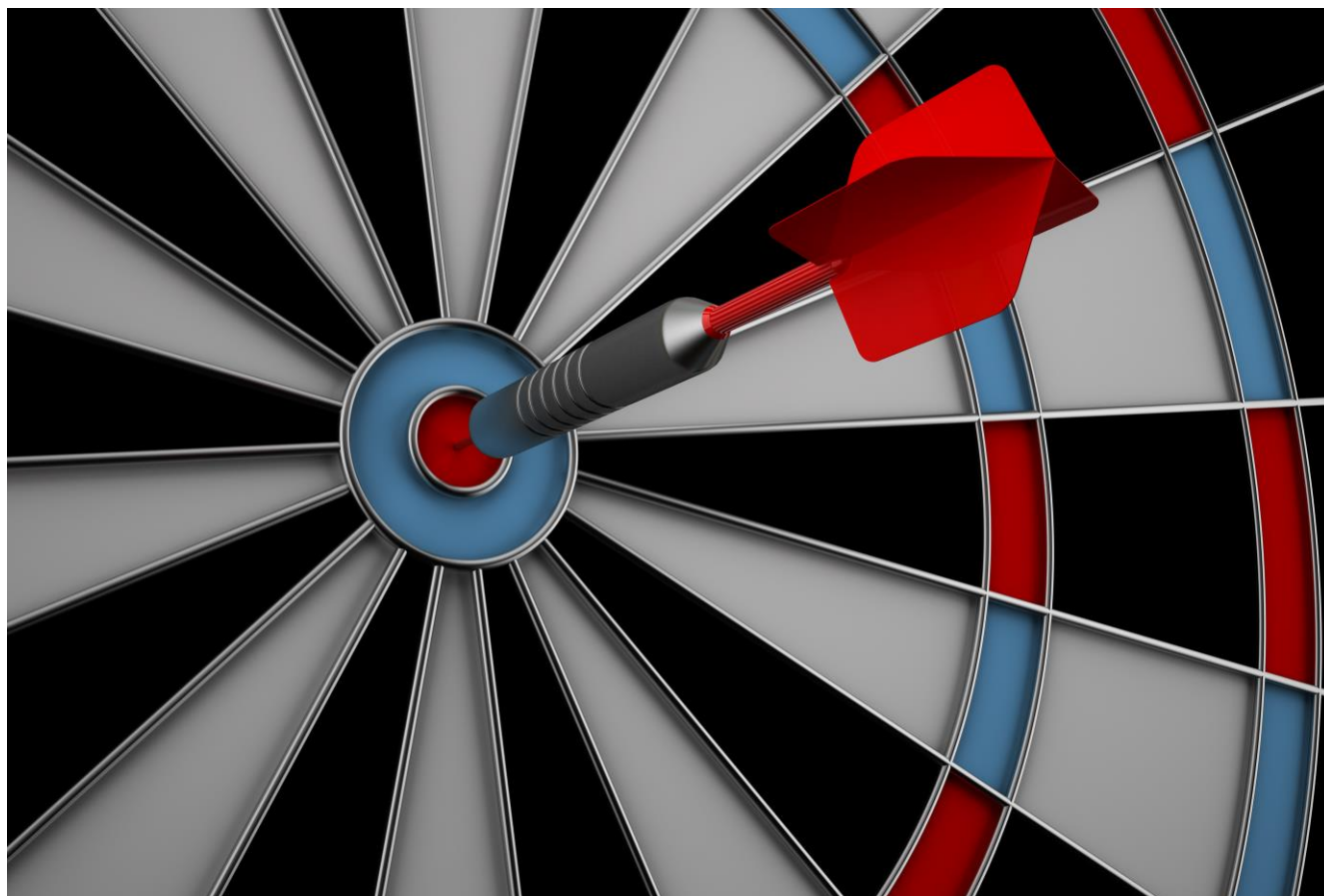


BULLSEYE:

**THE NEW YORK BAR FOUNDATION'S DATA-DRIVEN APPROACH
TARGETS URGENT NEEDS AND ENHANCES THE RULE OF LAW**



A Report of The New York Bar Foundation

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Synopsis

The New York Bar Foundation is a philanthropic organization that provides financial support to law-related programs, scholarships and educational activities throughout New York State. For its current three-year strategic plan, launched in June 2018 to coincide with the term of its incoming president, Lesley Rosenthal, the Foundation selected the Rule of Law as its guiding theme. The rule of law is a powerful concept that can bring people together in these fractious times. The basic idea is that governments guided by the Rule of Law provide a level playing field, evenhandedly applying a well-publicized set of laws, allowing fundamental rights to flourish, and providing other preconditions for justice to be done.

As part of its planning process, the board of directors of the Foundation set a goal to improve rule of law adherence in New York State and sought to measure progress toward that goal. The board determined to focus on improving access to civil justice, an area of significant concern and need, according to the World Justice Project's Rule of Law Index. The Foundation determined to locate and refer to data gathered in the state to help guide its path. By better understanding the most urgent unmet civil legal needs, the Foundation could apply its resources where they would do the greatest good.

In 2010, then-Chief Judge Jonathan Lippmann established the Task Force to Expand Access to Civil Legal Services in New York, since renamed the Permanent Commission on Access to Justice. The Commission aims to help ensure low-income New Yorkers access to legal representation in civil matters, in part by evaluating the needs of New Yorkers throughout all four Judiciary Departments of the state. Heeding the various studies, court data, and listening sessions compiled and analyzed by the Permanent Commission, the Foundation's grant making can prioritizing funding for legal services programs assisting with the *essentials of life*, namely:

- child support;
- consumer debt;
- housing (including evictions, foreclosures, and homelessness);
- family matters (including domestic violence, children, and family stability);
- access to health care;
- access to education; and
- subsistence income (including wages, disability and other benefits).

Beyond the scope of the Commission's focus, the Foundation is also determined to reach rural areas not included in the Commission's community listening sessions, as well as non-litigation civil matters. For its 2017 fiscal year, IOLA reported that its grantees addressing such matters most frequently closed cases related to housing, family law, immigration, and income maintenance.

Ahead of future years' grant making cycles, the Foundation will again refer to Commission reports, IOLA data, and experts in civil legal needs in rural areas so that the Foundation's work addresses the most urgent needs of New York's unique, diverse, and varied communities. By concentrating on the essentials of life for which the vast majority of New Yorkers are still without representation, the Foundation can maximize its impact, helping make access to justice a reality for all New Yorkers and, thereby, enhancing understanding of and respect for the rule of law.

BULLSEYE:
THE NEW YORK BAR FOUNDATION'S DATA-DRIVEN APPROACH TARGETS
URGENT NEEDS AND ENHANCES THE RULE OF LAW¹

Established in 1950, the New York Bar Foundation (the Foundation) is a philanthropic organization that provides financial support to law-related programs throughout New York State. Through its grant making, the Foundation aims to promote and advance service to the public, improvements in the administration of justice, legal research and education, high standards of professional ethics, and public understanding of legal heritage. Last year, in furtherance of this mission, the Foundation distributed \$640,000 to organizations serving New Yorkers from Brooklyn to Buffalo.²

For its current three-year strategic plan, launched in June 2018 to coincide with the term of its incoming president, Lesley Rosenthal, the Foundation selected the Rule of Law as its guiding theme. The rule of law is a powerful concept that can bring people together in these fractious times. The basic idea is that democratic governments provide a level playing field, evenhandedly applying a well-publicized set of laws, allowing fundamental rights to flourish, and providing other preconditions for justice to be done. Adherence to the rule of law promotes a stable social and civic order, citizen engagement, and a positive climate for economic investment.³

As part of its planning process, the board of directors of the Foundation sought to set specific goals that it could attain toward improved rule of law adherence in New York State. It also sought to establish metrics against which to measure those goals. Following vigorous discussion, the board

¹Adopted unanimously by The NY Bar Foundation Board of Directors, Nov. 3, 2018. Prepared by the Foundation's Task Force on Rule of Law Assessment. Principal authors: Lesley Rosenthal, President; Graham Duff, Harvard Law School, Class of 2020.

² *2017 Grantees*, THE N.Y. BAR FOUND., <https://www.tnybf.org/uploadedFiles/Foundation/PDFs/2017%20Grantees.pdf> (last visited Oct. 19, 2018).

³ See Lesley Rosenthal, *The Rule of Law*, 90 N.Y. ST. BAR ASS'N J. 8, 8 (2018).

determined to focus on improving access to civil justice, an area of significant concern and need in the rule of law arena.

It also decided in the first instance to locate and refer to data that has been gathered in the state to help guide its path. By gaining a better understanding of ways in which access and affordability of civil justice is being served—and not being served—at the outset of its three-year planning cycle, it could focus and apply Foundation resources where they can do the most good.

New York's urgent need to improve access and affordability of civil justice is underscored by social science research by the World Justice Project (WJP), an international nonprofit research organization working to advance the rule of law worldwide.⁴ WJP's Rule of Law Index, the world's leading source for original, independent data on the rule of law, provides impartial data on how the rule of law is experienced in everyday life in 113 countries around the globe, including the United States.⁵ The Index evaluates rule of law adherence through eight factors and forty-four subfactors.⁶

The 2017-2018 WJP Index reveals that access and affordability of civil justice is one of the most significant weaknesses in American rule of law adherence. While the United States received an overall rule of law score of .73 out of 1.00, placing it generally within the range of other wealthy nations, its score in the area of access and affordability of civil justice of .42 out 1.00, places it far below the rankings of every other high-income nation on this sub-factor of the rule of law.⁷ The United States' score on this sub-factor places its performance below such low-income nations as Afghanistan, Liberia, Malawi, Nepal, Senegal, and Tanzania.⁸ Perhaps most concerning, the United

⁴ *About Us*, THE WORLD JUSTICE PROJECT, <https://worldjusticeproject.org/about-us> (last visited Oct. 19, 2018).

⁵ *Research and Data*, THE WORLD JUSTICE PROJECT, <https://worldjusticeproject.org/our-work/wjp-rule-law-index> (last visited Oct. 19, 2018).

⁶ THE WORLD JUSTICE PROJECT, RULE OF LAW INDEX 2017-2018 2 (2018), *available at* https://worldjusticeproject.org/sites/default/files/documents/WJP_ROLI_2017-18_Online-Edition.pdf.

⁷ *Id.* at 148.

⁸ *Id.* at 42, 101, 104, 111, 126, 139.

States ranking on access and affordability of civil justice is on par with or lags behind the performance of many nations, where the United States has urged for greater adherence to rule of law.

Although the Index evaluates rule of law factors at the national level rather than local, New York City is one of the three cities studied by the World Justice Project in aggregating data for the entire country.⁹ Therefore, the Index does, in part, reflect the weakness of access and affordability of civil justice in our state.

With this insight, the Foundation has turned to another body of literature to understand more specifically where access to and affordability of civil justice in New York falls shortest, with the goal of directing its resources toward addressing the areas of greatest need. In 2010, then-Chief Judge Jonathan Lippmann laid the foundation for this body of literature by establishing the Task Force to Expand Access to Civil Legal Services in New York. He launched the Task Force to help ensure low-income New Yorkers access to legal representation in civil matters, in part by evaluating the needs of New Yorkers throughout all four Judicial Departments of the state.¹⁰ Since 2010, under the guidance of Helaine Barnett, past president of the Legal Services Corporation and an adjunct professor at New York University School of Law, the Task Force has issued comprehensive annual reports providing current data and recommendations on access to justice in New York. In 2015, the Chief Judge created the Permanent Commission on Access to Justice to continue the Task Force's mission.¹¹

Upon its creation in 2010, the Task Force commissioned a private research organization to conduct a professional legal needs study of low-income residents across the state, the first of its kind in

⁹ *Id.* at 163.

¹⁰ TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 7–8 (2010) [hereinafter 2010 REPORT], *available at* <http://ww2.nycourts.gov/sites/default/files/document/files/2018-04/CLS-TaskForceREPORT.pdf>.

¹¹ PERMANENT COMMISSION ON ACCESS TO JUSTICE, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 1 (2015), *available at* http://ww2.nycourts.gov/sites/default/files/document/files/2018-04/2015_Access_to_Justice-Report-V5.pdf.

New York in over two decades.¹² This survey confirmed the significant legal needs of low-income New Yorkers (defined as persons living at or under 200% of the federal poverty guidelines, which, at the time, meant a family of four earning \$44,100 or less per year).¹³ Forty-seven percent of these individuals had experienced at least one legal problem in the previous year.¹⁴ Extrapolated to the statewide population, this finding indicated that nearly 3 million low-income New Yorkers had experienced at least one legal problem in the previous year, 1.2 million of whom experienced three or more legal problems.¹⁵

The Task Force not only highlighted the significant legal needs of low-income New Yorkers but also shed light on the state's immense gap in meeting these needs. It obtained data from the state's Office of Court Administration showing that more than 2.3 million New Yorkers each year navigated the state's civil justice system without legal assistance.¹⁶ This figure did not include the large number of unrepresented New Yorkers who appeared in the state's more than 1,250 Town and Village Courts.¹⁷ Given that IOLA-funded civil legal service providers¹⁸ handled only about 260,000 legal matters each year within the context of the 1.2 million figure cited above, the Task Force concluded that providers were at best meeting 20% of the need.¹⁹

To address this staggering gap, the Task Force recommended a four-year plan to increase the existing \$208 million funding level by an additional \$100 million of annual funding from the state

¹² 2010 REPORT, *supra* note 9, at 11.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 12.

¹⁸ The New York State Interest on Lawyer Account Fund ("IOLA") helps low income people in New York State obtain help with civil legal problems affecting their most basic needs, such as food, shelter, jobs and access to health care. The IOLA program requires attorneys to deposit funds received from clients either in interest bearing accounts for the benefit of the clients or in interest bearing IOLA accounts, in accordance with the provision of the statute (Judiciary Law §497). The interest on IOLA accounts is pooled and provides the money for grants made by the Board of Trustees of the IOLA Fund to non-profit civil legal services providers across the state. <https://www.iola.org/about-iola>

¹⁹ *Id.* at 38.

judiciary budget.²⁰ In 2016, with the support of Chief Judge Lippman’s successor, Chief Judge Janet DiFiore, this goal was achieved.²¹ Data since then suggests that increased funding has indeed made a substantial dent in bridging the gap: that same year, the Permanent Commission estimated that 37% of the civil legal needs of low-income New Yorkers were being met, compared to only 20% six years prior.²² Additionally, the estimated 2.3 million New Yorkers navigating the state’s civil justice system without counsel in 2009 dropped to 1.8 million by 2014.²³

Despite this laudable progress, the majority of low-income New Yorkers’ civil legal needs remain unserved. On an individual basis, this lack of access to justice harms those who may feel that without an advocate, the deck is stacked against them in court; moreover, on a larger scale, difficulty accessing or navigating the legal system can erode the public’s confidence in the fairness of the justice system overall. For example, the Task Force’s 2010 study highlighted that over half of those who experienced any of the civil legal problems surveyed said they never took action on any of the problems.²⁴ Across the types of problems, the most commonly cited reasons for not taking action were the belief that action would not help, and not wanting to “cause trouble.”²⁵ A different study, sponsored by the American Bar Foundation (ABF), found another important reason: “Americans do not take most of their justice situations to lawyers or courts ... because they do not understand these

²⁰ *Id.* at 39. The \$208 million figure encompassed “an unstable combination of federal, State, local, and private awards and contributions.”

²¹ PERMANENT COMMISSION ON ACCESS TO JUSTICE, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 1 (2016), *available at* http://ww2.nycourts.gov/sites/default/files/document/files/2018-03/2016_Access_to_Justice-Report.pdf.

²² *Id.* at 7. These figures cover the entire state, and the needs in certain localities may be higher or lower.

²³ TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 20 (2014), *available at* <http://ww2.nycourts.gov/sites/default/files/document/files/2018-05/CLS%20TaskForce%20Report%202014.pdf>.

²⁴ TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK: APPENDIX #17 54 (2010) [hereinafter 2010 APPENDIX], *available at* <http://ww2.nycourts.gov/sites/default/files/document/files/2018-04/CLS-Appendices.pdf>.

²⁵ *Id.* at 59.

situations to be legal.”²⁶ “A lot of our everyday problems bump up against the law,” said the study’s author, Rebecca L. Sandefur, but “the law enters people’s minds so seldom. They have a significantly different frame for thinking about these issues than we do.”²⁷ The second-most commonly cited reason in the ABF study for not seeking advice with a civil justice situation was that it wouldn’t make any difference.²⁸ A majority of respondents in this study also believed that lawyers are “not affordable for people on low incomes.”²⁹

Public perception as well as funding reality of civil legal justice must shift if our state and our nation is to improve its performance on this key measure of Rule of Law adherence. A new set of strategies is needed to help the public recognize that many everyday problems have legal solutions; and greater funding is necessary to help realize the promise of that claim.

In order to make the biggest difference in access to justice and rule of law perception and adherence, the Foundation should therefore take a twofold approach. Together with the New York State Bar Association and other strong partners, the Foundation should spearhead a public messaging campaign that highlights the problems of low-income New Yorkers that the civil justice system must be able to address. And the Foundation will reframe, refocus and reenergize its longstanding efforts to support the needs of New Yorkers who cannot afford to pay for legal services. By raising awareness of the need for access to civil legal services and by allocating resources to help meet these needs, the Foundation will help make access to justice a reality for all New Yorkers and, thereby, enhance understanding of and respect for the rule of law.

²⁶ REBECCA L. SANDEFUR, ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE COMMUNITY NEEDS AND SERVICES STUDY 13 (2014) [hereinafter ACCESSING JUSTICE], available at http://www.abajournal.com/files/sandefur_accessing_justice_in_the_contemporary_usa_aug2014.pdf (findings based on personal interviews of residents in a midsize city in the Midwest).

²⁷ James Podgers, *Americans don’t see their issues as legal matters, study says*, ABA J. (Oct. 2014), http://www.abajournal.com/magazine/article/need_to_know_americans_dont_see_their_issues_as_legal_matters_study_says.

²⁸ ACCESSING JUSTICE, *supra* note 24, at 13.

²⁹ *Id.* at 15.

Where is the need the greatest? The Task Force’s 2010 recommendations targeted funding to impact the “essentials of life”: housing (including evictions, foreclosures, and homelessness), family matters (including domestic violence, children, and family stability), access to health care, education, and subsistence income (including wages, disability and other benefits, and consumer debts).³⁰ The 2010 study found that the most common problem area low-income New Yorkers faced was health insurance or medical bills, followed by finances, employment, housing, public benefits, and domestic and family issues.³¹ More specifically, the study found that the most common issues within these areas were difficulty or harassment by creditors over unpaid bills or loans, including personal loans, loans used to purchase something, and payday loans (14%); difficulty with creditors over unpaid medical bills or hospital bills (12%); unsafe conditions, neglected repairs, or being overcharged in rent among those who rent or live in Section 8 or public housing (10%); difficulty getting or keeping food stamps (9%); trouble getting unemployment benefits or being denied benefits (7%); having a divorce, separation or annulment of one’s marriage (7%); and difficulty keeping, being re-certified, or being denied Medicaid (7%).³²

Every year since 2010, the Task Force (and later the Permanent Commission) has reaffirmed that the most urgent unmet legal needs for which funding should be allocated are the essentials of life: housing, family matters, access to health care, education, and subsistence income. Each successive annual report of the Task Force has provided additional data contextualizing the evolving needs of New Yorkers.

The financial crisis of 2008 and the Great Recession that followed took a major toll on New Yorkers’ legal needs. From 2007-2010, cases involving obtaining, preserving, or increasing federal food stamps rose 75%; unemployment insurance matters increased 259%; and the increase in

³⁰ 2010 REPORT, *supra* note 9, at 5.

³¹ *Id.* at 28

³² 2010 APPENDIX, *supra* note 22, at 55.

foreclosure cases was a sobering 683%.³³ The 2012 and 2013 Task Force reports emphasized the impact of Superstorm Sandy and other major storms on the legal needs of low-income New Yorkers: natural disaster demanded services associated with disaster relief housing assistance, FEMA and insurance aid, disaster relief federal food stamp assistance, disaster relief unemployment benefits, and disaster relief health care coverage.³⁴

The Foundation's grant making responded, targeting grants toward foreclosure matters as well as legal services to provide or reinstate benefits interrupted after Sandy.

Significant progress has since been made in tackling the unmet legal needs of low-income New Yorkers in specific areas. For example, from 2011 to 2017, the number of litigants unrepresented statewide in foreclosure settlement conferences decreased from 67% to 38%.³⁵ Localized data also reflects substantial progress: in 2016, more than one in four tenants, or 27%, who were facing eviction in the New York City Housing Court were represented by counsel, compared to previous findings that only 1% were represented.³⁶ The Permanent Commission anticipates further improvement in light of a recently enacted New York City law that provides for the appointment of counsel to low-income tenants facing eviction in New York City Housing Court.³⁷

However, the Permanent Commission has given no indication that the drastic gap with regard to other essentials of life has changed as significantly. Despite promising progress with foreclosure and eviction issues as highlighted above, improvement of representation for New Yorkers facing issues

³³ TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 18 (2011), *available at* http://ww2.nycourts.gov/sites/default/files/document/files/2018-04/CLS-2011TaskForceREPORT_web.pdf.

³⁴ TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 19 (2013), *available at* http://ww2.nycourts.gov/sites/default/files/document/files/2018-04/CLS-TaskForceReport_2013.pdf.

³⁵ PERMANENT COMMISSION ON ACCESS TO JUSTICE, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 6 (2017), *available at* <http://ww2.nycourts.gov/sites/default/files/document/files/2018-03/2017-ATJ-Commission-Report.pdf>.

³⁶ *Id.*

³⁷ *Id.* at 1.

with other essentials of life may not be progressing as steadily. In 2017, the Permanent Commission noted that data suggests that the number of unrepresented litigants statewide remains unacceptably high with the percentages in particular case types, such as child support and consumer debt, near or above 90%.³⁸

Following a data-driven approach, the Foundation's grant making can prioritize funding for legal services programs assisting with these essentials of life:

- child support;
- consumer debt;
- housing (including evictions, foreclosures, and homelessness);
- family matters (including domestic violence, children, and family stability);
- access to health care;
- access to education; and
- subsistence income (including wages, disability and other benefits).

Local data helps flesh out this picture. In 2017, the Permanent Commission conducted a series of “community listening sessions” in several localities across the state to better understand the legal needs of low-income New Yorkers in advance of implementing a localized pilot program to close the access to justice gap.³⁹ Since the Foundation is one of few organizations that make law-related grants across the state, some of its grant making can be targeted specifically to the needs that have been identified locality by locality:

- In Albany County:
 - guardianship cases related to parents battling drug addiction;
 - contested divorces;

³⁸ *Id.* at 27.

³⁹ N.Y. ST. UNIFIED CT. SYS., JUSTICE FOR ALL STRATEGIC ACTION PLAN 18 (2017), *available at* <http://ww2.nycourts.gov/sites/default/files/document/files/2018-04/JFA-Report-122217.pdf>.

- housing (landlord/tenant and foreclosure);
 - immigration;
 - access to public assistance;
 - other drug addiction-related legal problems; and
 - elder law.⁴⁰
- In Queens County:
 - housing;
 - family law; and
 - immigration.⁴¹
 - In Suffolk County:
 - family law (divorce cases, post-judgment divorce issues, child support);
 - immigration (deportation defense, citizen applications, education, and eviction); and
 - re-entry (for veterans/service members and formerly incarcerated individuals).⁴²

These localized findings can help guide Foundation grant making where it will do the most good in those localities.

There are two additional areas beyond the scope of the Permanent Commission's focus, which the Foundation is determined to reach nonetheless. One is rural areas, which were not included in the community listening sessions; the other is non-litigation civil matters, and for the latter, we turn to data gathered by IOLA. IOLA data, which includes services provided outside the litigation context, also reflects significant needs in the essentials of life arena. For its 2017 fiscal year, IOLA reported that its

⁴⁰ *Id.* at 21.

⁴¹ *Id.* at 22.

⁴² *Id.* at 53-55.

grantees most frequently closed cases related to housing, family law, immigration, and income maintenance.⁴³

Going forward, each year's Permanent Commission report, IOLA data, and experts in civil legal needs in rural areas of the state can be consulted ahead of the grant making cycle so that the Foundation's work addresses the most urgent needs of New York's unique, diverse, and varied communities. By concentrating its grant making resources on the essentials of life for which the vast majority of New Yorkers are still without representation, the Foundation can maximize its impact, improving both quality of life and rule of law perceptions.

Those who have the privilege of practicing law in this state have a duty to assist those less fortunate. And in these fractious times, we must reinforce the rule of law as a unifying cornerstone of our democracy. We must work to lift our rule of law standing as a nation, and we may begin by lifting our own standing, around the corner and across the state. The Foundation, by following a data-driven approach, can help improve individual lives as well as the health of the body politic.

⁴³ IOLA FUND OF THE STATE OF NEW YORK, ANNUAL REPORT 5 (2017), *available at* <https://www.iola.org/all-documents/106-2017-iola-annual-report/file>. IOLA does not generally earmark its funds for these specific services; rather, the service areas depend upon the grantees' perceptions of the needs of the client communities they serve.