

# LEVERAGING CIVIL LEGAL SERVICES: USING ECONOMIC RESEARCH AND SOCIAL IMPACT BONDS TO CLOSE THE JUSTICE GAP

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*In order to address the dearth of available legal services for indigent communities, we should put ideology to the side and focus instead on the verifiable economic effects of legal aid. These effects can be leveraged to secure funding from private sector investors using innovative investment platforms called “social impact bonds.”*

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## INTRODUCTION

Since attorney Reginald Heber Smith introduced the concept of “access to justice” nearly one hundred years ago, political resistance to funding of civil legal services has been continuous and unrelenting.<sup>1</sup> Debates about civil legal services expose fundamental disagreements about both the proper role of government and society’s obligation to care for those in need.

The arguments of both supporters and opponents of civil legal services lean heavily on constitutional and ideological principles. Proponents argue that equal access to legal resources is both a moral imperative and a fundamental right implicit in the Due Process and Equal Protection Clauses. To opponents, civil legal services are an emblem of government waste and inefficiency, a misguided effort that breeds dependence on government programing. There has been little in the way of progress or compromise. Meanwhile, the Supreme Court’s decision in *Turner v. Rogers* has

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<sup>1</sup> 1 EARL JOHNSON, TO ESTABLISH JUSTICE FOR ALL, at 1X-XIII (2013).

virtually guaranteed that meaningful reform of civil legal services must be forged politically, not judicially.<sup>2</sup>

Part One of this article argues that to address the dearth of available legal services for indigent communities, we should put ideology to the side and focus instead on the verifiable economic effects of legal aid. An explosion in available data and information has fueled a growing body of empirical observations about how various civil legal services generate concrete economic benefits—not only for those directly served, but for all of society. Viewing civil legal services as a form of socially productive fiscal policy has two major implications. First, it broadens the political appeal of civil legal services by revealing that all members of the public have an interest in the outcome of these services. Second, economic studies—particularly cost-benefit analyses—have the capacity to neutralize toxic political rhetoric and cleanse the national conversation about civil legal services by introducing objective performance criteria to evaluate policy alternatives.

Part Two introduces a specific example of how the economic impact of civil legal services can be leveraged to secure funding from private sector investors using innovative investment platforms called “social impact bonds.” These instruments provide an alternative source of funding where government appropriations are inadequate, shift the risk of service programs from taxpayers to private investors, and encourage rigorous empirical testing of service methods in order to maximize cost-effectiveness. In the process, social impact bonds help service providers engage new sources of private funding and encourage efficiency and resource maximization in civil legal services.

#### PART I:

##### FISCAL SAVINGS AS A PATH TO BROAD POLITICAL SUPPORT

Economic impact studies represent the most likely avenue toward expanded funding of civil legal services. Contemporary political dialogue has stagnated. Ethical and ideological arguments alone simply do not appeal to a population segment sufficiently large or powerful to sustain meaningful policy changes. Meanwhile, economic studies prove that civil legal services benefit society *as a whole*, by avoiding events—including domestic violence and eviction—that would otherwise draw heavily on public funds. Arguments rooted in economic analysis, rather than any constitutional or moral ethos, are likely to mobilize political and financial support for civil legal services.<sup>3</sup> These arguments reveal that two seemingly competing government objectives—extending support for indigent communities and reducing public spending—may in some cases be interdependent rather than mutually exclusive.

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<sup>2</sup> See *Turner v. Rogers*, 131 S.Ct. 2507 (2010) (holding that the Due Process Clause of Sixth Amendment does not apply in civil cases).

<sup>3</sup> See generally RICHARD L. REVESZ & MICHAEL A. LIVERMORE, *RETAKING RATIONALITY: HOW COST-BENEFIT ANALYSIS CAN BETTER PROTECT THE ENVIRONMENT AND OUR HEALTH* 19 (2008). (observing that “there are many Americans who require not only individual stories, but hard numbers to convince them that [a policy is worthwhile].”).

*A. Traditional Arguments for Civil Legal Services have Failed to Secure Adequate Political Support*

Debate over civil legal services tends to expose fundamental disagreements about the nature and scope of individual constitutional rights and the role of government generally.<sup>4</sup> The result has been polarization, not consensus. There are many who view legal services as essential to America's pursuit of equality and justice.<sup>5</sup> There are many others who view legal services as fundamentally inconsistent with American values.<sup>6</sup> Each change in administration threatens interference with funding of legal aid programs.<sup>7</sup> This ongoing fault line shows that ideological and normative arguments are unlikely to provide a basis for maximizing support of legal aid. We cannot build a coalition without some common ground.<sup>8</sup>

*B. The Way Forward: Civil Legal Services As Effective Fiscal Policy*

Rather than attempt to persuade critics that access to justice is morally or legally indispensable to the administration of justice, proponents can change the terms of the discussion altogether by presenting civil legal services through the lens of fiscal policy.<sup>9</sup> Empirical research strongly suggests that the fiscal and economic benefits generated by civil legal services are wide-ranging and significant.<sup>10</sup> These studies

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<sup>4</sup> See Richard L. Abel, *Law Without Politics: Legal Aid Under Advance Capitalism*, 32 UCLA L. REV. 474 (1985).

<sup>5</sup> See Justin F. Marceau, *Gideon's Shadow*, 122 YALE L.J. 2482, 2484 (2013) ("The right to counsel has been described as critical to our 'universal sense of justice'; an 'obvious truth'; the 'foundation for our adversary system'; a weapon of antidiscrimination; and the 'gateway right' through which other rights are made real.").

<sup>6</sup> Compare Jona Goldschmidt, *The Pro Se Litigant's Struggle for Access to Justice*, 40 FAM. CT. REV. 36, 54 (2002) ("[A] right to civil legal services for the poor is implicit as a matter of political morality"), with Edgar S. Cahn & Jean C. Cahn, *The War on Poverty: a Civilian Perspective*, 73 YALE L. J. 1317 (1964) (arguing that civil legal services "bypasses the political process to misallocate resources which could otherwise benefit the people it is supposed to be helping").

<sup>7</sup> ALAN W. HOUSEMAN & LINDA E. PERLE, SECURING EQUAL JUSTICE FOR ALL: A BRIEF HISTORY OF CIVIL LEGAL ASSISTANCE IN THE UNITED STATES, 33-36 (2013). See Neil A. Lewis, *The Law; Legal Services: Political Tests Looms for Bush*, NEW YORK TIMES (Sept. 8, 1989), available at <http://www.nytimes.com/1989/09/08/us/the-law-legal-services-political-test-looms-for-bush.html> ("The Legal Services Corporation . . . has become an ideological battleground ever since Ronald Reagan tried to eliminate it and failed.").

<sup>8</sup> Ronald H. Silverman, *Conceiving A Lawyer's Legal Duty to the Poor*, 19 HOFSTRA L. REV. 885, 912 (1991) ("All too many proponents of mandatory pro bono seem to have overrelied [sic] on a powerful, but ultimately unsatisfying, moral rhetoric."); see generally Abel, *supra* note 4.

<sup>9</sup> See, e.g., Laura K. Abe & Susan Vignola, *Economic and Other Benefits Associated with the Provision of Civil Legal Aid*, 9 SEATTLE J. FOR SOC. JUST. 139 (2010).

<sup>10</sup> See, e.g., Task Force to Expand Civil Legal Services in New York, Report to the Chief Judge of the State of New York 23 (Nov. 2013), available at [http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceReport\\_2013.pdf](http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceReport_2013.pdf).

should render civil legal services more attractive—or at least less repulsive—from the perspective of fiscal conservatism. And by proving that civil legal services inure to the benefit of the entire public, not just those directly served, economic studies could broaden the political appeal of civil legal services.

Studies show that providing poor people with legal counsel prevents many problematic social outcomes, like homelessness and eviction, that otherwise drain public funds.<sup>11</sup> These savings come from avoiding monetary expenses that the public bears, directly or indirectly, as a result of sexual assault, eviction, and other preventable social ills. In New York, for instance, providing free counsel in eviction proceedings would save the public an estimated \$116 million in shelter costs, in addition to reducing court and law enforcement expenditures.<sup>12</sup>

Research examining the economic savings of legal services is growing in size and sophistication, though the results are most promising in the areas of domestic violence and homelessness prevention. A cost-benefit study commissioned by the Wisconsin Bar Association recently analyzed the economic benefit of appropriating \$8.4 million to local domestic services providers.<sup>13</sup> Using data collected by federal and state law enforcement agencies, the authors were able to assign a monetary value to each avoided assault (\$30,000) and rape (\$115,000), figures comprised of average costs for medical treatment, mental health care, productivity loss, property damage, and diminished “quality of life.”<sup>14</sup> Based on empirical evidence that restraining orders are 40 percent effective in preventing subsequent domestic assaults, the study found that, accounting for all expenses incurred by public, the \$8.4 million service expansion averted roughly \$20 million in costs to public funds, yielding a \$11.4 net benefit.<sup>15</sup>

Other studies underscore that the economic benefits of civil legal services are not limited to the client population, but in fact reverberate throughout the economy.<sup>16</sup> Government expenses avoided by legal aid may be used to provide other important public services. Clients who receive judicial relief with the aid of counsel tend to be more productive and to spend more.<sup>17</sup> The result is considerable job growth and an economic stimulus that can be broken down by industry.<sup>18</sup> Altogether, researchers

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<sup>11</sup> See, e.g., *id.* at 23.

<sup>12</sup> Task Force to Expand Civil Legal Services in New York, Report to the Chief Judge of the State of New York 18 (Nov. 2012).

<sup>13</sup> LIZ ELWART, ET. AL., INCREASING ACCESS TO RESTRAINING ORDERS FOR LOW-INCOME VICTIMS OF DOMESTIC VIOLENCE: A COST-BENEFIT ANALYSIS OF THE PROPOSED DOMESTIC ABUSE GRANT PROGRAM 6 (2006).

<sup>14</sup> *Id.* at 12-13.

<sup>15</sup> *Id.*

<sup>16</sup> See, e.g., The Perryman Group, Current and Potential Economic Benefits of Legal Aid Services in Texas (Feb. 2013), available at <http://www.teajf.org/news/docs/Impact-of-Legal-Aid-2013-FINAL.pdf>.

<sup>17</sup> See Taxwatch Report, Economic Impact of Legal Aid Services in the State of Florida (Feb. 2010) available at <http://www.teajf.org/news/docs/Impact-of-Legal-Aid-2013-FINAL.pdf>.

<sup>18</sup> See *id.* at 14 (“[M]ost jobs created due to effect on private business from use of the induced spending.”).

in various states have estimated value-added ratios for civil legal services to be more than 1:6. That is, every dollar spent generated over \$6 for society as a whole.<sup>19</sup>

Empirical methods can be especially useful on issues that tend to polarize and divide, moving the discussion away from anecdote and intuition. It is easy to simply declare that civil legal services are “inefficient” and “too expensive” if there is a paucity of detailed, cost-benefit analyses to debunk these claims. Economic analysis, therefore, offers a way to neutralize partisan rhetoric in the debate over civil legal services.

## PART II: SOCIAL IMPACT BONDS AND PRIVATE SECTOR FUNDING

Because empirical studies clearly indicate that providing the poor with access to legal services saves taxpayer money over time, policy makers can use this cost savings as the basis for innovative funding instruments, called social impact bonds (“SIBs”), that incentivize private investment in civil legal services. Unlike public funding of social services, SIBs elicit enthusiastic support from those primarily concerned with minimizing government spending and, as a result, create a viable opportunity to address the dearth of available legal services for indigent communities

### *A. How SIBs Work*

SIBs use private capital to finance social services that, if successful, are likely to save public resources over time. Also known as “pay for success” programs, SIBs are cash loans from private investors to service providers that the government agrees to pay back if and only if the program successfully reaches a predetermined goal.<sup>20</sup> SIBs use profit-making motives to drive evidence-based social service programs, while shifting the cost of nonperformance from taxpayers to private investors.<sup>21</sup> More specifically, a private investor provides lump-sum funding to an “intermediary” organization, which then disburses the funds to a service provider that has a proven track record of achieving results.<sup>22</sup> The government agrees that if the service

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<sup>19</sup> Iowa Legal Aid, *The Economic Impact of Iowa Legal Aid 1* (Jan. 1, 2013), available at <http://www.iowalegalaid.org/files/A3ED30CF-AFFE-7431-9310-0D521E4312AF/attachments/CF9C722F-986A-48F4-A399-D664E1837D79/economic-impact-study-1-22-13.pdf>.

<sup>20</sup> Jitinder Kohli, et al., *What are Social Impact Bonds?*, CENTER FOR AMERICAN PROGRESS (Mar. 22, 2012), <http://www.americanprogress.org/issues/open-government/report/2012/03/22/11175/what-are-social-impact-bonds/>.

<sup>21</sup> Social impact bonds are also referred to as “pay for success” programs.

<sup>22</sup> Intermediaries perform “perhaps the most important role in a traditional SIB.” Kevin W. Humphries, *Not Your Older Brother's Bonds: The Use and Regulation of Social-Impact Bonds in the United States*, 76 *LAW & CONTEMP. PROBS.* 433, 433-434 (2013) (“[An intermediary] raises capital from investors, selects the service providers, contracts with [the] government, works with the evaluation adviser and the independent assessor to set and measure performance targets, and partners with the evaluation adviser to monitor and analyze

program reaches its predetermined goal, the government will use a portion of the cost savings generated by the service provider to pay back the principle loan plus a return to the private investor who provided the initial funding. Importantly, a SIB arrangement requires an independent organization to track performance and determine whether performance thresholds have actually been met. If the service provider satisfies these benchmarks, all stakeholders stand to benefit: investors reap a profit, the government saves taxpayer money, and service providers enjoy greater resources and the prospect of better client outcomes. If services fall short of the benchmark, the government pays back only a portion of the loan and investors absorb the financial loss. SIBs “combine nonprofit expertise and private sector funding with rigorous evaluation” in order to more effectively and efficiently combat social problems.<sup>23</sup>

SIBs allow service providers to avoid many limitations inherent in traditional public funding. For logistical and political reasons, government budgets are geared toward short-term performance, often at the expense of long-term savings.<sup>24</sup> SIBs help service providers overcome the limitations of public financing by shifting the risk of under-performance to private investors, whom the government is only obligated to repay if the service program proves sufficiently effective. Moreover, this structure incentivizes prospective investors to select only those services most likely to generate a positive impact on the target population. One state agency reported that SIBs “creat[e] incentives for improved program performance and reduced costs; allow[] for more rapid learning about which programs work and which do not; and accelerat[e] the adoption of new, more efficient solutions.”<sup>25</sup> The goal is to bring private-sector efficiency to bear on persistent social challenges.

The recent history of SIBs in the United States is promising. Goldman Sachs issued the first American SIB in 2012, when it loaned \$10 million to a program providing cognitive behavioral therapy to juvenile inmates incarcerated at Rikers

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interim results and suggest midcourse corrections.”)(citing McKinsey & Co., From Potential to Action: Bringing Social Impact Bonds to the US 33 (2012), available at [http://mckinseysociety.com/downloads/reports/Social-Innovation/McKinsey\\_Social\\_Impact\\_Bonds\\_Report.pdf](http://mckinseysociety.com/downloads/reports/Social-Innovation/McKinsey_Social_Impact_Bonds_Report.pdf)).

<sup>23</sup> Massachusetts Launches Pay for Success Initiative to Reduce Chronic Individual Homelessness, (Dec. 8, 2014), available at [http://payforsuccess.org/sites/default/files/mass.gov-massachusetts\\_launches\\_pay\\_for\\_success\\_initiative\\_to\\_reduce\\_chronic\\_individual\\_homelessness.pdf](http://payforsuccess.org/sites/default/files/mass.gov-massachusetts_launches_pay_for_success_initiative_to_reduce_chronic_individual_homelessness.pdf).

<sup>24</sup> See, e.g., Benjamin R. Cox, *Financing Homelessness Prevention Programs with Social Impact Bonds*, 31 REV. BANKING & FIN. L. 959, 974 (2012) (citing *Request for Response (RFR): Social Innovation Financing for Homelessness—Service Providers*, Commonwealth of Mass., Exec. Office of Admin. & Fin., 2 (Jan. 18, 2012), available at <https://www.ebidsourcing.com/displayPublicSolUniversalSummRFRUpdateDe?doValidateToken=false&solUpdatesId=139795> (“One year budget cycles make it difficult to manage long-term, preventative measures, particularly in social services . . . current funding is insufficiently focused on results and performance measure . . . and preventative programs often do not get funded out of the budgets they help reduce.”).

<sup>25</sup> *Id.*

Island.<sup>26</sup> Because empirical studies strongly suggest that this type of treatment reduces the likelihood that treated individuals later re-offend, the program is expected to lower incarceration rates among the target population and thus save considerable taxpayer money.<sup>27</sup> A neutral party, in this case the Vera Institute of Justice, evaluates the program's performance over a period of four years. If the rate of "re-admission" to Rikers declines by 11%, the NYC Department of Corrections will save \$1,700,000 and pay a portion of the cost savings and the loan principal to Goldman through a third-party intermediary. If the reduction exceeds 11%, the amount paid by the government to Goldman would correspondingly increase.<sup>28</sup> If reduction is less than 11%, the amount paid by the government would correspondingly decrease and Goldman—but not taxpayers—will lose money.

Support for SIBs is apparent among state legislators as well as in Congress. As of 2014, seventeen states had passed, introduced, or taken steps to consider, enabling legislation.<sup>29</sup> For instance, Massachusetts House Bill No. 4219 established a \$50 million Social Innovation Financing Trust Fund "for the purpose of funding [social impact bond] contracts to improve outcomes and lower costs for contracted government."<sup>30</sup> As authorized by the statute, Massachusetts' secretary of state has committed the state to two SIBs: a \$27 million "juvenile justice" program to reduce incarceration rates and support employment for at risk youth and \$3.5 million homelessness prevention program. At the federal level, President Obama's 2014 budget included a \$500 million investment in SIBs, the majority to fund the newly minted Treasury Department Incentive Fund in support of state and local pilot programs. In April of 2015, two Senators proposed a bipartisan bill called the Social Impact Partnership Act that would appropriate \$300 million over ten years to fund social impact bonds.<sup>31</sup>

### *B. How SIBs Could Fund Civil Legal Services<sup>32</sup>*

The mechanics of SIBs are well-suited to overcome political constraints on funding for civil legal services. Historically, political swings and shortsighted

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<sup>26</sup> *The NYC ABLE Project for Incarcerated Youth*, <http://www.goldmansachs.com/what-we-do/investing-and-lending/urban-investments/case-studies/rikers-sib-fact-sheet.pdf>.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Kristina Costa, *Fact Sheet: Social Impact Bonds in the United States*, Center for American Progress (Feb. 12, 2014), *available at* <https://www.americanprogress.org/issues/economy/report/2014/02/12/84003/fact-sheet-social-impact-bonds-in-the-united-states/>.

<sup>30</sup> Mass. Gen. Laws Ann. ch. 10, § 35VV (West).

<sup>31</sup> Social Impact Partnership Act, H.R. 1336, 114th Cong. §§ 2051-2061 (2015).

<sup>32</sup> Social impact bonds have not yet been implemented to fund civil legal services, though the idea was recently proposed by an independent charity organization in the United Kingdom. *See* The Low Commission Report, *Tackling the Advice Deficit 104* (Jan. 2014), *available at* <http://www.lowcommission.org.uk/dyn/1389221772932/Low-Commission-Report-FINAL-VERSION.pdf> (recommending that the government fund a pilot program to test the applicability of social impact bonds to legal services).

budgets have rendered federal funding for legal aid inadequate and unstable.<sup>33</sup> SIBs, however, bind the government by contract to pay back investors should the program reach its predetermined goals, insulating the program from political transitions.<sup>34</sup> Unlike funding for civil legal services, there appears to be strong bipartisan support for further investment in SIBs.<sup>35</sup> Federal funding to SIB programs has already surpassed congressional appropriations to the Legal Services Corporation, the independent 501(c)(3) corporation established by Congress to fund and administer legal aid programs throughout the nation.<sup>36</sup>

Admittedly, not all practice areas are viable candidates for SIBs; some legal services are more suitable for experimentation with SIBs than others. Services providers should satisfy three basic criteria to qualify for SIB funding: (1) evidence of success that ties the program's progress to desirable social outcomes; (2) measurable outcomes that facilitate evaluation of the program; and (3) potential government savings large enough to continue funding beyond the initial private investment.<sup>37</sup> Above all else, SIBs require identification of discrete metrics to track progress and to determine whether a program has met its particular objective.<sup>38</sup> Of course, defining "success" can be extremely difficult, but is necessary in order to evaluate the effectiveness of services.

In the context of civil legal services, domestic violence and housing are among the most likely practice areas for implementation of a SIB. As it turns out, there are more clients unable to obtain counsel in these two practice areas than in any other area of civil legal services.<sup>39</sup>

A study commissioned by the Task Force to Expand Access to Civil Legal Services in New York of the economic impact of free counsel in eviction and foreclosure proceedings includes much of the information required to design a SIB

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<sup>33</sup> See Benjamin R. Cox, *Financing Homelessness Prevention Programs with Social Impact Bonds*, 31 REV. BANKING & FIN. L. 959, 961 (2012) (explaining that social impact bonds help overcome "insufficient and undependable capital streams").

<sup>34</sup> See Mass. Gen. Laws Ann. ch. 10, § 35VV (West) (stating that future payments from the state under social impact bonds "shall constitute a general obligation of the commonwealth for which the full faith and credit of the commonwealth shall be pledged").

<sup>35</sup> See, e.g., Anne Field, *Bipartisan Bill Would Allocate \$300M For Social Impact Bonds*, FORBES.COM, (June 26, 2014), <http://www.forbes.com/sites/annefield/2014/06/26/bipartisan-bill-would-allocate-300m-for-social-impact-bonds/> ("Seems there is something at least some House Democrats and Republicans can agree on. They like Social Impact Bonds.").

<sup>36</sup> See *supra* p. 7 (noting the administration's \$500 million commitment to SIB projects for FY 2014).

<sup>37</sup> Timothy Rudd et al., *Financing Promising Evidence-Based Programs*, www.mdrc.org, at ES-2 (Dec., 2013) [http://www.mdrc.org/sites/default/files/Financing\\_Promising\\_evidence-Based\\_Programs\\_FR.pdf](http://www.mdrc.org/sites/default/files/Financing_Promising_evidence-Based_Programs_FR.pdf).

<sup>38</sup> *Id.* at ES-3. For example, the New York City Rikers Island Social Impact Bonds used cost per day of incarcerating a single juvenile.

<sup>39</sup> See Legal Services Corporation, *Documenting the Justice Gap in America* 11 (Sept. 2009), available at [http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting\\_the\\_justice\\_gap\\_in\\_america\\_2009.pdf](http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf).



in the housing context.<sup>40</sup> The study found that eviction of 50,352 people was avoided or delayed by the legal services provider. Using historical data, researchers estimated that 40 percent of these people would have been made homeless had representation not been provided to them. The state spends on average \$12,822 to house each homeless person in emergency shelters, which amounted to \$116 million in 2010 alone.<sup>41</sup> Another study, examining eviction and foreclosure proceedings in Boston, found that providing free counsel in these cases generated a \$2.69 benefit for each dollar spent to provide the services.<sup>42</sup> Hence, this study suggests that legal services programs specializing in housing would satisfy all three requirements for SIB funding: evidence of success, measurable outcomes, and substantial public savings.

Domestic violence cases comprise another area of civil legal services that might accommodate SIB financing. The cost-benefit analysis discussed in Part One offers a viable metric—restraining orders—and successfully pegs that metric to a specific dollar amount.<sup>43</sup> While certainly not the only way to evaluate the effectiveness of legal representation in the domestic violence context, restraining orders have been shown to deter additional acts of violence during the following year in approximately 60% of cases.<sup>44</sup> The study discussed in Part One estimated that each restraining order generates \$30,000 in public saving.<sup>45</sup> An independent evaluator could use these figures to measure the public savings generated by a specific legal services provider over the life of a SIB. As a result, legal services focused on domestic violence could similarly meet the three requirements for SIB funding.

Because the law prohibits third parties from interfering with the attorney-client relationship, it is worth reiterating that a SIB does not require any direct dealing between service providers and investors. SIBs do not implement personal financial incentives to service providers other than funding for organizational efforts, and so SIBs are structured in a way that prevents undue influence on service providers. Lawyers would not contract or deal directly with investors. Instead, investors direct their payments to an intermediary organization, which disburses that money in

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<sup>40</sup> Task Force to Expand Civil Legal Services in New York, Report to the Chief Judge of the State of New York 24 (Nov. 2011), *available at* [http://www.nlada.org/DMS/Documents/1328110608.73/NY%20CLS-2011TaskForceREPORT\\_web%20%281%29.pdf](http://www.nlada.org/DMS/Documents/1328110608.73/NY%20CLS-2011TaskForceREPORT_web%20%281%29.pdf).

<sup>41</sup> *Id.*

<sup>42</sup> Boston Bar Association, Investing in Justice: A Roadmap to Cost-Effective Funding of Civil Legal Aid in Massachusetts 17 (October 2014), *available at* <http://www.bostonbar.org/docs/default-document-library/statewide-task-force-to-expand-civil-legal-aid-in-ma---investing-in-justice.pdf>.

<sup>43</sup> See Elwart, *supra* note 13.

<sup>44</sup> Jeffrey L. Baliban, Written Statements to the Task Force to Expand Civil Legal Services in New York, at 7 (Sept. 26, 2011), *available at* [https://www.nycourts.gov/ip/access-civil-legal-services/PDF/2011\\_1stDeptTestifying.pdf](https://www.nycourts.gov/ip/access-civil-legal-services/PDF/2011_1stDeptTestifying.pdf).

<sup>45</sup> Liz Elwart, et al., Increasing Access to Restraining Orders for Low-Income Victims of Domestic Violence: A Cost-Benefit Analysis of the Proposed Domestic Abuse Grant Program, at 6 (2006), *available at* <http://www.nlada.org/DMS/Documents/1176146724.92/>.

predetermined increments to the service provider. Investors have no right or apparent opportunity to influence the provision of services.

Another possible criticism is that SIBs are designed for preventing social problems before they occur,<sup>46</sup> whereas public interest lawyers typically engage clients only after a negative event has occurred. The truth, however, is that much of the unmet need for legal representation in America is born by individuals who face repeated encounters with the law.<sup>47</sup> Circumstances that elicit legal intervention are often self-perpetuating—default begets default, incarceration begets incarceration, violence begets violence, and so on. People who cannot afford to effectively assert their rights often as result are unable to assert their rights in future. In this sense, effective legal services are not only remedial, but also preventative.

#### CONCLUSION

Advocates of civil legal services are generally motivated by a deep conviction that access to justice should not be a function of individual wealth, not by a thirst for public cost savings. It may feel counterintuitive or even perverse to discuss civil legal services in terms of economic effects. As a means to an end, however, emphasizing economic impact may deliver what moral and constitutional arguments do not: a political consensus in favor expanding access to civil legal services.<sup>48</sup> Even if government funding of legal services remains inadequate, an economic approach to legal services—one that quantifies the fiscal impact of positive client outcomes—makes possible private investment in legal services through innovative platforms like social impact bonds.

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<sup>46</sup> Rebecca Leventhal, *Effecting Progress: Using Social Impact Bonds to Finance Social Services*, 9 N.Y.U. J. L. & BUS. 511, 523 (2013) (“Social Impact Bonds facilitate spending on upfront prevention, reducing the need for downstream remediation expenditures.”).

<sup>47</sup> See Legal Services Corporation, *Documenting the Justice Gap in America* 10 (Sept. 2009), available at [http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting\\_the\\_justice\\_gap\\_in\\_america\\_2009.pdf](http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf) (“Legal aid programs regularly find that people who have contacted them for assistance with one problem have other legal problems as well. . . . State legal needs studies confirm that a large percentage of people with at least one legal problem have more than one problem.”)

<sup>48</sup> See Carrie Sheffield, *Private Risk, Public Benefit: Are Social Impact Bonds the Way Of The Future?*, FORBES.COM (Oct. 15, 2013, 10:44 PM), <http://www.forbes.com/sites/carriesheffield/2013/10/15/private-risk-public-benefit-are-social-impact-bonds-the-way-of-the-future/> (“In theory [SIBs] help advance social causes without incurring substantial risk to the taxpayer. And since taxpayer protection is a signature conservative touchstone, they’re at least worth a look on the right side of the ideological spectrum.”).