# Credit Cards: Weapons for Domestic Violence

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## INTRODUCTION

Twenty years ago, Nicole Brown Simpson was brutally murdered.[1] Images of O.J. Simpson's criminal trial became ingrained in popular culture,[2] but the long history of domestic abuse that O.J. Simpson inflicted upon Nicole has largely been forgotten by today's collective consciousness.[3] Police were called to intervene during domestic disputes on nine occasions during the years prior to her killing.[4] Even the prosecution minimized the abuse as the trial progressed.[5] As the prosecution predicted, jurors could not grasp why domestic abuse was relevant to her death.[6] One juror asked, "What did all the talk about domestic abuse have to do with homicide?"[7]

The trial helped educate the public about the link between domestic violence and homicide.[8] But even with this national awakening and Congress' immediate passage of federal legislation and funding for domestic violence



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1. Nancy Dillon, *Revisiting the O.J. Simpson Trial, 20 years After the Infamous Bronco Chase*, N.Y. DAILY NEWS (Jun. 8, 2014, 2:00 AM), http://www.nydailynews.com/news/national/ revisiting-o-simpson-trial-20 -years-article-1.1821355.

2. *See id.* (citing the imagery of the ill-fitting leather gloves to the white Bronco).

3. *See e.g.*, *O.J. Simpson Murder Case*, WIKIPEDIA, http://en.wikipedia.org/wiki/People_of_the_State_of_California_vs._Orenthal_James_Simpson (mentioning domestic abuse in 1989 but not prior incidents) (last updated Jan 22, 2014).

4. Josh Meyer, *Police Records Detail 1989 Beating That Led to Charge: Violence: A Bloodied Nicole Simpson, Hiding in Bushes After 911 Call, Told Officers: 'He's going to kill me.' Judge Overruled Prosecutors' Request that Simpson Serve Jail Time*, L.A. TIMES (June 17, 1994), http://articles.latimes.com/1994-06-17/news/mn-5290_1_jail-time. *See* Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1849, 1909-10 (1996) (noting the critical response to Nicole Brown Simpson's murder).

5. EVAN STARK, COERCIVE CONTROL: THE ENTRAPMENT OF WOMEN IN PERSONAL LIFE 3 (2007).

6. *Id.*

7. *Id.*

8. *Id. See* ETHEL KLEIN ET AL., ENDING DOMESTIC VIOLENCE: CHANGING PUBLIC PERCEPTIONS/HALTING THE EPIDEMIC 8–9, 95–96 (1997) (explaining that trial was "a national 'teach-in' on the issue of domestic violence," and one year later, poll participants said domestic violence was an extremely important problem). Some argue that, while the trial showed the connection between murder and domestic violence, the O.J. Simpson trial obscured the underlying issues of domestic violence. *See e.g.,* Zanita E. Fenton, *Domestic Violence in Black and White: Racialized Gender Stereotypes in Gender Violence*, 8 COLUM. J. GENDER & L. 1, 5 (1998) (arguing politicization of O.J. trials around race caused public to see domestic violence as a white woman's problem); Aya Gruber, *A "Neo-Feminist" Assessment of Rape and Domestic Violence Law Reform*, 15 J. GENDER RACE & JUST. 583, 603–04 (2012) (stating domestic violence movement took "oversimplified" view of issue as "innocent, non-poor, white women").

prevention,[9] the prevalence of domestic violence remains staggeringly high.[10] Just as the nation was asked to redefine domestic violence as a criminal act with deadly consequences, our conception of domestic violence must continue to evolve as research uncovers the factors intrinsic to violent relationships and the new weapons abusers yield to harm their victims.[11]

One new weapon abusers are increasingly exploiting is debt.[12] Angela Littwin's groundbreaking research into domestic violence and credit lead to the identification of a more specific form of domestic violence abuse: coerced debt.[13] Coerced debt is defined as "all nonconsensual, credit-related transactions that occur in a violent relationship, not just matters that depend on the express application of force."[14] Examples of coerced debt include "abusers taking out credit cards in their partners' names without their knowledge, forcing victims to obtain loans for the abuser, [and] tricking victims into signing quitclaim deeds for the family home."[15] Although debt is not a recent invention,[16] over the past twenty years, credit cards and other consumer products have become easier to obtain, making coerced debt a more viable instrument for abusers.[17]

Today, credit cards are ubiquitous.[18] Credit card issuers have found it

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9. Within months of Nicole's murder, the Violence Against Women Act was passed as part of an omnibus bill. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat.1796 (codified as amended in scattered sections of 2, 15, 16, 18, 28 and 42 U.S.C. (2012)).

10. The national lifetime prevalence of intimate partner physical violence is 31.5% among women. Matthew J. Breiding et al., *Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization — National Intimate Partner and Sexual Violence Survey, United States, 2011*, 63 MORBIDITY & MORTALITY WKLY. REP. 9 (2014) [hereinafter Breiding, *NIPSVS 2011*], *available at* http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6308a1.htm. From 2003 to 2012, domestic violence comprised 21% of all nonfatal violent crime. JENNIFER L. TRUMAN & RACHEL E. MORGAN, U.S. DEPARTMENT OF JUSTICE, SPECIAL REPORT: NONFATAL DOMESTIC VIOLENCE, 2003-2012 1 (2014), *available at* http://www.bjs.gov/content/pub/pdf/ndv0312.pdf. In 2010, approximately 39% of female homicides were committed by an intimate partner. SHANNAN CATALANO, U.S. DEPARTMENT OF JUSTICE, SPECIAL REPORT: INTIMATE PARTNER VIOLENCE: ATTRIBUTES OF VICTIMIZATION, 1993-2011 3 (2013), *available at* http://www.bjs.gov/content/pub/pdf/ipvav9311.pdf.

11. An example of new technologies used by abusers to stalk and manipulate victims include spyware and GPS tracking. Justine A. Dunlap, *Intimate Terrorism and Technology: There's an App for That*, 7 U. MASS. L. REV. 10, 21–23 (2012).

12. Angela Littwin, *Coerced Debt: The Role of Consumer Credit in Domestic Violence*, 100 CAL. L. REV. 951, 953 (2012) [hereinafter Littwin, *Coerced Debt*] ("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.").

13. *Id.* at 954.

14. *Id.*

15. *Id.*

16. *See, e.g.*, Brian M. McCall, *Unprofitable Lending: Modern Credit Regulation and the Lost Theory of Usury*, 30 CARDOZO L. REV. 549, 555 (2008) ("The Athenians allowed transactions in credit to proceed unregulated. Although Athens became known for its sophisticated commercial credit market, it was infamous for the highest consumer interest rates in the ancient world at 9,000 percent.").

17. *See* Adam J. Levitin, *Rate-Jacking: Risk-Based & Opportunistic Pricing in Credit Cards*, 2011 UTAH L. REV. 339, 353-54 (2011) (highlighting the "democratization of credit"); Angela Littwin, *Beyond Usury: A Study of Credit-Card Use and Preference Among Low-Income Consumers*, 86 TEX. L. REV. 451, 453 (2008) [hereinafter Littwin, *Beyond Usury*] (noting the adverse effects of available credit for low-income families).

18. Lois R. Lupica, *The Consumer Debt Crisis and the Reinforcement of Class Position*, 40 LOY. U. CHI. L.J. 557, 583 (2009).

profitable to offer credit to higher-risk individuals.[19] Applications submitted through websites or from mail solicitations have exponentially grown and have largely replaced in-person meetings to apply for credit at a local bank.[20] Such innovations necessarily introduce new risks, including identity theft and fraud.[21] Congress has enacted multiple statutes in response to such threats, including a statute that compels financial institutions to safeguard personal information or implement identity theft warning systems.[22] In comparison, there has been little research on coerced debt, and even less on the potential regulatory framework, as well as credit card company policies relating to coerced debt.[23]

Research has only recently begun to fully comprehend the consumer and credit dimensions of domestic violence.[24] This article will argue that consumer protection statutes and financial institutions do not adequately protect domestic violence victims from coerced debt. Based on data that I collected after contacting twenty credit card companies to inquire into their domestic violence policies, I argue that domestic violence victims have been left behind in credit card regulation, consumer protection policy, and private enforcement. Part I of this article provides background on definitions of domestic violence and reviews recent empirical research into the prevalence of economic abuse and coerced debt. Part II of the article discusses changes in credit card issuing, and how those changes impact domestic violence victims. Part III describes the methodology and results of a qualitative study into the top twenty issuers of credit cards in the United States. Part IV compares the growth of the domestic violence movements with elder abuse movements to show that credit card issuers have responded to the needs of the elderly, but not domestic violence victims. This comparison will show that domestic violence survivors have been left behind in financial services regulation. Part V discusses potential options for future regulatory or private

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19. 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, 204–05 (2004).

20. *See* Tom Brown & Lacey Plache, *Paying with Plastic: Maybe Not So Crazy*, 73 U. CHI. L. REV. 63, 73 (2006) ("People who thirty years ago would not have been able to get an appointment to see a loan officer at a local bank can now get multiple offers for a home mortgage, an auto loan, or a credit card after filling out an application on the Internet."); Kelly M. Miley, *Electronic Banking*, 15 ANN. REV. BANKING L. 2, 6–7, 9 (1996) (discussing how banking institutions, like Wells Fargo, rolled out online portals for products in 1995 and 1996, including "accepting credit card applications over the Internet"); Oren Bar-Gill, *Seduction by Plastic*, 98 NW. U. L. REV. 1373, 1420 (2004) (noting that over five billion solicitations were sent in one year in America).

21. *See, e.g.*, David Adam Friedman, *Reinventing Consumer Protection*, 57 DEPAUL L. REV. 45, 45 (2007) ("In 2006, the Federal Trade Commission (FTC) measured reported consumer fraud losses in the United States at $1.1 billion, but this figure failed to account for undetected or unreported transactions.").

22. *See* Christine Daleiden, *Identity Theft and Consumer Protection Under the Fair Credit Reporting Act*, 16 HAW. B.J. 4, 7–8 (2012) ("The Fair and Accurate Credit Transaction Act . . . established numerous protections for consumers from identity theft. . . . FACTA also imposes numerous regulatory requirements on parties who maintain personal information about individuals: financial institutions, credit reporting agencies . . . ."); Chris Jay Hoofnagle, *Identity Theft: Making the Known Unknowns Known*, 21 HARV. J.L. & TECH. 97, 100 (2007) (noting that Congress defined identity theft in 2007 by enacting 18 U.S.C. § 1028).

23. Angela Littwin, *Escaping Battered Credit: A Proposal for Repairing Credit Reports Damaged by Domestic Violence*, 161 U. PA. L. REV. 363, 429 n.3 (2013) [hereinafter Littwin, *Battered Credit*] ("There are no other academic articles on coerced debt.").

24. *See* discussion *infra* Part I.B.

programs for responding to coerced debt.

## I. EMPIRICAL DATA ON DOMESTIC VIOLENCE & COERCED DEBT:

### A. Defining Domestic Violence and Coerced Debt

Domestic violence is generally seen as involving "physical violence, sexual violence, stalking, and psychological aggression (including coercive tactics) by a current or former intimate partner."[25] That violence can take place "among cohabitating or noncohabitating . . . opposite or same-sex couples"[26] and "does not require sexual intimacy."[27] In 2007, Evan Stark argued for a reframing of domestic violence in his seminal work, *Coercive Control*.[28] Domestic abuse has commonly been associated with physical assault,[29] and most media coverage of domestic violence focuses on this physical aspect.[30] In contrast, Stark defines domestic abuse as "a course of calculated, malevolent conduct . . . interweaving repeated physical abuse with three equally important tactics: intimidation, isolation, and control."[31] Stark argues that the "primary harm abusive men inflict is political, not physical, and reflects the deprivation of rights and resources that are critical to personhood and citizenship."[32] He considers each specific act of violence within "an ongoing and gender-specific pattern of coercive and controlling behaviors that causes a range of harm in addition to injury."[33] Stark's theory offers a more holistic and sophisticated portrayal of domestic violence than one focusing primarily on physical abuse or even isolated incidents of physical abuse.[34]

Researchers have continued to hone this coercive control theory by measuring specific behaviors that frequently accompany or are central to an abuser's pattern of violence.[35] The CDC defines coercive control as a form of

25. MATTHEW J. BREIDING ET AL., NAT'L CTR. FOR INJURY PREVENTION & CONTROL, CTRS. FOR DISEASE CONTROL & PREVENTION, INTIMATE PARTNER VIOLENCE IN THE UNITED STATES — 2010 7 (2014), *available at* http://www.cdc.gov/violenceprevention/pdf/cdc_nisvs_ipv_report_2013_v17_single_a.pdf. I use the term domestic violence synonymously with the term intimate partner violence.

26. *Id.*

27. *Intimate Partner Violence: Definitions*, CTRS. FOR DISEASE CONTROL & PREVENTION, www.cdc.gov/ViolencePrevention/intimatepartnerviolence/definitions.html (last updated Nov. 25, 2014).

28. STARK, *supra* note 5, at 3–6.

29. In the 1990s, Lenore Walker also developed the cycle theory of violence, which identified three phases: "(1) tension building, (2) the acute battering incident, and (3) loving contrition." Mia M. McFarlane, *Mandatory Reporting of Domestic Violence: An Inappropriate Response for New York Health Care Professionals*, 17 BUFF. PUB. INT. L.J. 1, 6–7 (1999). In this theory, the cycle revolves around moments of violence. *Id.* Ellen Pence developed the Power and Control Wheel, which theorized domestic violence as a pattern of behavior where other forms of abuse, like emotional and economic abuse, filled the periods between physical violence. *Id.*

30. STARK, *supra* note 5, at 5.

31. *Id.*

32. *Id.*

33. *Id.* at 99–100.

34. *See* Cheryl Hanna, *The Paradox of Progress: Translating Evan Stark's Coercive Control Into Legal Doctrine for Abused Women*, 15 VIOLENCE AGAINST WOMEN 1458, 1459 (2009) [hereinafter Hanna, *Paradox*] (critiquing Evan Stark's portrayal of domestic violence).

35. *See e.g.*, Adrienne E. Adams et al., *Development of the Scale of Economic Abuse*, 14 VIOLENCE

psychological aggression that includes "behaviors that are intended to monitor, control, or threaten an intimate partner."[36] According to the CDC, one type of coercive control behavior includes economic abuse, defined as "behaviors that control a woman's ability to acquire, use, and maintain economic resources." [37] Although the CDC considers economic abuse as a subset of psychological abuse, researchers now argue that economic abuse should be considered distinct from psychological abuse.[38] They suggest economic abuse takes three unique forms: economic control, economic exploitation, and employment sabotage.[39] Coerced debt is a specific form of economic abuse that involves "all nonconsensual, credit-related transactions that occur in a violent relationship, not just matters that depend on the express application of force."[40] Coerced debt spans both the economic control and economic exploitation categories of financial abuse.[41] Physical, sexual, and psychological abusive behaviors have all been widely researched, but financial abuse and economic control have only become a topic of study recently.[42]

## B. Measuring Coerced Debt

According to the CDC, the lifetime prevalence of all forms of coercive control for women is 39.9%, and 40.4% for men.[43] There has been little research on the prevalence of coerced debt and economic abuse,[44] and such research has

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AGAINST WOMEN 563 (2008) (noting the difficulty of measuring economic abuse); Terri L. Weaver et al., *Development and Preliminary Psychometric Evaluation of the Domestic Violence–Related Financial Issues Scale (DV-FI)*, 24 J. INTERPERSONAL VIOLENCE 569 (2009) (utilizing an explanatory factor analysis to study domestic violence and related financial issues).

36. MICHELE C. BLACK ET AL., NAT'L CTR. FOR INJURY PREVENTION & CONTROL OF THE CTRS. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT 10 (2011), *available at* http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf. It is important to note that 48.4% of lesbian women, 68.8% of bisexual women, and 48.2% of bisexual men reported experiencing coercive control in their lifetime. MIKEL L. WALTERS ET AL., NAT'L CTR. FOR INJURY PREVENTION & CONTROL OF THE CTRS. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 FINDINGS ON VICTIMIZATION BY SEXUAL ORIENTATION 23–24 (2013), *available at* http://www.cdc.gov/ViolencePrevention/pdf/NISVS_SOfindings.pdf.

37. Adams et al., *supra* note 35, at 563–66.

38. Amanda Mathisen Stylianou et al., *Measuring Abusive Behaviors: Is Economic Abuse a Unique Form of Abuse?*, 28 J. INTERPERSONAL VIOLENCE 3186, 3199–201 (2013).

39. *Id.* at 3189.

40. Littwin, *Coerced Debt*, *supra* note 12, at 954.

41. Angela Littwin notes that research in economic coercive control behaviors identifies two categories, "preventing victims from earning money and controlling their access to money the family has earned," and that coerced debt falls within the latter category. Littwin, *Battered Credit*, *supra* note 23, at 374. However that conceptualization is a different theory than the three-pronged one used here.

42. Stylianou et al., *supra* note 38, at 3197.

43. Breiding, *NIPSVS 2011*, *supra* note 10, at 10.

44. Stylianou et al., *supra* note 38, at 3187. The 2007 Consumer Bankruptcy Project, the leading study into consumer bankruptcy, asked consumer bankruptcy filers questions regarding domestic violence and demonstrated that domestic violence survivors are disproportionately represented in comparison to the general population. *See* Angela Littwin, *Coerced Debt*, *supra* note 12, at 962–69. However, this study focused on physical and sexual violence experienced by bankruptcy filers and not coerced debt. *See id.* at 968–69 tbl.2 (listing questions asked to participants showing that these questions do not include issues of coerced debt).

only been preliminary.[45] In a study by Michigan State University psychologists, researchers interviewed 103 women who received assistance from domestic abuse victim agencies in a Midwestern state[46] and found that 99% of these women had experienced some type of economic abuse from their partners.[47] The study developed the Scale of Economic Abuse (SEA), which asks domestic violence victims twenty-eight questions about specific actions taken by their abusive partners. For example, the SEA asked the victim how frequently their abuser would "[s]teal the car keys or take the car so you couldn't go look for a job or go to a job interview" and "[t]hreaten you or beat you up for paying the bills or buying things that were needed."[48] The researcher grouped each question into two subscales: Economic Control and Economic Exploitation.[49] Angela Littwin analyzed this study in her article, *Coerced Debt: The Role of Consumer Credit in Domestic Violence*, and identified eleven questions from the survey that affect whether a victim is able to pay off debt, have access to a credit card, or prevent the abuser's use of the victim's credit card.[50] The questions involving credit- and non-credit-related behaviors were almost all grouped together into a single question, complicating the results for coerced debt.[51]

In a second study of domestic abuse victims by Rutgers University researchers, 94.2% of the participants experienced some form of economic abuse.[52] This study interviewed 120 women recruited from domestic violence programs across 10 states.[53] This study used a Modified Scale of Economic Abuse, which reduced the SEA to twelve questions grouped into three categories: economic control, economic exploitative behaviors, and employment sabotage.[54] Of the participants, 79% experienced economic exploitative behaviors, which included "[b]uild up debt under [their] name by doing things like us[ing] [their] credit card or run[ing] up the phone bill." [55] Similarly, 79% experienced economic control, which included behaviors like "[k]eep[ing] financial information from [them]."[56] Since this modified scale was based on the

45. *See* Littwin, *Coerced Debt*, *supra* note 12, at 960 ("Like the original research presented in this Essay, the one previous study of coerced debt was preliminary.").

46. Adams et al., *supra* note 35 at 570–71.The women's ages ranged from 18 to 85, and 48% of the women were African American, 45% white, 1% Asian, and 5% Hispanic/Latina. *Id.* at 571.

47. *Id.* at 580.

48. *Id.* at 58.

49. *Id.* at 574.

50. Littwin, *Coerced Debt*, *supra* note 12, at 960–61.

51. *See* Adams et al., *supra* note 35, at 583 app. (including "[b]uild up debt under your name by doing things like use your credit card or run up the phone bill"); Littwin, *Coerced Debt*, *supra* note 12, at 960–61 ("The extent to which some of these items are measuring credit-related behavior is currently unclear.").

52. Judy L. Postmus, et al., *Understanding Economic Abuse in the Lives of Survivors*, 27 J. INTERPERSONAL VIOLENCE 411, 419 (2012).

53. *Id.* at 416. Specifically, the researchers only invited adults from these domestic violence programs who "had attended at least one individual or group session during which the economic empowerment curriculum information had been shared." *Id.* The participants ranged from age 18 to 73, and approximately 55% were white, 20% African American, 18% Latina/Hispanic, and 8% biracial, Native American or other racial identity. *Id.*

54. *Id.* at 411.

55. *Id.* at 411, 420.

56. *Id.*

same scale in the Michigan State University study, the results pertaining to credit-related behaviors are similarly unclear.[57]

The scholars on the forefront of this research admit that their collective knowledge of economic abuse "is still in its infancy"[58] and that more studies are necessary to understand how the economic dimensions of abusive relationships prevent women from escaping.[59] Nonetheless, the researchers conclude that such high percentages of women experiencing economic abuse indicates a "pressing need" for changes to state and federal policies to prohibit economic abuse and fund financial literacy programs.[60] Considering the rise of credit card use, as discussed in the following Parts, more research is needed specifically on coerced debt, so that credit-related policies and interventions can better respond to the needs of domestic violence victims.

## II. WHY CREDIT CARDS MATTER FOR DOMESTIC VIOLENCE VICTIMS

There are numerous barriers preventing domestic violence victims from breaking themselves out of the abusive cycle and remaining free. Factors include safety, inefficient law enforcement response, biases against domestic violence victims, economic dependence, and homelessness.[61] Domestic violence survivors will often leave their relationships with damaged credit,[62] loss of property, legal fees, medical bills, cost of new housing, and marred employment histories.[63]

A primary reason that many women do not try to leave their abusers is that they lack the adequate material resources to do so.[64] Inadequate material resources lead to a victim's economic dependency on the abuser.[65] Studies have

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57. *See id.* at 420 tbl.I (including as an item "[b]uild up debt under your name by doing things like use your credit card or run up phone bills"). For a 2013 study using the same scale, *see* Stylianou et al., *supra* note 38.

58. Stylianou et al., *supra* note 38, at 3188.

59. *Id.* at 3201.

60. *Id.* at 3200.

61. Dana Harrington Conner, *Financial Freedom: Women, Money, and Domestic Abuse*, 20 WM. & MARY J. WOMEN & L. 339, 356 (2014); *see also* Sarah M. Buel, *A Lawyer's Understanding of Domestic Violence*, 62 TEX. B.J. 936, 939 (1999) (citing as other factors "the batterer's stalking and sabotage of any steps toward independence" and "physical or mental disability, advanced age, homelessness, medical problems, no available shelter space, religious beliefs, extreme youth, or immigration status," as well as "lack of money, job skills, affordable child care and housing").

62. Littwin, *Coerced Debt*, *supra* note 12, at 1001.

63. *See* Michael A. Anderson et al., *"Why Doesn't She Just Leave?": A Descriptive Study of Victim Reported Impediments to Her Safety*, 18 J. FAM. VIOLENCE 151, 153 tbl.I. (2003) (listing the types of abuses leading to these types of outcomes, including physical abuse leading to hospital stays, and thus, medical bills); Sara J. Shoener & Erika A. Sussman, *Economic Ripple Effect of IPV: Building Partnerships for Systemic Change*, DOMESTIC VIOLENCE REP. 83, 84 fig.1 (Aug./Sept. 2013) (noting both the long- and short-term effects of leaving the relationship), *available at* http://www.csaj.org/document-library/Shoener_and_Sussman_2013_-_Economic_Ripple_Effect_of_IPV.pdf ;
Jamie Haar, *Women's Work: Economic Security in the Domestic Violence Context*, 31 HOFSTRA LAB. & EMP. L.J. 471, 481, 491 (2014) (citing lack of employment protections as a factor and "tax liability, consumer credit debt, loss of unemployment insurance, and lack of property rights" as consequences of domestic violence).

64. *See* Adams et al., *supra* note 35, at 568 ("Studies have consistently identified economic dependence as a critical obstacle for many women who are attempting to leave abusive partners.").

65. Weaver et al., *supra* note 35, at 570.

shown that the level of economic dependency negatively correlates with the likelihood that the victim will leave the abuser.[66] If the victim is financially dependent on an abuser, she may feel obliged to stay with her abuser and find it more difficult to press criminal charges or seek restraining orders.[67] The relationship of domestic violence and financial insecurity is circular.[68] Abusers control their victims' access to material resources and cause financial instability, which increases the victims' further susceptibility to violence and erects obstacles for them to escape to safety.[69]

Coerced debt may lead to destroyed credit ratings, which in turn, makes creating a life liberated from the abuser even more difficult.[70] Damaged credit obstructs the victim's ability to secure the basic necessities for leaving the relationship, including housing, employment, and utilities, since landlords, employers, and utilities companies regularly consult credit scores to screen applicants.[71] Consequently, damaged credit has led to "longer shelter stays, victims returning to their abusers, or victims making financial calculations that resulted in them not leaving their abusers in the first place."[72] Since coerced debt results in such daunting costs for its victims, researchers must better understand the mechanisms for how and why coerced debt can be so easily utilized as a form of abuse.

### A. How Has Credit Become a Weapon?

Today, approximately 75% of American households own at least one credit card, which household maintaining an average of $7,400 in credit card debt.[73] Cardholders have roughly eight credit cards each.[74] This was not always the case. Consumer lending did not constitute part of the portfolio of banks in America for most of the nation's history.[75] Diners Club created the first charge card in 1949,[76]

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66. *Id.*

67. *Id.*; Deborah M. Weissman, *The Personal Is Political and Economic: Rethinking Domestic Violence*, 2007 B.Y.U. L. REV. 387, 401 (2007); Angela M. Moore Parmley, *Violence Against Women Post VAWA: Where Have We Been, Where Are We Going?*, 10 VIOLENCE AGAINST WOMEN 1417, 1422 (2004).

68. Shoener & Sussman, *supra* note 63 at 83.Although the lifetime prevalence of physical violence by an intimate partner is less than a third among women, approximately half of all women participating in Temporary Assistance to Needy Families (TANF) had experienced domestic violence. NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, SHORTCHANGING SURVIVORS: THE FAMILY VIOLENCE OPTION FOR TANF BENEFITS 5 (2009), *available at* http://www.ncdsv.org/images/NLCHP_ShortchangingSurvivorsTheFVOptionForTANFbeneftis_12-2009.pdf.

69. *Id.*

70. *See* Angela Littwin, *Battered Credit, supra* note 23, at 366 ("Coerced debt wreaks havoc on credit scores. Victims of coerced debt often do not discover the debt until they attempt to leave an abusive relationship, when much of the debt is delinquent or in danger of becoming so.").

71. *Id.* at 366–67.

72. *Id.* at 367.

73. Neil L. Sobol, *Protecting Consumers from Zombie-Debt Collectors*, 44 N.M. L. REV. 327, 333–34 (2014).

74. *Id.*

75. Michael L. Starzec, *The Legal History of Credit in Four Thousand Years (or Less)*, 26 LOY. CONSUMER L. REV. 107, 114 (2013).

76. Andrea Freeman, *Payback: A Structural Analysis of the Credit Card Problem*, 55 ARIZ. L. REV. 151, 159 (2013). Although charge cards were invented at this time, credit for consumption of goods has existed since antiquity. LENDOL CALDER, FINANCING THE AMERICAN DREAM: A CULTURAL

and banks began issuing credit cards in the late-1950s.[77] After over twenty years of increasing numbers of credit cardholders, revolving credit still only accounted for 3.8% of total consumer credit outstanding in 1970.[78] Usury laws in each state banned the extension of credit to higher-risk borrowers, restricting the pool of potential customers.[79]

For multiple reasons,[80] consumer lending to higher-risk customers became more profitable over time.[81] One important turning point came in 1978 when the Supreme Court held that national banks could follow the interest rates permitted in the state where they were headquartered, which caused states to repeal usury laws and national banks to move to states with lenient rates.[82] In 1996, the Supreme Court extended this rule to fees.[83] As a result, credit card companies could raise interest rates, fees, and penalties, making lending to lower-income and riskier borrowers incredibly profitable.[84] Subsequently, the secondary market became efficient, the supply of credit increased, and the demand for credit exploded.[85]

Today, credit cards are abundant amongst even lower-income households.[86] For very low-income households, making less than $10,000 per year, credit card debt increased by 184% from 1989 to 2001.[87] In 1989, 27.6% of households in the bottom 25% by net worth had credit card balances; by 2007, 41% had credit card balances.[88] Another factor contributing to this increase was the easing of the application process – applications for credit cards can now be completed at home through online websites, telephone, or postal mail solicitations.[89] In 2011, credit

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HISTORY OF CONSUMER CREDIT 17 (1999).

77. Lander, *supra* note 19, at 204.

78. Glenn B. Canner & Gregory Elliehausen, Bd. of Governors of the Fed. Reserve Sys., *Consumer Experiences with Credit Cards*, 99 FED. RES. BULL. 1, 6 (2013), *available at* http://www.federalreserve.gov/pubs/bulletin/2013/pdf/consumer-experiences-with-credit-cards-201312.pdf. Revolving debt is primarily comprised of credit card debt. *Id.*

79. Lander, *supra* note 19, at 204.

80. *See id.* at 204–05 (discussing lenient usury laws, high inflation in the late 1970's, legislative atmosphere, changes in legal precedent, Bankruptcy Reform Act, increased volume, oligopolization and consolidation of competitors into a handful of credit card lenders, sophistication in credit scoring).

81. *Id.* at 205.

82. Marquette Nat. Bank of Minneapolis v. First of Omaha Serv. Corp., 439 U.S. 299 (1978); Freeman, *supra* note 76, at 159.

83. Smiley v. Citibank (S.D.), N.A., 517 U.S. 735 (1996); Freeman, *supra* note 76, at 159–60; Lupica, *supra* note 18, at 581.

84. *See* Lupica, *supra* note 18, at 580–82 (noting that low-risk, affluent, middle-class clients paid off their balances within the grace period resulting in less income from interest rates, so a shift to soliciting lower-income households who could not payoff debt in full would lead to increased profits).

85. Lander, *supra* note 19, at 205.

86. Lupica, *supra* note 18, at 583.

87. TAMARA DRAUT & JAVIER SILVA, BORROWING TO MAKE ENDS MEET: THE GROWTH OF CREDIT CARD DEBT IN THE '90S 10 (2003), *available at* http://www.demos.org/sites/default/files/publications/borrowing_to_make_ends_meet.pdf.

88. BD. OF GOVERNORS OF THE FED. RESERVE SYS., 2013 SUMMARY OF CONSUMER FINANCES CHARTBOOK 1188 (2014), *available at* http://www.federalreserve.gov/econresdata/scf/files/BulletinCharts.pdf. The same percentage decreased after the recession to 33.4% of households in 2013. *Id*.

89. *See supra* note 20 and accompanying text.

issuers sent nearly five billion direct mail solicitations, nearly 40% more than in 2010.[90] According to MasterCard Advisors, the professional services arm of MasterCard Worldwide, 52% of new credit card acquirers applied online, 18% by postal mail, 12% by mobile device, 8% by telephone, and 6% by other means.[91] Households who file for bankruptcy receive disproportionately more credit offers per month than the average household.[92]

Greater availability of credit as well as home solicitation offers assist abusers in coercing their victims into coerced debt. [93] Angela Littwin explains that coerced debt is either achieved through fraud, force, or "misinformation and other means." Coerced debt by fraud would include impersonation, forgery, and identity theft. By applying online, sending in a form via mail, or speaking to a representative over the phone, the abuser can create an account using the victim's social security number and personal information.[94] Littwin notes, "[T]he types of information that lenders currently require to prevent identity theft are only useful in screening out strangers, not intimate relations."[95] The abuser can also charge items to the victim's accounts if the abuser knows the victim's credit card and billing information. Coerced debt by force includes using threats of physical violence or other extremely negative consequences, like harming the victim's children or reporting the victim for immigration-related violations.[96] Coerced debt by "misinformation and other means" is a sort of catch-all for behaviors that do not fit in the two prior categories. Examples include using language barriers to trick victims into signing documents, generating debt under a joint, married household knowing the victim will be liable, and destroying a victim's property that is collateral for loans.[97]

## B. The Value of Credit Cards and Financial Freedom for Victim Safety

Credit cards do not necessarily harm all domestic violence victims. In reality, credit cards can assist in providing a social safety net for domestic violence victims, especially when they first leave the abusive environment. Credit cards can serve to "enhance or maintain their productivity (e.g., to start a business, invest in an education, or subsist until new employment is found), to

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90. BD. OF GOVERNORS OF THE FED. RESERVE SYS., REPORT TO THE CONGRESS ON THE PROFITABILITY OF CREDIT CARD OPERATIONS OF DEPOSITORY INSTITUTIONS 8 (2012), *available at* http://www.federalreserve.gov/publications/other-reports/files/ccprofit2012.pdf.

91. MARGOT VAUGHAN, MASTERCARD ADVISORS, HOW ISSUES CAN GET, KEEP, AND GROW THE OMNICHANNEL CUSTOMER 2 (2014), *available at* http://www.mastercardadvisors.com/campaign/DMA2014/Responsive_Marketing_Whitepaper.pdf.

92. Katherine Porter, *Bankrupt Profits: The Credit Industry's Business Model for Postbankruptcy Lending*, 93 IOWA L. REV. 1369, 1393–94 (2008) ("The average bankrupt household in the sample reported receiving fifteen offers each month, 2.5 times the number directed to the average nonbankrupt family.").

93. *See* Littwin, *Beyond Usury*, *supra* note 17, at 453 (explaining the increased availability of credit over the past ten years).

94. *See* Littwin, *Coerced Debt*, *supra* note 12, at 986 ("[B]anks used to require face-to-face meetings in order to authorize personal lines of credit. These meetings . . . limited the ways in which one person could fraudulently obtain a loan in the name of the other.").

95. *Id.* at 987.

96. *Id.* at 989–90.

97. *Id.* at 990–9.1

consume, and to provide a measure of income security or insurance in times of enhanced risk."[98] When a financial crisis hits, credit cards can be used to pay for necessities like food, shelter, or medicine.[99] The three main reasons cited by bankruptcy filers as causes of their bankruptcy are job loss, medical illness, and divorce.[100] Individuals can and often rely on their credit cards to "fill the gaps in the safety net to cover expenses when these sorts of financial calamities occur."[101] Researchers have also shown that low-income families rely significantly on credit cards during times of unanticipated financial crisis.[102] If a domestic violence victim's credit has been destroyed due to coerced debt, that domestic violence victim has less liquidity to handle financial crises or to find financial freedom from her abuser.[103]

## III. SURVEY OF CREDIT CARD ISSUERS' POLICIES FOR COERCED DEBT: DATA & METHODOLOGY

The purpose of the study was to survey credit card issuers' policies for responding to coerced debt. This study consisted of phone interviews with customer service representatives from each of the top twenty issuers of credit card debt in the United States.[104]

### A. Subject Selection

I consulted *The Nilson Report*, a payment-industry publication, for a list of the top credit card issuers. Although *The Nilson Report* uses proprietary information and does not generally disclose its sources,[105] government agencies[106] and numerous academics[107] have relied on this source for statistics on

98. Regina Austin, *Of Predatory Lending and the Democratization of Credit: Preserving the Social Safety Net of Informality in Small-Loan Transactions*, 53 AM. U. L. REV. 1217, 1227 (2004).

99. *Id.*

100. ELIZABETH WARREN & AMELIA WARREN TYAGI, THE TWO-INCOME TRAP: WHY MIDDLE-CLASS MOTHERS & FATHERS ARE GOING BROKE 81 (2003).

101. Jean Braucher, *The Two-Income Trap: Why Middle-Class Mothers & Fathers Are Going Broke Elizabeth Warren & Amelia Warren Tyagi*, 21 EMORY BANKR. DEV. J. 193, 209 (2004) (book review).

102. Sara Sternberg Greene, *The Broken Safety Net: A Study of Earned Income Tax Credit Recipients and A Proposal for Repair*, 88 N.Y.U. L. REV. 515, 548–49 (2013) (finding that low-income families use credit cards for approximately 70% financial shock events in comparison to turning to families or friends, earned income tax credit, unemployment insurance, welfare, or private charities).

103. Even beyond these financial shocks, credit cards support families during times of unexpected financial strain and even "cyclical borrowing" typical of "a consumer lifestyle" where a household's expenses temporarily exceed revenues, like Christmas or the beginning of school terms. Austin, *supra* note 98, at 1227.

104. *Infra* Part III.A.

105. Adam J. Levitin, *Priceless? The Social Costs of Credit Card Merchant Restraints*, 45 HARV. J. ON LEGIS. 1, 58 (2008) [hereinafter Levitin, *Priceless*].

106. *See e.g.*, U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-14-225, CREDIT CARDS: MARKETING TO COLLEGE STUDENTS APPEARS TO HAVE DECLINED 3 n.7 (2014) [hereinafter GAO, CREDIT CARDS], *available at* http://www.gao.gov/assets/670/661121.pdf (citing *The Nilson Report* as source for identifying the high volume of credit card issuances for purposes of the study); BD. OF GOVERNORS OF THE FED. RESERVE SYS., REPORT TO THE CONGRESS ON THE PROFITABILITY OF CREDIT CARD OPERATIONS OF DEPOSITORY INSTITUTIONS 6 n.8 (2014) [hereinafter BD. OF GOVERNORS, PROFITABILITY REPORT] (citing *The Nilson Report* as source for information on number of cards VISA, MasterCard, American Express, and Discover Card Services provided in 2013).

the American card industry. For instance, when the U.S. Government Accountability Office (GAO) prepared a report for Congress on the marketing of credit cards to college students, the GAO relied on *The Nilson Report* to identify "the five largest general credit card issuers."[108] Ronald J. Mann, a Columbia Law School professor, and Adam J. Levitin, a Georgetown Law professor, are leading consumer law scholars, and both have relied on *The Nilson Report* to conduct their research on the payment industry.[109] I followed their lead.

According to *The Nilson Report*, the largest issuers of consumer Visa and MasterCard[110] credit cards based on consumer purchase volume in 2013 were (ordered by their descending share of the market): JPMorgan Chase, Bank of America, Citi, Capital One, U.S. Bank, Barclays, Wells Fargo, USAA, Cabela's WFB, GE Capital Retail Bank,[111] Navy FCU, PNC, First National Nebraska, TD Bank, Nordstrom, ICBA Bancard, Fifth Third, BB&T, State Farm, and Pentagon FCU.[112] The top four companies, JPMorgan Chase, Bank of America, Citi, and

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107. According to a WestlawNext search, *The Nilson Report* had been cited in 64 law journal articles at the time of publication. *See also, e.g.*, Ronald J. Mann, *Credit Cards and Debit Cards in the United States and Japan*, 55 VAND. L. REV. 1055, 1108 (2002) ("I rely throughout this paper on the Nilson Report for statistics regarding the American card industry. Although the source of the statistics published in the Nilson Report is rarely clear, I follow the lead of American government agencies and earlier academics, which generally have accepted them as authoritative."); Adam J. Levitin, *The Antitrust Super Bowl: America's Payment Systems, No-Surcharge Rules, and the Hidden Costs of Credit*, 3 BERKELEY BUS. L.J. 265, 271 tbls. 1 & 2 (2005) [hereinafter Levitin, *Antitrust Super Bowl*] (creating tables on U.S. transactions by payment method using *The Nilson Report* data); Michael S. Barr, *Banking the Poor*, 21 YALE J. ON REG. 121, 204 (2004) ("*The Nilson Report* predicts that debit card transactions will surpass credit card transactions in the next decade."); Christopher C. DeMuth, *The Case Against Credit Card Interest Rate Regulation*, 3 YALE J. ON REG. 201, 224 tbl. 2 (1986) (citing *The Nilson Report* for credit card issuers statistics in 1984).

108. GAO, CREDIT CARDS, *supra* note 106, at 3 n. 7 .

109. Mann, *supra* note 107, at 1108; Levitin, *Antitrust Super Bowl*, *supra* note 107, at 271.

110. I chose to limit the survey to only issuers of Visa and MasterCard credit cards for multiple reasons. First, Visa and Mastercard-labeled cards constituted 432 million general purpose credit cards provided in 2013, dominating the majority of the market. BD. OF GOVERNORS, PROFITABILITY REPORT, *supra* note 106, at 6. Therefore, by including only these two networks' issuers, this study will reflect the experience of a majority of credit card customers. Second, the system of credit card issuing, acquiring, and network associations is complex. Visa and MasterCard do not issue credit card accounts but instead rely on third-party banks and institutions to issue their cards to customers. Levitin, *Priceless*, *supra* note 105, at 1328. In contrast, American Express and Discover have historically issued their respective credit cards. *Id.* American Express and Discover have begun to contract with third-party banks, including Visa and MasterCard member banks, but both still issue a significant amount of cards on their own. Alan S. Frankel & Allan L. Shampine, *The Economic Effects of Interchange Fees*, 73 ANTITRUST L.J. 627, 663 (2006). The dynamics between customers, issuers, acquirers, and networks are intricate. Issuers can negotiate with networks and voice the collective concerns of their customers and merchants. Andrew P. Morriss & Jason Korosec, *Private Dispute Resolution in the Card Context: Structure, Reputation, and Incentives,* 1 J.L. ECON. & POL'Y 393, 429–30 (2005). Since American Express and Discover are both issuers and networks, their behavior as issuers may be different. To include American Express and Discover as issuers in this study is outside of this study's scope and my level of expertise. For these reasons, I excluded American Express and Discover as issuers from this study.

111. GE Capital Retail Bank is now named Synchrony Financial, but I will refer to it as GE Capital in this paper. Michael J. De La Merced, *G.E. Files to Spin Off Retail Finance Unit*, N.Y. TIMES (Mar. 13, 2014, 8:05 AM), http://dealbook.nytimes.com/2014/03/13/g-e-files-to-spin-off-retail-finance-unit/?_r=0.

112. HSN Consultants, Inc., *Top U.S. Consumer Credit/Debit Issuers*, THE NILSON REP., August

Capital One, issued the vast majority of credit cards in America.[113] Surveying these companies alone would provide information on $856.5 billion of consumer purchase volume in 2013.[114] Instead, I chose to survey the top twenty issuers of credit cards to compare results across a more diverse range of issuers, including nonprofit credit unions,[115] retail store-affiliated banks,[116] and a financial institution for military families.[117]

### B. Methodology and Data Collection

The phone interviews loosely followed a script.[118] I called each credit card issuer's customer service number listed on their websites[119] and told each representative that I was a domestic violence advocate who sought information on behalf of my domestic violence clients.[120] In addition to asking about the company's general policies for domestic violence, I asked what the protocol would be for two specific scenarios: (a) the first client, Client A, discovered that her abusive ex-partner had opened a credit card account in her name using her personal information without her knowledge, and (b) the second client, Client B, was forced to open a credit card account by her abusive ex-partner, and then the ex-partner charged a significant amount of debt on that account against her will. I chose these two scenarios to compare the reaction of representatives to coerced debt by fraud (Client A) and coerced debt by force (Client B) as defined by Angela Littwin.[121] I called each company twice using the same script.

As stated previously, the purpose of the study was to observe credit card issuers' responses to coerced debt of their clients. I chose to interview credit card issuers' customer service representatives, because this method would offer at least an initial glimpse into how credit card issuers train their representatives. Because individual representatives may not adequately portray the companies' actual policies and protocols, this study was only introductory. Nonetheless, representatives' responses may still carry informative and legal weight.[122] I

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2014, at 1, 10 tbl. "Largest U.S. Issuers of Consumer Visa and Mastercard Cards 2013."

113. The amount of consumer purchase volume for JP Morgan Chase, $364.86 billion, is more than the total amount, $273.27 billion, that the sixteen credit card issuers ranked fifth to twentieth issued. *Id.*

114. *Id.*

115. Pentagon FCU.

116. Nordstrom, Cabelas WFB.

117. USAA.

118. *See infra* app. A.

119. For example, JP Morgan Chase bank lists one phone number on the Customer Service webpage for its credit card products. *See Chase Credit Card Customer Service*, J.P. MORGAN CHASE & CO., https://www.chase.com/credit-cards/customer-service (last visited Feb. 17, 2015). First National of Nebraska lists a specific number on its website for "Credit Card Customer Service." *See Contact Us*, FIRST NAT'L BANK, https://www.firstnational.com/RetailWeb/default/contactus/SHOW_FORM/form (last visited Feb. 17, 2015). BB&T lists a phone number directly on its credit card-specific page. *See Credit Cards from BB&T*, BB&T, http://www.bbt.com/bbtdotcom/banking/credit-cards/default.page (last visited Feb. 17, 2015).

120. The companies and customer service representatives were not notified that they were the subject of a study.

121. Littwin, *Coerced Debt*, supra note 12, at 986–90.

122. *See* John Leubsdorf, *Evidence Law As A System of Incentives*, 95 IOWA L. REV. 1621, 1627 (2010)

tracked the representatives' responses, including whether their employees transferred me to a supervisor or legal department, provided detailed instructions for contesting coerced debt, or claimed that the company did not have a policy for responding to domestic violence. Since the topic of domestic violence may be offensive or traumatizing, I did not fabricate or discuss details involving physical violence, sexual abuse, or other disturbing issues. I sought to minimize any risk to the welfare of the subject customer service representatives.[123]

## C. Results[124]

### 1. Domestic Violence Policy or Protocol

None of the representatives identified that their company had a written policy or protocol to respond to issues of domestic violence. On the first round of

("Likewise, Federal Rule of Evidence 801(d)(2)(D) . . . allows an employers' opponent to use employees' statements, when they were made during their employment and are about a matter within their employment's scope, against the employer."); Felicia Ruth Reid, *Ethical Limitations on Investigating Employment Discrimination Claims: The Prohibition on Ex Parte Contact with A Defendant's Employees*, 24 U.C. DAVIS L. REV. 1243, 1246 (1991) ("Since employment discrimination occurs in the workplace, fellow employees will be a plaintiff's major witnesses and will possess information crucial to her case."). In the housing and lending discrimination context, nonprofits have hired individuals to test whether individual employees or agents of a landlord or lender would treat people of different backgrounds, including race, familial status, and so on, discriminately, and courts have continually approved of this testing to prove discrimination claims. Liam Garland, *Reflections on Housing Rights Center v. Krug*, 41 URB. LAW. 249, 249–56 (2009); Steve Tomkowiak, *Using Testing Evidence in Mortgage Lending Discrimination Cases*, 41 URB. LAW. 319 (2009).

123. The probability and magnitude of harm or discomfort of the representatives anticipated in the research are no greater than those ordinarily encountered in daily life. I did not record identifying information about the representatives. I only recorded the first name of representatives to ensure that I did not speak to the same individual on subsequent calls to the same company. Since the subject companies are large corporations, it is unlikely that a first name will be able to identify an individual if this information was released. I also did not record conversations on an audio or visual recording device for similar reasons. Instead, I transcribed the conversations during the interviews to the best of my ability and immediately reviewed my notes for errors after concluding the interview.

124. On the first round of calls, representatives from two issuers, Barclays and ICBA Bancard, refused to speak with me even regarding general information. On the second round of calls, more representatives refused to speak to me, including GE Capital, First National Nebraska, US Bank and Bank of America. During the first round, the Barclays representative said he could only speak to me with formal authorization from the domestic violence victims. The Barclays representative told me to go to the company's website for general questions. When I asked where on the website I should look, the Barclays representative immediately responded, "I need to speak to the cardholder to answer that." The ICBA Bancard representatives on each round of calls claimed that they are "just the provider," so the domestic violence victims should contact whatever bank is getting business from her credit card. According to the ICBA Bancard website, the company offers banks two credit card programs: (1) "Direct Issuing," which permits banks to issue their own credit cards while ICBA Bancard offers "fraud protection, 24-hour customer service, a rewards program, and more"; and (2) "Total Card Management" program, where banks can offer ICBA Bancard's cards "branded with your own, [the bank's], logo" but through TCM Bank, N.A., a subsidiary bank of ICBA Bancard. *Credit Card Solutions*, ICBA BANCARD & TCM BANK, http://www.icbabancard.com/productservices/index.cfm?ItemNumber=54428&navItemNumber=53373 (last visited Feb. 17, 2015); *About TCM, Bank, N.A.*, ICBA BANCARD & TCM BANK, http://www.icbabancard.com/About/index.cfm?ItemNumber=53413&navItemNumber=53318 (last visited Feb. 17, 2015).

calls, thirteen representatives explicitly stated that no policy existed or that they were unaware of any such policy. Five representatives stated that their company had policies for credit card terms and conditions, identity theft, or fraud, but none of these policies explicitly mention domestic violence or coerced debt. On the second round of calls, twelve representatives explicitly stated that no policy existed or they were unaware of any policy. Six representatives refused to answer whether a policy existed or whether they knew or did not know of any policy. No representative directed me to a general credit card policy on terms and conditions identity theft, or fraud.

**Table 1. Credit Card Issuers' Domestic Violence-Specific Policies**

| | 1 | Issuers from Round 1 | 2 | Issuers from Round 2 |
|---|---|---|---|---|
| Representative stated that company had no domestic violence policy or that they did not know of one | 13 | Chase, Bank of America, Citi, US Bank, Wells Fargo, USAA, Cabela's WFB, GE Capital, Fifth Third, BB&T, State Farm, Pentagon FCU, Capital One | 12 | Chase, Barclays, USAA, Cabela's, Navy FCU, TD Bank, State Farm, Nordstrom, PNC, Fifth Third, BB&T, Pentagon FCU |
| Representative would not disclose whether the company had a domestic violence policy or whether they knew of any policy | 0 | | 6 | Bank of America, Capital One, US Bank, First National Nebraska, Citi, Wells Fargo |
| Representative said company had written policy but directed me to general card use terms and conditions, policies for identity theft, charges, or fraud. | 5 | Navy FCU, PNC, First National Nebraska, Nordstrom, BB&T | 0 | |
| I did not ask if company had a domestic violence policy | 3 | TD Bank, ICBA Bancard, Barclays | 2 | GE Capital, ICBA Bancard |

2. Options for Victims of Coerced Debt by Fraud or Force

I received ranging and conflicting responses from representatives for what Clients A and B should expect upon calling to report their coerced debt issues.[125] Although Client A involved an individual opening an account using another person's personal information, representatives identified Client A's scenario in

125. Certain representatives were resistant to answering questions. If a company is not mentioned in the results, then that company was not asked the pertinent question.

varied ways. On the first round of calls, five representatives identified Client A's situation as identity theft, thirteen identified it as fraud, and two stated that there was no way for a client to dispute or that the client would be held responsible for the account's activity. Capital One's representative said it would likely be identity theft but it may also implicate fraud if the abuser used the same account to incur debt. On the second round of calls, multiple issuers' representatives gave different answers from the initial round of calls. On the second round, three companies' representatives identified Client A's scenario as an identity theft claim, but none of these three companies are the same companies from the first round of calls. Similarly, twelve representatives identified Client A's situation as a fraud claim, but four represent companies that had answered differently in the first round of calls. Most importantly though, two new companies' representatives, BB&T and State Farm, stated that Client A could not dispute the account or would be held responsible for the account charges. BB&T and State Farm had previously stated during the first round that Client A could dispute under a fraud or identity theft claim.

**Table 2. Credit Card Issuers' Responses to Coerced Debt by Fraud**

| | Round 1 Total | Issuers from Round 1 | Round 2 Total | Issuers from Round 2 |
|---|---|---|---|---|
| Representative said Client A is/similar to identity theft claim | 5 | State Farm, PNC, Wells Fargo, Capital One, Bank of America | 3 | USAA, Navy FCU, TD Bank |
| Representative said Client A is/similar to fraud claim | 13 | Chase, Citi, Capital One, US Bank, USAA, TD Bank, First National Nebraska, Navy FCU, Cabela's WFB, Fifth Third, BB&T, Nordstrom, GE Capital | 12 | Chase, Citi, Capital One, US Bank, USAA, Cabela's WFB, Pentagon FCU, Nordstrom, Bank of America, Barclays, Wells Fargo, PNC |
| Representative said Client A can dispute charges (but did not identify claim as fraud or identity theft) | 0 | | 1 | Fifth Third |
| Representative refused to comment on whether Client B identity theft/fraud/can dispute | 2 | Barclays, ICBA Bancard | 3 | GE Capital, First National Nebraska |
| Representative said there is no way Client A can dispute or said she will be held responsible or put into a payment plan | 2 | Pentagon FCU, Capital One | 2 | BB&T, State Farm |

Responses to Client B were also inconsistent. In the first round of calls, two representatives identified Client B's situation as identity theft, and eight considered it fraud. Five representatives stated that Client B can dispute charges on the account but did not identify the scenario as fraud or identity theft, and four said that the Client could not dispute the account or charges and would likely be held responsible. In contrast, on the second round of calls ten representatives identified Client B's situation as a fraud claim, one identified it as an identity theft issue, and two representatives stated that Client B would be responsible for the account.

Representatives that claimed that Client B will likely be held responsible ranged in how they discussed this point. During the first call to Fifth Third, the representative stated, "No, she'd be solely responsible. If you give someone permission to use your card you've given permission, so you are responsible. You're the primary account holder." The Fifth Third representative said fraud would not apply and that there were no exceptions for domestic violence victims. On the second call to BB&T, the representative discussed Client A and B together, saying "They are responsible. If it's a BB&T card, they have to sign for it. If their name is on the account, then they had to sign for it, and they're responsible." When I asked what "sign for it means" and whether she means sign for each transaction or for the credit card application itself, the representative said both. I asked if an individual could apply for a card online, and the representative responded, "Yes, you can apply for a credit card online, but you have to sign electronically. So, even if it's forced, she still gave authorization."

**Table 3. Credit Card Issuers' Responses to Coerced Debt by Force**

| | **Round 1 Total** | **Issuers from Round 1** | **Round 2 Total** | **Issuers from Round 2** |
|---|---|---|---|---|
| Representative said Client B is/similar to identity theft claim | 2 | State Farm, Wells Fargo | 1 | TD Bank |
| Representative said Client B is/similar to fraud claim | 8 | Chase, Bank of America, US Bank, Cabela's WFB, BB&T, Navy FCU, GE Capital, TD Bank | 10 | Chase, Bank of America, Citi, Capital One, US Bank, Barclays, Wells Fargo, USAA, PNC, Nordstrom |
| Representative said Client B can dispute charges (but did not identify claim as fraud or identity theft) | 5 | Fifth Third, PNC, Citi, Nordstrom, First National Nebraska | 3 | Cabela's WFB, Fifth Third, Pentagon FCU |
| Representative refused to comment on whether Client B identity theft/fraud/can | 3 | USAA, Barclays, ICBA Bancard | 3 | GE Capital, Navy FCU, First National Nebraska |

| | | | | |
|---|---|---|---|---|
| dispute | | | | |
| Representative said there is no way Client B can dispute or said she will be held responsible or put into a payment plan | 4 | Pentagon FCU, Fifth Third, Nordstrom, Capital One | 2 | BB&T, State Farm |

3. Police Involvement and Mandatory Reporting

For both Clients A and B, policies regarding police involvement were also inconsistent across issuers and internally within companies as representatives shifted positions during calls. For the first round of calls regarding Client A, five representatives said that Client A would likely be required to file a police report if she wanted to challenge the account,[126] four recommended that Client A file a police report but did not say it was required,[127] and four said that the report was not required or especially recommended.[128] Capital One's representative gave inconsistent information. She explained that the company "cannot take so many actions unless the victim initiates a police report." When I asked what would happen if Client A filed a police report, the representative said, "That's different. We are the one who is going to take action on the person who committed theft. But I will be asking her." I asked whether the company would intervene in the police report complaint, and the representative replied, "Sometimes it's difficult to take action on the person who committed the theft. If she opens police report, she does not have to. The police can share the information. We cannot take action." In comparison, JP Morgan Chase's representative said the company may file a police report on its own without Client A's consent. I asked if Client A can prevent the police from being involved, especially if she feared for her safety, and the representative said, "I can see the fear, but to protect her, we would pursue those charges– not her. . . I've seen that scenario play out. It's unfortunate, but at the same time, from our standpoint, we want to help the person being victimized."

In the second round of calls, two representatives said that Client A would likely be required to file a police report if she wanted to challenge the account,[129] one recommended that Client A file a police report but did not say it was

126. TD Bank, First National of Nebraska, Cabela's WFB, and USAA. Citi's representative said that a police report would be necessary if only a few numbers in her identification (i.e., social security number) were incorrect on the account application.

127. State Farm, BB&T, Navy Federal Credit Union, and Bank of America.

128. PNC, GE Capital, and Wells Fargo. Citi's representatives said that if the fraudulent account's application was opened with her personal information without any errors then she would not be required to file a police report.

129. Wells Fargo and TD Bank.

required,[130] and five said that the report was not required or especially recommended.[131] By contrast, USAA and TD Bank's representatives stated during the second round of calls that the company would file police charges against the abuser without discussing Client A's consent. TD Bank's representative explained, "If she doesn't press charges, then TD will. . . . Police is going to be involved either way. If she don't do it, it'll be on her credit report. She'll be held liable, and she'll have to pay it off."

During the first round of calls, in Client B's situation, three representatives said that Client B would be required to file a police report to challenge the account,[132] three said that they would recommend but would not require Client B to report,[133] and three did not indicate whether a police report was required or recommended.[134] Citi and JP Morgan Chase representatives said that their companies may pursue police charges against the abuser without Client B's consent. Citi's representative explained that fees may shift to Client B for the cost of investigating her claim:

> [Citi] may also ask the law enforcement agencies to take some action. That will be done by Citibank. The customer will have nothing to do with this. . . . she will be kept in the loop throughout the investigation. She will be sent out a letter anytime something happens. So, if an investigation will be raised, then a letter will be sent out saying: 'You asked us to investigate so and so issues.' If the investigation results in her favor, she will not have to pay for anything. If otherwise, she may have to pay for that. But she can be sure that we will have documented proof of everything that we do.

Lastly, two representatives would not provide an answer.[135]

On the second round of calls, representatives from Wells Fargo and TD Bank said that Client B would likely be required to file a police report to contest the account, and three representatives recommended that Client B file a police report but did not say it was required by company policy.[136] Finally, the same representatives, from USAA and TD Bank, that identified that their companies may file police reports without Client A's consent applied the same rule in Client B's situations as well.

4. Credit Card Representatives' Emotional Responses to Domestic Violence

While most representatives remained neutral during the interviews, refraining from commenting on the domestic violence scenarios, some shared personal stories or expressed empathy or kindness towards Clients A and B.[137] During the first round of calls, a representative from one of the top four issuers[138]

130. Chase.

131. Capital One, Barclays, PNC, State Farm, and Nordstrom.

132. State Farm, First National of Nebraska, and Cabela's WFB.

133. BB&T, Navy Federal Credit Union, and Bank of America.

134. GE Capital, Wells Fargo, and Capital One.

135. PNC and USAA.

136. Chase, PNC, and Fifth Third.

137. *See* Part C.3., *supra*.

138. Since this may be more detrimental to the representatives, I will not name the

explained, "From personal experience, when it comes to things like that, I went to the police department. They kept an eye out for me and protected me. I would file a police report and see if there's anything they can do to put a restraining order so that way they can be safe from any danger." She also stated that talking about abusive relationships "can be embarrassing" and that she would be happy to talk to them because she is "not going to judge anybody." Another representative from a top four issuer divulged, "Yeah, I mean, I have seen some of it in my own life – which is why I am trying to give you as much information as I can. So you know what to do going forward." In addition, during the second round of calls, representatives from two other companies shared personal experiences. One representative stated, "When somebody's been through that, it's hard to know what to do. I do know more about that stuff, because it's stuff that I've lived through so I know." A representative from another company, while explaining that police reports may be problematic but necessary to free the clients from their debt, also stated, "I know DV is a touchy situation, I totally understand. I've been in that situation before."

In addition, some representatives recommended that Client A or B downplay their domestic violence stories when they contact the issuer companies. A representative from one of the top four issuers recommended that Client B not discuss the domestic violence issues when disputing her account activity. The representative said:

> [The issuer] may not give her a credit for the entire amount. We may say that we cannot dispute this charge, so ask her not to disclose everything. . . . they don't need to know the entire story. . . . I understand what the situation is. As an organization, you also know, our company would not help people with these kinds of situations and these kinds of charges on this account. . . . You know the internal culture or organization's mentality.

Another representative from a top four issuer explained that the clients "don't have to go in depth" when they make their initial call.

On the second round of calls, two representatives shared similar sentiments. One representative from a top four issuer explained that, if the client does not want her abuser to be notified or charged with crime against her will, the client should not share details on the situations and just request that the account be closed. The representative stated, "I wouldn't share information if they are just wanting to close the account if they don't want police involved in it. . . . I would have to report." A representative from a smaller institution stated that, when the clients call to dispute charges or open a fraud claim, they do not need to explain the situation. The representative said, "It can be done without a – why certain things happened. They can just file it as a dispute and we would go ahead and do that. They don't have to say anything."

5. Elder Abuse Protocols

The topic of elder financial abuse arose naturally in interviews. In both the first and second round of calls, Wells Fargo's representatives explained that, if Client A or B is elderly, the company's policy would be different since Wells

representative's company but will identify the issuers' rank according to *The Nilson Report*.

Fargo has either "specific forms for elder abuse" or an abuse reporting protocol. At the end of the first conversation, I asked if he knew if Wells Fargo commonly received domestic abuse-related calls from customers. He said no, but he explained that it was "not uncommon" to find that "the person you're talking to on the phone sounds like they are elderly, who might be getting taken advantage of." He said that if he can tell that an elderly person is "being pushed," then that is something Wells Fargo will respond to immediately. Capital One's representative said similar comments. She explained, "We're used to receiving elderly situations with elderly people. That's handled in a different way. That's pretty common."

Five days after my interview with the Bank of America representative, I received a call from a different Bank of America representative. She explained that she received "a report about financial abuse" and that her call was "in reference to an elder abuse report that you submitted for a client." I explained that I did not indicate anytime during my conversation with the Bank of America representative that my clients were elderly and that I did not submit an elder abuse report. That representative stated that that is what she had received but that she would close the report. Although this conversation did not occur during my initial call, it nonetheless illustrates how the call was interpreted and responded to by the initial representative.

D. Discussion

Across the issues of identity theft, fraud, account disputes, police reports, and police intervention, the only consistent theme throughout the interviews was that there is no consistency across the top credit card issuers in responding to coerced debt. It is unclear whether the representatives' responses were affected by discussions of domestic violence or whether these responses are generally how representatives respond to issues of identity theft and fraud. Further study is needed to compare how an issuer responds to individuals who do not identify as domestic violence victims and to individuals who do, using otherwise identical stories for each individual. Furthermore, it is unknown whether the responses of each individual representative are indicative of the company's general policy. Multiple series of this survey, or a similar survey, could be run on the same issuers to further investigate representatives' responses.[139] What is clear is that the representatives that discussed elder abuse and credit card issuer policies appeared to have clear directions, and even special forms, on how to respond to the issue of financial abuse and even credit card debt coerced by the elder's relatives. More research is needed to understand whether domestic violence and elder abuse share any similarities, and if so, the benefits or challenges of integrating their models.

139. Since a more extensive survey was not conducted , discussion of identity theft and fraud lack analytical foundation from these interviews.

## IV. BACKGROUND AND COMPARISON OF THE DOMESTIC VIOLENCE AND ELDER ABUSE MOVEMENTS

### A. An Emphasis on Safety Versus an Emphasis on Finances

The domestic violence movement did not emerge as a national movement until the late 1960s and 1970s.[140] Domestic violence had not previously been recognized by the criminal justice system as a matter of concern.[141] The early domestic violence movement distrusted the state, and instead, focused on providing services and shelter to victims outside of state involvement.[142] Advocates later committed to changing laws and policies, under the belief that it was necessary for systemic change.[143] Advocates pushed for access to civil protection orders against abusers.[144] From 1976 to 1992, all fifty states enacted legislation for civil protection orders.[145]

While domestic violence advocates in the 1970s pursued a national organized effort and created shelters and other services for victims, elder abuse did not reach a national audience until 1981.[146] In 1981, the United States House of Representatives Select Committee on Aging published a breakthrough report on elder abuse, defining the nature and extent of elder abuse.[147] The report estimated that approximately one million elders were abused each year.[148]

An important distinction between the early elder abuse and domestic violence movements is that the elder abuse movement initially saw financial abuse as its central issue. The aforementioned House Committee report explained that "[p]hysical violence including negligence [as] the most common form of abuse, followed by financial abuse"[149] and that it "developed literally

140. Jane C. Murphy, *Engaging with the State: The Growing Reliance on Lawyers and Judges to Protect Battered Women*, 11 AM. U. J. GENDER SOC. POL'Y & L. 499, 500 (2003). *See also* McFarlane, *supra* note 29, at 5 ("It was not until the women's liberation movement in the late 1960's and 1970's that the problem of domestic violence began to receive adequate attention.").

141. Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 WIS. L. REV. 1657, 1666 (2004); McFarlane, *supra* note 29, at 4–5 ("In 1882, Maryland became the first state to criminalize wife abuse.").

142. Sack, *supra* note 141, at 1666 (2004); Murphy, *supra* note 140, at 500–01 ("[Advocates] saw the state as maintaining, enforcing, and legitimizing male violence against women . . . Groups rejected governmental funding for battered women's services and programs."). Police officers "frequently ignored domestic violence calls or purposefully delayed responding for several hours." Joan Zorza, *The Criminal Law of Misdemeanor Domestic Violence, 1970-1990*, 83 J. CRIM. L. & CRIMINOLOGY 46, 47 (1992).

143. Sack, *supra* note 141 at 1667; Murphy, *supra* note 140 , at 500–02.

144. Sack, *supra* note 141 at 1667.

145. Murphy, *supra* note140, at 502.

146. *See* Seymour Moskowitz, *Saving Granny from the Wolf: Elder Abuse and Neglect-the Legal Framework*, 31 CONN. L. REV. 77, 82–83 (1998) (highlighting a rise in public and professional recognition of abuse throughout the 1960s and 1970s).

147. HOUSE SELECT COMM. ON AGING, 97TH CONG., ELDER ABUSE: AN EXAMINATION OF A HIDDEN PROBLEM (Comm. Print 1981); Charles Pratt, *Banks' Effectiveness at Reporting Financial Abuse of Elders: An Assessment and Recommendations for Improvements in California*, 40 CAL. W. L. REV. 195, 230 (2003); Moskowitz, *supra* note 146, at 83.

148. Moskowitz, *supra* note 146, at 83.

149. HOUSE SELECT COMM. ON AGING, *supra* note 147, at xv.

thousands of examples which [fell] into the category of financial exploitation."[150] Unlike the studies on domestic violence, there have been numerous studies on the prevalence of elder financial exploitation since 1981.[151]

The statutory definition of elder abuse varies in each state, but generally, elder abuse encompasses "neglect and physical, psychological, fiduciary, and sexual abuse or exploitation."[152] Financial abuse of an elder can include an array of conduct, including "'fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers or denial of access to assets,' as well as undue influence and abuse of fiduciary relationships."[153]

For over twenty years, banks have been identified as a "first line of defense" against financial exploitation of elders.[154] Banks are able to identify unusual activity on an elder's bank account, including sharp increases in debt or unusual spending patterns or sudden withdrawals.[155] In the 1990s, Massachusetts created "the first major public/private partnership on a statewide level involving the banking industry."[156] This partnership enlisted 173 banks and published manuals for bank employees to identify, respond to, and thwart elder financial exploitation.[157] This model has been replicated in several states.[158]

States have also enacted statutes requiring bank employees to report elder financial abuse. Nine states have enacted reporting statutes that explicitly mention or require reporting by bank employees.[159] Seventeen other states require reporting by any individual, but these states did not identify banks specifically.[160]

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150. *Id.* at 13.

151. *See* John C. Craft, *Preventing Power of Attorney Abuse-A Lawyer's Role*, 75 ALA. LAW. 116, 118 (2014) ("[E]lderly victims are not likely to report financial exploitation. Numerous studies have been conducted attempting to estimate the number of cases never reported to authorities.").

152. Clarissa Bryan, *Beyond Bedsores: Investigating Suspicious Deaths, Self-Inflicted Injuries, and Science in a Coroner System*, 7 NAELA J. 199, 202 (Fall 2011).

153. Jessica Coombs, *Scamming the Elderly: An Increased Susceptibility to Financial Exploitation Within and Outside of the Family*, 7 ALB. GOV'T L. REV. 243, 245 (2014). Typically, relatives or caretakers perpetrate the abuse, but strangers sometimes commit it as well. *Id.* Examples include telemarketer scams, sweepstakes, disaster scams, and identity theft. *Id.*

154. Pratt, *supra* note 147, at 229.

155. Sandra L. Hughes, *Can Bank Tellers Tell?-Legal Issues Related to Banks Reporting Financial Abuse of the Elderly*, 58 CONSUMER FIN. L.Q. REP. 293, 294 (2004).

156. Gillian Price & Craig Fox, *The Massachusetts Bank Reporting Project: An Edge Against Elder Financial Exploitation*, 8 J. ELDER ABUSE & NEGLECT 59, 62–69 (1997).

157. *Id.* at 65–66.

158. *See* Hughes, *supra* note 155, at 303-04 (discussing similar projects in Oregon, California, and New York); *see also* James H. Pietsch, *Elder Abuse and Laws to Protect Older Persons in Hawaii*, 16 HAW. B.J. 93, 110 n.6 (2013) (discussing The Elder Justice Act, aimed at "ensuring adequate public-private infrastructure and resolving to prevent, detect, treat, understand, and intervene in, and where appropriate, aid in the prosecution of, elder abuse, neglect, and exploitation.").

159. *See* the following states' statutes, mandating reporting by bank employees: Ark. Code Ann. § 12-12-1708(a)–(c) (2013); D.C. Code Ann. § 7-1903(a)(1) (2006); Fla. Stat. Ann. § 415.1034 (2003); Ga. Code Ann. § 30-5-4 (2002); Kan. Stat. Ann. § 39-1431 (2002); Miss. Code Ann. § 43-47-7 (2003); *see also* Colo. Rev. Stat. § 26-3.1-102 (2003) (urging but not mandating bank employees to report); Haw. Rev. Stat. § 346-224(a)(2) (2009) ("Employees or officers of any public or private agency or institution providing social, medical, hospital or mental health services, including financial assistance").

160. LORI STIEGEL & ELLEN KLEM, AM. BAR ASS'N COMM'N ON LAW & AGING, REPORTING REQUIREMENTS: PROVISIONS AND CITATIONS IN ADULT PROTECTIVE SERVICES LAWS, BY STATE (LAWS

B. Modeling Coerced Debt After Elder Financial Abuse?

Despite the robust private and public response to financial abuse against elders, domestic violence and financial abuse have not received the same attention. Financial institutions' identification, reporting, and prevention mechanisms for financial abuse have been in place for twenty years. Considering that policies, trainings, and institutional memory already exist for elder abuse, coerced debt implementation can follow a similar model.[161]

Requiring mandatory reporting in the domestic violence context, similar to those already required in the elder abuse context, would incentivize credit card companies to properly train employees and create systems to prevent coerced debt. In addition, as demonstrated in the elder abuse context, mandatory reporting would assist in tracking the actual prevalence of coerced debt.[162] This, in turn, may support more funding for better systems of prevention and support for victims.[163] Lastly, there is "a public interest in prosecuting criminals," and mandatory reporting helps the criminal justice system by identifying those criminals and likely developing evidence of the abuser's criminal behavior that could later be used as evidence in prosecuting the abuser.[164]

There are multiple arguments against mandatory response provisions for domestic violence. Sometimes it is reasonable for domestic violence victims to decide to stay.[165] Victims often methodically develop long-term strategies to escape the pattern of abuse.[166] Leaving a violent relationship requires consideration of complex issues, including securing future housing or shelter, protecting any children, saving funds, and planning police intervention.[167]

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CURRENT AS OF 12/31/06) (2007), *available at* http://www.americanbar.org/content/dam/aba/migrated/aging/docs/MandatoryReportingProvisionsChart.authcheckdam.pdf.

161. *See e.g.*, James P. Bessolo, *Mandatory Reporting Requirements for Financial Elder Abuse*, 30 L.A. LAWYER 23, 23–27 (Oct. 2007). Currently, elder financial exploitation mandatory reporting laws do not apply to domestic violence. *See* NANCY DURBOROW ET AL., THE FAMILY VIOLENCE PREVENTION FUND, COMPENDIUM OF STATE STATUTES AND POLICIES ON DOMESTIC VIOLENCE AND HEALTH CARE 2 (2010), *available at* http://www.acf.hhs.gov/sites/ default/files/fysb/state_compendium.pdf ("Mandatory reporting laws are distinct from elder abuse or vulnerable adult abuse and child abuse reporting laws."). Domestic violence mandatory reporting provisions for domestic violence do not encompass banks or financial institutions. McFarlane, *supra* note 29, at 33–35.

162. James T. R. Jones, *Kentucky Tort Liability for Failure to Report Family Violence*, 26 N. KY. L. REV. 43, 60 (1999) ("Without obligatory reports there is significantly less information available for measuring this type of criminal activity [and if statistics show abuse is a major problem, society is much more likely to respond to it both with attention and adequate resources].").

163. After a mandatory reporting law for domestic violence victims and health practitioners was enacted in Kentucky, advocates attributed the state's well-funded shelter system to that law. McFarlane, *supra* note 29, at 17–18.

164. *See id.* at 33–34, 41 (explaining how mandatory reporting achieves these goals in the medical context).

165. *Id.* at 22 ("When a woman makes a police report or seeks an order of protection, plans must be put in place to ensure her safety. Only the battered women fully understands her own particular situation, knows when and how she can be safe, and can decide when it is the right time to leave the relationship.").

166. *See* Virginia Daire, *The Case Against Mandatory Reporting of Domestic Violence Injuries*, 74 FLA. B.J. 78, 78–79 (2000) (examining mandatory reporting of domestic violence within the medical context).

167. *Id.*

Mandatory reporting can alert the abuser to the victim's intent to flee and force the victim into premature flight prior to her becoming financially able to protect herself from future serious bodily harm or homicide.[168] If an abuser is alerted to a loss of control of the victim, research has shown that the abuser will escalate the abuse in response.[169] Mandatory reporting may lead to victims' refusal to report coerced debt out of fear of their own safety.[170] The victim has the best information to evaluate what can be achieved based on the situation, including the potential risk of harm from the abuser.[171]

## CONCLUSION

The abuse that domestic violence survivors must endure, and often overcome, is undoubtedly complex. However, by failing to fully understand coerced debt and other economic abuse tactics used by abusers, we limit domestic violence survivors' opportunity to engage fully and equally in today's modern economy and to build financial futures of consumer choice and long-term planning. Most importantly, we implicitly condone certain acts of abuse as tolerable, because the harm they create, which we have not even measured fully, appears to pale in comparison to bruises or blows. In light of our new economy of credit, we must focus on (1) researching financial abuse to understand the problem, (2) creating incentives for financial institutions to properly monitor, prevent, and respond to domestic violence tactics, potentially through mandatory reporting, and (3) forming pathways for domestic violence survivors to find financial freedom, either through better regulatory frameworks, legal standards, or creation of financial literacy programs.

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168. *Id.*

169. McFarlane, *supra* note 29, at 22 ("Many victims have been seriously injured or killed after police reports have been made or orders of protection have been sought.").

170. Daire, *supra* note 166, at 79–80.

171. *Id.*

Appendix A
Interview Script

Hi, my name is Chris Kim. I work at a nonprofit organization in Durham, NC, where I help domestic violence survivors. Do you have a moment to help me understand what my clients should do regarding credit card problems they're having as a result of their ex-partners?

I have one client whose abuser opened a credit card account with your company account in her name using her social security number without her knowledge.

How can she contest being liable for that account?

What is the process?

Will she need to file a police report to contest the account?

If a police report is required, does she have any other option other than filing a police report?

If she does not file a police report, will the company file a police report and pursue charges on your own?

If she does file a police report, will your company intervene and be involved in pursuing charges?

Will she be liable for that account and charges made to that account?

I have a second client whose abuser threatened to hurt her if she refused to open a credit card account in her name and give full access to the credit card account to the abuser. Out of fear, she agreed, and her abuser charged a significant amount on the account but refuses to pay.

How can she contest being liable for that account?

Can she contest being liable for those charges?

What is the process for contesting?

Will she need to file a police report to contest the account?

If a police report is required, does she have any other option other than filing a police report?

If she does not file a police report, will the company file a police report and pursue charges on your own?

If she does file a police report, will your company intervene and be involved in pursuing charges?

Will she be liable for that account and charges made to that account?

For either client, will their abusers be alerted to the fact that they have reached out to try to close the account?

How do you verify that someone is attempting to close the account?

For either client where your company will pursue charges, will my client be charged for the cost of that investigation?

Do you have a written policy for these issues?

Do you have a written policy for fraud/identity theft?

Do you have a written policy or protocol for domestic violence specifically?

Where can I find a copy of your policies? On your website?

Is domestic violence a frequent problem that you encounter?

Have you ever dealt with a domestic violence situation before?

Do you have other similar programs?
Do you have an elder abuse protocol or policy?
What was your name again? What department?
Thank employee for his or her time.