



# Opening Statements

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## Concerned Bar Groups Step Up Rise in hate crimes and divisive rhetoric prompts action

**PRESIDENT DONALD TRUMP'S EXECUTIVE ORDER** seeking to restrict immigration from seven Muslim countries was part of a disturbing trend that didn't surprise members of minority bar associations already prepping for court battles to come. Even before the "Muslim ban," affinity bars were marshaling resources and teaming up to fight a reported increase in racism, bigotry, xenophobia, harassment and hate crimes.

Among those leading the effort is Cyndie M. Chang, president of the National Asian Pacific American Bar Association and managing partner of the Los Angeles office of Duane Morris.

Chang, an attorney who specializes in business

litigation, was recently the victim of a racist taunt.

"I was standing on the steps of the U.S. Capitol, and a Caucasian man told me to go back to my own country," says Chang, whose family has lived in the United States for five generations.

"I'm an Asian-American female, so this is not the first time it happened to me," she says. "If you're a person of color like me, you've probably had racist experiences. It's common."

But the upsurge in racism and bigotry has become an issue of increasing concern in the current political climate. As a result, Chang's group and others are taking on proactive roles.

“To provide our membership and the greater Asian-American community with resources to help victims of racism and hate crimes, our organization has created a toolkit of hate-crime resources for attorneys and bar associations developed over a period of months,” she says.

The toolkit contains a comprehensive definition of hate crimes, information on how to report one, sources of pro bono legal services and community education, statements from other bar associations, and additional resources.

The ABA itself has spoken out about Trump’s immigration order and his attacks on judges. (See “Taking on Trump,” page 61.)

Chang’s bar association, with a membership of about 56,000, also is working with other minority bar associations to educate as well as combat racism and hate crimes.

Those organizations include the Hispanic National Bar Association, the National Native American Bar Association, the National Bar Association (an African-American affinity bar), the National LGBT Bar Association, and the National Association of Women Lawyers.

Vichal Kumar, president of the South Asian Bar Association of North America and managing attorney for the civil defense practice of the Neighborhood Defender Service of Harlem, says his organization also has provided resources for how to report hate crimes and information on immigration rights.

“Lawyers have asked for this,” says Kumar, whose organization has 26 chapters and about 7,500 members. “We also work with other bar associations and with community organizations to protect the greater Southeast Asian community.”

SABA North America formed in the wake of the 2001 attacks on the World Trade Center, in response to an increase in anti-Muslim rhetoric and bigotry.

Kumar thinks the recent uptick in incidents might be attributable to the 2016 presidential campaign and social media. The Department of Justice reported a 67 percent increase in hate crimes committed against Muslim-Americans in 2015 (the latest figures available).

“Maybe the DOJ is doing a better job of tracking hate crimes; maybe people are just more aware of them,” Kumar says.

The Southern Poverty Law Center says at least 700 “hateful incidents of harassment around the country” against immigrants were reported during the week after the presidential election. And as the legality of Trump’s executive order on refugees winds its way through the court system, minority bar associations have pledged to continue their fight against racism, xenophobia and hate crimes.

“Because of the increase in racism and bigotry, it’s been challenging at times,” Kumar says. “But by and large, Muslims are optimistic here because of what the country offers—freedom, opportunity and hope.”

—Marc Davis

## Exposing the Bail Trap

New film campaign works to inform, effect change



**Educating the public and inspiring action** to change the U.S. money bail system are among the goals of the Bail Trap: American Ransom film campaign. The multipart initiative is co-produced by Brave

New Films and the Pretrial Justice Institute.

“We don’t run a think tank, and we don’t do research papers,” says Robert Greenwald, founder and president of Brave New Films. “We tell human stories and hope that from the human story comes a better understanding of policy.” Brave New Films recently released the first short film in the campaign, *Breaking Down Bail*.

*Breaking Down Bail* combines information about the bail system—such as the fact that about 500,000 people are in jail on any day, awaiting trial—with man-on-the-street interviews, highlighting the many misconceptions people have about the bail system. For example, some interviewees erroneously assumed bondsmen are public sector employees; one said the individuals work for themselves. The film also points out that insurers underwrite bail bondsmen.

In addition to arming the public with facts, *Breaking Down Bail* highlights the human lives impacted and the hardships that often accompany the money bail system. An arrestee unable to come up with the funds can be locked up for even a minor infraction.

In many cases, this puts the arrestee’s job—often a low-wage one—in jeopardy and leaves him or her unable to care for dependents.

Advocates say the system has got to change. According to Cherise Fanno Burdeen, co-chair of the ABA Criminal Justice Section’s Pretrial Justice Committee and CEO of the Pretrial Justice Institute, the goal isn’t to eliminate bail but to replace the system.

“There are 12 million arrests a year, but just 6 percent are convicted,” Burdeen says. “Jail is where mass incarceration happens, even though three-quarters of arrests are for misdemeanors.”

Many of those arrested serve more pretrial time than they would for the crime with which they’ve been charged. For example, an arrestee who can’t afford bail might spend a month in jail for a crime that carries

a sentence of a year’s probation.

Greenwald says he was inspired to tackle the bail system when he learned that the United States and the Philippines are the only countries that currently use a for-profit bail system. The film notes that some states have begun to eliminate for-profit systems, and arrestees show up for court dates at about the same rates as do those in states with money bail systems.

Maryland recently overhauled its bail policy, requiring judges to consider a defendant’s ability to pay. Other states, including Kentucky, New Jersey and New Mexico, also have moved away from money bail.

Research also has shown that locking up people because they can’t afford bail is not only costly and immoral but also ineffective—it doesn’t boost safety, Greenwald says. “It is both morally wrong [and] it’s bad policy,” he says.

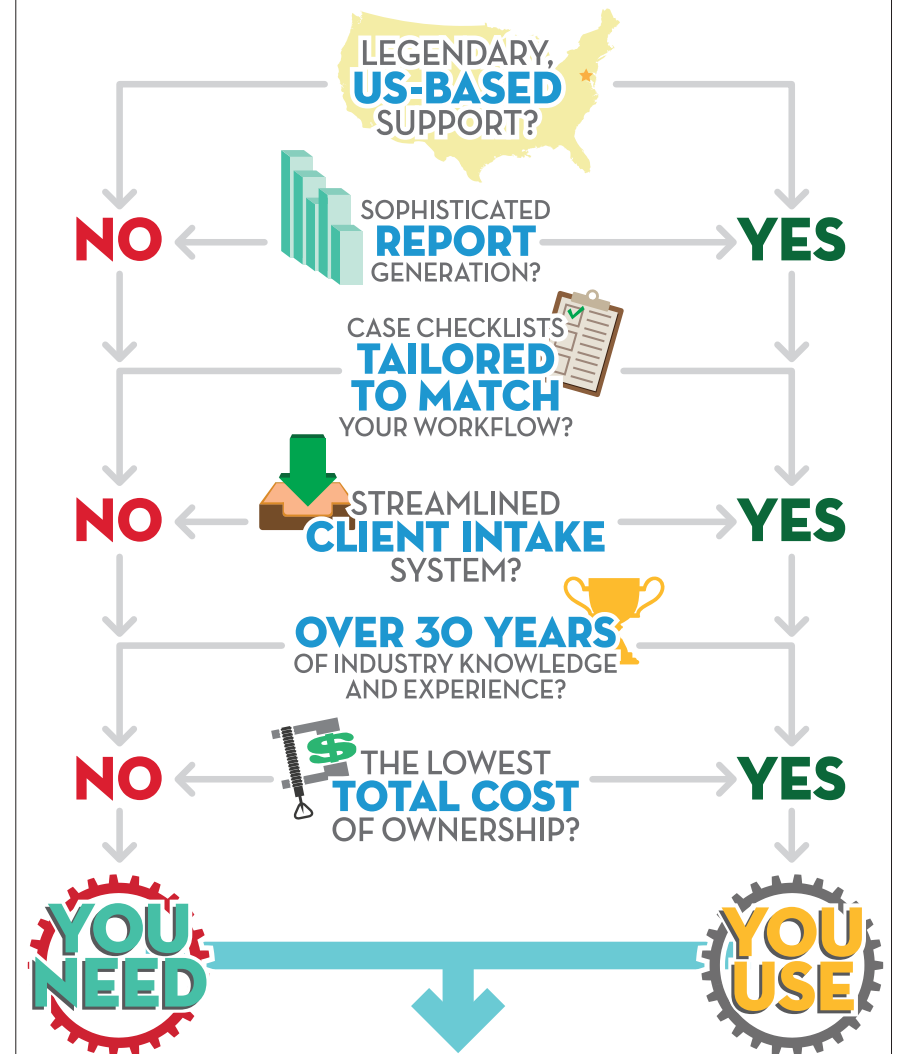
The shortcomings of the money bail practice have garnered interest from across the political spectrum. Greenwald says many who’ve been part of the “lock them up and throw away the key” world are shifting their stance—often due to costs, concern about government overreach, and the lack of success with the current system.

Depending on funding, Brave New Films will complete three to five films in the series. Each will focus on personal stories and will be available for legislators and their staffers as well as voters and activists. The films initially will focus on efforts underway in California, Greenwald says. But because of its size, success in California tends to have a trickle-down effect.

Causing change at the national level will be difficult, Greenwald says. Changes will come “state by state and community by community.”

—Karen M. Kroll

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10 QUESTIONS

# Check the Technique

When it comes to rap and hip-hop music, LA lawyer Julian Petty represents

**AS A COLLEGE INTERN** at Def Jam Records, Julian K. Petty saw firsthand how poorly artists were represented, and he vowed that someday, he'd do something about it. Fast-forward 20 years, and Petty now is a top entertainment lawyer who represents some of the biggest names in rap and hip-hop music, including Childish Gambino, A Tribe Called Quest and the estate of the Notorious B.I.G. As head of Nixon Peabody's entertainment law practice, the Los Angeles-based partner specializes in crafting cross-disciplinary deals that maximize ownership interests and business opportunities that can range from nontraditional record deals and reality shows to concert promotions and clothing lines.

**You're always doing exciting work, from brokering the deal for British singer Estelle to play a part in an episode of the Fox network TV show *Empire* to representing the Harlem Globetrotters. What are you working on right now?**

There are three projects that are taking up large chunks of my day. First is the Tribe Called Quest album, their first in 18 years. I was very involved in putting that deal together, and we still have merchandising and licensing deals to finalize before they mount a tour. I'm also working with Childish Gambino, making sure his vision gets executed correctly, and he has the right partners for his music. And today we just released a single from the long-awaited Notorious B.I.G. and Faith Evans duet record.

**Can you tell me more about that deal? There must have been some legal work involved since Biggie was murdered in 1997.**

I've represented the estate and Faith for several years now, and Faith had this idea of doing a duet record with her late husband, Christopher Wallace [the Notorious B.I.G.], like Natalie and Nat King Cole. I went to the company that owns his master recordings, and they didn't want to do anything. But I rarely take no for an answer.

**How did you convince them?**



Julian Petty

At the end of the day, I am in the solutions business. I showed them how this was going to build value and would benefit everyone. The company that owns the master recordings wants to find new ways to exploit the catalog, and this is a new, fresh and authentic way to do that. It's good business and it's a great art piece. And that's how we approached it.

**What's your favorite part of your practice?**

I love the music and the live performances, but my favorite part is helping young people fulfill their dreams. I enjoy being part of that process, from the point when an artist comes in with an offer to when they hand their mom the keys to her own house. I just watched that happen with a client, and whenever that happens, I always get the chills.

**Do you think musicians are treated better now than they used to be? I'm thinking about situations like in the movie *Straight Outta Compton*, where the naive '90s rap group gets cheated by lawyers and the record companies. Is that a cautionary tale that's become outdated?**

I don't think that story is outdated at all. Listen, the business side of music is driven by desperation. You're talking about someone with a dream who puts their art out into the world and is trying to make a living at it. When you have opportunity dangling right in front of you, you can make bad decisions. The key is not to be desperate. If you shift the power, you shift the conversation.

**You were once an aspiring rapper. Are you ever disappointed it didn't work out for you as an artist?**

Not really. But every once in a while, I'll listen to an old demo. That was definitely my dream. I started rapping when I was 12. I used to write my own lyrics, and I worked out of the studio where [hip-hop group] EPMD recorded their first three albums. I'd go to the record companies and pitch my stuff, and I even had some label

PHOTOGRAPH BY WENDY LE

interest at one point. I did that until the end of high school, and nothing happened. So I went to college at Howard University.

**During law school, you clerked for well-known entertainment lawyer L. Londell McMillan, who represented Prince, Stevie Wonder, Lil' Kim and Michael Jackson. You read about him in *Black Enterprise* magazine and cold-called the firm. What did you say?**

First of all, I'd worked for four years before law school, so I had a little more maturity than the average law student. I knew I could do this. I didn't have any concerns about what would happen after I got him on the phone. When I came in for an interview, I told him what I could do to add value to his practice. People are always asking "Show me the forms" or "Teach me entertainment law." But my thing was: "I am going to do everything in my power to make your life easier." I worked in technology; I've managed people. And I have a passion for zealously advocating for creatives.

**How did your tech background help?**

It was actually one of the reasons I was there through the summer, through the next school year and then after graduation. For example, I was able to quickly

grasp the importance of ring tones and SoundExchange [a performance rights organization for online radio and internet radio], allowing me to make sure my boss was ahead of the curve and capitalizing off those new revenue streams for our clients.

**What's exciting you right now about the music business?**

I'm excited about the concept of success shifting. It used to be you sold this number of records, you got a gold or platinum plaque. In today's marketplace, there are so many different revenue streams that you can have an extremely successful career with a very niche audience. I have a client, Vince Staples, who had a critically acclaimed album, *Summertime '06*. Five or 10 years ago, you'd look at his sales for the album and say, "This guy's not that successful." But he's touring all around the world and has several endorsement deals. I find this very compelling, and it's what keeps me motivated.

**Is it about more than just making music?**

You definitely have to hustle more. You have to be more entrepreneurial. And that's the challenge because you don't want people to lose their creative space. But if you want to succeed, you've got to get out there.

—Jenny B. Davis

# Feather in Your Cap

Supreme Court advocates carry home traditional mementos

**THE SUPREME COURT** is a place of tradition. It is an institution of custom and continuity—from the seniority system that decides where the justices sit on the bench to who answers the door during their secret conferences to the handshake before they deliberate.

One unique tradition, maintained since "the earliest sessions of the court," according to the Supreme Court's public information office, is presenting goose-feather pens to advocates who appear for oral argument.

The practice reportedly dates back to the early 1800s, when Chief Justice John Marshall provided lawyers with quill pens and inkwells to take notes. Today, "one set of two quill pens is placed before each chair at counsel's table at every oral argument," according to the information office.

"The pens are a perfect memento of your trip to the Supreme Court," says Gregory Garre, a partner and global chair at Latham & Watkins' appellate practice and a former U.S. solicitor general—the government's top lawyer in the court. "Sometimes they invoke very pleasant memories, and other times very painful ones."

The keepsakes don't just land in the hands of the lucky few who argue cases. "Typically, there are several quills on counsel's table so that you can share them with your colleagues who have worked just as hard on the case but may not have the chance to argue," Garre says.

The high court estimates that it distributes 650 sets of hand-cut goose quills each term. Garre got his first pen from John G. Roberts Jr. before the chief justice joined the high court.

Lisa Blatt, head of Arnold & Porter Kaye Scholer's appellate practice, has in her glass-walled office a vase with 34 pens—one for each of her arguments. "I keep one for myself and give the rest to clients or



Lisa Blatt keeps 34 pens on display in her office—one for each of her high court arguments.

my team," she says.

For some lawyers, the pens become family heirlooms. Cliff Sloan, a high court advocate who wrote a book on Marshall, gave each of his three children a framed quill as a high school graduation gift.

Sloan isn't alone. "When my kids were a certain age, I gave them some to play with," says Kannon Shanmugam, Williams & Connolly's appellate head, who has argued 19 cases. "They still display them in their rooms." Shanmugam summed up the practice perfectly: "The Supreme Court prizes tradition and continuity. The giving of quills is one of the court's great traditions."

—Anthony Franze

PHOTOGRAPH COURTESY OF ARNOLD & PORTER KAYE SCHOLER

# Loving, Then and Now

Landmark court case gains renewed significance on the big screen



The 2016 movie *Loving* depicts the story of Mildred and Richard Loving, who were arrested in the 1950s because their interracial marriage violated Virginia's anti-miscegenation statute.

marry violated the 14th Amendment's equal protection and due process clauses.

Although the movie is about a landmark court case, it isn't a traditional legal drama loaded with intense courtroom scenes. For Parker, that deliberate filmmaking decision helped show that the Lovings were two regular people "who were pointedly not activists," but who made history, he says. But at least one of the lead attorneys was unimpressed.

"I didn't like the film, personally," says Hirschkop, who helped argue the case. (See "Justice for All," page 33.) "It was entertaining but

flawed." Much of what was portrayed didn't happen, says Hirschkop, who wasn't interviewed by the filmmakers even though he's a character in the film. "I understand the writer's privilege,

but the inaccuracies disturb me—especially when they're unnecessary."

Despite Hirschkop's review, legal scholars are unanimous on the impact the case had on history and the importance of the film's message.

In the more recent fight for marriage equality, personal stories such as the Lovings' played a similar role in persuading the Supreme Court justices who decided *Obergefell v. Hodges*, the 2015 landmark case that prevented states from banning same-sex marriage. Wallenstein says although early efforts to apply *Loving* to LGBT couples were rebuffed, the case still was "an important tributary in a growing river. It gave language for substantial change to take place," even though it took decades.

—Leslie Gordon



**WHEN IT COMES TO CIVIL RIGHTS** milestones of the mid-20th century, a trifecta stands out: the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the U.S. Supreme Court's 1967 *Loving v. Virginia* decision. The latter dismantled one of the last vestiges of segregation—a law that crossed from the public domain into the privacy of the bedroom.

"During the '60s, all the formal trappings of Jim Crow were gone, but there was one tower left and *Loving* brought this down," says Peter Wallenstein, a Virginia Tech history professor who has written two books about the *Loving* decision, which invalidated state laws that banned miscegenation.

Marriage, which was not covered by the Civil Rights Act, was one of the last areas of overt discrimination, says Dennis Parker, director of the American Civil Liberties Union's Racial Justice Project. "It was the last bastion of historical racism," he says. As a result, *Loving* had "an extraordinary impact" and signaled a change in societal attitudes.

On the 50th anniversary of the decision, the *Loving* case has gained renewed significance, and the recently released Hollywood film by the same name has revived the story for the masses, at a time when issues that surround equality and state's rights are dominating the political discourse.

The *Loving* movie chronicles the love affair between Richard Loving, a white man, and Mildred Loving, a black woman, who were arrested in the 1950s because their interracial marriage violated Virginia's anti-miscegenation statute. Exiled from the state, they moved to Washington, D.C., but desired to return to Virginia. Mildred Loving wrote to then-Attorney General Robert Kennedy, seeking help. Kennedy then referred the couple to the ACLU, which took the case alongside two upstart pro bono lawyers, Philip Hirschkop and Bernard Cohen.

Eventually, in 1967, the Supreme Court unanimously decided in their favor, holding that state laws that foreclosed the opportunity to

## Hearsay

### More Than \$81 Million

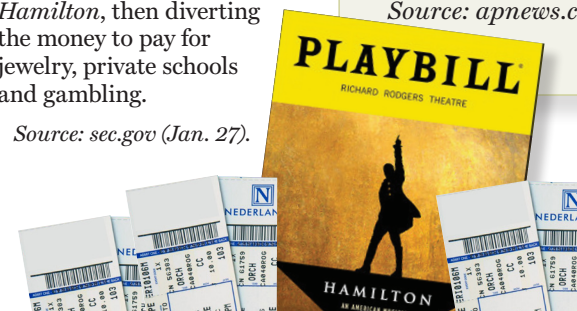
It's not quite the cost of a *Hamilton* ticket, but it's how much was raised in an alleged Ponzi scheme to defraud investors that involved the purported resale of seats to the hit Broadway show and other A-list events. The Securities and Exchange Commission filed a civil suit that accused Joseph Meli and Matthew Harriton of falsely representing to clients that they had an agreement with producers to buy 35,000 tickets to *Hamilton*, then diverting the money to pay for jewelry, private schools and gambling.

Source: *sec.gov* (Jan. 27).

### 137,000

How many views the live YouTube broadcast got during oral arguments over President Donald Trump's travel ban. The 9th U.S. Circuit Court of Appeals heard from lawyers for the state of Washington and the Department of Justice. CNN, Facebook, MSNBC and other networks also live-streamed the audio to additional viewers. It was the largest audience for a 9th Circuit oral argument since the San Francisco-based court began to live-stream about two years ago.

Source: *apnews.com* (Feb. 7).



## Did You Know?

The *Harvard Law Review* has elected its first African-American woman as president of the prestigious journal. ImeIme A. Umana will supervise more than 90 student editors and staff members. Last year, as part of a commitment to better reflect society, the *Review* elected "the most diverse class of editors in its history."

Source: *thecrimson.com* (Jan. 31).

## Quick Bites

Columbia Law School student Oriane Hakkila took a break from the books to appear on the Food Network TV show *Cooks vs. Cons*, winning the contest and taking home \$15,000. On the show, amateur chefs face off against professionals in a series of culinary challenges. Hakkila's winning dishes were shrimp scampi sauteed with common salad bar toppings and a Southern red-eye gravy with brewed coffee, over prosciutto-wrapped pork loin and coffee-roasted root vegetables.

Source: *law.columbia.edu* (Jan. 19).



## Cartoon Caption Contest

**CONGRATULATIONS** to Mike Matesky of Seattle for garnering the most online votes for his cartoon caption. Matesky's caption, far right, was among more than 90 entries submitted in the *Journal's* monthly cartoon caption-writing contest.



**JOIN THE FUN** Send us the best caption for the legal-themed cartoon above. Email entries to [captions@abajournal.com](mailto:captions@abajournal.com) by 11:59 p.m. CT on Sunday, April 9, with "April Caption Contest" in the subject line.

For complete rules, links to past contests and more details, visit [ABAJournal.com/contests](http://ABAJournal.com/contests).



"The terms and conditions were drafted by Pete here, but the sentiment is all mine."

—Mike Matesky of Seattle

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