

Anti-AAPI Attacks and Moving Beyond: Update and Overview of Gibson Dunn's Recent Efforts

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Discrimination and prejudice against Asian American and Pacific Islander (AAPI) communities is not a new phenomenon. However, the COVID-19 pandemic has brought with it a surge in anti-AAPI harassment and hate crimes, with some institutions estimating a 124% increase in hate crimes between 2020 and 2021, followed by an even steeper 339% increase between 2021 and 2022.^[1] This exponential rise in anti-AAPI violence has drawn broader attention to a longstanding problem and an increased urgency to take action. Spearheaded by Debra Wong Yang, former partner Robert Hur, Veronica Moyé, David Lee, Betty Yang, Poonam Kumar, Cynthia Chen McTernan, Nicole Lee and many others, Gibson Dunn has responded through work on various fronts, including the founding of the Alliance for Asian American Justice, leadership of task forces and working groups, and representation of victims of anti-AAPI hate across the country. **Section I** of this report examines obstacles that stand in the way of accountability from (a) a prosecutorial perspective and (b) from the perspective of victims. **Section II** highlights the Firm's efforts, which are ongoing on multiple fronts, and **Section III** outlines possible paths forward as we continue to combat anti-AAPI hate. **I. Overview of the Problem** Twenty-four million Asian Americans and 1.59 million Native Hawaiians and Pacific Islanders currently live in the United States, according to 2020 Census data.^[2] Although there has been increased media attention surrounding the recent spate of anti-AAPI attacks, this present-day phenomenon is only one part of a broader history. Upticks in racial violence against Asian Americans historically correlate with periods of economic and social upheaval. In 1871, growing anti-Asian sentiment, fueled by fears that Asian immigrants were depressing wages during an economic downturn, led to a massacre of 18 Chinese residents, including a 15-year-old boy, in Los Angeles' Chinatown.^[3] In January 1930, Filipino men were attacked in race riots in Watsonville, California, purportedly motivated by resentment that Filipino men were taking over agricultural labor and interacting with white women.^[4] Southeast Asian refugees faced discrimination and violence in the wake of the Vietnam War, including attacks by Ku Klux Klan members on Vietnamese fishermen in Texas.^[5] In 1982, Vincent Chin was beaten to death by two autoworkers in Detroit who believed him to be Japanese, amid a recession that was partially blamed on the rise of Japanese automakers.^[6] And in arguably the most recent surge of anti-AAPI violence before the present-day crisis, the terrorist attacks on September 11, 2001 led to a staggering 1,600% increase in the number of anti-Muslim hate crimes reported to the FBI as compared to the year prior.^[7] Today, the COVID-19 pandemic has led to another resurgence of anti-AAPI hate and violence. Reports of anti-AAPI hate crimes increased by over 70% during the pandemic, according to the FBI,^[8] while the Center for the Study of Hate and Extremism estimates an even higher increase, from 124% between 2020 and 2021 to 334% between 2021 and 2022.^[9] New York City and San Francisco have experienced steeper jumps, 343% and 567% respectively.^[10] A 2021 Pew survey revealed that 45% of AAPI adults said they have experienced some sort of offensive incident based on their race.^[11] From March 2020 to March 2022, the Stop AAPI Hate reporting center collected 11,467 anti-AAPI incidents nationwide.^[12] Most incidents (67%) involved some version of harassment, such as verbal or written hate speech or inappropriate gestures, while 17% of incidents involved physical violence.^[13] Additionally, 16% of incidents involved avoidance or shunning, and 12% of incidents included possible

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civil rights violations, such as discrimination in a business or workplace.^[14] In March 2020, Burmese American Bawi Cung and his six- and two-year-old children were attacked and stabbed in a Texas grocery store because the assailant believed they were Chinese and responsible for causing the pandemic.^[15] In early 2021, 84-year-old Thai American Vicha Ratanapakdee was physically assaulted and killed;^[16] 65-year-old Filipino American Vilma Kari was kicked in the stomach, knocked to the ground, and kicked in the head repeatedly while her attacker yelled, “You don’t belong here,” and while multiple onlookers watched.^[17] And in March 2021, eight people, six of them Asian women, were killed in shootings at several Atlanta spas.^[18] A month after the Atlanta killings, a mass shooting at a FedEx facility in Indianapolis left four Sikh Americans dead.^[19] These media reports and statistical data almost certainly fail to capture the full extent of the problem. As discussed in Section II, implicit and institutional biases contribute to underreporting by victims, which is further exacerbated by the lack of a uniform database and widely accessible reporting mechanisms. Some estimate that only about one-tenth or fewer of hate crimes are reported.^[20]

II. Obstacles to Accountability and Justice In Section II, we examine two significant barriers to accountability, both stemming from implicit and institutional biases: (a) challenges in adequate prosecution of hate crimes, and (b) challenges in underreporting and lack of resources on the part of victims of hate crime.

A. Challenges in Prosecution of Hate Crimes

Evidence suggests the physical and verbal attacks unleashed against AAPIs in recent years are not adequately prosecuted as anti-AAPI hate crimes, and that prosecution of these crimes fails to recognize the racial animus and stereotypes driving these acts. Some of the examples described in Section I are illuminating. In the March 2021 Atlanta spa shootings, six of the eight victims were Asian women. The district attorney in Fulton County, where four of the victims were killed, filed formal notice that she intended to seek hate crime enhancements on the basis that the shooter targeted the victims because they were of Asian descent—yet the prosecutors in Cherokee County, where two of the four victims were Asian, declined to find the shooting racially motivated, determining instead that the perpetrator was motivated by a sex addiction and his religious beliefs. The shooter also claimed his acts were not driven by race.^[21] And in April 2021, nine people (including the gunman) were killed in a mass shooting at a FedEx facility in Indianapolis, Indiana. Four of the eight victims were Sikh Americans, and about 90% of the workers at the facility were as well. Although the shooter had previously visited white supremacist websites, the Justice Department declined to bring charges based on racial motivation or bias.^[22] A report from the Asian American Bar Association of New York found that only seven of the over 230 reported attacks against Asians in New York City through the first three quarters of 2021 led to hate crime convictions.^[23] A review of a dozen high-profile criminal cases in San Francisco involving Asian and Asian American victims during 2020 and 2021 similarly found that only two incidents were eventually charged as hate crimes.^[24] The challenges facing adequate prosecution of hate crimes are two-fold. *First*, hate crimes are by nature difficult to prosecute because they require proof of a perpetrator’s intent. Because no universal symbol of anti-AAPI hate exists, prosecutors typically must rely on a perpetrator’s statements—if any are even made. While some statements may contain racial slurs or similarly obvious epithets, in the absence of such language, prosecutors are left to infer motive from the nature of act itself or must conduct additional investigation to collect evidence. *Second*, prosecutors may then lack the educational and logistical resources needed to build the rigorous case required for hate-crime prosecution. Prosecutors may not be familiar with the nuances and history behind anti-AAPI sentiment, such that they fail to detect racial animus where it exists, and they may simply lack the time and resources needed to undertake the additional investigation to gather evidence—for example, past Internet activity showing racial hate or evidence of association with various organizations indicating racial motive. Combined, the difficult legal standard for hate-crime prosecution and a lack of resources needed to meet that standard result in lower rates of charges brought and lower rates of successful prosecutions across the board.

B. Challenges Facing Victims of Anti-AAPI Hate

The difficulties in adequately prosecuting anti-AAPI hate crimes are in turn compounded by the obstacles that face victims of anti-AAPI hate. *First*, the challenges of prosecuting hate crimes discussed in Section II.A may lead to underreporting by victims who doubt that their complaints will be taken seriously, and who therefore distrust police and the government more generally. Even where victims of anti-AAPI attacks seek to report these incidents, many are unaware of how to do so. Victims, especially those from under-resourced communities, are often unsure of what constitutes a hate crime, and to whom reports of such incidents can be made. This is further exacerbated by language and cultural barriers, especially for the elderly.^[25] *Second*, once complaints are made or filed, victims may also lack a sufficient understanding of the legal system to know how to navigate criminal proceedings and may broadly lack access to adequate representation in civil litigation. As a result of these compounding factors, some estimate that only about one-tenth, or less, of hate crimes against AAPIs are reported. A study from AAPI Data revealed that only 30% of Asian Americans were “very comfortable” reporting a hate crime to law enforcement, compared to 42% for Latino Americans, 45% for Black Americans, and 54% for White Americans.^[26] The same study concluded that roughly 10% of Asian Americans had experienced hate crimes or hate incidents, compared to 6% of the general population.^[27]

III. Gibson Dunn’s Efforts on Behalf of Victims of Anti-AAPI Hate

A. The Alliance for Asian American Justice

In April 2021, in the wake of the continuing surge in anti-AAPI hate crimes across the country, Gibson Dunn partner Debra Wong Yang and four other prominent attorneys in the AAPI legal community, along with additional Fortune 1000 General Counsels and over 40 law firms, founded the Alliance for Asian American Justice. Recognizing the deep-seated barriers to justice preventing victims of anti-AAPI hate from holding their attackers accountable, Yang and others created the Alliance to stand up for victims and prevent future acts of anti-AAPI hate. In particular, the Alliance connects victims of anti-AAPI hate with law firm resources provided on a pro bono basis in an effort to combat the historical marginalization in the legal system of low-income and under-represented AAPIs. Through the Alliance, attorneys across the country have provided pro bono legal counsel in civil litigation for victims of anti-AAPI hate, worked with law enforcement to ensure that perpetrators are held accountable, and identified additional specialized services, including social services and other community support, to assist victims in navigating these ordeals. The Alliance is also giving legal representation to families of the March 16 Atlanta spa shooting victims, as well as to the family of Mr. Ratanapakdee. With Gibson Dunn’s involvement, the Alliance is estimated to have provided legal representation in more than 50 cases of anti-AAPI violence, and has grown its network to more than 110 participating law firms. Although the Alliance connects victims of anti-AAPI hate with law firms across the country, a number of our own Gibson Dunn attorneys have engaged in this important work. Led by partners **Veronica Moyé** and **Betty Yang** and of counsel **Poonam Kumar**, a Gibson Dunn team represents a client in a civil suit filed in Plano, Texas, asserting that a woman attacked our client and her friends, threatened to shoot them, shouted ethnically charged profanities at them, and told them to “stay ... in [their] country.” Partner **David Lee** and associates **Cynthia Chen McTernan** and **Nicole Lee** also lead a team in representing an Asian family in southern California in civil litigation alleging that a man trespassed on their property, physically assaulted the family’s father in view of his wife and young daughters, and called them racial slurs. Former partner Robert Hur represented two Korean American women in Baltimore, Maryland, who were beaten by a man with a cinder block as the women tried to close their liquor store. Hur coordinated with law enforcement to hold the perpetrator accountable. Gibson Dunn’s work extends beyond the Alliance. While partner at Gibson Dunn, Hur also served as chairman of an Asian American Hate Crimes Workgroup formed by Maryland Governor Larry Hogan in April 2021. After extensive consideration and analysis, the workgroup issued a series of recommendations in November 2021 that led to a series of statewide actions by Governor Hogan to combat anti-AAPI hate and bias crimes, including enhanced safety and enforcement measures, more robust community resources, and steps to empower educators and students.

IV. The Path Forward

First, we can and should continue to

advocate for the implementation of a formal anti-discrimination framework that will, among other things, aid in combatting prosecutorial bias. To name one example, the Biden administration enacted the COVID-19 Hate Crimes Act in response to the surge in AAPI attacks,^[28] intended to make hate crime reporting more accessible at the local and state levels by increasing public outreach, providing grants to law enforcement agencies to train their officers to identify hate crimes, encouraging the creation of state-run hate crimes hotlines, and decreasing language barriers in online reporting resources. Further, the law aims to expedite the Department of Justice's review of hate crimes and expand reporting channels. Other formal processes to address this issue may include increasing bystander intervention training, increasing and improving data collection, and public education about the diversity within the AAPI community. *Second*, we can further combat prosecutorial bias and lower the barriers to accessing justice by increasing awareness of the historical and cultural context in which these anti-AAPI attacks occur. In addition, the focus should not only be on prosecution: Better intelligence about individuals and groups that promote hate-motivated violence can also help. Absent evidence of explicit hate speech during an attack, prosecutors are often reluctant to charge attacks on AAPI victims as hate crimes. In those scenarios, law enforcement must conduct substantial investigation into perpetrators to uncover proof of racial animosity to support a hate crime charge, but resources to do so may not be available. *Third*, solutions to addressing the recent rise in AAPI attacks should include education on victims' rights and opportunities to seek relief through the civil and criminal justice system, as well as targeted outreach to vulnerable segments of the AAPI population, such as women or the elderly, to ensure that they are empowered to exercise the rights available to them. For these reasons, affording victims of anti-AAPI hate competent legal representation—while also ensuring that they have access to the social and mental health services critical to navigate these ordeals—is paramount. Through its work with the Alliance and elsewhere, Gibson Dunn's work on this front and its representation of victims of AAPI attacks not only help those directly impacted in the cases, but may also inspire other victims of AAPI attacks to speak out and protect their rights. In partnering with organizations like the Alliance and other AAPI groups, Gibson Dunn has helped mobilize legal resources to demonstrate that the AAPI community will not be silent bystanders in the face of unwarranted, hateful attacks. Moving forward, Gibson Dunn will proudly continue to collaborate with AAPI groups and other legal organizations to assist victims of AAPI attacks and seek justice.

^[1] Kimmy Yam, *Anti-Asian hate crimes increased 339 percent nationwide last year, report says*, NBC News (Jan. 31, 2022), <https://www.nbcnews.com/news/asian-america/anti-asian-hate-crimes-increased-339-percent-nationwide-last-year-repo-rcna14282>. ^[2] U.S. Census Bureau, 2020 Census Redistricting Data Summary File, Pub. L. 94-171 (2022). ^[3] Corina Knoll, *Los Angeles to Memorialize 1871 Massacre of Chinese Residents*, N.Y. Times (Sept. 14, 2022), <https://www.nytimes.com/2022/09/14/us/massacre-chinese-los-angeles-1871.html>. ^[4] *On this day - Jan. 19, 1930: White Mobs Attack Filipino Farmworkers in Watsonville, California*, Equal Justice Initiative (last accessed on Jan. 9, 2023), <https://calendar.eji.org/racial-injustice/jan/19>. ^[5] William K. Stevens, *Klan Inflames Gulf Fishing Fight Between Whites and Vietnamese*, N.Y. Times (Apr. 25, 1981), <https://www.nytimes.com/1981/04/25/us/klan-inflames-gulf-fishing-fight-between-whites-and-vietnamese.html>. ^[6] Wynne Davis, *Vincent Chin was killed 40 years ago. Here's why his case continues to resonate*, NPR (June 19, 2022), <https://www.npr.org/2022/06/19/1106118117/vincent-chin-aapi-hate-incidents>. ^[7] Katayoun Kishi, *Assaults against Muslims in U.S. surpass 2001 level*, Pew Research Center (Nov. 15, 2017), <https://www.pewresearch.org/fact-tank/2017/11/15/assaults-against-muslims-in-u-s-surpass-2001-level/>. ^[8] *Raising Awareness of Hate Crimes and Hate Incidents During the COVID-19 Pandemic*, U.S. Dep't of Justice and U.S. Dep't of Health and Human Servs. (May 20, 2022), https://www.justice.gov/file/1507346/download?_sm_au_=iHV3RFTV1qNV7nVFFcVTvKQkcK8MG. ^[9] Yam, *supra* note 1. ^[10] *Id.* ^[11] Neil G. Ruiz, Khadijah Edwards, and Mark Hugo Lopez, *One-third of Asian Americans fear threats, physical attacks and most say violence against them is rising*, Pew Research Center (Apr. 21, 2021), <https://www.pewresearch.org/fact-tank/2021/04/21/one-third-of-asian-american-s-fear-threats-physical-attacks-and-most-say-violence-against-them-is->

rising/?_sm_au_=iHV3RFTV1qNV7nVFFcVTvKQkcK8MG. [12] Two Years and Thousands of Voices: What Community-Generated Data Tells Us About Anti-AAPI Hate, Stop AAPI Hate (Jul. 2022), <https://stopaapihate.org/wp-content/uploads/2022/07/Stop-AAPI-Hate-Year-2-Report.pdf>. [13] *Id.* [14] *Id.* [15] *Texan pleads guilty to hate-crime attack on Asian family*, AP News (Feb. 23, 2022), <https://apnews.com/article/coronavirus-pandemic-business-health-crime-texas-0a2d8913a7d693b911c373d8003dfcba>. [16] Rachel Swan, *Man accused in street attack that killed 84-year-old Thai man in San Francisco to face trial*, S.F. Chronicle (June 17, 2022), <https://www.sfchronicle.com/bayarea/article/Man-accused-in-street-attack-that-killed-17249717.php>. [17] Jessie Yeung, *She was attacked in the street for being Asian. Her community still lives in fear*, CNN (Jan. 30, 2022), <https://www.cnn.com/2022/01/29/us/asian-american-attacks-aftermath-intl-hnk-dst/index.html>. [18] Jenny Jarvie, *Police say man charged with killing Asian women and others at spas had 'sexual addiction'*, L.A. Times (Mar. 16, 2021), <https://www.latimes.com/world-nation/story/2021-03-16/7-killed-in-shootings-at-3-atlanta-area-massage-parlors>. [19] Casey Smith and Luis Andres Henao, *US Sikh community traumatized by yet another mass shooting*, AP News (Apr. 20, 2021), <https://apnews.com/article/shootings-statutes-violence-hate-crimes-indianapolis-395655b314f1e57553fbac7b3f1804be>. [20] Catherine Thorbecke, *Why anti-Asian hate incidents often go unreported and how to help*, ABC News (Mar. 18, 2021), <https://abcnews.go.com/US/anti-asian-hate-incidents-unreported/story?id=76509072>. [21] Nicholas Bogel-Burroughs, *Atlanta Spa Shootings Were Hate Crimes, Prosecutor Says*, N.Y. Times (May 24, 2021), <https://www.nytimes.com/2021/05/11/us/atlanta-spa-shootings-hate-crimes.html>. [22] Sakshi Venkatraman, *FBI says FedEx shooting not a hate crime; Indianapolis Sikhs still want answers*, NBC News (July 29, 2021), <https://www.nbcnews.com/news/asian-america/fbi-says-fedex-shooting-not-hate-crime-indianapolis-sikhs-still-n1275430>. [23] Laura Ly, *Only 7 of 233 reported attacks against Asian Americans in NYC in 2021 led to hate crime convictions, new report says*, CNN (May 31, 2022), <https://www.cnn.com/2022/05/31/us/hate-crime-convictions-asian-americans/index.html>. [24] Joe Fitzgerald Rodriguez and Han Li, *Why High-Profile Attacks on SF's Asian Communities Rarely Lead to Hate Crime Charges*, KQED (June 2, 2022), <https://www.kqed.org/news/11915634/why-high-profile-attacks-on-sfs-asian-communities-rarely-lead-to-hate-crime-charges>. [25] Thorbecke, *supra* note 20. [26] Kimmy Yam, *Asian Americans are least likely to report hate incidents, new research shows*, NBC News (Mar. 31, 2021), <https://www.nbcnews.com/news/asian-america/asian-americans-are-least-likely-report-hate-incidents-new-research-n1262607>. [27] *Id.* [28] Pub. L. No. 117-13, 131 Stat. 265 (2021).

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