



Asian American
Bar Association
of New York

A Rising Tide of Hate and Violence against
Asian Americans in New York During COVID-19:
Impact, Causes, Solutions

Paul | Weiss

COVID-19 pandemic of 2020 has directly impacted all Americans, nowhere more so than in New York City, one of the original epicenters of the pandemic in the United States. But while Americans may be united in their suffering because of the pandemic, the pandemic has also divided American communities.

The impact of the pandemic on the Asian-American community in New York City is particularly profound. Beyond the pandemic's effect on public health, economic growth, education, medical services, food supply, and international relations, the Asian-American community has been blamed for the pandemic and the target of hate and violence.

This paper discusses the data showing that anti-Asian hate and violence have skyrocketed in 2020, focusing on the New York City region. What are the contributing factors and causes for this disturbing rise in anti-Asian hate and violence? And what actions have politicians, law enforcement, and community organizations taken to address anti-Asian hate and violence? How can we keep Asian Americans safe in America?

A Dedication to Corky Lee

This report is dedicated to Corky Lee, who passed away on January 27, 2021 due to COVID-19.

Through his life's work of photographic justice, he ensured that Asian Americans were part and parcel of American history. One of the last projects he documented was the effort to combat anti-Asian violence and harassment in the wake of COVID-19.

Corky Lee personified the Asian-American movement, and AABANY honors his memory by carrying on his work to combat indifference, injustice and discrimination against Asian Americans.



Photo Credit: Victor Suwathcharapinun

Foreword

Frank H. Wu
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When I was a kid growing up in the Midwest in the 1970s, I knew there was something not quite right when I was teased and taunted for no reason, ceaselessly if casually. My peers challenged me to kung fu fights with their eyes drawn back in a slant and chanting ching-chong-chink-jap-gook. Although we were the only family in the neighborhood who looked like us, the other Asian Americans whom I met now and then, of every ethnic background whether male or female, had been exposed to the same. But I was told by the adults supervising the scene to get over it, take the joke, and reply that sticks and stones would break my bones but words would never hurt me. As a consequence, I understood these incidents were merely in my own head, of no concern to anyone else, for whom they were indeed funny.

It was thanks to the murder of Vincent Chin, a Chinese American, at the hands of white autoworkers, during the depths of the recession of the early 1980s in my hometown of Detroit, the “Motor City,” that I realized I was not alone. Although I didn’t know him, I identified with him. He was bludgeoned with a baseball bat on the eve of his wedding, while out with buddies celebrating a bachelor’s party. As cerebral matter, spinal fluid, and blood pooled onto the pavement beneath him, spilling from a head cracked open, he uttered the last words, “It’s not fair.”

His killers used the same racial epithets with which I was more familiar than I cared to be. They said, using ample obscenity, that it was because of him they were out of work, apparently referring to the influx of imported cars into the market, upsetting the American monopoly that had prevailed until then. Forget that he was as assimilated as could be, it was mistaken identity twice over: Chinese, not Japanese; American, not foreign. To those who took out their frustrations on him, lethally, he nonetheless embodied Toyota, Tokyo, and by extension the “Orient” which was exotic and somehow sinister. The slurs pack their own punch. They lead to the sticks and stones.

Vincent Chin was symbolic, but not of what the men who took his life believed. Pleading guilty under the terms of a deal, they never denied the act; they only argued their motivation was plain anger as if that were an excuse. For their transgression, they were sentenced to probation for three years and a fine of \$3000 each, praised by the judge as good men who would not again do anything so bad. The older of the two, who according to witnesses swung the Louisville Slugger as if he were trying to hit a home run, even sued his car company employer for firing him, alleging discrimination. Chin has become iconic for experiencing in the fatal extreme what ordinary Asian Americans endure daily. As unique as any Asian American may wish to be, we face the same stereotypes and similar threats.

Two generations later, for all the progress in race relations that has been made, anti-Asian violence remains difficult to discuss, seemingly defeating even the most progressive activists. That is not only due to the trauma inflicted on individuals and communities but also owing to the potential for Asian American advocacy for civil rights to be misinterpreted. Yet anti-Asian violence is real. It is pervasive, serious, and recurring, ranging from the common cruelty of childhood bullying to hate crimes which include remorseless homicide. This study is much needed. For the ideals of our diverse democracy beckon the

world over as a beacon like no other. We are proud of that exceptionalism. Our ancestors or we ourselves journeyed through great hazards, risking and sacrificing to improve our lives and offer opportunities for our descendants. Only our own efforts, joined to universal appeals of morality, will generate change.

Our nation remains riven by race, after Civil War, Reconstruction, and the struggle for Black equality that culminated in legislation in the 1960s. Against the ongoing #BLM protests and within a context of disparities, white nationalism is resurgent again, overwhelming social media with grievances which devolve into conspiracy theories, about those others who are taking over. Those who are neither black nor white, who perceived as newcomers even if native born (like Latinx), neither benefit from the privileges correlated with majority status nor receive acknowledgement of problems corresponding with minority status. Asian Americans are ambiguous. We are caught “in between.”

Despite our shared stake in this society we have embraced, Asian immigrants and their American-born heirs, in some times and places including during the pandemic even in cosmopolitan New York City, feel as if we are exposed to hostility from all quarters, beset by whites, blacks, and even other Asian Americans organized in transnational gangs. Those feelings have a basis in fact. COVID-19 in particular has brought to the surface what bigotry might have been suspected to be lurking underneath, whether prejudice that is suppressed for decency and etiquette or perhaps even bias which is unconscious or half-heartedly renounced. People attacking Asian Americans during the quarantine, motivated by the virus, are not fearing contagion from disease but assigning blame for it. Asian Americans are visited by revenge directed toward a specter, an advanced version of the Yellow Peril, alleged to be culpable for sins ranging from the Vietnam War to an invisible infection. We are guilty by association even if our grandparents lament our alienation from their traditions.

There are many reasons for the omission of Asian Americans from discussions of race and civil rights whether deliberate or negligent. We are regarded as perpetual foreigners who have no standing within the community to hint at an injustice over which others if it were them would be outraged. Or we are assumed to be model minorities who are all doing well. These blend together in the lingering sense that Asians are doing better than we would back where we “really” came from, even if that is one of the many New York City Chinatowns, and implicitly could return to, with good riddance – overseas, as well as in the resentment which becomes racialized based on the erroneous notion that Asian Americans have gained from what others have lost. Asian Americans who stand up and speak out may do so with accents, or, if not, told with surprise, “My, you speak English so well.”

Either way, we are dismissed as irrelevant, the “Johnny come lately” whose case deserves no priority. Even people, including Asian Americans, who learned Chinese workers — 15,000 of them — built the western half of the transcontinental railroad completed in 1869 are not taught anything about the lynchings and mob violence that purged those same laborers from the nation after they had toiled to unite it. The Japanese American internment of World War II may have been mentioned in school, but the government finding based on what was known at the time that it was not justified by military necessity typically is not emphasized.

The evidence, ironically, confirms that Asian Americans hesitate to call out discrimination. We may be reluctant for cultural reasons to raise a fuss. Our elders warn us not to dishonor the family. The admonition is internalized as meaning not revealing you have been a victim, which implies your

weakness; and not attracting controversy by complaining, as if you cannot remedy the situation by yourself and without intervention. We are acutely aware of being pushed aside, as figuratively as literally, or mocked for language skills notwithstanding studious practice to imitate self-styled social superiors. We have encountered people whose sympathies are selective even if their rhetoric is about diversity, equity, and inclusion. People introduce their team which they praise for looking like America, and our absence is conspicuous. The more Asian Americans proclaim we belong, the more we provoke those who would insist otherwise. We are expected to smile politely as if we are the guest who ought not offend their host, even if the former's family has been here longer than the latter's. So we cannot be sure we will receive the modicum of consideration much less material help even from public officials who were elected to represent all of us. To have suffered is shameful, to bring notice to it more so. The image of Asian Americans is quiet, passive, and docile.

Thus Asian Americans become easy targets. We are reputed to be tourists carrying cash who won't fight back or even report wrongdoing. When we are targeted for assault, while out and about minding our own business, that means the aggression is not random but racial. Asian Americans also are loathe to admit, though it is true, that we can be perpetrators of misconduct toward other people of color, or bystanders who become complicit since we show scant solicitude for their suffering. Our desire to be safe can prompt us to shy away from others on the basis of assumptions, as strangers on the street at night signal whom we trust and whom we fear. We fail ourselves if we are not our better selves.

It is principled and practical for Asian Americans to pursue civic engagement and bridge building. Asian American identity itself is a coalition. It brings together people whose forebears fought total wars, one after another, with no love lost among them. The theme of "you all look alike," however, has inspired initially mutual defense on these shores and then what is genuinely "only in America." To declare "I am Asian American" is to be an optimist.

Asian Americans yearn to make good for America, in America, alongside other Americans, their co-workers and neighbors, who will accept us as we have adapted. The explanation that an Asian can be an American should not be necessary, neither as a defense to atrocities, or at all. To be Asian American is to be American, to express confidence enough in an experiment of self-governance to participate wholeheartedly. The Asian American Bar Association of New York City, the largest of local voluntary bars based on affinity, merits praise for taking on this project. The volunteers who compiled the information and offer recommendations are promoting the public good, through the rule of law which is the foundation of everything else we value. This document of pain is cathartic. More than that, it should be compelling.

Frank H. Wu is President of Queens College, City University of New York, and author of *Yellow: Race in America Beyond Black and White*. The opinions expressed here are his own.

A Letter from Congresswoman Grace Meng

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Grace Meng
Congress of the United States
Sixth District, New York

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February 3, 2021

Dear Asian American Bar Association of New York,

I write to commend and thank you for your work on the report entitled, “*A Rising Tide of Hate and Violence against Asian Americans in New York During COVID-19: Impact, Causes, Solutions.*” This report comes at an important time as the COVID-19 pandemic rages on, and the Asian American community continues to be a target of hate and violence.

Since January 2020 – and even before the first known COVID-19 cases in New York, there has been a significant number of reported anti-Asian incidents. Scapegoated for the spread of COVID-19, countless Asian Americans have been threatened, harassed, assaulted, or have had their businesses vandalized. This upsurge of racial discrimination against Asian Americans was fueled by misinformation about the coronavirus and usage of anti-Asian rhetoric terms like “Chinese virus” and “Kung-flu”. Shamefully, such rhetoric was perpetuated by the upper echelons of our nation’s Republican leaders at the White House and in Congress – further fanning the flames of fear and hate. As a result, in the midst of the COVID-19 crisis, Asian Americans were left fighting an additional front – that of hate and bigotry.

There are nearly 2 million Asian Americans who have been on the frontlines of this unprecedented pandemic – working across a variety of industries to keep us safe from harm, while keeping us treated and fed. It was heartbreaking to hear stories of Asian American health care workers whose lives were threatened by both COVID-19 and despicable racism.

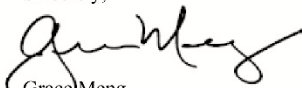
That is why, in the 116th Congress, I introduced House Resolution 908, a resolution condemning all forms of anti-Asian sentiment as related to COVID-19. I was proud to lead this resolution with then-Senator Kamala Harris, and Senators Hirono and Duckworth. Endorsed by over 500 organizations across the nation, including AABANY, my resolution passed the House of Representatives in September 2020.

After the historic 2020 presidential election, I urged then-President-elect Biden to take executive action on efforts to condemn anti-Asian hate, and to recognize the unequal access to COVID-19 resources due to linguistic and cultural barriers. I am proud that on January 26, 2021, President Biden took a historic stand for Asian Americans by signing a Presidential Memorandum to address anti-Asian sentiment and hate crimes against the Asian American community, as well as language and cultural barriers in COVID-19 response and recovery.

I also want to thank AABANY for recognizing our local friend and legendary photographer, Corky Lee. Corky’s contributions to the Asian American community is unmeasurable. As a political activist, he chronicled the lives of Asian Americans through the photographs he took, many of which sought to combat injustices. Corky was like a walking museum, capturing the battles Asian Americans fought, including that of anti-Asian hate during COVID-19. His death is a terrible loss for our community, but he and his work will forever be remembered.

For too long, Asian Americans have been fighting against anti-Asian hate and xenophobia. Throughout history – and even today, our community is made either “invisible” or are seen as the “other” – a perpetual foreigner; but we are neither. And this report speaks to the startling impact anti-Asian hate has on our community. While we have a long road ahead, I look forward to working with you in the fight for the future and voice of Asian Americans in our nation.

Sincerely,


Grace Meng
Member of Congress

1. The COVID-19 Pandemic's Impact on the Asian-American Community

Anti-Asian hate incidents increased dramatically in the wake of the 9/11 attacks and then surged after the election of Donald J. Trump. South Asian, Muslim, Sikh, Hindu and Middle Eastern communities all faced recurring cycles of harassment and violence.¹ Since the onset of the pandemic, however, anti-Asian hate incidents now primarily directed at East Asians have skyrocketed according to both official and unofficial reports. Across the country, there were more than 2,500 reports of anti-Asian hate incidents related to COVID-19 between March and September 2020. And this number understates the actual number of anti-Asian hate incidents because most incidents are not reported.



A. The Asian-American Community: Who Are We?

Asians comprise 13.95% of the New York City population and 17.64% of the Asian population lives in poverty.² The Asian community in New York City includes native-born New Yorkers as well as immigrants, tourists and exchange students. All have been severely impacted by the pandemic. The Asian-American community has higher-than-average business ownership,³ and Asian-owned businesses were some of the earliest to experience declines at the early onset of the pandemic (including due to fears that COVID-19 could be transmitted through Chinese food)⁴. Asian Americans have also filed a disproportionately high percentage of unemployment claims. By mid-April, Asian Americans, who accounted for 9 percent of the state's labor force, had filed 14% of the state's unemployment claims.⁵

In the meantime, economic recovery for Asian Americans is expected to be slow due to institutional barriers which could be exacerbated by racial bias. A majority (75 percent) of Asian American-owned businesses lack existing relationships with a mainstream bank or credit union and thus have little chance of obtaining a Paycheck Protection Program (PPP) loan.⁶ Asian Americans also face language barriers in obtaining government relief: none of the four financial-relief services offered by the United States Small Business Administration provide translations into Asian languages.⁷ The general public may be slow to return to Asian-American businesses due to lingering bias and fear related to the pandemic.

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Approximately two million Asian Americans are working as essential workers.⁸ In the medical profession alone, Asian Americans constitute 20.4 percent of physicians and surgeons, 9.8 percent of registered nurses and therapists, 7.7 percent of healthcare technologists and technicians, and 6.9 percent of physician assistants, despite representing only 5.9 percent of the U.S. population.⁹ In New York state, Asian Americans comprise an estimated 11.6 percent of the healthcare work force,¹⁰ and within the Asian-American community, Filipinos and Fijians constitute the largest percentage of healthcare workers at 11.5 percent and 10.1 percent, respectively.¹¹ The toll has been devastating for Filipino-American nurses. Nearly one third of all nurse deaths are Filipino-American, despite making up only 4% of all nurses in America.¹²

B. Anti-Asian Hate and Violence Skyrocket During the Pandemic

Despite Asian Americans' long history in America and their involvement in healthcare and small businesses in the community, hate incidents towards Asian Americans have increased during the pandemic.

There have been widespread reports of hate incidents (both physical and verbal abuse) against Asian Americans during the pandemic. Hate incidents encompass all overt acts of racial prejudice, including harassment, racial slurs, spitting, as well as hate crimes defined by statute. Overall, the collected data shows that hate incidents

comprise 90% of the total cases. Under federal law, a hate crime is willfully causing or attempting to cause bodily injury because of, *e.g.*, a person's race, color, or national origin.¹³ Other crimes, like property crimes, may also carry longer terms of imprisonment when motivated by bias against, *e.g.*, a person's race, color, or national origin.¹⁴ In addition, nearly all states have separately enacted hate crime laws.¹⁵ In New York, a wide variety of criminal offenses are defined as hate crimes when they are motivated by bias or hate against, *e.g.*, a person's race, color, or national origin, and are subject to enhanced penalties.¹⁶

For example:

- An Asian woman wearing a face mask was assaulted and called “diseased” in a NYC subway station in February 2020.¹⁷ In a video clip of the incident, a man appears to be kicking and punching the woman.¹⁸
- In March 2020, a Chinese-American lawyer, her young child and husband were verbally harassed and threatened by a woman blocks from their home. Hurling anti-Asian invective, the event was covered in social media. Despite reporting this to the NYPD, no arrest was ever made.¹⁹
- Also in March 2020, an Asian man was kicked from behind while walking on the street and fell to the ground, with the attacker adding, “F--king Chinese coronavirus” and telling the man to go back to his country. The man also told police that the attacker spat in his face.²⁰
- Around the same time in March 2020, an Asian woman was hit by a stranger who screamed, “Where’s your corona mask, you Asian b---h!” in Manhattan.²¹
- In Queens, a man and his son were yelled at by a stranger who yelled, “Where’s your f---ing mask, you Chinese b---h?” The stranger followed the man and his son to a packed bus stop and then tried to hit the man over the head. The man was later charged with aggravated harassment as a hate crime.²²
- A writer for *The New Yorker* said she was taking out her trash in March 2020 when a man walking by began cursing at her for being Chinese.²³
- A 30-year-old from Syracuse, NY was verbally abused in a grocery store by a man who shouted, “It’s you people who brought the disease.” That same day, the victim experienced verbal abuse from two couples at Costco.²⁴

- A 51-year-old Asian woman was attacked on an MTA bus by four female suspects who made anti-Asian statements and struck the victim on her head with an umbrella before fleeing.²⁵
- A man harassed an Asian woman in Rego Park, Queens, with expletives. When the victim tried to take a picture of the perpetrator, he slapped the phone out of her hand.²⁶
- In May, a 30-year-old Asian man was almost dragged out of his seat on the 4 Train of the NYC subway by a stranger who called the victim an “infected China boy.”²⁷
- A man who spat on a female Asian passenger and screamed, “Asians caused the virus!” and “Go back to China!” in a Bronx subway on July 31 was arrested on August 7, 2020.²⁸
- In October, a 40-year-old Asian man was choked and punched in the face just as he left his parked car near West 16th Street and Seventh Avenue in Manhattan. The attacker yelled racial slurs at him.²⁹
- In December, a 32-year-old Asian woman was confronted and punched in the face by three men and three women in the subway. Police reported that she was confronted over not wearing a mask and anti-Asian comments were made during the attack.³⁰

Asian Americans have also been the victims of countless other crimes, even though they are not classified as hate crimes due to purportedly insufficient evidence of racial animosity:

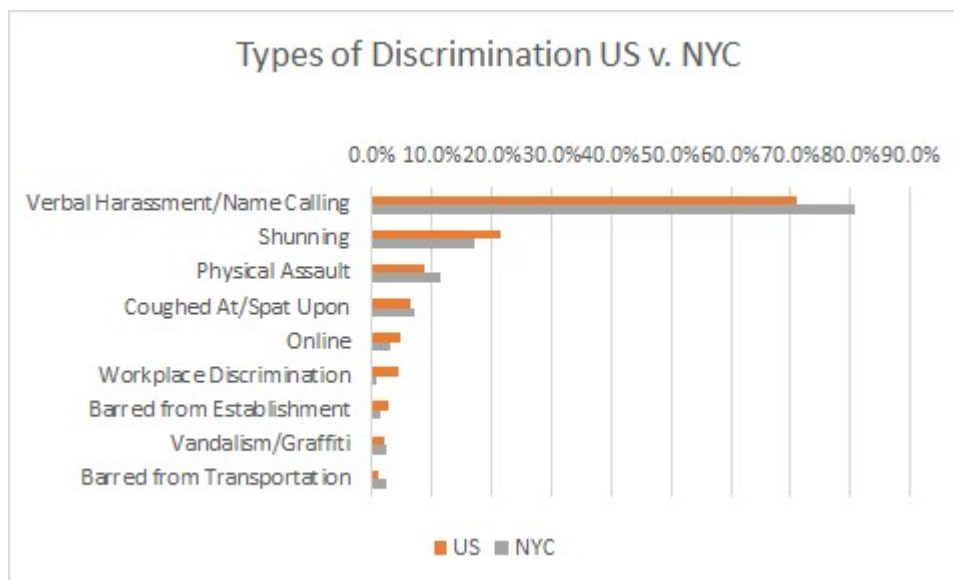
- A 39-year-old woman of Asian descent in Brooklyn was taking out the garbage when she was attacked by a stranger who poured a corrosive substance over her, leaving second degree burns to her face, neck, shoulder, and back.³¹
- An 89-year-old Chinese-American grandmother was assaulted in Brooklyn and then set on fire by two perpetrators. In early September, two 13-year old boys were arrested and charged with third-degree assault.³²
- In downtown Manhattan, Judge Phyllis Chu was punched in the jaw by a suspect on a bicycle as she walked to work from the Staten Island Ferry terminal.³³ The police investigated, but made no arrests.³⁴

- In early October 2020, jazz pianist Tadataka Unno was attacked and beaten as he tried to exit the subway station in Harlem. No arrests have been made.³⁵

The data bears out the anecdotal and reported incidents of violence against Asian Americans during the pandemic. As of December 31, 2020, there were 259 reports of anti-Asian incidents in New York reported to “Stop AAPI Hate,” which is sponsored by the Asian Pacific Policy & Planning Council, Chinese for Affirmative Action, and San Francisco State University’s Asian-American Studies Department. The vast majority of the incidents involve verbal harassment. However, shunning, physical assault, and being coughed and spat on are also being reported in alarming numbers. Moreover, New York data shows a greater number of transportation-related incidents compared to other regions of the U.S., which is consistent with the heavy use of public transportation in New York City. The number of online hate incidents reported underrepresents the level of anti-Asian aggression on digital platforms because the perpetrators’ identities are hidden and the aggression is often hate speech, as opposed to an attack on a particular individual. Current online infrastructures do not track or regulate hate speech.



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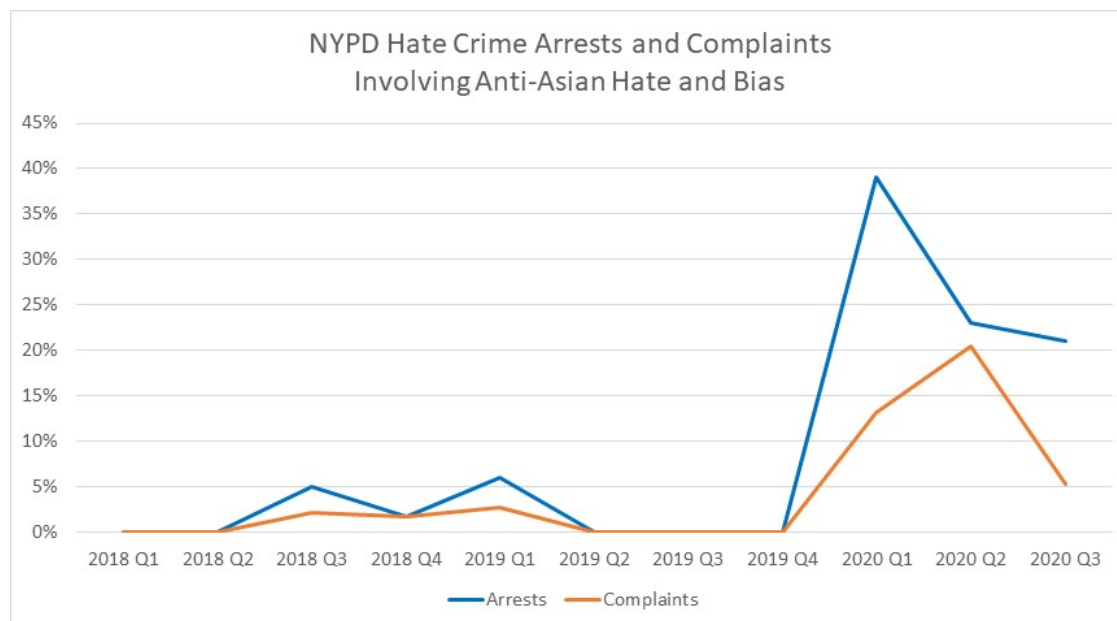


Anti-Asian Discrimination in the U.S. and in New York City from March 19, 2020 to December 31, 2020
(Source: Stop AAPI Hate)

Similarly, between February and May 2020, the New York City Commission on Human Rights (“NYCCHR”) received reports of 389 coronavirus-related hate incidents.³⁶ Of those, 145 complaints involved anti-Asian sentiment, representing 37% of all complaints received. According to local newspaper *City & State New York*, those 145 complaints show a “tenfold increase in anti-Asian complaints filed compared to the same period last year, which had only 12.”³⁷ One-third of Americans report that they have witnessed other individuals blame Asians for the outbreak.³⁸

Further, we note that incidents reported to community organizations represent a small fraction of the actual number of incidents targeting Asian Americans. Even fewer of those incidents are reported to the police. Nonetheless, police reports have dramatically spiked compared to the period before the pandemic. According to the NYPD, between January 1 and November 1, 2020, 24 coronavirus-related hate crimes were reported (a category that did not exist in 2019, but which are directed against Asians), which is eight times the number of hate crimes reported against Asians in the same period in 2019.³⁹ Indeed, in the first quarter of 2020, 23 arrests were made for racially motivated crimes, and 39.1 percent of those were reported with an anti-Asian bias, compared to only 6.1 percent in 2019.⁴⁰ In the third quarter, 19 hate crime arrests were made, of which 20 percent were for anti-Asian crimes.⁴¹ Meanwhile, the NYPD reports a decrease in reported hate crimes against other

groups during the same time period. For instance, there has been a decrease in reported hate crimes based on gender or sexual orientation, Anti-Semitic hate crimes, and hate crimes against Muslim, Hispanic and white populations.⁴²



(Source of data: N.Y. Police Dep't, Hate Crimes Reports, available at <https://www1.nyc.gov/site/nypd/stats/reports-analysis/hate-crimes.page>.)

Finally, we note with frustration that despite all of the incidents above, we do not have a single prosecution of anti-Asian bias or hate crime from 2020 that we are aware of. This is also true on the civil side, where complaints to civil law enforcement have also produced no meaningful response.

2. Causes and Contributing Factors

Anti-Asian hate and violence are not new. Historically, diseases and outbreaks have been used to rationalize racism and xenophobia against Asian Americans and against other perceived “out” groups. Such racism and xenophobia is often caused by a confluence of factors, some of which has little to do with disease itself.

Here too, several causes and contributing factors have given rise to anti-Asian hate and violence during the COVID-19 pandemic. In particular, actions taken by public figures—including elected officials within the government—and misinformation

and poor portrayal by the media can amplify disease-based stigma against Asian Americans, and further normalize and fuel racism.

A. History of Anti-Asian Hate and Violence

Targeting Asian Americans as a group to blame for the pandemic results from underlying social, political, or economic tensions. In times of stress, there is a tendency to blame groups that are seen as economic threats or as not assimilating or conforming. Such irrational fear and scapegoating are exacerbated when political figures misappropriate these crises to further their own agendas and divert public attention from the real causes of the underlying tensions.

The irrational fear and scapegoating are exacerbated when political figures misappropriate these crises to further their own agendas and divert public attention from the real causes of the underlying tensions.

Historically, anti-Asian racism was fiercest during times of economic downturn, war, and disease. In the late 19th and early 20th centuries, there was a prevailing anti-Chinese sentiment fueled by economic fears that attributed declining wages and unemployment to competition from Chinese laborers. When the bubonic plague hit San Francisco, Chinese immigrants were singled out and blamed.⁴³ When the body of a Chinese laborer—suspected of having died from the plague—was found in Chinatown in March 1900, authorities immediately quarantined Chinatown, only to find, three and a half months later, that there were no cases of bubonic plague within Chinatown.⁴⁴ The Chinese Exclusion Act—enacted in 1882 and permanently extended in 1904 to prevent Chinese laborers from entering and obtaining citizenship in the U.S.—was also partly justified on the grounds that the Chinese brought a variety of infectious diseases, including the bubonic plague, into the country.⁴⁵

The detention of Japanese Americans in internment camps during WWII, pursuant to President Roosevelt’s Executive Order 9066, was also a result of scapegoating—albeit for war—motivated by economic, social, and political tension.⁴⁶ On the West



Manzanar barracks. Japanese Americans were interned here during World War II.

Coast, long-standing racism against Japanese Americans, motivated in part by jealousy over their commercial success, erupted into furious demands to remove them indiscriminately to relocation camps for the duration of the war. Japanese immigrants and their descendants, regardless of citizenship or residence status, were systematically rounded up and placed in crude, cramped detention quarters.⁴⁷ In the now infamous decision of *Korematsu v. United States*, the Supreme Court upheld the exclusion of Japanese Americans from the West Coast war area, denying the obvious racial motivations behind it.⁴⁸

During the economic downturn that hit the U.S. auto industry in the 1980s, Asian Americans were also blamed—due to the growing presence of Japanese auto manufacturers in the U.S. at that time—and the scapegoating led to the death of Vincent Chin.⁴⁹ On June 19, 1982, Chin, a 27-year-old Chinese-American in Detroit, was beaten to death by two white autoworkers, Ronald Ebens and Michael Nitz.⁵⁰ Ebens allegedly said to Chin, “It’s because of you little m-f-s that, we’re out of work.”⁵¹ Neither Ebens nor Nitz received any prison time—they were convicted of manslaughter, sentenced to three years’ probation and ordered to pay a \$3,000 fine.⁵² In defense of his light sentencing, the presiding Judge Charles Kaufman said, “These aren’t the kind of men you send to jail. We’re talking here about a man who’s held down a responsible job for 17 or 18 years, and his son is employed and

is a part-time student. You don't make the punishment fit the crime, you make the punishment fit the criminal."⁵³

In the aftermath of the September 11 attacks by Al-Qaeda, South Asian Americans, Muslim Americans and Middle-Eastern Americans became targets of hate and violence based on their appearance, ethnicity, or religious affiliation. Eighty-one hate incidents against South Asians were reported nationwide in just the one week following 9/11.⁵⁴ Government and law enforcement agencies, including the NYPD, also implemented programs that subjected South and Southeast Asians to surveillance and profiling.⁵⁵ One example is the National Security Entry-Exit Registration System, which required men entering the U.S. from certain countries, including Bangladesh, Pakistan, and Indonesia, to be fingerprinted, interviewed, and photographed, and to check in with officials regularly.⁵⁶

B. Fear and Uncertainty Stoke Anti-Asian Hate During the Pandemic

The rise of anti-Asian hate and violence during the pandemic is in part explained as a reaction to uncertainty and fear. One response to the threat of disease is to conform with what are perceived as culturally accepted and normalized attitudes, and to associate with familiar national or ethnic groups. This provides some people with a sense of security and belonging, thereby serving as a defense mechanism against the fear of one's own mortality.⁵⁷ Not surprisingly, discrimination often rises in response to perceived threats such as the COVID-19 pandemic. In order to create a sense of security and belonging, Asian Americans are scapegoated as a perceived "out" group (which necessarily defines an "in" group to which others belong). One study, which compared measures of racial prejudice across areas with different infectious disease rates, found that "[p]eople living in regions with higher infectious disease rates have a greater tendency to avoid out-groups because such avoidance reduces their perceived likelihood of contracting illnesses."⁵⁸

Actions taken by some public figures and by the media early in the COVID-19 pandemic further reinforced the "us" vs. "them," "out" vs. "in" dichotomy. For example, President Trump and other government officials referred to the disease as the "Chinese coronavirus," the "Wuhan coronavirus," or the "Kung Flu," phrases that appeared alongside a contrasting statement about the U.S.⁵⁹ News outlets also proliferated the use of similar labels throughout the pandemic.⁶⁰ Some officials' months-long, steadfast refusal to encourage the use of masks, and the higher usage

of masks in the Asian community, strengthened the anti-Asian stigma associated with wearing masks and bolstered the notion that masks (and thus Asians wearing masks) were anti-American.⁶¹

Anti-Asian racism and xenophobia during the COVID-19 pandemic is also fueled by rising economic and political tensions between the U.S. and China. As the world's second largest economy, China is increasingly portrayed in recent years as a threat to American global economic and military dominance and as the biggest competitor for U.S. jobs and technologies. Both political figures and



the media have, at times, suggested a relationship between the coronavirus and China's economic and political rivalry—for example, that the virus originated from Chinese weapons research or was manufactured by the Chinese government.⁶² Government officials, including the Secretary of Commerce, have also tied the virus directly to American jobs, touting that the coronavirus outbreak in China would “help to accelerate the return of jobs to North America.”⁶³ Even locally, in Brooklyn, community board member Ronald X. Stewart defended anti-Asian statements, telling New Yorkers to avoid Chinese restaurants, groceries, and businesses, arguing that “[t]hese Chinese restaurants in our community make millions of dollars off us. They don't hire us[,] don't donate to any of our events and express racism against us.”⁶⁴

C. Incomplete or Inaccurate Information Reinforce Anti-Asian Sentiment During the Pandemic

Racial animosity towards Asian Americans also stems from misinformation or incomplete information. During the early stages of the pandemic in the U.S., speculation about the origins of the virus and the methods of transmission was widespread, especially given the dearth of authoritative information and guidance.



Much of the speculation blamed Chinese people—and more broadly Asian Americans—for the pandemic. The anti-Asian statements Mr. Stewart defended came from a Facebook message shared by a staffer of New York Assemblywoman Mathylde Frontus, stating “We urge citizens to stay




away from Chinese supermarkets, shops, fast food outlets, Restaurant, [sic] and Business. Most of the owners went back to China to celebrate the Chinese New [Year] Celebrations. They are returning and some are bringing along the Coronavirus.”⁶⁵ Flights from China were banned while other international flights remained in operation. As a result, many quickly sought to blame Chinese people—and thus Asian Americans—for the pandemic; social media accounts are replete with tweets describing Chinese people as “backward,” “disgusting,” “dirty” and having “gross” eating practices, and that they should die because of coronavirus “karma.”⁶⁶

... social media accounts are replete with tweets describing Chinese people as “backward,” “disgusting,” “dirty” and having “gross” eating practices, and that they should die because of coronavirus “karma”

Later, it was determined that the COVID-19 strand in New York actually came from Europe, brought to New York by contagious passengers on flights from European countries.⁶⁷

D. Deep-Seated Anti-Asian Racism Is Exposed During the Pandemic

Pandemics are often used to justify a return to nativist beliefs or beliefs in innate racial or cultural superiority. Such beliefs against Asians and Asian immigrants date back to “the Yellow Peril” in the mid-1800s, which labeled Chinese immigrants as, among other things, “uncivilized, unclean, and filthy.”⁶⁸ During the bubonic plague outbreak in the early 1900s, so-called experts posited that whites are less susceptible to the plague compared to Asians because of the “inherent racial superiority and proper European habits.”⁶⁹ Unfortunately, many of these prejudices

<p>Daily Mail <small>.com</small> </p> <p>Revolting footage shows Chinese woman eating a whole bat at a fancy restaurant as scientists link the deadly coronavirus to the flying mammals</p>  <p><small>© Douyin77maggie77</small> <small>+15</small></p> <p><small>Viral footage purports to show a fashionable Chinese young woman biting one of the wings of a cooked bat at a fancy restaurant. The deadly coronavirus could come from the animal</small></p>	<p>The New York Times</p> <p><i>China's Omnivorous Markets Are in the Eye of a Lethal Outbreak Once Again</i></p> <p>The coronavirus that has spread from Wuhan has been linked to the sale of live wildlife at a market that experts describe as a perfect incubator for novel pathogens.</p>  <p><small>A market in Shenzhen, China, in 2016. Chinese markets have now been linked to the spread of a novel virus twice in two decades. Link</small></p> <p><small>The NY Times</small></p>
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and stereotypes still linger. Thus, at the onset of the pandemic, many news outlets played videos purporting to show Chinese people eating bats, “as scientists link the deadly coronavirus to the flying mammals.”⁷⁰ Other news outlets reported that the coronavirus began in Chinese wet markets, describing them as “omnivorous” markets.⁷¹ These were common means of perpetuating racialized “Orientalist” tropes.⁷²

Some high-profile public figures propagated these nativist beliefs. For example, in March, U.S. Senator John Cornyn described the Chinese as “the culture where

people eat bats and snakes and dogs and things like that,” and saying, “they have a fundamental problem” because it “has been the source of a lot of these viruses.”⁷³ Senator Cornyn incorrectly cited China as the birthplace of Middle East respiratory syndrome (MERS) and swine flu.⁷⁴ Similarly, U.S. Senator Ted Cruz defended President Trump’s response to the coronavirus, stating that Trump “wasn’t serving bat soup in the Wuhan province.”⁷⁵ A Scottsdale, Arizona City Councilmember shared a Facebook post claiming that COVID-19 stood for “Chinese Originated Viral Infectious Disease” and “the number 19 is due to this being the 19th virus to come out of China.”⁷⁶

In addition to the express statements by public officials and the media that promote racism, subtle and implicit media portrayals have normalized discrimination as well. For example, photojournalism has, in many instances, implicitly linked Asian Americans to COVID-19. Many national news outlets—including the *New York Times*—have used pictures of Asians in COVID-related articles that have no direct connection with the community.⁷⁷

In one case, a news outlet tweeted a picture of an Asian man standing outside a Duane Reade in Queens and linked it to an article on the “[f]irst case of coronavirus confirmed in Manhattan,” even though the “first case” described in the article was a woman—whose race and ethnicity were unidentified—who contracted the virus while traveling in Iran.⁷⁸

... images of Asian people wearing masks influenced the general public to associate the virus with Asians, and stigmatized mask-wearing in the United States

Similar mischaracterizations from the media were also seen during the SARS epidemic in 2003, when media outlets illustrated their stories with unrelated images of Chinatown buildings or Asian people wearing face masks.⁷⁹ These images of Asian people wearing masks influenced the general public to associate the virus with Asians, and stigmatized mask-wearing in the U.S.

3. Action, Inaction, and Reaction

While many have denounced the rise of COVID-19-related anti-Asian racism and harassment, there has been limited legislative and executive action at the federal, state, and local levels.



Rep. Grace Meng (D-NY)

At the federal level, Representative Grace Meng (D-NY) introduced a resolution in the U.S. House of Representatives on March 25, 2020 condemning all forms of anti-Asian sentiment related to COVID-19 and calling on federal law enforcement officials to work with state and local officials to investigate hate crimes and incidents against the Asian-American community.⁸⁰ On May 14, 2020, Senators Kamala Harris (D-CA), Tammy Duckworth (D-IL), and Mazie Hirono (D-HI) introduced a companion U.S. Senate resolution.⁸¹ These resolutions have garnered the support of 50 scientific and professional organizations.⁸² A group of senators, including Senators Charles Schumer (D-NY) and Kirsten Gillibrand (D-NY), also wrote a letter to President Trump, echoing concerns from national security leaders that anti-Asian prejudice and stigmatization undermine American values of hope and U.S. leadership abroad.⁸³

Some state legislatures have followed suit. An Ohio state senator introduced a resolution denouncing discriminatory words and deeds resulting from COVID-19 and acknowledging the “responsibility to speak out and advocate on behalf of people who are experiencing stigma as a result of COVID-19.”⁸⁴ A Utah state senator and state representative have sponsored a resolution whereby the state legislature and governor would express “solidarity and support for the Chinese people’s efforts to contain the coronavirus.”⁸⁵ Two New Jersey representatives introduced a resolution “denouncing racism and any form of bias crime in New Jersey resulting from the coronavirus,” which would encourage the governor and attorney general to provide state assistance to hate crime victims and to enhance security measures and improve preparedness at targeted institutions.⁸⁶

Local governments of cities and counties in several states, including Illinois and California, have also successfully passed resolutions denouncing xenophobia and

anti-Asian sentiment.⁸⁷ The New York State Assembly Asian Pacific American Task Force established a virtual weekly town hall to build solidarity among local communities in the face of rising hate crimes against Asians and to discuss solutions for the pandemic's heightened impact on minorities.⁸⁸ Additionally, New York State Assembly Member Ron Kim called upon Mayor de Blasio and Richard A. Carranza, Chancellor of the New York Department of Education, to implement anti-bullying and anti-hate lessons in K-12 schools to combat a rising trend in anti-Asian sentiment and violence.⁸⁹

There have been federal and local government efforts to address this wave of anti-Asian hate and violence. In April, the Equal Employment Opportunity Commission (EEOC) began tracking workplace discrimination charges related to the coronavirus,⁹⁰ a few weeks after the agency called on employers and workers to "create respectful workplaces" during these times when "the anti-discrimination laws the EEOC enforces are as vital as ever."⁹¹ At the state level, in March, New York Attorney General Letitia James established a state hotline for reporting hate incidents and hate crimes in the wake of rising reports of harassment and assaults against Asian Americans amidst the pandemic.⁹² From February 1, 2020 to September 30, 2020, the NYCCHR received over 566 reports of discrimination, harassment, and bias related to COVID-19, of which 184 were anti-Asian in nature. By comparison, over the same time period last year, NYCCHR received 26 reports of anti-Asian discrimination.

Following this sharp increase in reports of discrimination related to COVID-19, NYCCHR formally launched the COVID-19 Response Team in April 2020. The COVID-19 Response Team tracked and responded to incidents of discrimination and harassment connected to the pandemic, including by conducting emergency interventions, providing referrals to services, informing people of their rights, and commencing investigations. Since the formation of the COVID-19 Response Team, it has taken action in 249 matters. As COVID-19-related incidents of discrimination began to emerge in early 2020, the Commission has organized 16 in-person and virtual events as early as end of January and reaching nearly 5,000 community members. The Commission has provided ongoing outreach and education to impacted communities, including:

- Hosting events in Chinese neighborhoods in Manhattan, Queens, and Brooklyn educating community members about the NYC Human Rights Law.
- Conducting five virtual town halls—one each in English, Chinese, Korean, Tagalog and Japanese—with Asian and Pacific Islander community leaders to address concerns related to the underreporting of bias incidents to law enforcement. The town halls featured the Mayor’s Community Affairs Unit, the Mayor’s Office for the Prevention of Hate Crimes, the New York City Police Department, and New York district attorney’s offices, and were attended by over 1,800 people.
- Partnering on Bystander Intervention Trainings with Center for Anti-Violence Education in Chinese (Mandarin & Cantonese), Korean and English.
- Creation of videos by Commission staff on rejecting COVID-19-related discrimination and bias in Mandarin, Cantonese, Fujianese, Taiwanese, Korean, Tagalog, English, Arabic, Haitian Creole, and other languages.

In May, the NYCCHR launched a two-month, \$100,000 public education campaign to combat anti-Asian bias.⁹³ In August, the New York City Police Department formed an Asian hate crime task force to investigate anti-Asian attacks.⁹⁴

Nevertheless, many have characterized the overall government response as lacking.⁹⁵ Efforts from certain federal agencies have been notably absent. For example, although the CDC published a guide on reducing stigma during the COVID-19 pandemic,⁹⁶ the agency has been criticized as slow to respond when compared to its launch of a 14-member community outreach team during the 2003 SARS outbreak in response to stigma and hostility toward East Asians.⁹⁷ Likewise, the DOJ has not directly addressed anti-Asian hate crimes during the COVID-19 pandemic, despite having quickly launched a three-pronged response to address hate incidents against Asians in the wake of the 9/11 attacks.⁹⁸ In an early May letter, a group of 16 senators urged

Many have characterized the overall government response as lacking. Efforts from certain federal agencies have been notably absent.

Justice Department Assistant Attorney General Eric Dreiband to “take concrete steps to address the disturbing increase in anti-Asian discrimination.”⁹⁹ Two months later, a bipartisan group of about 150 members of Congress again called on the Justice Department to take action. Representative Ted Lieu (D-CA), who led the group, said they “did not understand why the Department of Justice wasn’t doing more in countering hate crimes.”¹⁰⁰

Many have attributed the inaction of the federal government to President Trump’s personal views, inflammatory statements, trade war with China, and political agenda in an election year. For example, State Senator John Liu noted in March 2020, “I will say that the so-called president certainly doesn’t help things when he repeatedly and intentionally characterizes COVID-19 as the Chinese virus.”¹⁰¹

On June 30, 2020, the New York City Council passed a city budget that redistributed \$1 billion from the NYPD budget to spending for education, summer programming for young people, social and family services, and public housing.¹⁰² Among the budget cuts, though, is the \$1 million Hate Crimes Prevention Initiative, a program that allowed various nonprofit organizations to take reports of hate crimes from residents who might not otherwise feel comfortable calling the police.¹⁰³ In 2019, 15 diversity groups, including one anti-hate violence group, The Center for Anti-Violence Education, shared that \$1 million funding, which also funded education and outreach on the available resources related to hate crimes.¹⁰⁴

**Among the budget cuts,
though, is
the Hate Crimes
Prevention Initiative**

4. A Path Forward

COVID-19 has triggered a wave of hate and increased violence against Asian Americans. This aspect of the pandemic reinforces the ease with which many Americans will revert to a long history of treating Asian Americans as “others.” Whether this reaction is because of stress, fear, or deep seated racism, it has had a profound impact on the Asian-American community in the U.S.

The reaction of the Asian-American community has been mixed—both in assessing the underlying problem and the possible solutions. There is frustration with the underreporting of anti-Asian hate crimes and incidents, especially official reporting to law enforcement, and debate as to whether this is a result of cultural barriers or lack of trust in the criminal justice system.¹⁰⁵ Because of underreporting and a lack of media attention, it is difficult to get an accurate and complete picture of the extent of anti-Asian hate incidents in New York. Further, the motivation element of hate crimes is sometimes difficult to prove, which means fewer prosecutions. This contributes to the perception by the Asian-American community that the police or the prosecutors are not committed to tackling anti-Asian violence.

Just as the causes of anti-Asian hate and violence are complicated, so are the solutions, and there are a diversity of views within the Asian-American community on the most effective path forward. Some have demanded more government action and more police attention to hate crimes against Asians.¹⁰⁶ Others want to defund the police, fearing that emphasis on hate crime prosecution will be used to further prosecute African Americans. In the wake of George Floyd's death and the ensuing protests against systemic racism and police brutality, more attention has been given to police reform. The movement to defund the police, described by some as reallocating and redirecting funding away from police departments to other government agencies, has gained popularity.¹⁰⁷ New York State Assemblyman Ron Kim, who is a proponent of this movement, called on Mayor Bill de Blasio in June 2020 to defund the NYPD, shift \$1 billion toward human services, and pass the #SaferNYAct bills.¹⁰⁸ And on September 3, 2020, 26 nonprofit organizations and collectives from the New York City Asian-American community signed onto a letter denouncing the NYPD's Asian Hate Crime Task Force and its potential to harm vulnerable minority communities.¹⁰⁹

Mindful of the ongoing debate within the Asian-American community on how to effect positive change, we have carefully weighed the arguments and propose the seven initiatives below. We offer them to spur dialogue and discourse that will help break the cycle of violence against Asian Americans.

A. Clear Reporting Mechanisms for Victims, Including Online and Hotline Reporting

Hate crimes and incidents often go unreported because, for many victims, filing an official report can be time consuming, too personal, and burdensome. Particularly during the pandemic, many individuals are reluctant to find a local police precinct, or to dial an emergency number and wait for police to arrive at the scene to take a report. There may be language barriers, as well as fear of backlash from the community or retaliation from the perpetrator. Because the majority of incidents are non-emergency situations, the burden of contacting the police and engaging in a lengthy reporting process is a strong deterrent for victims.¹¹⁰ As a result, the number of hate crimes or incidents actually reported to the police is shockingly low—for example, between January 1, 2020 and November 1, 2020, the NYPD only recorded 237 incidents of hate crimes.¹¹¹ And when law enforcement and government officials report (and rely upon) these numbers, they appear to lack appreciation for the severity of the problem.

There are many potential solutions to this particular problem. The ability to report through an official website or hotline, including anonymous reporting, would help protect the identity of the victims (at least for initial stages or when criminal charges are not being pressed) and eliminate some of the burdens of reporting. It would also increase the standardization of data collection. Online channels can also make the distribution of information regarding victim support services easier. Both reporting mechanisms and information for victims can easily be made available in multiple languages, thus reducing the challenge of finding police officers or translators with the requisite language capabilities to take reports from victims who are not proficient in English. Currently, both incident reporting and distribution of information are being supported by a variety of non-profit organizations, but government and law enforcement channels should be playing a bigger role in this area.

B. Uniform and Consistent Classification, Documentation, and Reporting of Hate Crimes by Law Enforcement as well as Uniform and Consistent Investigation and Prosecution of Hate Crimes

Another factor contributing to underreporting and to general dismay with law enforcement is the dearth of prosecutions of hate crimes against Asian

Americans.¹¹² Both police and prosecutors should develop uniform policies and procedures that are followed consistently for classifying, documenting, and reporting hate crimes as well as investigating and prosecuting potential hate crimes that are followed consistently where circumstances suggest hate may have been the motivation for the crime. Thus, rather than assuming that a crime does not involve hate because the victim did not, for example, report a specific hateful statement during the incident, if circumstances nonetheless indicate that hate may have been a motive for the crime (such as the COVID-19 pandemic and statements by government officials blaming Asians), police and prosecutors should still classify, document, and report the incident as a potential hate crime, and then rigorously investigate the potential role of hate in the crime before drawing conclusions. Similarly, even when physical injuries are not severe, the police should be vigilant about classifying incidents as hate crimes where applicable under the law, and elevate the crimes for prosecution. The initial classification, documentation, and reporting of the hate crime is critical because it prompts the allocation of time, resources, and expertise that are necessary to properly investigate and prosecute these types of crimes in a timely manner before evidence is lost. It is also critical because it is the first and, likely, only point in time at which crucial data on these types of crimes is captured (*e.g.*, number of potential hate crimes incidents, demographic information of the victims and perpetrators, location of the incidents, type of underlying crimes, etc.). This data is crucial for subsequent analysis if we ever are to understand what resources must be directed towards the prevention and deterrence of hate crimes going forward.

During the pandemic, for example, crimes against Asian Americans could be regarded with heightened scrutiny for hate motivation, similar to crimes against synagogues or crimes against Muslims or those perceived as Muslims in the post-9/11 time period. When the 89-year-old Asian grandmother was attacked and set on fire in Brooklyn this summer, it was described by the NYPD and the media merely as an assault because the perpetrators were not heard to have said anything during the attack.¹¹³ That crime could instead have been categorized by the police—and therefore reported by the media—as a *potential* hate crime and investigated as such.

Prosecutors should also be alert to circumstantial evidence of hate motivation and charge perpetrators with hate crimes in a consistent manner. They should also consider alternative charges. In New York, for example, under Penal Law § 240.30, an individual is guilty of aggravated assault in the second degree if:

With the intent to harass, annoy, threaten or alarm another person, he or she *strikes, shoves, kicks, or otherwise subjects another person to physical contact, or attempts or threatens to do the same because of a belief or perception regarding such person's race, color, national origin, ancestry, gender, gender identity or expression, religion, religious practice, age, disability or sexual orientation, regardless of whether the belief or perception is correct.*¹¹⁴

More uniform and consistent prosecution of hate incidents, coupled with greater transparency and public information and discussion about these efforts, would increase deterrence and encourage victims to make reports.

C. The Asian Hate Crimes Task Force and Greater Representation of Asians in Law Enforcement, Public Office, and the Courts

The NYPD has made a commendable effort to create the Asian Hate Crimes Task Force. It is now time to take further steps to ensure it is more than a token effort. We recommend these further steps to ensure the future effectiveness of the Asian Hate Crimes Task Force:

- Make the head of the Asian Hate Crimes Unit a commanding officer, with a recurring budget and office assigned to it.
- Instead of a volunteer task force, assign lieutenant sergeants and detectives to the Asian Hate Crimes Task Force.
- The divide between law enforcement and the Asian community is exacerbated by lack of readily available translation services. We recommend real-time 24-hour translation services be readily available to all NYPD employees who need it to perform their duties.

The above recommendations mirror the creation of the “Jade Squad” in the 1970s, when Chinese gangs garnered the attention of law enforcement. Enormous resources were devoted to the eradication of Chinese gangs and related criminal activity. The careers of police officers were “made” as they did important work in the Jade Squad—their work produced important promotions for those who served in the Jade Squad. Concomitantly, Asian Gang Units were also formed at the District Attorney’s office.¹¹⁵ As such, we recommend:

- Create an Asian Hate Crimes Unit in each District Attorney’s office across the city.

The divide between law enforcement and the Asian community is exacerbated by the under-representation of Asians in the police force, in public office, and in the court system.¹¹⁶ This contributes to a perception that Asians will not be treated fairly in the “system,” and that the government does not care about or understand the plight of Asians in the face of increasing anti-Asian racism.

The NYPD has made efforts to staff officers of Asian descent on the Asian Hate Crimes Task Force, which is headed by Deputy Inspector Stewart Loo.¹¹⁷ The Task Force is useful in communicating with the public, but it does not fully address the day-to-day experiences of the community with local police officers. Having Asian police officers positioned in the community – particularly if they have language skills – would increase the comfort level of Asian Americans to engage with the police, report crimes, and ask for help. This means increased funding and attention to recruiting police officers of Asian descent, and greater appreciation for diversity in all ranks, not just the targeted task force.

The same is true with regard to representation in public office and the courts. Racism and bias fester where positions of power are held primarily by the white majority.¹¹⁸ Institutions that are meant to both represent and serve justice to the community will be more effective if they more closely reflect the composition of the community.

An October 1, 2020 Report on Equal Justice in the New York State Courts, prepared at the request of Chief Judge Janet DiFiore of the New York Court of Appeals, marshalled complaints about “an under-resourced, over-burdened New York State court system, the dehumanizing effect it has on litigants, and the disparate impact of all this on people of color.”¹¹⁹ In effect, there is “a second-class system of justice for people of color in New York State.”¹²⁰ The Report recommended, among other things:

- to ensure greater transparency and accountability of its hiring and promotional practices, the Unified Court System should publish data, broken down by ethnicity, race, religion, sexual orientation, gender, etc., related to the hiring,

promotion, and retention of its judges and non-judicial personnel on a regular basis;

- the Court System should promote the efforts of independent organizations such as the Franklin H. Williams Judicial Commission, one of the nation’s first organizations dedicated to promoting racial and ethnic fairness in the courts;
- the Court System should mandate formal cultural sensitivity, racial bias, and inclusiveness training for all judicial and non-judicial personnel throughout the state;
- the Court System should streamline and increase awareness of its process for investigating complaints of racial bias and it should track and publish data regarding such complaints;
- the Court System should emphasize diversity on panels dedicated to hiring and promotional decisions concerning both judicial and non-judicial personnel within the Court System; and
- the Court System should provide more and better language interpreters for attorneys, parties, and jurors that appear before the Court to ensure that all Americans can meaningfully participate in the judicial process.

The Report also called for addressing juror bias, adopting a media policy against racially insensitive statements, and enhancing trust between court officers and the community.¹²¹

Diversity should be carefully considered as a factor for appointed government positions, including criminal court judges. For elected positions, greater grass roots efforts to increase the Asian voter base and ensure fair elections is a basic starting point. And sponsorship, encouragement, and support of potential candidates for office is a necessary responsibility of the Asian community.

D. Public Education Campaign

Public education campaigns have been effective mechanisms to educate and remind the public about important issues, and to raise public consciousness. For example, the advertising campaign in New York for “See Something, Say Something” has resulted in an increased number of reports from the public of suspicious packages

or activity.¹²² Similar campaigns regarding appropriate behavior on the subway— not to push, put backpacks on the floor, be considerate of others—have also helped promote this behavior.¹²³ During the pandemic, campaigns to encourage the use of masks have also been effective at increasing compliance with new rules mandating masks in public places.¹²⁴

A broad advertising campaign to promote kindness and respect for fellow New Yorkers and fellow Americans from all backgrounds could have a profound impact on public sentiment and behavior. The NYCCHR ran a public art campaign, “I Still Believe in Our City,” in celebration of Asian and Pacific Islander (API) New Yorkers. The campaign was created by Amanda Phingbodhipakkiya, one of the Commission’s two 2020-2021 Public Artists in Residence (PAIR). The series honored API and Black New Yorkers in the face of racial injustice, xenophobia, and COVID-19-related discrimination, harassment, and bias.

A feature of the campaign includes an art installation in the Atlantic Avenue terminal, where Phingbodhipakkiya’s 45 unique pieces celebrated East Asian and Southeast Asian New Yorkers, who have been disproportionately targeted for discrimination during the pandemic, as strong, compassionate members of their communities and showed solidarity with the Black Lives Matter movement and the fight to eliminate anti-Black racism. The Atlantic Avenue terminal was chosen for its centrality in connecting historically Black and API neighborhoods including Chinatown, Koreatown, Sunset Park, Crown Heights, Bedford-Stuyvesant and Weeksville, for being a site of reported anti-Asian harassment, reflecting the wave of COVID-19-related bias reports, and for its proximity to the Barclays Center, a de facto town square for Black Lives Matter demonstrations.

Campaigns like Phingbodhipakkiya’s series, “I Still Believe in Our City,” are welcomed and we believe will have a beneficial effect.¹²⁵ Widespread messaging would not only decrease hatred toward Asians, but encourage individuals to stand up for and help victims of hate crimes. The Asian American Federation, for example, hosted webinars on this topic in the early days of the pandemic.¹²⁶ At a minimum, such campaigns would help counteract false messaging from others directing blame for the pandemic toward Asians, which fuels hate and violence. At maximum art can help make visible the Asian-American experience, and reaffirm anti-Asian violence as deserving social and legal attention.

E. Stronger Unity and Collaboration Among Minority Groups

In communities like New York City where the population is diverse, there is a danger that hate incidents further deepen racial politics, including inter-minority racisms. No group is immune to bias and hate—both as victims and as perpetrators. Tensions between Asian and other minority communities are deep-seated, particularly in poor communities. This summer, the actions and inaction of Minneapolis police officer Tou Thao in the George Floyd incident cast a spotlight on these tensions.¹²⁷ In New York, anger and controversy over the fatal shooting of Akai Gurley by rookie police officer Peter Liang continues to be divisive.¹²⁸

Divisiveness, however, hinders the common purpose of all minority groups—equal treatment and respect under the law and in the community. These are not special pleadings; it's about universal values and American ideals. Unity and collaboration among minority groups, with mutual understanding and better communication to address tensions and common stereotypes about each other, would bolster the broader movement to effect change. This is not a new idea,¹²⁹ but the need for active coordination has never been more real.

Some collaboration is already underway. Leaders from different communities have expressed support for each other's initiatives. Asian activists have joined movements like Black Lives Matter, to stand in solidarity against unlawful force against black victims.¹³⁰ Minority groups have openly condemned anti-Asian violence.¹³¹ Within the legal community, the Asian American Bar Association of New York has reached out to members of sister bar associations and leaders in the community, among others, to solicit ideas and promote discussion, including with respect to this paper. But no doubt, more can be done. And leadership is required to wade through politics, conflicts, competing agendas, and apathy, to create a strong unified force.

F. Legislative Reform

Existing legislation that defines hate crimes can be expanded to provide greater protection against crimes motivated by racism. Currently, in New York and other jurisdictions, proof of a race-based motive is needed in order for the crime to be classified as a hate crime, and that is most commonly shown through an overt statement by the perpetrator.¹³² Legislators should consider new language that

gives greater protection to Asians and other minority groups during times of crisis like the pandemic. A presumption of hate and/or higher penalties during high-stress periods could help deter such crimes.

Various organizations are currently working with attorneys to propose legislative reforms to address this issue, including providing sufficient resources to address the rise in hate crimes and passing legislation to protect all communities against hate crimes, including the Asian-American community.¹³³ Such recommendations will require support from elected officials and the public, but may be one way to prevent future hate crimes.

Separately, legislation can be enacted to provide clearer standards and financial support to state, city, and county human rights commissions that sponsor hate violence prevention programs and victim response networks. Last year, both New York State and New York City updated their Human Rights Laws—enforced by the New York State Division of Human Rights and the NYCCHR, respectively—to better address gender-based discrimination in the workplace.¹³⁴ Similar legislative reform could provide clearer guidance to the commissions to better protect Asians and other minority groups from discrimination during the pandemic crisis.

G. Civil Actions

Finally, an alternative to criminal law enforcement is civil enforcement through engagement with administrative agencies to address anti-Asian harassment. Civil administrative complaints and remedies can be less burdensome and less intimidating for victims seeking to hold perpetrators accountable. The NYCCHR's enforcement of civil protections against discrimination in public accommodations presents one such civil enforcement model. Once a civil complaint is commenced, civil remedies including monetary damages can be sought through NYCCHR's mediation program. Additional resources should be committed to the mediation program to hire more mediators, particularly those with the ability to speak a language other than English. The monetary damage at issue may not be great, but the process of justice and the element of accountability are important steps forward in combatting hate crimes and incidents.

Separately, Civil Rights Law § 79-n empowers the New York Attorney General to seek to enjoin intentional activities causing physical injury or property damage to a person due to a belief or perception regarding that person's race, color, national origin, or ancestry.¹³⁵ This statute also allows private persons who are harmed to sue for both monetary damages and injunctive reliefs.¹³⁶ Several other states, such as California, Maine, Massachusetts, and New Jersey, also have similar statutes empowering their Attorneys General to civilly prosecute hate crimes and incidents.¹³⁷

* * *

The COVID-19 pandemic has exposed both the isolation and tribalism, as well as the inter-connectedness, of our communities. What is clear is that the fight for justice continues: that our laws provide for equal rights and opportunities does not mean that the Asian-American community experiences those rights and opportunities equally. The profound rise in hate and violence against Asian Americans in these challenging times is a call to action. We must dismantle the deep-seated racism and xenophobia that have haunted Asian Americans for the last 200 years since the first wave of Asian immigrants came to the U.S.

President Biden's January 26, 2021 memo was a start, and the administration has a critical leadership opportunity to address anti-Asian hate and racism from the federal level.¹³⁸ As such, we recommend the following concrete steps to the new administration as a starting point:

- Appointment of Vice President Kamala Harris as the Chair of the White House Initiative on Asian Americans and Pacific Islanders (WHIAAPI).
- Focus WHIAAPI to coordinate a federal response to the rise of anti-Asian harassment and violence during the COVID-19 pandemic, ensuring that this issue is connected to the larger focus on civil rights that the Biden/Harris administration is committed to.
- Assign the Department of Justice – Community Relations Service to focus on public education and community mediation in relation to anti-Asian incidents during the COVID-19 pandemic.

We welcome opportunities to discuss our collective experience, share ideas, and work toward solutions to address the root causes of anti-Asian racism and promote justice for all.

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Whoever, whether or not acting under the color of law, willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin of any person—

(A) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and
(B) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both
if—

- (i.) death results from the offense; or
- (ii.) the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

¹⁴ See U.S. Sent’g Guidelines Manual, § 3A1.1(a) (U.S. Sent’g Comm’n 2018). The Guidelines Manual is an advisory document that recommends a sentence length based on a crime’s “offense level,” the individual’s criminal history, and other considerations. Section 3A1.1(a) provides:

If the finder of fact at trial or, in the case of a plea of guilty or nolo contendere, the court at sentencing determines beyond a reasonable doubt that the defendant intentionally selected any victim or any property as the object of the offense of conviction because of the actual or perceived race, color, religion, national origin, ethnicity, gender, gender identity, disability, or sexual orientation of any person, increase by three levels.

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A person commits a hate crime when he or she commits a specified offense and either:

(a) intentionally selects the person against whom the offense is committed or intended to be committed in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, gender identity or expression, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct, or

(b) intentionally commits the act or acts constituting the offense in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, gender identity or expression, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct.

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An Asian Truth

By Bella Miraflores

you don't see.
no one does.
watch as you walk down the street
beside an old asian man
happy and bright
all of you blind
next thing you know
he's falling to the ground
hitting his head, blacks
out turn around
pitter patter
footsteps rush away
and a shadow laughs
disappears
that night you search
and find asian seniors
being pushed around
one even slashed cross the face
it's all racism
you focus on the asian
but no one else does
people look at celebrities tv shows
but blindside us
because asians are model minority
they're independent and happy
don't face racism Not a priority
not a priority to help
open your eyes
open your eyes!

we're always in the background
of our story no accounts
pushed away
when we ask for help
he says he does
he really takes a photo
and goes
goes away and I'm going to say
that this is unfair
and we have problems too
so wake up
and see our story for what it truly is.

you remember the slo-mo
of the fall
his expression
of it all
he was scared
like one would be
you cry
cause you stood by.
cause America
stands by.

Bella Miraflores is an 11-year old writer from New York City who believes that she can make a difference through her writing.

AABANY

Asian American Bar Association of New York