feature of the NFVS).

489. BLACK ET AL., *supra* note 32, at 108.

490. *Id.* at 103 tbl.B1.

491. TJADEN & THOENNES, *supra* note 1. These included participants who were in noncohabitating relationships as well as those who were single. All participants were asked about their experiences with current and former partners, so being single was not a bar to participation. *Id.* at 5.

492. STARK, *supra* note 2, at 56, 115, 271; James Ptacek, *The Tactics and Strategies of Men Who Batter: Testimony from Women Seeking Restraining Orders*, in *VIOLENCE BETWEEN INTIMATE PARTNERS: PATTERNS, CAUSES, AND EFFECTS* 104, 112–15 (Albert P. Cardarelli ed., 1997).

personal or not relevant to you, please just let me know and we will skip to the next topic. However, some women find it helpful to talk about their experiences. If you choose to answer the questions, everything will be held in complete confidence and your name will never be connected to your answers. If you are uncomfortable with a particular question, let me know and we'll move on. May I continue?

1. Yes
2. No (SKIP to CHLD01)
3. Don't know (SKIP to CHLD01)
4. No answer (SKIP to CHLD01)

2) It is important that I make sure this is a safe time for you to answer questions about your relationship. Is this a safe time?

1. Yes
2. No (SKIP to CHLD01)
3. Don't know (SKIP to CHLD01)
4. No answer (SKIP to CHLD01)

If at any time it becomes unsafe for you to answer, please just ask me to skip to the next set of questions.

3) In the year before your bankruptcy, did a current or former intimate partner, for **ANY REASON**, hit you or twist your arm?

1. Yes
2. No
3. Don't know
4. No answer
5. Situation unsafe (SKIP to CHLD01)
6. Respondent does not want to answer these questions (SKIP to CHLD01)

4) In the year before your bankruptcy, did a current or former intimate partner, for **ANY REASON**, push you, shove you, or throw something at you?

1. Yes
2. No
3. Don't know
4. No answer
5. Situation unsafe (SKIP to CHLD01)
6. Respondent does not want to answer these questions (SKIP to CHLD01)

5) In the year before your bankruptcy, did a current or former intimate partner, for **ANY REASON**, force you to have sexual relations of ANY kind or pressure you to do so when you felt uncomfortable?

1. Yes
  2. No
  3. Don't know
  4. No answer
  5. Situation unsafe (SKIP to CHLD01)
  6. Respondent does not want to answer these questions (SKIP to CHLD01)
- 6) In the year before your bankruptcy, did a current or former intimate partner, for **ANY REASON**, kick you or beat you up?
1. Yes
  2. No
  3. Don't know
  4. No answer
  5. Situation unsafe (SKIP to CHLD01)
  6. Respondent does not want to answer these questions (SKIP to CHLD01)

*B. Consumer Bankruptcy Project (2007) Full Domestic Violence Protocol*

1) Now I'd like to ask you some questions about something that many women have experienced at one time or another—violence and other forms of conflict in our relationships. I know that these are personal and difficult subjects to talk about, but many women also tell us that it's helpful to have the opportunity to do so. I want to remind you that everything you say will be held in complete confidence and your name will never be connected to your responses. If, for any reason, you are uncomfortable with any question, you are not required to answer it; simply ask me to move to the next question. Also, you may, for any reason and at any time, ask to stop the interview. Is it okay if I continue?

1. Yes
2. No
3. Don't know
4. No answer

2) It is very important that I make sure this is a safe time for you to talk.

Are you alone?

1. Yes
2. No

2.B) Is it safe for you to answer questions about your relationship?

1. Yes
2. No

2.C) If things become unsafe at any time while we're talking, please feel free to say something like, "If you have any more questions about the bankruptcy, you can call me back at another time." I'm now going to ask you a series of questions about things a current or former intimate partner may have done to you. By intimate partner, I mean someone you had a romantic relationship with, someone you considered yourself to be "involved" with.

3) Please say whether any CURRENT OR FORMER intimate partner did each of these things in the YEAR BEFORE you filed bankruptcy.

In the year before you filed for bankruptcy, did a current or former intimate partner throw something at you that could hurt?

1. Yes
2. No
3. Don't know
4. No answer

4) In the year before you filed for bankruptcy, did a current or former intimate partner twist your arm or hair?

1. Yes
2. No
3. Don't know
4. No answer

5) In the year before you filed for bankruptcy, did a current or former intimate partner make you have sex without a condom?

1. Yes
2. No
3. Don't know
4. No answer

6) Did a current or former intimate partner push or shove you?

1. Yes
2. No
3. Don't know
4. No answer

7) Did a current or former intimate partner use force (like hitting, holding down, or a weapon) to make you have oral or anal sex?

1. Yes
2. No
3. Don't know
4. No answer

8) Did a current or former intimate partner use a knife or gun on you?

1. Yes

2. No
3. Don't know
4. No answer

9) In the year before you filed for bankruptcy, did a current or former intimate partner punch or hit you with something that could hurt?

1. Yes
2. No
3. Don't know
4. No answer

10) In the year before you filed for bankruptcy, did a current or former intimate partner choke you?

1. Yes
2. No
3. Don't know
4. No answer

11) Did a current or former intimate partner slam you against a wall?

1. Yes
2. No
3. Don't know
4. No answer

12) In the year before you filed for bankruptcy, did a current or former intimate partner beat you up?

1. Yes
2. No
3. Don't know
4. No answer

13) Did a current or former intimate partner grab you?

1. Yes
2. No
3. Don't know
4. No answer

14) In the year before you filed for bankruptcy, did a current or former intimate partner use force (like hitting, holding down, or using a weapon) to make you have vaginal sex?

1. Yes
2. No
3. Don't know
4. No answer

15) Did a current or former intimate partner insist on sex when you did not want to, but did not use physical force?

1. Yes
2. No
3. Don't know
4. No answer

16) Did a current or former intimate partner slap you?

1. Yes
2. No
3. Don't know
4. No answer

17) In the year before you filed for bankruptcy, did a current or former intimate partner use threats to make you have oral or anal sex?

1. Yes
2. No
3. Don't know
4. No answer

18) Did a current or former intimate partner burn or scald you on purpose?

1. Yes
2. No
3. Don't know
4. No answer

19) Did a current or former intimate partner insist that you have oral or anal sex, but did not use physical force?

1. Yes
2. No
3. Don't know
4. No answer

20) Did a current or former intimate partner kick you?

1. Yes
2. No
3. Don't know
4. No answer

20.B) Did a current or former intimate partner use threats to make you have vaginal sex?

1. Yes
2. No
3. Don't know

4. No answer

21) In the YEAR BEFORE bankruptcy, did a CURRENT or FORMER intimate partner follow or spy on you?

1. Yes

2. No

3. Don't know

4. No answer

21.B) Did you feel frightened or fear bodily harm as a result?

1. Yes

2. No

3. Don't know

4. No answer

22) Did a CURRENT or FORMER partner send you unsolicited letters or written correspondence?

1. Yes

2. No

3. Don't know

4. No answer

22.B) Did you feel frightened or fear bodily harm as a result?

1. Yes

2. No

3. Don't know

4. No answer

23) In the year before your bankruptcy, did a CURRENT or FORMER partner make unsolicited phone calls to you?

1. Yes

2. No

3. Don't know

4. No answer

23.B) Did you feel frightened or fear bodily harm as a result?

1. Yes

2. No

3. Don't know

4. No answer

24) Did a CURRENT or FORMER partner stand outside your home, school, or workplace?

1. Yes

2. No

3. Don't know

4. No answer

24.B) Did you feel frightened or fear bodily harm as a result?

1. Yes

2. No

3. Don't know

4. No answer

25) In the year before your bankruptcy, did a CURRENT or FORMER partner show up at places you were even though he or she had no business being there?

1. Yes

2. No

3. Don't know

4. No answer

25.B) Did you feel frightened or fear bodily harm as a result?

1. Yes

2. No

3. Don't know

4. No answer

26) Did a CURRENT or FORMER partner leave unwanted items for you to find?

1. Yes

2. No

3. Don't know

4. No answer

26.B) Did you feel frightened or fear bodily harm as a result?

1. Yes

2. No

3. Don't know

4. No answer

27) In the year before your bankruptcy, did a CURRENT or FORMER partner try to communicate in other ways against your will?

1. Yes

2. No

3. Don't know

4. No answer

27.B) Did you feel frightened or fear bodily harm as a result?

1. Yes

2. No
3. Don't know
4. No answer

28) Did a CURRENT or FORMER partner vandalize your property or destroy something you loved?

1. Yes
2. No
3. Don't know
4. No answer

28.B) Did you feel frightened or fear bodily harm as a result?

1. Yes
2. No
3. Don't know
4. No answer