

## How Attorneys Can Help Combat Anti-Asian Hate

By **Debra Wong Yang, Cynthia McTernan and Adrienne Liu** (June 2, 2023, 4:28 PM EDT)

Discrimination against Asian American and Pacific Islander, or AAPI, communities is not a new phenomenon. But the COVID-19 pandemic has brought with it a surge in anti-AAPI harassment and hate crimes — one that, three years later, has not slowed.

The FBI estimates that reports of anti-Asian hate crimes increased by over 70% over the course of the pandemic,[1] while the Center for the Study of Hate and Extremism estimates a 124% increase in anti-Asian hate crimes in 2020, and an even steeper 339% increase in 2021.[2]

And even as the nation celebrated AAPI Heritage Month, on May 6, a gunman shot and killed eight people in a shopping mall in Allen, Texas, four of whom were Asian. In light of evidence that the gunman held neo-Nazi beliefs, officials are investigating whether the incident was racially motivated.[3]

This exponential rise in anti-AAPI violence has drawn broader attention to a long-standing problem and created an increased urgency to take action. At the same time, unique obstacles stand in the way of accountability and justice.

### Challenges in Prosecution of Hate Crimes

First, evidence suggests the physical and verbal attacks unleashed against Asian Americans in recent years are rarely prosecuted as anti-Asian hate crimes.

In the March 2021 Atlanta spa shootings, six of the eight victims were Asian women. The district attorney in Fulton County, Georgia, 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, determined that they didn't have enough evidence to prove beyond a reasonable doubt that the shooting was racially motivated. The shooter also claimed his acts were not driven by race.[4]

And in April 2021, nine people, including the gunman, were killed in a mass shooting at a FedEx facility in Indianapolis. Four of the eight victims were Sikh Americans, as were approximately 90% of the workers



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at the facility.

Following an investigation, the Indianapolis police department and the FBI determined that the gunman was not motivated by "bias or a desire to advance an ideology," noting that although the shooter had visited some white supremacist websites and viewed "Nazi-like propaganda" on the computer, the activity was only a small percentage of his Internet activity.[5]

These are only two examples of a broader problem. 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.[6]

And finally, KQED and The San Francisco Standard reviewed a dozen high-profile criminal cases in San Francisco involving Asian and Asian American victims during 2020 and 2021, and similarly found that only two incidents were eventually charged as hate crimes.[7]

The challenges facing adequate prosecution of hate crimes are twofold. 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 the act itself or must conduct additional investigation to collect evidence.

Second, prosecutors may lack the resources needed to build the rigorous case required for hate crime prosecution.

Some prosecutors, particularly those in offices without dedicated hate crimes units, may also be unfamiliar with the nuances and history behind anti-AAPI sentiment, such that it may be difficult to detect latent racial animus.

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 successful convictions across the board.

### **Underreporting by Victims of Anti-AAPI Hate and Lack of Victim Resources**

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 in prosecution described above 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.

Second, even where victims of anti-AAPI attacks seek to report these incidents, many are unaware of how to do so. Victims, especially those from underresourced 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.[8]

Third, 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 legal representation, which may be an

additional deterrent in reporting hate crimes.

As a result of these compounding factors, some estimate that only a small fraction of hate crimes against the AAPI community are reported.[9]

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.[10]

The same study concluded that roughly 10% of Asian Americans had experienced hate crimes or hate incidents, compared to 6% of the general population.[11]

## **The Path Forward**

So what can attorneys do to address these issues?

First, 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.

Here, attorneys can partner with organizations focused on raising awareness for those investigating, prosecuting and shaping the law so that they are best equipped to ensure the law extends its full protection to victims of racially motivated attacks.

For example, the Alliance for Asian American Justice is partnering with Jerry Kang, distinguished professor of law and distinguished professor of Asian American Studies at UCLA, to develop and implement tailored training for prosecutorial offices on the historical context of anti-AAPI hate, the existence of implicit biases, and the harmful impact of negative stereotypes against Asian Americans, and ways to collectively promote the public safety and fair treatment of the AAPI community.

Second, we should also continue to advocate for victims' rights and amplify their opportunities to seek relief through the civil and criminal justice system, including by 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.

Attorneys can also work with organizations like the Alliance for Asian American Justice, the National Asian Pacific American Bar Association, the Asian American Legal Defense and Education Fund, Asian Americans Advancing Justice, the Asian American Federation, the Asian American Foundation and many others.

Given that many victims come from underresourced communities, attorneys can effect powerful change in connection with these organizations, not only by providing legal representation relating to the attacks victims have suffered, but providing other assistance they may need, including connection to medical care, help with immigration services, or access to other government benefits.

As this AAPI Heritage Month comes to a close, we can all continue to do more to prevent anti-Asian

hate, stand up for victims, and demonstrate that the AAPI community will not be silent bystanders in the face of unwarranted, hateful attacks.

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[1] 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](https://www.justice.gov/file/1507346/download?_sm_au_=iHV3RFTV1qNV7nVFFcVTvKQkcK8MG).

[2] 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>.

[3] Alan Feuer, Adam Goldamn, Neelam Bohra, and Livia Albeck-Ripka, After Texas Mall Shooting, Searching for Motive and Grieving for Children, N.Y. Times (May 8, 2023), <https://www.nytimes.com/2023/05/08/us/texas-mall-shooting-mauricio-garcia.html>.

[4] 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>.

[5] 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>.

[6] 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>.

[7] 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>.

[8] Thorbecke, *supra* note 20.

[9] Catherine Thorbecke, California commits \$1.4 million to combat 'horrific' attacks on Asian Americans, ABC News (Feb. 24, 2021), <https://abcnews.go.com/US/california-commits-14-million-combat-horrific-attacks-asian/story?id=76084993>.

[10] 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>.

[11] Id.