

**NEW YORK STATE BAR ASSOCIATION
MINUTES OF HOUSE OF DELEGATES MEETING
BAR CENTER, ALBANY, NEW YORK, AND REMOTE MEETING
NOVEMBER 5, 2022**

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PRESENT: Adigwe, Ahn, Alcott, Alomar, Arenson, Barreiro, Bascoe, Baum, Beltran, Berlin, Block, Bond, Braiterman, Bray, Brown, Buckley, Buholtz, Bunshaft, Burke, Buzard, Campbell, J. Carter, R. Carter, Chambers, Chandrasekhar, Chang, Christian, B. Cohen, Cohn, Cooper, Coreno, D’Angelo, Davidoff, Degnan, Doerr, Donaldson, D’Souza, Dubowski, DuVall, Effman, Emborsky, Feal, Fellows, Fennell, Fernandez, Filemyr, Finerty, Fogel, Fox, French, Galler, Gauntlett, Gerstman, Getnick, Gilbert, Gilmartin, Gold, Good, Graber, Greenberg, Gross, Haig, Harper, Harwick, Heath, Hill, Hoffman, Holder, Houth, Islam, Jackson, Jaglom, James, Jamison, Jimenez, Johnston, Jones, Joseph, Kamins, Karson, Katz, Kaufman, Kean, Kelley, Kenney, Kiernan, Klugman, Ko, Kobak, Koch, Kodjoe, Kolhmann, Kossover, LaMancuso, LaRose, LaTrop, Lau-Kee, Leo, Lessard, Levin, Levin Wallach, Lewis, Lisi, Loyola, Mack Madigan, Makofsky, Marinaccio, Markowitz, Maroney, May, Mazur, McCann, McElwreath, McFadden, McGinn, McKeegan, McNamara, Merriman, Messina, Middleton, C. Miller, M. Miller, Milone, Minkoff, Minkowitz, Moreno, Moretti, Morrissey, Mukerji, Muller, Murphy, Napoletano, Noble, Nowotarski, Palermo, Parker, Petterchak, Quaye, Quinones, Randall, Riano, Richter, Riedel, Rosenthal, Rothberg, Russ, Russell, Ryan, Safer, Santiago, Sargente, Schofield, Schraver, Schwartz-Wallace, Sciocchetti, Seiden, Sen, Sharkey, Silkenat, Skidelsky, Sonberg, Spring, Starkman, Stephenson, Stoeckman, Stong, Sweet, Syracuse, Teff, Terranova, Treff, Triebwasser, Vaughn, Vigdor, Ward, Warner, Waterman-Marshall, Wesson, Westlake, Wolff, Woodley, Yeung-Ha.

Mr. Lewis presided over the meeting as Chair of the House.

The meeting was called to order and the Pledge of Allegiance was recited.

1. Approval of Minutes of June 18, 2022, meeting. The minutes were deemed accepted as distributed.
2. Report and recommendations of the Committee on Bylaws. Robert T. Schofield, IV, chair of the Bylaws Committee, outlined proposed bylaws amendments: first, to implement the resolution of the Committee on Diversity, Equity, and Inclusion as adopted by the House of Delegates on June 18, 2022, directing the addition of a new Section 2 to Article II and amendments to Article V, Section 3(H) and Article VII, Section 1(F)(1); second, to incorporate requests made by the Committee on Membership for amendments to Article III, Section 1(D)(1) and Article III, Section 6; and, third, to correct an internal citation error at Article IV, Section 7. The proposed amendments received the required subscriptions to permit their consideration at the 2023 Annual Meeting
3. Report and recommendations re the Rules of the House of Delegates. Justin S. Teff, a member of the Committee on Bylaws subcommittee tasked with reviewing the Rules of the House of Delegates, outlined proposed amendments to the Rules. After discussion, a motion was made to approve the report and recommendations, after which a motion to

amend Rule 3(g) to read “Voting shall be by voice vote, unless the Chair of the House of Delegates directs a division of the House, or, if the delegate is participating remotely, by polling through the videoconference software.” was duly carried. The main motion to approve the report and recommendations was then adopted.

4. Reports of Treasurer. Domenick Napoletano, treasurer, reported that through September 30, 2022, the Association’s total revenue was \$16,051,439, a decrease of approximately \$295,278 from the previous year, and that the Association’s total expenses were \$13,751,497, an increase of \$2,786,075 from the previous year. The report was received with thanks.
5. Report of President. Ms. Levin Wallach highlighted items contained in her written report, a copy of which is appended to these minutes.
6. Report and recommendations of Finance Committee re proposed 2023 income and expense budget. Michael J. McNamara, chair of the Finance Committee, reviewed the proposed budget for 2023, which projects revenue of \$20,521,643, expenses of \$20,472,563, and a projected surplus of \$49,080. After discussion, a motion was adopted to approve the proposed 2023 budget.
7. Memorial for Hon. Richard D. Simons. Hon. Howard A. Levine presented a memorial in honor of Hon. Richard Duncan Simons, former associate judge of the Court of Appeals from 1983 to 1997 and acting chief judge in late 1992 and early 1993, who passed on July 17, 2022.
8. Report of Nominating Committee. Henry M. Greenberg, chair of the Nominating Committee, reported that the Committee had nominated the following individuals for election to the indicated offices for the 2023-2024 Association year: President-Elect – Domenick Napoletano of Brooklyn; Secretary – Taa R. Grays of New York City; Treasurer – Susan Harper of New York City; District Vice-Presidents: First District – Bridgette Ahn of New York City and Michael McNamara of New York City; Second District –Pauline Yeung-Ha of Brooklyn; Third District – Jane Bello Burke of Albany; Fourth District – Nancy Sciocchetti of Saratoga Springs; Fifth District – Hon. James P. Murphy of Syracuse; Sixth District – Michael R. May of Ithaca; Seventh District – Mark J. Moretti of Rochester; Eighth District – Kathleen M. Sweet of Buffalo; Ninth District – Karen Beltran of Yonkers; Tenth District – Michael A. Markowitz of Hewlitt; Eleventh District – David Louis Cohen of Kew Gardens; Twelfth District – Michael A. Marinaccio of White Plains; Thirteenth District – Orin J. Cohen of Staten Island. The following individuals were nominated to serve as Executive Committee Members-at-Large for a 2-year term beginning June 1, 2023: LaMarr J. Jackson of Rochester (Diversity Seat); Thomas J. Maroney of New York City; and Christopher R. Riano of New York City. Nominated as Young Lawyer Member-at-Large was Lauren E. Sharkey of Schenectady. Nominated as Section Member-at-Large was Barry D. Skidelsky of New York City. The following individuals were nominated as delegates to the American Bar Association House of Delegates for the 2023- 2025 term: Claire P. Gutekunst, Yonkers; Scott M. Karson, Melville; Michael Miller, New York City; Domenick Napoletano, Brooklyn; and Sherry Levin Wallach, White Plains. The report was received with thanks.

9. Report of Task Force on Emerging Digital Finance and Currency. Jackie Drohan and Dana Syracuse, co-chairs of the Task Force on Emerging Digital Finance and Currency, presented on the Task Force’s ongoing work and programming. The report was received with thanks.
10. Report of Task Force on Modernization of Criminal Practice. Catherine Christian and Andy Kossover, co-chairs of the Task Force on Modernization of Criminal Practice, presented on the mission, composition, and goals of the Task Force. The report was received with thanks.
11. Report and recommendations of Committee on Procedures for Judicial Discipline. Justin S. Teff, chair of the Committee on Procedures for Judicial Discipline, reviewed the Committee’s report and recommendations concerning suspension as a mode of judicial discipline. After discussion, a motion was duly carried to table consideration of the report until a future meeting of the House.
12. Presentation of 2022 Root/Stimson Award to Samantha I.V. White. President Levin Wallach presented the Root-Stimson Award, which honors members of the profession for outstanding community service, to Samantha I.V. White, a staff attorney in the Criminal Defense Unit at the Legal Aid Bureau of Buffalo, Inc., where she works as a Public Defender in Buffalo City Court.
13. Report and recommendations of Committee on Legal Aid and President’s Committee on Access to Justice. Hon. Edwina F. Martin, immediate past co-chair of the President’s Committee on Access to Justice, outlined the groups’ report on access to justice during the COVID-19 pandemic and its recommendations to address the impacts of the pandemic in the long term on the administration of justice in New York State. After discussion, a motion was adopted to approve the report and recommendations.
14. Report and recommendations of Task Force on the U.S. Territories. Mirna Martinez Santiago, co-chair of the Task Force on the U.S. Territories, presented on the Task Force’s report calling on the Association to support efforts to overrule the *Insular Cases*, including through the filing of *amicus curiae* briefs in appropriate litigation. After discussion, a motion was adopted to approve the following resolution:

NOW, THEREFORE,

IT IS RESOLVED, that the New York State Bar Association supports efforts to overrule the *Insular Cases* and the territorial incorporation doctrine and dismantle the colonial framework they establish, including but not limited through the filing of *amicus curiae* briefs in appropriate litigation; and it is further

RESOLVED, that the President of the Association is authorized to take such other and further action as may be required to implement this resolution.

One member abstained from the vote.

15. Report and recommendations of Women in Law Section. Susan Harper and Terri Mazur, past chairs of the Women in Law Section, presented the Section’s resolution and accompanying report entitled “Resolution Supporting Reproductive Health-Care Rights and Reproductive Autonomy and the New York State Equal Rights Amendment.” After discussion, a motion was adopted to approve the following resolution:

NOW, THEREFORE,

IT IS RESOLVED, that the New York State Bar Association supports the rights of individuals to choose legal reproductive health care, including abortion; and it is

FURTHER RESOLVED, that the New York State Bar Association supports the amendments to New York State Public Health Law, Education Law, and Penal Law, as enacted in New York State by the signing of S.240/A.21 in 2019; and it is

FURTHER RESOLVED, that the New York State Bar Association supports N.Y. Public Health Law Article 25-A as enacted in 2019; and it is

FURTHER RESOLVED, that the New York State Bar Association supports the June 13, 2022, Legislative Package, as enacted by New York State and supports the policies and intent of the legislative package enacted; and it is

FURTHER RESOLVED, that the New York State Bar Association supports S.51002 of 2022, as passed by the New York State Senate and Assembly, and as policy the proposal codified in this concurrent resolution to amend Section 11 of Article 1 of the New York State Constitution in relation to equal protection; and it is

FURTHER RESOLVED, that the New York State Bar Association supports passage of the Women’s Health Protection Act of 2022, and supports the policies and intent of this bill; and it is

FURTHER RESOLVED, that the New York State Bar Association opposes passage of laws that would ban abortion nationwide and/or diminish the current protections under New York law; and it is

FURTHER RESOLVED, that the New York State Bar Association approves the report and recommendations of the Women in the Law Section; and it is

FURTHER RESOLVED, that the officers of the Association are hereby authorized to take such other and further action as may be necessary to implement this resolution.

Hon. James P. Murphy abstained from the vote.

16. Report of The New York Bar Foundation. Hon. Cheryl E. Chambers, vice president of The New York Bar Foundation, updated the House members on the ongoing work and mission of The Foundation. The report was received with thanks.
17. Administrative items. Mr. Lewis asked members to register for the 2023 Annual Meeting, advised of the ongoing Member Referral Program, and encouraged members to attend a Continuing Legal Education program on implicit bias scheduled for December 1, 2022.
18. New Business. House member Scott M. Karson, co-chair of the International Section's Ukraine Task Force, proposed a motion in two parts. First, to ratify the Section's report and resolution entitled "Regarding Investigation and Prosecution of the Russian Federation and its Culpable Officials Arising from Its Illegal Military Invasion of Ukraine," as adopted by the Executive Committee on July 16, 2022, which reads:

WHEREAS, NYSBA, the nation's largest voluntary state bar association, has a long, consistent and proud tradition of defending the rule of law, both domestically and internationally; and

WHEREAS, NYSBA's defense of the rule of law has included support for the establishment of the Permanent Court for Arbitration at The Hague and the ICC; and

WHEREAS, Russia's unlawful invasion of Ukraine is a direct attack on the rule of law, in that it violates the prohibition of the use of force against the territorial integrity and political independence of another state as proscribed by Article 2(4) of the Charter of the United Nations and most fundamental peremptory norms of international law, and is contradictory to the mission of the United Nations to end war and promote peace; and

WHEREAS, the actions by Russia in launching its prolonged armed attack on Ukraine constitutes a direct violation of the 1994 Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons, whereby Russia reaffirmed its obligation to refrain from the threat or use of force against the territorial integrity and political independence of Ukraine, and also agreed to refrain from any form of economic coercion designed to subordinate to its own interest the exercise by Ukraine of the rights inherent in Ukraine's sovereignty and thus to secure advantages of any kind at Ukraine's expense; and

WHEREAS, the invasion of Ukraine by Russia constitutes an “act of aggression” and, by virtue of its sustained military presence and offensive within the borders of Ukraine, “a war of aggression” and, therefore, a “crime against peace,” all as defined in the Declaration of the United Nations General Assembly on Principles of International Law Concerning Friendly Relations and Cooperation Among States (Resolution 2625 (XXV)) and the General Assembly’s Resolution 3314 (XXIX) on the Definition of Aggression; and

WHEREAS, the reported actions by Russia, including, wantonly attacking and decimating cities, towns and villages of Ukraine; in targeting civilian institutions, buildings, and property, resulting in the deaths of thousands of civilians; deporting civilians to the Russian territory, imposing Russian political control over occupied parts of Ukraine, among other acts, which if proven, would constitute war crimes and crimes against humanity committed in connection with the crime of a war of aggression, and therefore are worthy of investigation, prosecution, and upon conviction, punishment under the Principles of International Law Recognized by the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal; and

WHEREAS, these reported actions of Russia, while it calls into question Ukraine’s legitimacy and its inherent right to independence and sovereignty, would constitute genocide within the meaning of Article II of the Convention on the Prevention and Punishment of the Crime of Genocide, which is also a crime against international law and punishable thereunder; and

WHEREAS, Russia’s war of aggression has caused untold damage to the people and property of Ukraine, resulting in immense economic loss and privation, for which Russia has state responsibility as a matter of customary international law as most recently articulated in the Articles proposed by the International Law Commission on Responsibility of States for Internationally Wrongful Acts, for which Ukraine is entitled to reparation by Russia in the form of restitution, compensation and satisfaction; and

WHEREAS, NYSBA is encouraged that democratic nations around the world are standing together to assist Ukraine in fighting Russia’s aggression and taking appropriate legal actions to support Ukraine; and

WHEREAS, NYSBA is also encouraged that, among other organizations, the Council of Europe Parliamentary Assembly and the Parliament of the European Union have condemned Russia’s War Crimes, including the crime of aggression, committed in and against Ukraine, and have called for appropriate legal actions to support Ukraine; and

WHEREAS, NYSBA supports the United Nations General Assembly's condemnation of the invasion of Ukraine by Russia and Russia's alleged violations of international law; and

WHEREAS, there already exists strong legal and diplomatic precedent, supported by well settled jurisprudence, for the establishment of a justice mechanism to investigate, indict, and prosecute the leadership of Russia and its armed forces and agents for violations of international law such as the crime of aggression, crimes against the peace, crimes against humanity, and acts constituting genocide; and

WHEREAS, the jurisdiction of the ICC over Russia for the crime of aggression is uncertain but, nevertheless, Russia's aggression against Ukraine must be fully investigated and prosecuted by the international community through some other appropriate tribunal in accordance with the rule of law; and

WHEREAS, the United Nations General Assembly, in its very first session, in the aftermath of World War II, in Resolution 3, called on member and non-member states to take all necessary measures to cause the arrest of those war criminals who have been responsible for or taken a consenting part in such crimes and to cause them to be returned to the countries where they committed their crimes "that they may be and punished according to the law of those countries"; and

WHEREAS, the United Nations General Assembly, in Resolution 3074, enunciated Principles of International Cooperation in the Detection, Arrest, Extradition & Punishment of Persons Guilty of War Crimes & Crimes Against Humanity, including that States shall cooperate with each other in the collection of information and evidence which would help to bring to trial persons against whom there is evidence that they have committed international crimes; and

WHEREAS, the United Nations General Assembly, has played a leading role in establishing judicial mechanisms and commissions to investigate and prosecute criminal violations of international law, including Resolutions 52/135 and 57/228 calling for the formation of the Extraordinary Chambers of the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, and in Resolution 63/19, endorsing the International Commission Against Impunity in Guatemala;

IT IS THEREFORE RESOLVED THAT:

NYSBA hereby deplores and condemns Russia's unlawful invasion of Ukraine, causing untold harm to the people of Ukraine; and it is further resolved that

NYSBA hereby supports any and all international and domestic efforts to investigate, prosecute, and hold Russia's armed forces and officials accountable for acts committed by Russia, its military and its agents, in the prosecution of its unlawful war of aggression; and it is further resolved that

NYSBA hereby calls upon those members of the international community with deep, actual experience in the investigation and prosecution of war crimes, to investigate, prosecute, and bring to justice Russia and its culpable officials, its military and its agents; and it is further resolved that

NYSBA calls upon the United Nations General Assembly to take action by authorizing the Secretary General of the United Nations to establish, at an appropriate time and place, such tribunals – e.g., a hybrid international war crimes tribunal involving Ukraine, similar to those established to investigate and prosecute war crimes in Sierra Leone, Rwanda, and Cambodia – as he shall deem appropriate to exercise jurisdiction and hear and determine whether Russia and its culpable officials violated international law, including but not limited to the crime of aggression against Ukraine, and hold to account those responsible.

Second, to ratify ABA Resolution 22A405, as adopted by the American Bar Association House of Delegates on August 9, 2022, which reads:

RESOLVED, That the American Bar Association condemns the Russian Federation's unlawful invasion of Ukraine; and

FURTHER RESOLVED, That the American Bar Association calls upon the United Nations General Assembly to authorize the Secretary General of the United Nations to expeditiously report to the General Assembly on what further measures are needed to ensure that those who committed war crimes, crimes against humanity, genocide and crimes of aggression during the Russian Federation's unlawful invasion of Ukraine are held accountable.

After discussion, a motion was duly carried to ratify both resolutions.

19. Date and place of next meeting. Mr. Lewis announced that the next meeting of the House of Delegates would take place on Friday, January 20, 2023, at the New York Hilton Midtown in New York City.
20. Adjournment. There being no further business to come before the House of Delegates, the meeting was adjourned.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Taa R. Grays".

Taa R. Grays
Secretary



SHERRY LEVIN WALLACH, ESQ.

President

The Legal Aid Society of Westchester County

150 Grand St

White Plains, NY 10601-4821

(914) 286-3407

slw@laswest.org

**Report of President Sherry Levin Wallach to the
House of Delegates of the New York State Bar Association
November 5, 2022**

Dear Colleagues:

It is my privilege to be with so many of you this morning here at our Bar Center in Albany. As many of you know the theme of my presidency is Investing in the Future of the Profession, and in my remarks today I will highlight how we are collectively positioning NYSBA and ourselves as members and attorneys for a bright, exciting, and impactful future.

Let me start by saying that being here at the Bar Center is refreshing and reinvigorating. This is the first in person meeting of the House of Delegates held at the Bar Center since November 2019. It is good to be here at our Association's home. Being here allows us to use the technology and space offered by our building to produce a modern and engaging hybrid meeting of the House of Delegates. I am so very pleased to tell you that thanks to the hard work and cooperation of leaders of NYSBA and The Foundation that the Bar Center at One Elk will remain our home into the future. Together in our building and using our resources we can grasp new opportunities and create new experiences and new memories in this wonderful historic place where we have already spent an incredible fifty years. Now we can begin the important work we must do to update and renovate our Bar Center. I can assure you that we are moving forward with the same vigor and passion that our leaders did fifty years ago when they brought us to the Bar Center that we are still proud to call home today.

The process of transferring One Elk has strengthened the bonds between NYSBA and our sister organization, The New York Bar Foundation. The members of the House of Delegates also serve as the members of The Foundation, and the connections between our organizations are powerful and mutually beneficial. I am also confident that The Foundation will continue to support the New York State Bar Association to Invest in the Future of our Profession and Build our Future Together as well as the work of NYSBA's public-focused programs, including attorney wellness, the Lawyer Assistance Program, the Law, Youth, and Citizenship program, and our pro bono projects. Financial support of these programs and our expanding attorney wellbeing services helps deliver real results for our members, the legal community, and the public.

Leadership, staff, and the Finance Committee are working diligently on launching the initial phase of construction on our building and a committee has been formed to explore opportunities for productive future uses for our building to support the legal community and our membership. The initial phase will use monies already approved by this House to make the necessary repairs, upgrades, and renovations required to structurally maintain our building. We anticipate launching

a capital fundraising campaign to provide us with the necessary financial basis to execute future renovations.

It has been a pleasure to see so many members at NYSBA events and section meetings over the last few months, including just a few weeks ago at the Partnership Conference here in Albany which brought close to four hundred legal services and pro bono attorneys in person to Albany. I have a legal services background and was humbled to join civil legal aid attorneys, paralegals, support staff, court personnel, and pro bono attorneys for two days of educational programming, networking, and celebration of the work done to advance access to justice for all New Yorkers. Each of the twenty-two sessions were recorded, and the videos will soon be available on demand on the NYSBA website. Conferences like Partnership can truly serve as unifying moments for our members, especially after the last few years of uncertainty and disconnection.

Registration is now open for the 2023 Annual Meeting. For the first time since 2020, the Annual Meeting will be held in person at the New York Hilton Midtown, with a limited number of virtual meetings and events to supplement the in-person programming in the days following the live meeting. The Presidential Summit, which will be sponsored by the Task Force on Mental Health and Trauma-Impacted Representation, will focus in three parts on the challenges of representing people living with Trauma and Mental Illness and the intersection with attorney well-being within the legal profession including a look at the mental health and the criminal justice system. I am also proud to announce that the President's Reception will be a "Celebration of Diversity" held immediately after the Constance Baker Motley Symposium and Diversity Awards Program.

I am also thrilled to partner with The Foundation on the upcoming Presidential Gala, scheduled for Friday, January 20th, at the Rainbow Room in Manhattan as part of our 2023 Annual Meeting. I want to thank my dear friends John Gross, Kailyn Whittingham, and Winnie Martin for leading our ticket and table sales committee and planning committee for all of their hard work in making this event possible. I want to thank Hon. Cheryl Chambers for being a part of the leadership team planning this event. Finally, I want to thank the Bar Foundation Board of Directors and President Carla Palumbo and the NYSBA and Foundation staff for their support. The highlight of the evening will be the presentation of the Gold Medal Award, the highest honor bestowed by the Association, to Sherrilyn Ifill, senior fellow at the Ford Foundation and former president and director-counsel of the NAACP Legal Defense Fund. I hope that you will show your support of NYSBA by joining us for great music, and an exciting auction. It promises to be an amazing night spent in celebration of the law and Building a Better Future!

As we return to in-person programming, we also continue to expand our Virtual Bar Center. NYSBA has produced thousands of CLE webinars and other remote events since the onset of the pandemic in March 2020. Through the Virtual Bar Center, our sections, task forces, and committees can hold remote meetings and handle pressing business at rates unprecedented before the pandemic. This impressive feat would be impossible without the dedicated efforts of our members, sections, committees, and staff, and I would like to acknowledge the incredible strides that we have made here in delivering high-quality and convenient online programming and content to our members. The meeting today also highlights the potential of the Bar Center as a hybrid meeting venue – and I encourage our Sections and other groups to make full use of the facility in the years to come.

We continue to remain on the forefront of technology and legal issues – the New York State Bar Association is entering the Metaverse. In a short while, you will hear an informational report from the co-chairs of the Task Force on Emerging Digital Finance and Currency. This Task Force is focused on the regulatory and legal issues affecting practitioners and their clients as they transact with cryptocurrencies and engage in this stimulating and constantly evolving Web3 space. Cryptocurrencies, non-fungible tokens (NFTs), digital assets and the metaverse is disrupting the way we do business, create art, buy, purchase and own products, world finance and the practice of law in New York, around the country, and worldwide. It is the future whether we want to face it or not. The Task Force will lead us into Web3 by educating us and making recommendations as to how NYSBA can position itself in the digital world and offer innovative benefits to its members. I am pleased to announce our partnership with the NYU Metaverse Collaborative to join together our prestigious institutions to educate and explore Web3 and the Metaverse and all it has to offer including issues and opportunities. I am excited to provide you with exciting updates in the months to come.

Concerning my other presidential initiatives, the Task Force on the Ethics of Public Sector Lawyering, which will give an informational report at an upcoming meeting of the House, is examining the difficult challenges faced by public sector lawyers who represent government entities. The co-chairs of the Task Force on Modernization of Criminal Practice will give an informational report today highlighting the mission of this group and the work of its three subcommittees on justice courts, sentencing, and technology.

Today you will also be addressed by the Task Force on the U.S. Territories, which is working hard to educate on and work to eliminate inequalities and inequities faced by the people of the U.S. Territories and their second-class citizenship status which are founded in biased and racist beliefs and values. You will be asked to ratify a resolution passed by the NYSBA Executive Committee and the ABA House of Delegates calling for the *Insular Cases* to be overruled and the dissolution of the territorial incorporation doctrine which must happen for all U.S. Citizens to be equal. Although it is disappointing that the Supreme Court declined to grant *certiorari* in *Fitisemanu v. United States* and remove the stain of the *Insular Cases* from jurisprudence once and for all, we will continue our effort to seek justice for people of the territories. Part of that initiative includes the important work we are doing with the Virgin Islands Bar Association with whom we signed a Memorandum of Understanding this past June and the Puerto Rican Bar Association, the Colegio de Abogado y Abogada de Puerto Rico, a relationship we plan to formally recognize next week with the signing of a Memorandum of Understanding. We have also formed a chapter in the Virgin Islands and are working on the formation of a chapter in Puerto Rico. By way of these efforts, we are expanding our footprint and reach to the U.S. Territories as well and fostering diversity, equity, and inclusion with our members and the issues we address.

I also wish to acknowledge the many other groups within our Association that are hard at work developing important reports and policy recommendations, including the Task Force on Racism, Social Equity, and the Law, the Task Force on the Post-Pandemic Future of the Profession, and our twenty-eight sections, including the Women in Law Section, whose members have been hard at work developing programming and the report they will present to you today in response to the *Dobbs* decision and the laws that were enacted in this state in response that decision. Make no mistake about it – we are at a pivotal moment in American History where rights that we have fought for are being stripped from us while still others are at risk.

We have policy that inspired and aspires for us to be a diverse, equitable, and inclusive organization. Our work must reflect these values. We must lead by example and fight for the rule of law and access to justice. I have formed my initiatives with a view toward showing our association's commitment to a more inclusive and dynamic future.

NYSBA is a shining star in the world of bar associations, and our own work here at NYSBA becomes more influential when we collaborate with other organizations. Look no further than the 2022 Annual Meeting of the American Bar Association held in Chicago this August, where NYSBA sponsored four successful resolutions. The resolutions are Resolution 402, reaffirming the ABA's commitment to the law that prohibits lawyers from sharing legal fees with non-lawyers and from directly or indirectly transferring ownership or control over entities practicing law to non-lawyers; Resolution 404, declaring that the "territorial incorporation doctrine" established by the U.S. Supreme Court in the Insular Cases in 1901 is contrary to the principles of the U.S. Constitution and civil rights jurisprudence; Resolution 405, calling upon the United Nations General Assembly to authorize the secretary general to establish international war crime tribunals to determine whether the Russian Federation and its officials violated international law in Ukraine; and Resolution 601, urging federal, state, local and tribal governments to enact laws to give police reasonable time to complete a background check of a gun buyer. NYSBA commands a powerful presence within the American Bar Association House of Delegates, and I look forward to bringing forward other significant resolutions at the ABA 2023 Midyear Meeting. I also wish to acknowledge my friend and fellow New Yorker ABA President Deborah Enix-Ross, who I have invited to address our House at the Annual Meeting this January.

On the international stage, NYSBA is the recognized leader, and our preeminent position is largely due to the dedicated efforts and esteemed reputation of our International Section, whose international conferences are a "must attend" for lawyers worldwide. The International Section continues to steadfastly pursue memoranda of understanding with bar associations from around the globe which connect attorneys no matter where they might work and practice. I especially wish to commend the work of the International Section's Ukraine Task Force, including partnership with international stakeholders like the Global Accountability Network, to help the people of Ukraine and hold the Russian Federation accountable for the atrocities brought by this horrific war. I want to acknowledge the Section leaders who have done so much good work here, including International Section chair Azish Filabi, past president of the Association and Ukraine Task Force chair Scott Karson, and immediate past chair of the International Section Ed Lenci. I also wish to acknowledge the incredible impressive and tireless leader of the Ukrainian Bar Association, my friend, Anna Orgenchuk, who I have had the pleasure and honor to serve with this year. Our role in the international community is increasingly important especially with virtual capabilities and the expansion of Web3 and use of cryptocurrencies across the world. The international legal community considers our voice incredibly important and wants to partner with us on many issues in the law. I have made a concerted effort to raise our visibility in the international legal community and I promise to continue this mission.

Advancing access to justice in law and society is a core purpose of our Association and is a value that I and many others collectively share as lawyers. Access to justice is a statewide issue, as the seminal report of our Task Force on Rural Justice so masterfully demonstrated, but we can hope that lessons learned during the COVID-19 pandemic can help in developing solutions to bridge

the justice gap. After all, lawyers are innovators. I want to acknowledge the Committee on Legal Aid and President's Committee on Access to Justice, who you will hear from later this morning concerning their report on access to justice during the COVID-19 pandemic. I urge all stakeholders to thoroughly review this report and the voluminous testimony supporting it and I trust that the document will be a great resource to the Commission to Reimagine the Future of New York Courts as it continues its important work to guide our New York State justice system into the future.

In looking to next year, I look forward to our continued partnership with the Unified Court System, the Acting Chief Judge Anthony Cannataro, and the next Chief Judge. I am also confident that the voice of the Association and its thousands of members will be clearly heard in our advocacy efforts both here in Albany and in Washington, D.C., as we steadfastly advance our legislative priorities.

A foremost priority is a statewide increase to assigned counsel rates to ensure adequate compensation for the private bar and safeguard the continued participation of highly qualified attorneys who are willing to accept these assignments. This is a matter not just of money, but a constitutional and statutory obligation of the State towards those children and indigent people who rely on counsel mandated by law. On October 25th, the Executive Committee authorized the commencement of litigation against the State of New York to bring about a statewide state-funded increase in assigned counsel rates, set retroactively from February 2nd, 2022, and subject to periodic review to ensure that compensation remains adequate. I will continue to update you on our efforts here.

This is an exciting time for the New York State Bar Association, and an exhilarating time to be a leader. I am beyond pleased to note that we have seen a steady increase in membership this year, and to acknowledge that our sections and committees continue to produce high-quality CLE programs and events at an astounding rate. I also commend our collective efforts to increase engagement with law students and new lawyers, including as members of our sections, task forces, and committees, with many thanks to our Young Lawyers Section for the significant role they play in representing the future of our profession.

In September, leaders of our sections and statewide local, county, specialty, and affinity bar associations convened here at the Bar Center for two days of workshops. The conference was an inclusive and collaborative forum, and the broad diversity of our profession was well represented. It was extremely inspiring to be part of such a free exchange of ideas to ensure the long-term health and success of our bar association. My professional success is in large part due to my experience with the New York State Bar Association, and I will not waver in my commitment to help other attorneys grow as leaders here at NYSBA. I know that you, the members of our House of Delegates, feel the same. When we last met in June, I announced the launch of our Member Referral Program, which will close on March 31st of next year. If not already participating, I encourage you to refer your colleagues and associates to join NYSBA. There is no better way to offer colleagues a lasting gift than getting them involved in an organization that will change their lives in profound and unexpected ways. And just think of the impact we can make if every one of us participates.

A handwritten signature in black ink, appearing to read 'Sherry Wallach', with a long horizontal line extending to the right.

Sherry Levin Wallach
President

NEW YORK STATE BAR ASSOCIATION

In Memoriam

RICHARD D. SIMONS

RICHARD D. SIMONS

**MEMORIAL
To**

RICHARD D. SIMONS

*Presented by
Howard A. Levine*

New York State Bar Association

*at the
House of Delegates Meeting
November 5, 2022
Albany, New York*

RICHARD D. SIMONS
1927-2022

I am grateful for this opportunity to speak in celebration of the life of Richard D. Simons – before the leaders of the New York State Bar Association. Dick passed away last July at age 95. He was appointed an Associate Judge of our State’s highest court, the Court of Appeals, in 1983 and served a full 14-year term. It was my privilege to serve with him and thereby observe his extraordinary judicial talent while also enjoying his close friendship, during his last five years on the Court.

One of his singular contributions to the Court was his service as Acting Chief Judge, chosen as such by the other members of the court following the resignation of Chief Judge Sol Wachtler, as a result of a criminal investigation which cast doubt upon the reputation of the Court and the soundness of its decisions in the last several years of Wachtler’s leadership. It was Dick’s calm and strong presence, and intellectual and moral leadership that enabled the Court to survive those troubled times essentially unscathed.

Richard D. Simons, upon my observation, was a superb common law judge and also a superb human being. He was kind, generous to a fault and open-minded. He was idolized by his law clerks for having a profound influence,

not only upon their legal careers, but on how they lived their lives.

One of those clerks, David McCraw, who attained great success, as Senior Vice President and Deputy Counsel of the New York Times, spoke at Dick's funeral and had this to say: "But to talk only about Richard Simon's brilliant career as a jurist would be to miss so much – to miss out, really on the essence of who he was as a man. He didn't just change the law. He changed lives. In saying that, I speak not just for myself, but for all of his former clerks.

David McCraw also related a conversation he had with Dick after he had retired in which he asked him "what made a great judge, and he said "honesty, patience, industry' and then he paused and added 'courage'."

I would add to those qualities one more trait that Richard Simons possessed as a great judge, "Rectitude." Dick agreed with Cardozo that important decisions, decisions of long-lasting influence and guidance, would also have a moral dimension, reflecting the best values of society.

*To illustrate those qualities of Dick's greatness, I will briefly discuss two of his judicial writings. The first is *Brown v State of New York*¹, a case of blatant racial profiling by local and State Police. An elderly white woman reported being robbed at knife point on a public street in the City of Oneonta by a black man whose hand*

¹ 89 NY2d 172 (1996)

was cut during the incident. The police had no more detailed description nor other clues leading to the assailant. So, they rounded up everyone of the black students at the Oneonta State College and confronted every black male encountered on the City streets for interrogation and display of their hands, all to no avail.

A class action for damages on behalf of all of those black males was commenced under the theory of Constitutional Tort, based on the violation of their rights under the New York State Constitution to equal protection and to be free from unreasonable searches and seizures.

Damages for a Constitutional Tort was not recognized in New York at that time unless linked to a traditional tort, so new law had to be created, in the common law process.

Dick, writing for a five to one Court of Appeals majority, created that new law, in what I consider to be a textbook writing in the common law tradition. The undisputed facts are succinctly marshalled. The opposing positions are respectfully addressed, and cogent reasons are given for rejecting the losing side's position, in this case that of the State's opposition to the new tort.

The analysis follows a logical progression, to the extent that the outcome appears to be inevitable. Richard Simons's conclusion reflects that moral dimension:

“The point is that no government can sustain itself, much less flourish, unless it affirms and

reinforces the fundamental values that define it by placing the moral and coercive powers of the State behind those values.”

The second writing was before his appointment to the Court of Appeals, while he was still a Justice of the Appellate Division, Fourth Department. The case was Matter of Jacob D. Fuchsberg, who was then an elected Associate Judge of the Court of Appeals. It was before a five-judge Court on the Judiciary.² The judges were selected by then Chief Judge Charles Breitel. They were among the most highly respected Justices of the Appellate Division coming from all major parts of the State. Dick was chosen from the Fourth Department.

Fuchsberg’s most serious charges arose out of his trading in multi-millions of dollars in New York City short-term notes and Municipal Assistance Corp bonds during the City’s extreme financial crisis of the 1970’s, issued in part to avoid bankruptcy, along with other emergency measures, including a moratorium on redemption of those notes.

Many of those measures became the subject of legal challenges which foreseeably would ultimately reach the Court of Appeals. Fuchsberg did not dispute that the value of his New York debt securities would be affected by the Court’s dispositions of those challenges. Nonetheless, he

² 53 NY2d A (1978)

did not recuse in most of the appeals, in clear violation of ethical canons relating to judicial conflicts of interest.

A majority of members of the Court on the Judiciary informally reprimanded Judge Fuchsberg for those ethical violations but declined to institute formal proceedings to remove or otherwise discipline him.

Judge Simons's strong dissent manifested his courage – that quality of character he described in retirement years later as one of the qualities of a great judge, and also his rectitude, addint to his greatness.

In 1978, when the Court on the Judiciary met to consider the Fuchsberg matter, Dick had already achieved a reputation as one of the ablest appellate jurists in the State. He made no effort to hide his aspiration to someday sit on the Court of Appeals.

Jacob Fuchsberg was not only very wealthy, but he was also quite powerful with well-known close connections to groups and associations in the personal injury and criminal defense bar who furthered their political agenda with generous donations to candidates for high State Office.

Nonetheless, Richard Simons dissented, alone, and I will close my remarks here with his eloquent closing remarks in Matter of Fuchsberg:

“The evidence presented raises issues going directly to the heart of the judicial system, the impartiality of its judges and the integrity of the court’s decisions. The public interest requires that neither be compromised in appearance or in fact for the public must respect the courts, and the Judges of the court must deserve the respect of the public. That is the bedrock upon which our system of law is built for the courts have little else to enforce compliance with their judgements other than to acceptability of them borne of public respect.”

That is the Richard Simons for whom I had the highest admiration, and whose friendship I treasured.

May his memory always be a blessing.