REFLECTIONS ON THE NATIONAL TRANS BAR ASSOCIATION’S FIRST YEAR:
Where We’ve Been, Where We’re Going, & Our Survey of Community Needs
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## CONCLUSION
Trans people and cisgender allies\(^1\) working together have achieved remarkable progress towards social and legal recognition of trans people’s humanity and fundamental legal rights. Even in the wake of these gains, however, effective representation of trans clients requires more than general competence in a particular practice area or a baseline knowledge of what it means to be trans. Attorneys working with trans clients must be capable of educating tribunals and the public about trans issues where relevant, shielding their clients from anti-trans “attacks or bias,” and must stay up-to date on “emerging and constantly changing” areas of trans law.\(^2\)

In addition, trans individuals cannot merely be legal service clients if the trans community at large is to achieve true inclusion. Trans people must also be members of the legal profession—not merely as tokens, but with numbers sufficient to shape and influence the conversation on trans justice and rights.

That is precisely why the National Trans Bar Association (NTBA) was formed.

**Who We Are**

NTBA is a national bar association by and for trans legal professionals and cisgender legal professionals who care about trans rights. Our members hail from different regions of the United States and professional backgrounds. We are diverse in terms of race, ethnicity, gender, and age. We work in government, law firms, and the nonprofit sector. We share a

\(^1\) We use the term “trans” throughout to refer to individuals who identify as transgender, gender non-conforming, or non-binary. “Cisgender,” in turn, refers to persons with non-trans identities.

commitment to supporting trans people within and outside the legal profession. Together we are working to build an organization that welcomes individuals who have historically been underrepresented in the legal profession including trans and cisgender women and femmes, people of color, people who have experienced poverty, people who have been criminalized, or had criminal justice system involvement, and members of immigrant communities. We also welcome people from a range of areas in the legal profession including solo practice, law firms of all sizes, non-profit and social justice organizations, and government, in addition to those working primarily on trans rights advocacy and litigation.

**Our Mission**

NTBA’s core mission is to support trans people in the legal profession and to increase the trans community’s access to affordable and culturally competent legal services. Specifically, we work to support and empower trans legal professionals and law students; promote the entry of a new generation of trans individuals into the legal profession; build the capacity of the broader legal community to address trans legal needs; foster bold, inclusive, and creative legal strategies to expand formal legal protections for trans people and meaningfully address issues of equity; and elevate intersectional approaches while identifying opportunities for cross-movement collaboration.

NTBA firmly believes that strengthening the numbers, connections, and voices of trans people in the legal profession will, in turn, strengthen the existing movement for trans rights.

**What We’ve Done Thus Far; Where We Go From Here**

Although 2017 was our inaugural year of operations, NTBA hit the ground running—mindful of the urgency and importance of our work. We installed a founding board of directors, comprised of a diverse group of trans and cisgender legal professionals from across the country. We began our organizational launch. We engaged in outreach to trans community members across the country. We partnered with the National LGBT Bar Association to host a legal symposium highlighting recent developments in trans rights, and awarded travel scholarships to facilitate the participation of community members from diverse socioeconomic backgrounds. We hosted a Bay-Area meet and greet attended by more than 50 trans legal professionals. In addition, we signed on to an amicus brief asserting the right of trans individuals to equal protection under the U.S. Constitution.
To ensure that our work is both intentional and community-focused, NTBA also solicited feedback from trans lawyers and community leaders from across the country about what they want to see us build and accomplish. The capstone of this project was a survey consisting of in depth interviews. The report that follows is, in large part, a summary of those findings, which have informed and will continue to inform our strategic planning.

Going forward, NTBA is committed to building upon the foundation we laid in 2017 by developing a robust support network for trans legal professionals nationwide, serving as a clearinghouse connecting trans people to culturally competent legal representation where the need exists, and realizing other priorities identified in our community member survey.

**Acknowledgement**

NTBA would like to give thanks to all of the trans advocates who shared their thoughts and insights as part of our survey; to Dr. Shane Mannis, who devoted countless hours to interviewing the participants to our survey and analyzing their responses; and to Kristine Ross (www.kristineross.com), who generously donated her graphic design services.

We also wish to acknowledge the Arcus Foundation, whose generous support has made our work to date possible; Stephanie Lax and Kimberly Taylor of Morgan Lewis & Bockius LLP, for donating their time and talents *pro bono* to helping NTBA incorporate as a non-profit; Trans United for serving as NTBA’s interim fiscal sponsor; and D’Arcy Kemnitz and the National LGBT Bar Association for supporting our vision and embracing opportunities for partnership. Finally, we thank the small but dedicated community of attorneys and advocates working tirelessly to promote trans justice nationwide.
Over the past year, NTBA surveyed trans lawyers, community leaders, and allies, seeking answers to the following questions:

1. What legal needs exist within the trans community?
2. How are these needs currently being met?
3. How successful are these current approaches/resources?
4. What are areas of unmet need?
5. What additional support do lawyers who are trans and/or working with the trans community need?
6. What role can NTBA play in meeting the needs of trans lawyers and the trans community?

The objective of our survey was threefold: we wanted to identify the legal resources currently available to trans individuals across the county, and create a resource map; identify areas of growth and opportunity, concerning unmet needs; and to hear what trans advocates and community leaders wanted to see from NTBA as a newly forming bar association.

Participants & Methodology

NTBA’s survey participants are all trans leaders or cisgender allies dedicated to advancing trans rights. They span diverse genders, age groups, and racial and ethnic backgrounds. NTBA took care to ensure that leaders from every geographic region were represented and solicited the opinions of attorneys and non-attorneys alike.

Attorney participants had expertise in a variety of issue areas, including family law, anti-discrimination law, immigration law, bankruptcy, and criminal law. Many participants also had experience performing legal advocacy for trans clients either as part of their regular work or on a pro bono basis, be it in the form of conducting impact litigation or performing name and gender marker changes for trans individuals.
Dr. Shane Mannis, an accomplished social science researcher, conducted a series of in-depth interviews for our survey. We used an interview methodology to ensure that the responses we gathered were robust and detailed. Dr. Mannis reported the data to NTBA’s board using a thematic analysis.3

The survey participants’ responses were, no doubt colored by their professional and personal backgrounds. However, it is important to note that the issues each participant identified as most pressing did not always align with their area of practice or expertise. Moreover, even though participants were from diverse personal and professional backgrounds, they identified a number of common themes.

The following is a list of some of our survey participants:

- Melissa Alexander, Co-chair, Trans Ohio
- Alana Chazan, Attorney, Chazan Family Law
- Kris Hayashi, Executive Director, Transgender Law Center
- Kristine Holt, Attorney, Law Offices of Kristine W. Holt
- Bennett Kaspar, Associate, Littler Mendelson
- Ellie Krug, Founder, Human Inspiration Works, LLC
- Morgan Mentzer, Co-founder, Lavender Rights Project
- Marisa Richmond, Nashville Metro Human Relations Commission
- Gunner Scott, Director of Programs, Pride Foundation
- Rachel See, Board President, National Center for Transgender Equality
- Ames Simmons, Director of Transgender Policy, Equality NC
- Lou Weaver, Transgender Programs Coordinator, Equality Texas
- Jillian Weiss, Former Executive Director, Transgender Legal Defense & Education Fund

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3 Shane Mannis, Phd, NTBA Qualitative Research Report (Jan. 5, 2018). On file with the board of directors of the NTBA. The remainder of this report is sourced from this analysis except where otherwise stated.
Observations on the Trans Legal Landscape

Although the last decade has been marked by the significant expansion of legal rights and protections for trans people, survey participants uniformly agreed that trans people continue to face substantial hurdles to enjoying basic legal rights and thriving.

Participants who worked in advocacy and impact litigation organizations tended to identify securing formal legal protections at the state and federal level as high priority issues, while those working at law firms (including as solo practitioners) tended to conceptualize priority issues on a more microlevel. However, despite the macro/micro split, the following issues repeatedly came up as high priorities across both groups:

- Being able to get documentation that accurately reflects one’s identity (this includes access to and assistance with legal name and gender marker changes);
- Healthcare discrimination by both medical providers and insurers;
- Employment discrimination;
- Housing discrimination and increased prevalence of homelessness;
- Public accommodation discrimination (including restroom access).

Each of these universal concerns stem directly from experiences associated with being trans.

Criminalization and justice system involvement was another important legal issue that a number of participants flagged. Here, participants noted that trans people face issues related to:

- Disproportionate arrests and profiling by police;
- Prosecution for non-violent offences, including survival crimes (e.g., sex work);
- Indifference from law enforcement to trans issues;
- Bias in the courtroom by judges and court staff;
- Challenges finding culturally-competent attorneys;
- Harassment, violence, and sexual assault in prisons and jails, often due to being housed in a facility misaligned with the person’s gender;
- Problems accessing trans-specific medical care and legal support for name and gender marker changes behind bars;
- Challenges expunging records post-conviction.
Finally, participants identified a number of legal issues where trans people face a serious risk that their trans identity will be used against them as a complicating or exacerbating factor. Examples included:

- Child custody cases where a cisgender parent is battling a trans parent for custody;
- Child custody cases where parents with opposing viewpoints are fighting over the care of a trans child;
- Cases where trans youth are seeking to emancipate themselves from unsupportive parents or guardians;
- Estate and probate cases where non-supportive family members of trans individuals seek to block their last wishes.

**Note on Intersectionality, Urban & Rural Divides**

Participants recognized that trans individuals at the intersection of multiple forms of oppression—i.e. trans women of color, trans immigrants with different statuses, trans individuals living with HIV/AIDS, and trans individuals living in poverty—were especially hard hit by many of the issues identified. This included being assaulted, victimized, and murdered at heightened rates, at times without meaningful law enforcement response.

Participants also recognized that the experiences of trans people vary by region, creating an urban rural divide. They noted that trans individuals in rural areas often face higher incidences of discrimination and marginalization, and an increased need for legal services. Unfortunately, however, the relative isolation of these rural settings can make legal services more difficult to obtain.

**Mapping Existing Resources**

Survey participants affirmed that access to culturally competent representation is crucial to trans people’s ability to meaningfully access the legal system in service of basic needs. These needs include access to gender-affirming identity documents, health care services, immigration relief, the right to be free from discrimination, and effective assistance of counsel in criminal proceedings. Therefore, it was no surprise when one respondent noted that “not all issues are related to being trans, but people want to work with lawyers who are trans competent regardless of the legal issue.”
When asked, survey participants most commonly cited large national organizations as resources for trans legal issues. Among these, the American Civil Liberties Union (ACLU), including the national organization and regional offices, was mentioned most frequently. Other national organizations mentioned included the Transgender Legal Defense & Education Fund (TLDEF), the Transgender Law Center (TLC), the National Center for Transgender Equality (NCTE), Lambda Legal, the National Center for Lesbian Rights (NCLR), and Legal Aid. Some participants also noted that the United States Equal Employment Opportunity Commission (EEOC) is a helpful resource for those with employment discrimination cases. With the exception of the EEOC, participants noted that most national organizations are strong impact litigators and advocates, but have less capacity to help individuals seeking counsel for individual legal issues or to enforce already well-established legal rights.

Participants were also aware of a number of local and regional resources, generally in the areas where they lived and worked. These were most often advocacy organizations, but also included clinics set up by law schools, local LGBT centers, and others. Some clinics simply handle name and gender marker changes, while others offer consultations and/or representation in a wider variety of practice areas. In addition to the organized legal clinics, participants also noted loose networks of attorneys willing to take trans legal cases. Finally, some participants mentioned the utility of written resources, such as handbooks and websites that either provide legal information or act as a portal to other sites providing information. Local and regional organizations were generally viewed as effective but limited in reach, often due to resource constraints.

For those organizations and services with access criteria for taking on clients, income was most often noted as a limiting factor. Respondents noted that community members either did not have enough income to afford a private attorney, even with a sliding scale, or often did not have low enough income to qualify for free or truly inexpensive legal services. Trans people who fall in this gray in-between area are particularly vulnerable, as they make too much to qualify for free services, but not enough to afford to pay for legal counsel. More people are likely to fall into this gray area in parts of the country where housing is particularly expensive, like New York or San Francisco.

Based on our conversations with community leaders as well as supplemental research from our members, NTBA created a map of some of the legal resources that currently exist across the country for trans people. Although this map is not exhaustive, it identifies national, state, and local organizations that hold themselves out as providing legal assistance to trans individuals, almost always, but not exclusively, via staff or volunteer lawyers.
Some of the entities we identified primarily or exclusively work on trans legal issues. Most, however, work on trans legal issues as a part of their work, but not exclusively. On the national level, many organizations addressing trans legal issues focus on LGBTQ legal issues more broadly. At the state and local level, the bulk of the organizations identified did not work exclusively on trans or even LGBT legal issues. Irrespective of the designation, however, all of these organizations have done important advocacy work for trans people.

Unsurprisingly, most of the resources we identified were concentrated in large urban areas particularly in the Northeast, Mid-Atlantic, West Coast, and large Midwestern cities like Chicago. Resources outside those areas are demonstrably more scarce, particularly in the South and Midwest.

Because the map is a living document best viewed digitally, it resides on NTBA’s website, www.transbar.org. There, one can view the most up to date list of organizations we have identified. Please also note that in its current form, NTBA’s map is not an exhaustive list of lawyers, firms and organizations that provide legal services to trans people. We look forward to expanding the map going forward, with your help. If you are aware of additional resources, please contact us at info@transbar.org so that we may highlight their work going forward.

We hope that the map both serves to increase the visibility of organizations currently providing legal assistance to the trans community and to highlight areas of opportunity going forward particularly with respect to underserved populations.
Where NTBA Fits In

In addition to acknowledging the important work being done by trans legal service providers across the country, survey participants had no shortage of excitement about the work of NTBA, or ideas about what they would like to see from a trans bar association. The most wished-for resources clustered into three main categories: education and training, legal services and support, and community and connection.

Education & Training

Participants identified several ways which NTBA might, alone or in partnership with others, provide education about trans people and the law. One of the most popular recommendations was that NTBA provide continuing legal education for attorneys. One participant, for example, was excited about the potential for continuing legal education seminars aimed at helping attorneys stay up-to-date on "the current state of the law is around trans civil rights, since so much of that is in flux right now."

Participants also saw NTBA as a potential source of education and training about the legal obligations of doctors, service providers, and employers, and the legal rights of trans people themselves. Participants recognized that NTBA is not positioned to provide legal advice or direct services. Instead, they saw value in NTBA providing legal information. They recommended NTBA first focus education in the high priority areas of name and gender marker changes and discrimination in employment, healthcare, housing, and public accommodation before branching out to other topics. As one participant stated, "I would love to see an approach that’s really founded in community-based legal advocacy... making it so folks don’t need to access the few attorney resources there are but can advocate for themselves and their community members through knowledge and information."

Legal Services & Support

Numerous survey participants wished for increased legal services and support for trans individuals. They did not expect that NTBA would provide such services directly. Instead, participants recommended that NTBA serve as a clearinghouse that connects trans people to lawyers and/or lawyers with resources that help them better represent trans people.
**Connecting trans people to lawyers.** Participants viewed NTBA as well-positioned to develop networks of attorneys and other legal professionals who have the necessary knowledge and skills and are willing to provide pro bono or low cost legal support to trans individuals in need. One clear takeaway was that by securing buy-in from legal professionals in a variety of practice areas and developing a method of connecting trans individuals with these professionals, NTBA can assist trans people in accessing the legal services they need. The referral method could be as simple as a searchable database with contact information. Useful search parameters could include type of legal issue, fee structure (pro bono or sliding scale), and geographic location.

**Connecting lawyers with resources.** Participants also saw arming attorneys with the resources to better represent trans clients as an important service that NTBA could provide. They recommended that this could be accomplished by creating a bank of briefs, letters, other legal documents, and even academic or scientific research that attorneys can learn from and adapt for use in their own advocacy. A number of participants also brought up the possibility of NTBA drafting or recruiting attorneys to submit amicus briefs in cases that involve trans rights. One participant said, “If and when the Supreme Court is asked to consider whether discrimination against trans persons is the same as discrimination on the basis of sex, I want to be part of a bar association that is going to submit a brief on behalf of a bunch of trans lawyers, to say we deserve protection too.” Another added, “We would be in a unique position to be a bar association made up of people who very much need legal support ourselves.” By submitting amicus briefs, NTBA can support both individual trans litigants and the furtherance of trans legal protections for all trans people, including bar association members.

Participants also saw value in liaising with plaintiffs’ attorneys and law firms with pro bono practices in order to increase the number of lawyers who are both interested and able to take on trans cases in a competent manner. Participants suggested that NTBA conduct outreach to plaintiffs’ lawyers to make “sure they know there could be good cases out there for them working with trans clients.” One participant observed, “There’s a lot of plaintiffs’ lawyers who might not want to take a swing at these things, because they perceive—in my opinion, incorrectly—that there’s legal uncertainty as to whether the law protects trans people. I think we need to...”
be better at saying, well, actually, the law does protect trans people, and here’s all the ways it does.”

**Community & Connection**

In addition to having more tools to help trans clients, a number of participants expressed a desire to strengthen connections between trans attorneys, trans legal workers, and cisgender allies working on trans legal issues. Along with building increased visibility—one of the most-cited hopes for NTBA—several participants expressed a desire for NTBA to facilitate and nurture mentoring and professional growth opportunities for trans legal advocates.

**Visibility.** Participants felt that NTBA could provide greater visibility—and with that, more peer-to-peer support—for trans legal professionals. As one participant stated, “It’s important for people to be visible, to be possibility models for our youth.” Another expressed hope that with a trans-focused bar association, “trans attorneys can come together and start talking to each other and empower other trans attorneys to come out and be visible.” Increased visibility would bring a number of benefits, including helping to recruit more trans people into the legal workforce and helping to create a more hospitable environment for trans people in the legal world—both practitioners and those in need of legal services. Increased visibility can also help change the ways in which policies are written and enacted; as one participant pointed out, it could give trans people more opportunity to take an active role in creating policy, instead of defaulting to the current model, which this person characterized as “there’s not enough of you; we’ll just do it for you.” Another important aspect of increased visibility for trans attorneys is “bringing the legal system in contact with trans people who are not just defendants.” And beyond the legal world, participants felt the world at large could benefit from greater visibility of trans professionals, demonstrating that trans people are smart, capable, and able to achieve positions of power and influence.

“Having openly trans people in the courtroom at all levels—lawyers, judges, advocates, and legislature—sends a message to the community that the justice system is for all, including trans people.”

**Communication.** Participants expressed interest in NTBA nurturing connections and facilitating communications between and amongst trans lawyers and allies. In some cases, this interest seemed to be based predominantly on a desire to communicate about trans legal
issues—for instance, discussing successes and seeking input on challenges. A listserv of vetted legal professionals was suggested as one way to facilitate this. In other cases, the interest in connecting and communicating had more to do with having a sense of community and support on a personal level. One participant said they would like “just to know how many other trans attorneys there are,” and stated "we don’t even have a concept of how many of us there are.” Another noted the “huge benefit to attorneys who identify as trans of having a professional network, of knowing more people... it’s an effective means of self-care and stress relief to be able to talk over the issues of trying to be a trans attorney operating in a world that was created by cis people.”

Trans attorneys also face unique issues as professionals, and benefit from being able to talk to each other about these concerns. According to one participant, isolation has been his top challenge; he knows only one other trans lawyer and spoke of “feeling the singularity of my experience.” However, participants noted that it might be difficult for someone who is completely closeted/stealth to join NTBA; several participants suggested that the organization work to ensure an option of anonymity for those members who prefer it. Coming out at work was an area of concern for several participants, with one noting that trans professionals struggle with this. Resources to help people deal with the perceived or actual fallout from coming out in a variety of workplaces, including at big firms, would be welcome—even just a venue (virtual or otherwise) for discussing such matters.

**Mentoring.** Participants also described mentorship programs involving established trans attorneys as a desired initiative, and one that could serve to increase both the number and visibility of trans legal practitioners.

Participants felt that newer attorneys and law students alike would benefit from being paired with someone older and more experienced to provide professional guidance. In addition to the traditional one-on-one mentorship model, a participant also proposed a “student bar” to connect and build coalitions with law students interested in tackling trans legal issues. Another participant suggested that NTBA pair mentoring initiatives with an initiative to assist trans law students in their search for internships and post-graduation employment, including at organizations working on trans legal issues.

“It’s an existential imperative to do mentorship. If we don’t do it, who will?”
Additional Suggestions

Participants also shared the following suggestions about NTBA’s structure and programming:

Financial Support. A number of survey participants suggested that NTBA might one day offer scholarships for legal studies; a fund to support for trans lawyers, particularly people of color, in taking the bar exam; and fellowships to place trans legal workers in organizations that otherwise would not be able to fund them. According to one participant, “This work needs to be done by trans folks who are directly impacted.”

Legal Clinics. A number of participants identified free legal aid clinics as an important resource for trans people, and suggested that NTBA organize some clinics. In addition to name and gender marker change clinics, one participant said “I would love to see things like expungement clinics where people can get their arrests expunged, because that’s such a huge barrier for a lot of trans people to get employment.”

State Bar Records. Another participant suggested that NTBA advocate for changes in how state licensure boards maintain and amend bar records of trans attorneys who undergo a name and gender marker change mid-career. In one participant’s experience, a search by bar number turns up both current and prior names for an individual who has transitioned after being admitted to the bar. The participant’s view was that advocating for a policy change could be a meaningful intervention for NTBA members.
Although survey participants understood that NTBA is a nascent organization, they praised NTBA’s effort to center the voices of trans advocates within the legal community and had high hopes for what the organization will accomplish in the coming months and years.

A number of the initiatives that participants wanted to see developed are already reflected in NTBA’s mission statement. These include, for instance, providing mentorship and support to trans attorneys and advocates, promoting the entry of a new generation of trans individuals into the legal profession, and enhancing the ability of legal professionals of all backgrounds to advocate for trans individuals in a skilled and culturally competent manner.

Participants also identified a number of priorities that prompted new reflection about NTBA and our work. This includes the call for trans legal clinics focused on issues such as name and gender marker changes, as well as criminal expungements, which could be achieved through partnership and collaboration between NTBA and direct legal services organizations.

Achieving many of the goals identified over the course of our community survey will be a long-term endeavor for NTBA—and one that is also contingent on our ability to fundraise at a level that enables us to transition from an all-volunteer organization to one with permanent staff.

In the short term, however, NTBA can still make important strides by continuing to focus on some or all of the following:

- **Building a robust network** of trans legal professionals and allies to better connect them to professional resources as well as one another;

- **Identifying opportunities to collaborate** with other bar associations, firms, and legal organizations;

- **Engaging in outreach to trans law students and newly-admitted attorneys** to provide them with mentorship and support, as well as leads on employment opportunities;
Hosting legal education events that update legal professionals on important developments impacting the trans community;

Developing written materials such as “know your rights” guides and aggregating them in an easily accessible location on NTBA’s website;

Engaging in outreach to law firms and private attorneys with a demonstrated interest or commitment to trans legal advocacy, for inclusion in a comprehensive referral network;

Building the capacity of attorneys who are interested in advocating for trans clients but currently lack the experience or skill;

Developing anti-bias and cultural competency training materials for use with a variety of audiences, including law enforcement officers, members of the judiciary, and court staff; and

Continuing to shape the conversation around trans rights through public education and advocacy, including by submitting amicus briefs.

A final take away from our community survey was the need for NTBA to remain vigilant in acknowledging the diversity within the trans community and to ensure that this diversity is reflected in our work. Among other things, NTBA will:

Continue to center the experiences of trans persons at the intersection of multiple forms of oppression in our strategic and programmatic planning, given the heightened barriers they often face.

Remain mindful of the vastly different experiences of trans individuals in rural suburban, and urban areas.

Remember that trans attorneys practice in a number of different areas—including law firms, advocacy organizations, government, and solo practices—and may have differing needs and priorities when it comes to mentorship and support.

Develop flexible organizational structures and resources so we may meaningfully serve all constituents.
Attending to these realities will be key to NTBA’s growth and longevity as a bar association.

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National Trans Bar Association
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