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**Report of President Sherry Levin Wallach to the
House of Delegates of the New York State Bar Association
April 1, 2023**

Dear Colleagues:

As one of the world's most prominent legal organizations, the New York State Bar Association must wield its significant influence to defend the rule of law, protect those who are vulnerable to oppression, and create a more equitable society. As bar association leaders, we must do everything we can to ensure access to justice, equity, inclusion, and equality within and without the profession.

This has been a year filled with wonderful accomplishments, challenges, new opportunities, and crises which have altered our profession on a grand scale. We have incorporated lessons and technologies learned over the pandemic years into our daily lives, and have faced uncertainty, including economic upheaval, the deepening of political and socio-economic divides, the war in Ukraine, and the rapid development of the metaverse and the digital economy.

In times like these, the rule of law often comes under attack both at home and abroad, and this time is no exception. But the uncertainty we are all feeling also brings opportunity to us as lawyers and bar members – the opportunity to speak out and be a part of the change in the global legal community and at home in our communities. We are uniquely positioned to address these issues because we are New York, a legal community that impacts the nation and the world. As the New York State Bar Association, we have the means, voice, and experience to lead and to engage.

We have influence within our state and we have an impact on a local, national, and international scale. We are a global organization. We have formal partnerships with bar associations throughout the world and have nearly 1,500 international members in eighty-four countries and the U.S. Territories. We are New York, and people at home and globally want to know what we are doing and how and why we are doing it. Our voice matters.

During my presidency, we have signed memoranda of understanding with ten bar groups worldwide, including the Bar Association of Puerto Rico, the Bar Council of England and Wales, the Bar Association of Serbia, the Law Society of Scotland, the Law Society of England and Wales, the Global Accountability Network, Polish Bar Council, the Warsaw Bar Association, the National Bar of Legal Advisers in Warsaw, and the U.S. Virgin Islands Bar Association.

Our Association has not hesitated to tackle issues head on. Shortly after my installation and the issuance of the *Dobbs* decision by the U.S. Supreme Court, I worked closely with our Women in

the Law Section on their landmark report in support of the protection of women's reproductive rights and access to health care as well as support for the Equal Rights Amendment. The Section continues to be a leader in programming and supporting women's rights and women in the law.

Ownership of our wonderful bar center was successfully transferred to NYSBA, and we have been busy developing plans to begin the much need repairs and upgrades to our building. These repairs and upgrades were more extensive than anticipated due to the age of our building and its systems. Work is divided into two phases – the first phase consisting of the necessary repairs and upgrades and the second phase consisting of the necessary construction to provide a new ADA compliant entrance to our building. We are contemplating forming a historical building 501(3)(c) to allow us to raise money for construction and additional upgrades.

We have changed the trajectory of our membership numbers. We have exhaustively studied how to best develop membership within our Association and will be exploring a new subscription membership model in the coming months. We have also launched our law firm enterprise model providing law firms with the opportunity to enroll all of the members of their firm. Law firm membership includes the All Access Pass for our virtual CLE library. I am happy to say that Whiteman Osterman & Hanna was the leading firm to adopt this model.

Our International Section added a Ukraine chapter, and then launched a task force to assist refugees and displaced lawyers. We called on the United Nations to set up a tribunal to investigate violations of international law there. In fact, we were the first international legal agency to urge the U.N. General Assembly to establish a special tribunal to investigate the crime of aggression against Ukraine, and then, when the American Bar Association adopted our policy as its own in this area, we brought that effort nationally.

That is a mere example of how far our reach extends. I have traveled to Europe and met with bar leaders from around the world several times. I have joined international conversations on the status of the rule of law, access to justice, mental health and attorney well-being, the status of courts across the world and the virtual practice of law. Each time it opens new doors and opportunities for our association and our members, in addition to raising awareness of the opportunities of membership in a collaboration with the New York State Bar Association. I have been honored to address the Barcelona Bar Association's International Commission, the UIA International Association of Lawyers, the NYSBA International Section's meeting in London, the Virgin Islands Bar Association as well as many New York based bar associations.

We have continued our commitment toward Diversity, Equity, and Inclusion with our work on the issues facing the U.S. Territories but also with our work in New York.

We have also partnered with the Virgin Islands, Puerto Rico, and Guam bar associations to fight for equality for the people of the U.S. Territories and to eliminate the racism embedded in our society and laws because of the *Insular Cases*. Our Task Force on the U.S. Territories continues to fight to have these cases overruled. The U.S. Supreme Court and lower courts have relied on the *Insular Cases* to limit the rights to the people of the U.S. territories since the early 1900s, establishing a second-class citizenship status and promoting racism.

In November, our House of Delegates approved a resolution declaring that residents in the U.S. territories should be afforded the same rights as those in the 50 states. We presented this resolution to the American Bar Association where it was adopted as policy as well. We have helped to educate members on the fact that this is a national issue. We continue to do so and show the strength in collaboration by partnering with the New York City Bar Association's Task Force on Puerto Rico to present a program in May 2023 on the issues facing the U.S. Territories and the *Insular Cases*, as well as participating in the planning of an American Bar Association symposium on the same topics later this year.

Earlier this week, I attended ABA lobby days in Washington DC with our President-Elect Richard Lewis, past presidents Mark Alcott and Stephen Younger and Hilary Jochmans and Cheyenne Burke from our Government Relations Department. We held meetings with our representatives in the legislature to promote both the ABA and NYSBA legislative policies. I am happy to report that there is movement again with HR 279 the resolution acknowledging that the United States Supreme Court's decisions in the *Insular Cases* and the territorial incorporation doctrine are contrary to the text and history of the United States Constitution, rest on racial views and stereotypes from the era of *Plessy v. Ferguson* that have long been rejected as contrary to our Nation's most basic constitutional and democratic principles, and should be rejected as having no place in the United States constitutional law.

We are also addressing the growing mental health crisis within our own profession.

We have launched a Task Force on Mental Health and Trauma Informed Representation that is focusing on the intersection between the growing mental health crisis in the state and its impact on the public as well as criminal and civil justice systems. Individuals living with mental illness and/or trauma are often incarcerated or housed in hospital emergency rooms instead of in settings that have the resources to provide them with the care they need. Making this issue the topic of the Presidential Summit at our 2023 Annual Meeting displayed the importance of these issues and raised awareness about this very serious problem.

We now have a 24/7 hotline for attorneys in need of support, and our Committee on Attorney Well-Being has developed programming to support our members on the importance of self-care. Our leadership on attorney well-being has been recognized nationally and internationally.

We have entered our first ever enterprise membership model with one of our partners at the Virgin Island Bar Association who expressed the desire to access NYSBA Attorney well-being programming as well as our trial advocacy training. The pilot membership opportunity has allowed the Virgin Island Bar Association to pay for its members to join NYSBA, bringing us an additional 1200 members and assisting the Virgin Island with relevant and useful programming.

We have filed a lawsuit against the state seeking a statewide pay rate of \$164 an hour for assigned counsel. If successful it will ensure that 18-B attorneys in the 57 counties outside of New York City will be compensated the same as those court-appointed attorneys within the city. This will increase the number of attorneys who are able to take on this work and prevent children and indigent adults from being deprived of their constitutional rights to meaningful and effective representation in the criminal and family courts.

We have fought against additional bail reform in the wake of the proposed bail reform rollbacks that Gov. Hochul has included in her 2023–24 proposed state budget. These changes would likely force more New Yorkers, particularly people of color, to be incarcerated and for longer periods simply because they lack the financial means to afford bail.

We have continued our efforts to have Question 26 removed from the Bar Application process which in its current state requires applicants to divulge all interactions with law enforcement including family court and traffic court matters. While we have been successful in urging the Administrative Board to agree to modify the question to some degree, we still have more work to do because even in its modified state, applicants are still required to report youthful offender adjudications which will continue to foster disparity in the applicants to the Bar and deter many people of color and/or those from marginalized communities.

Our House of Delegates adopted a report from the LGBTQ+ People and the Law Section’s report asking for the adoption of a resolution to adopt the Office of Court Administration’s LGBTQ+ Bench Card and promoted its use statewide with a resolution. I was then honored to successfully bring our report and bench card to the ABA with a resolution that promoted and supported the use of similar LGBTQ+ bench cards nationwide.

The Association continues to protect the legal profession in many ways and keep its members informed of legal, economic, and policy developments which affect the practice of law.

Our Executive Committee has launched a Working Group on Facial Recognition Technology and Access to Legal Representation that will explore the impact of this technology on access to justice and our members’ ability to represent clients without fear of retribution.

In the wake of our state’s struggle to confirm our next chief judge, I have formed a Special Committee to Evaluate the Selection Process for the Court of Appeals. It is imperative that our judiciary remains independent, respected, and strong.

After the governor signed into law new requirements for notary publics that have a significant effect on the legal community, we immediately developed CLE programming to educate our members on these changes and formed a special committee to study and comment on the impact of the regulations on the legal profession.

This is vital work.

NYSBA continues to lead within the American Bar Association, where we successfully brought resolutions to the floor of the House at both the 2022 Annual and 2023 Midyear meetings, and lent our support to resolutions brought by other bar associations.

Four NYSBA-sponsored resolutions were adopted at the ABA Annual Meeting in August 2022. These resolutions are Resolution 402, which reaffirms 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, which declares 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, which calls 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, which urges federal, state, local and tribal governments to enact laws to give police reasonable time to complete a background check of a gun buyer.

NYSBA supported two resolutions at the 2023 Midyear Meeting in February – Resolution 501, adopting ten principles to advance the goal of gender equity among employers, institutions, and people who are part of the criminal legal profession, and Resolution 603, which urges federal, state, local, territorial, and tribal governments to enact statutes, rules and regulations that would make it unlawful for any person, other than law enforcement, to possess firearms on property owned, operated, or controlled by any public or private institute of higher education; and in states that do not make it unlawful for any person, other than law enforcement, to possess firearms on property owned, operated, or controlled by any public institute of higher education, authorize such institutions of higher education to restrict or regulate the concealed or open carry of firearms on their campuses.

In addition, our Association is uniquely positioned to have an impact internationally. Our voice is part of the discussion on how virtual practice will impact the profession worldwide.

The Task Force on Emerging Digital Finance and Currency is hard at work educating our legal community in New York, across the nation and the world. It has put the New York State Bar Association at the forefront of discussions regarding regulations and ethical considerations within this quickly evolving frontier, and Web3's impact on the practice of law. NYSBA is exploring opportunities to engage in and use Web3 technology to teach and provide opportunities to our association and its members. Our Sections have also engaged with these emerging technologies and continue to produce excellent programming to educate lawyers on how to handle matters involving digital assets, digital currency, and non-fungible tokens.

Earlier this year, I presented to the University of Florence, Italy, on the work that the NYSBA is undertaking within the digital finance, blockchain, and Web3 space. I serve on the Advisory Board to New York University's Metaverse Collaborative Advisory Board and have formed a close working relationship with NYU's School of Professional Studies ("SPS") I am proud of this bond between NYSBA and NYU, and look forward to late April when the "Deep Dive Into Web3 and The Metaverse" international conference will be presented at NYU in collaboration with the SPS and the NYU School of Law.

While technology redefines long standing legal issues and creates many new ones, as members of the legal community and bar associations we educate, evaluate, and suggest how and when use of technology is appropriate. We also struggle to protect the sanctity of the legal profession and the need for humanism.

As we strive to understand the impact of these new technologies on our system of justice and the practice of law, we must also come to understand the extent of their benefits and their limitations. To do this effectively, it is important to learn to use and navigate these evolving technologies. At the New York State Bar Association, we formed a Committee on Technology and the Legal

Profession which has been actively presenting CLE programing on issues including cyber security and the virtual practice of law.

We formed the Task Force on Emerging Digital Finance and Currency and the Task Force on the Post Pandemic Future of the Profession and, as mentioned, most recently the Working Group on Facial Recognition Software. Our sections and committees have developed programing in collaboration with each other and these groups to educate our membership and develop important policies to enable the New York State Bar Association to have a voice in this rapidly evolving world.

Recognizing that these technologies are here to stay, we must continue to learn about them and test their abilities and limitations. To that end, I decided to ask the ChatGPT Artificial Intelligence Program what it believed its limitations were in legal representation. The response was not only appropriate but proves that humans are necessary, at least so far, to the legal profession.

The Chat GPT identified three areas of legal representation where it could not replace humans. One, AI cannot provide the human touch and empathy that is essential for legal representation. Two, AI cannot provide creative solutions to legal problems. Three, AI is not able to process a large amount of data and parse out relevant portions. This issue may also impact the data's quality. Finally, AI cannot provide ethical judgment. It concluded by acknowledging that AI has limits to what it can provide in legal representation. While it was reported just yesterday that Goldman Sachs estimated generative AI could automate 44% of legal tasks in the U.S, the Chat GPTs own acknowledgment of its limitations seems to suggest that lawyers will remain essential to the practices of law and in client representation, at least for the time being.

New York and NYSBA are recognized global leaders. The benefits of New York law and courts have made it a go-to place for worldwide commercial contracts. Businesses throughout the world look to our state because it offers among the most sophisticated set of rules that cover a wide range of business transactions from collaborations and partnerships to joint ventures.

Through our memoranda of understanding with the Law Society of England and Wales and the Bar Council of England and Wales, I have developed a close working relationship with both organizations. Both organizations will support the "Deep Dive Into Web3 and The Metaverse" program later this month. Further, through collaboration while our International Section was in London, and throughout the year, I have developed an excellent working relationship with the United Kingdom's Ministry of Justice and the British Consulate. I look forward to working together to support cross-border practice of law for our members.

We are thus positioned to forge change, globally, nationally, and here in New York.

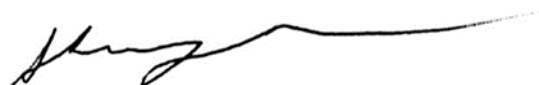
We must continue to move forward to help those facing the atrocities of war and oppression, to address quickly evolving technology, and to reinforce our position as a voice and ally to the international legal and business communities.

Our stake in safeguarding access to justice for everyone can never diminish. We live in a moment that is rife with issues that can appear to be overwhelming. Conversely, these issues present us with the opportunity to have an indelible impact on our profession and the rule of law itself.

NYSBA has remained strong despite the challenges that this year has presented. We anxiously await the completion of the selection of our new Chief Judge and the restoration of our Court of Appeals to a full bench. While these have been challenging times, we must remember that adversity makes us stronger. We must continue to unite as a profession and remember the oath we took when we became lawyers and judges. Remember that the mission of our Association ends with the goal to Do the Public Good.

Our Association is at its best when it uses its collective voice to lead, influence, and inspire. We learn from each other by exposing ourselves to new approaches toward resolutions. We possess a robust voice that is heard because of our influence, prestige, geographic position, and worldwide memberships and partnerships.

Throughout my presidency, NYSBA has confronted numerous issues that have demanded the attention of the bench and bar of the Empire State. As leaders and as members of the greatest bar association in the nation, we should be proud of our work and what we have accomplished. However, there is always more that can be done. We must and we will continue to forge a path forward and express our voice to impact change on issues affecting the profession, the association, and the rule of law.

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

Sherry Levin Wallach
President