



Asian American
Bar Association
of New York

Endless Tide: *The Continuing Struggle to Overcome Anti-Asian Hate in New York*

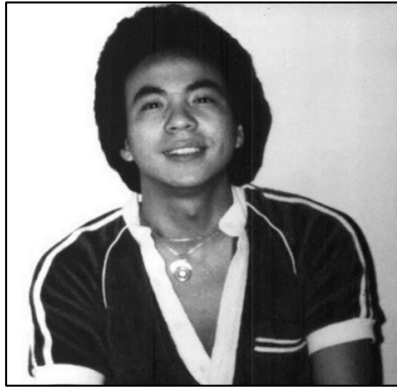
On February 10, 2021, the Asian American Bar Association of New York (“AABANY”) published a report titled *A Rising Tide of Hate and Violence against Asian Americans in New York during COVID-19: Impact, Causes, Solutions* to address the rise in hate and violence directed toward the Asian American Pacific Islander (“AAPI”) community since the onset of the COVID-19 pandemic in the United States. As the 2021 report made clear, anti-Asian hate is not new, has surfaced in various forms throughout American history, and has complex socio-economic, political, and cultural roots that require study and solutions.

Shortly after publication of the paper, a series of high-profile violent attacks, including the March 2021 spa shootings in Atlanta and brutal attacks in New York City and nationwide, brought renewed attention to the problem of anti-Asian hate and violence. Those attacks triggered heightened mainstream awareness, media attention, public protests, condemnations from local and national politicians, and the creation of various task forces and initiatives. That attention was short-lived, however. Despite cause for optimism, attacks against AAPI persons have continued and anti-Asian hate has not abated. Indeed, the endless tide of anti-Asian violence continues to make every AAPI person feel unsafe, unvalued, and invisible.

A year after publication of the *Rising Tide* report, the AAPI community in New York remains under attack, with no foreseeable relief or end in sight. Stop AAPI Hate, an organization that collects reports of anti-Asian violence from across the country since 2020, has received 10,905 reports since the onset of the pandemic through December 2021. The recent deaths of three Asian women, Michelle Go, Christina Yuna Lee, and GuiYing Ma, in the first two months of 2022 underscore the urgent and grave situation in New York.

This paper is a continuation of AABANY’s examination of the rise of anti-Asian hate and violence during the COVID-19 pandemic. It chronicles the efforts that have been made in the past year and assesses the impact of those efforts through detailed data collection and analysis of anti-Asian incidents in New York City. Based on these observations, the paper explores the failings of the current legal framework and raises a call to action by elected officials, law enforcement, and community organizations to keep the AAPI community safe in America.

A Dedication to the Memory of Vincent Chin



This report is dedicated to the memory of Vincent Chin, who was brutally beaten to death on June 19, 1982—the eve of his wedding—by two white autoworkers, Ronald Ebens and Michael Nitz, in Highland Park, a suburb of Detroit, Michigan. Vincent Chin—a Chinese-American—was targeted and used as a stand-in and scapegoat for Japanese auto manufacturers who were being blamed for a decline in the U.S. automotive industry at the time. Ronald Ebens allegedly said to Vincent Chin, “It’s because of you little m-f-s that we’re out of work.”¹

Neither Ronald Ebens nor Michael Nitz received any prison time—they were convicted of manslaughter but sentenced only to three years’ probation and ordered to pay a \$3,000 fine. In defense of the light sentence, 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.”²

But the message conveyed to the world by Judge Kaufman’s sentence was that Vincent Chin’s life was not worth more than a \$3,000 fine, and there would be no accountability for Vincent Chin’s death. The case sparked nationwide outrage and launched the modern movement to combat indifference, injustice, and discrimination against Asian Americans. Judge Kaufman’s sentence underscored and reinforced the fundamental invisibility and degradation experienced by the Asian-American community. Now, forty years later, in the wake of a global pandemic, it is heart-breaking to see that hate continues to outpace justice as history repeats itself and members of the AAPI community are inexplicably blamed for the pandemic. The fight for Asian Americans to be seen, heard, and valued continues.

About AABANY and AALFNY



AABANY is in its fourth decade as a bar association dedicated to promoting the interests of Asian American, Pacific Islander, and South Asian attorneys and legal professionals in New York, as well as the communities they serve. The Asian American Law Fund of New York, Inc. ("AALFNY") was established by AABANY in 1991 to support non-profit, charitable, and educational purposes within Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

AABANY and AALFNY have partnered to implement a multi-pronged action plan to turn back the rising tide of hate and violence against AAPI persons. Our **Turning the Tide (T3) Project** aims to incorporate a three-pronged approach to provide a holistic and practicable action plan to address anti-Asian hate and violence: **Education & Communication, Advocacy, and Research**. Each prong draws its strength from the diverse pool of passionate and talented individuals of AABANY, the largest diverse bar association in the country, the largest affiliate of the National Asian Pacific American Bar Association ("NAPABA"), and one of the most prominent bar associations in the country dedicated to promoting diversity, inclusion, and equity in the legal profession.

AABANY and AALFNY welcome any donations to the T3 Project. **They may be made online at www.AsianAmericanLawFund.org/donate**. Please note "T3 Project" when making the donation. If you would prefer to send a check, please make it payable to "AALFNY" with a notation for the "T3 Project" and mail to:

Asian American Law Fund of NY
PO Box 161
41 Purdy Ave.
Rye, NY 10580

Donations to AALFNY are tax deductible to the extent permitted by applicable law.

A copy of AALFNY's latest annual report may be obtained from AALFNY at the address above or from the NYS Attorney General's Charities Bureau website www.charitiesnys.com. Information may also be obtained from AALFNY by email at donations@AsianAmericanLawFund.org or the NYS Attorney General at 212-416-8686.

Executive Summary

The AAPI community in the United States has been under siege since the onset of the global pandemic. In February 2021, AABANY published a report—*A Rising Tide of Hate and Violence against Asian Americans in New York City during COVID-19: Impact, Causes, Solutions*—that provided (i) historical background and context for anti-Asian hate, discrimination and violence, (ii) observations about challenges in combating and differing opinions on how to approach the problem, and (iii) several proposals of possible solutions. Since that report was published, the hate and violence have continued to surge and have become an endless tide.

- Lee-Lee Chin-Yeung was cursed at and forcibly shoved to the ground outside a Flushing bakery on February 16, 2021, resulting in serious injury.³
- Xiaojie Tan, Daoyou Feng, Hyun Jung Grant, Suncha Kim, Soon Chung Park, and Yong Ae Yue were gunned down in a shooting spree in Atlanta on March 16, 2021 (“Atlanta Spa Shootings”).⁴
- Yao Pan Ma was stomped on the head while collecting cans in Harlem on April 23, 2021 and later died of his injuries on New Year’s Eve.⁵
- Than Than Htwe died on July 28, 2021, eleven days after an attempted robbery caused her to fall down subway stairs and hit her head.⁶
- On January 15, 2022, Michelle Go was shoved to her death in front of a moving subway train in Times Square.⁷
- Less than a month later, Christina Yuna Lee was followed and then stabbed more than 40 times in her apartment in Manhattan’s Chinatown.⁸
- On February 22, 2022, GuiYing Ma died from her injuries after she was smashed in the head with a rock while sweeping the street near her home in Queens.⁹
- On February 27, 2022, seven AAPI women were attacked in seven separate incidents across midtown Manhattan over a three-hour period.¹⁰
- In April 2022, there were three separate attacks within a 10-day span on Sikhs in Richmond Hill, Queens.¹¹

These individual victims are innocent stand-ins in the brutal assault on the AAPI community.

Despite promises, sympathy, and the efforts of many, the problem persists and is growing. AABANY, through its Anti-Asian Violence Task Force (“AAVTF”), has been actively engaged in research, education, and advocacy on the subject since February 2021. This report is the culmination of some of that work. Our goals are to identify the impediments that have deprived the AAPI community a measure of justice and safety in New York City, and to call for specific, immediate change from those with the power to address this pandemic of hate.

The report consists of four parts:

Part 1 summarizes the efforts in 2021 and 2022 to combat anti-Asian violence, as well as the persistence of the problem. Following the Atlanta Spa Shootings, several private organizations announced initiatives providing additional funding and volunteers to programs that support the AAPI community. Municipal, state, and the federal governments created several task forces dedicated to studying and preventing violence against AAPI persons. However, there have been few tangible results thus far, and interest has since waned. Meanwhile from March 19, 2020 to December 31, 2021, there have been more than 10,000 hate incidents against AAPI persons—a manifold increase from the previous year.¹²

Part 2 provides an empirical analysis of 233 anti-Asian incidents¹³ reported in New York City over the first three quarters of 2021. Assault was the most common offense, comprising 58% of all incidents. The majority of incidents occurred in Manhattan, but a notable number also occurred in Queens and Brooklyn. Victims were more often women (55% female vs. 45% male) and more than 59% of victims were between the ages of 20 and 49. Approximately 4 out of 5 perpetrators were men, and 5 out of 10 perpetrators were between the ages of 30 and 49. Notably, out of the 64 criminal prosecutions the database studied, 7 have resulted in hate crime convictions. Another 20 prosecutions with hate crime charges are still open matters and have not reached their conclusion.¹⁴

Part 3 discusses the lessons learned from the prosecution of one perpetrator, Patrick Mateo, and from several notable uncharged incidents. In February 2021, Mateo shouted obscenities and racially charged language at an Asian woman in Flushing, Queens before shoving her headfirst into a metal newspaper stand. Mateo was only prosecuted

and later convicted of a hate crime after a “perfect storm” of circumstances, including a swell of celebrity attention, an interview with a newspaper reporter, and the AAVTF’s intense advocacy on behalf of the AAPI community. Along with the uncharged incidents, the Mateo prosecution reflects an urgent need to provide victims with greater support services, a broader and deeper approach to investigating hate crime cases, and zero tolerance for excuses and lack of diligence in addressing the needs of the AAPI community.

Part 4 outlines several solutions that should be implemented by the legal community, law enforcement, and members of government.

(1) Improve Public Hate Crime Data Reporting. All law enforcement agencies should be required to report data on hate incidents to a comprehensive, publicly accessible database that tracks information, including when and where the incident occurred, charges brought, status of the prosecution, and the resolution of the incident.

(2) Recognize the Community as Victim and Investigative Partner. Prosecutors’ offices should recognize that hate crimes affect both the individual attacked and the community to which the individual belongs. Prosecutors should therefore consider the interests of the community in determining the appropriate disposition of a case and should coordinate with the community to facilitate the investigation, and to keep the community apprised of the prosecution of hate crimes.

(3) Develop Better Guidance for Hate Crime Investigations. The hate crimes statute should provide affirmative guidance on what constitutes a hate crime so that police officers, investigators, and prosecutors can better understand the actions and statements that show a bias motivation.

(4) Reform the Hate Crimes Law. The hate crimes statute should be revised to remove two unduly restrictive requirements and to re-categorize the crime of Aggravated Harassment. The requirement that race be a motivating factor in the crime “in whole or in substantial part” should be revised to “in whole or in part” to permit more latitude where a defendant may have targeted a victim based on multiple or shifting motivations. In addition, the restriction of hate crime enhancements to an arbitrary list of offenses should be eliminated. Furthermore, the crime of Aggravated Harassment includes acts targeting persons because of their race, ethnicity, and other protected characteristics. These crimes should be re-categorized under the hate crimes statute.

(5) Fully Fund the Study, Prevention, and Prosecution of Hate Crimes. The government and/or private entities should fully fund initiatives dedicated to studying, preventing, or investigating hate crimes, including paid personnel.

(6) Develop Anti-Bias Programming, Training in Cultural Sensitivity, and Trauma-Assisted Counseling. Anti-bias programs concerning anti-Asian hate should be developed and provided to hate crime defendants where appropriate. Cultural sensitivity and trauma-assisted counseling should also be required for law enforcement agencies and victims' assistance programs to ensure that all victims' concerns are properly addressed.

(7) Remedy Barriers to Reporting of Hate Incidents. AAPI persons report hate incidents at a significantly lower rate than non-AAPI persons for several reasons, including that the victim did not consider the crime serious enough, the victim did not know that a hate crime occurred, and reporting is inconvenient. To remedy some of these issues, state and local governments should publish guides, in multiple languages, to educate the community on what constitutes a hate crime, how to report a hate crime, and what to expect when doing so. AAPI persons should have the option of reporting hate crimes in places where they may be more comfortable, such as local community centers, places of worship, and parks. And community groups should be working in close cooperation with government groups and law enforcement to facilitate reporting.

(8) Improve Investigative Training and Tools Available to Government Agencies. Prosecutors' offices and other governmental agencies should receive appropriate training on best practices in how to investigate hate crimes. This training should include instruction on language translation tools.

(9) Revisit Bail Reform. In April 2022, Governor Kathy Hochul and the New York State legislature reached agreement on several bail reforms, including permitting bail determination for serious felonies to consider factors such as criminal history, making repeat offenses bail eligible, making hate crime offenses subject to arrest, and making gun-related offenses bail eligible. The AAVTF supports these reforms and urges more. Bail determinations should consider public safety and whether a person charged poses a danger to the community.

Only by uniting together as one city can we combat the endless tide of hate and make clear that the AAPI community is a valued part of New York City.

1. One Year Later: Where We Were vs. Where We Are

AABANY's *Rising Tide* report garnered significant media attention and dialogue within the legal, corporate, academic, and political arenas. Numerous organizations—corporate groups, bar associations, schools, parents' groups, and governmental bodies -- invited AABANY to speak on the issue of anti-Asian hate.¹⁵

AABANY also established the AAVTF and together with AALFNY started the Turning the Tide (T3) Project to combat anti-Asian hate through communication, advocacy, and research. Among other activities, the AAVTF has met with state and local government officials, community leaders, and other stakeholders to discuss specific proposals, provide victim support services (including advocacy with law enforcement),¹⁶ hold public discussions about combating hate, identify victims' resources and rights, and continue to research the issues and collect and analyze available data.¹⁷

Unfortunately, despite media attention, protests, and substantial efforts within the AAPI community, anti-Asian hate continues unabated.

What is clear is that earlier calls for increased reporting from the AAPI community deflect attention from a much larger, more pernicious problem. Even though reporting has been occurring, these reports have largely become an exercise in futility.¹⁸ And despite a surge in media attention in the Spring of 2021, the public is desensitized to all but the most violent incidents, and the media has largely ignored further proceedings beyond initial incidents.

A. Storm Sirens

In the two months following the Atlanta Spa Shootings on March 16, 2021, there was broad media coverage about the wave of anti-Asian violence across the country.¹⁹ Many major corporations and law firms issued public statements of support.²⁰ Several initiatives were formed to help combat the issue, such as the Alliance for Asian American Justice, a group comprised of Asian American leaders and allies at large law firms and corporations that launched a national pro bono initiative to aid victims and prevent acts of anti-Asian hate,²¹ and The Asian American Foundation, a group founded by top business leaders to provide funding and resources to improve AAPI advocacy, power and representation.²²

Furthermore, the Asian American Federation, Asian Americans Advancing Justice,

and other organizations focused on Asian communities saw an increase in donations. These contributions helped fund coordinated anti-hate campaigns, mental health services, trainings to combat anti-Asian harassment, and assistance to AAPI small businesses and seniors.²³

Locally, in August 2020, the NYPD announced a newly formed Asian Hate Crimes Task Force (an extension of its existing Hate Crimes Task Force, “HCTF”) which includes 25 Asian American officers who speak a second language.²⁴ According to then Chief of Detectives Rodney Harrison, this new task force was meant to “build trust and understanding between the NYPD and Asian New Yorkers.”²⁵ Part of this task force was an undercover unit of plainclothes NYPD officers of Asian descent who would frequent areas where there had been anti-Asian violence.²⁶

Politicians across the country also took up the cause. President Biden,²⁷ Attorney General Merrick Garland,²⁸ Representative Grace Meng (D-NY),²⁹ Representative Judy Chu (D-CA),³⁰ Representative Young Kim (R-CA),³¹ and Representative Ted Lieu (D-CA)³² issued statements of support. In New York City, the issue of anti-Asian hate incidents became a campaign topic in the Mayoral³³ and the Manhattan DA’s races,³⁴ with all candidates, including the winners of those races pledging to invest more resources and attention to combating hate.

On May 20, 2021, President Biden signed the COVID-19 Hate Crimes Act in recognition of the dramatic increase in hate crimes and violence against AAPI persons.³⁵ The law outlines several reforms, including:

- The designation of an officer of the U.S. Department of Justice (“DOJ”) who is responsible for facilitating the expedited review of hate crimes.³⁶
- The Attorney General shall issue guidance to law enforcement agencies on how to establish online reporting of hate crimes, collect disaggregated data, and expand public election campaigns aimed at raising awareness of hate crimes.³⁷
- The Attorney General may make grants to States or other units of local government to implement the National Incident-Based Reporting System (a national database on crime), hate crime hotlines, and crime reduction programs.³⁸

Shortly afterward, on May 27, 2021, Attorney General Garland issued a memorandum announcing the steps the DOJ is taking to give effect to the Hate Crimes Act. These steps comprise an increase in resources and coordination to combat hate crimes, expedited review of hate crimes under 18 U.S.C. §§ 245, 247, and 42 U.S.C. § 3631, designation of local Civil Rights Coordinators, alliances with local law enforcement, an increase in the DOJ's language access capabilities, and restoration of the DOJ's Community Relations Service to help resolve community conflicts.³⁹

On August 30, 2021, the DOJ listed its key initiatives and accomplishments regarding its efforts to combat hate crimes. These include the prosecution of at least 17 defendants over the prior six months, the elevation of hate crimes to a Level 1 national threat which will increase resources for hate crime prevention and investigation, and an increase in language access, grant programs, and law enforcement training sessions.⁴⁰ Unfortunately, the information provided did not identify whether the defendants charged had committed hate crimes against AAPI persons, and the DOJ's selected case summaries only reference one anti-Asian hate crime that was resolved in 2002.⁴¹

On September 20, 2021, Senator Mazie Hirono (D-HI) and Representative Meng wrote a joint letter to Attorney General Garland urging that attention be paid to specific aspects of the COVID-19 Hate Crimes Act, namely expanded review of all hate crimes, not just those targeting AAPI persons; the issuance of guidance to local law enforcement agencies; and the expansion of linguistically appropriate education campaigns.⁴² Senator Hirono and Representative Meng noted that there is an urgent need to implement these initiatives given an FBI report indicating that hate crimes in 2020 rose to the highest level in 12 years, with hate crimes against AAPI persons rising by more than 70%. The numbers cited in this letter are national statistics. Fact sheets published by California State University list an 833% increase in Asian hate crimes in New York City from 2019 to 2020, and a 262% increase from the first quarter of 2020 to the first quarter of 2021.⁴³

In October 2021, Attorney General Garland appeared before the Senate Judiciary Committee and assured its members that responding to hate crimes remained among the DOJ's top priorities.⁴⁴ The DOJ held "listening sessions" to get feedback on guidance aimed at raising awareness on the spike of anti-Asian violence.⁴⁵ The DOJ also announced that its Office of Justice Programs would award more than \$21 million to investigate and prosecute hate crimes and assist hate crime victims.⁴⁶

The *Rising Tide* report also called for greater activity by The White House Initiative on Asian Americans and Pacific Islanders (“WHIAAPI”),⁴⁷ an office created during the administration of President Bill Clinton, to advance AAPI interests. Among other things, the *Rising Tide* report called on WHIAAPI to coordinate a federal response to the rise in anti-Asian harassment and violence during the COVID-19 pandemic, and to ensure that the issue is connected to the larger focus on civil rights under President Biden’s administration.

On May 28, 2021, President Biden signed an Executive Order establishing the White House Initiative on Asian Americans, Native Hawaiians, and Pacific Islanders, which was “charged with driving an ambitious, whole-of-government agenda to advance equity, justice, and opportunity for AA and NHPI communities.”⁴⁸ On December 9, 2021, a President’s Advisory Commission was created to advise President Biden on several issues, including improving health, socioeconomic, and employment outcomes for AA and NHPI communities, addressing anti-Asian bias and racism, and bettering policies and practices on AA and NHPI data collection.⁴⁹ U.S. Health and Human Services Secretary Xavier Becerra announced that he and U.S. Trade Representative Ambassador Katherine Tai would co-chair the commission and that they would focus on implementing the directives of the Executive Order by coordinating “a comprehensive federal response to the rise in acts of anti-Asian bias and violence.”⁵⁰

B. Stagnation

After Asian Pacific American Heritage Month in May 2021, public attention to anti-Asian violence largely waned for the rest of the year. The number of statements made and initiatives implemented by local and national politicians decreased, notwithstanding the continually rising tide of anti-Asian incidents. A report on AAPI health was released by the New York City Health Department on December 10, 2021,⁵¹ but otherwise public interest declined.

The NYPD also appears to be winding down certain programs aimed at combating anti-Asian violence. For instance, the undercover unit of the Asian Hate Crimes Task Force, in which plainclothes Asian officers would frequent areas where incidents of anti-Asian violence occurred as a way to prevent further incidents, has not been active since May 2021 after officers faced threats of violence against themselves.⁵² Although the Asian Hate Crimes Task Force still provides support for Anti-Asian incident investigations, such as language services and facilitating

cultural understanding, the task force remains comprised of volunteer members of the NYPD. AABANY has called for full funding of the NYPD and New York City DA's offices to combat hate crimes, but no action has been taken on such funding proposals.

News outlets have also increasingly shied away from mentioning the race of the Asian victim.⁵³ This sanitization of anti-Asian violence not only impedes the tracking of these incidents but also increases the sense of invisibility and persecution within the AAPI community. The lack of acknowledgement and tangible progress dissuades victims from reporting, and this in turn makes it difficult to document trends and invites more victim-blaming for not reporting. The cycle is pernicious and must stop.

It was not until the horrific deaths of Michelle Go and Christina Yuna Lee in early 2022 that the plight of the AAPI community returned to public attention. New York City Mayor Eric Adams denounced anti-Asian hate, and New York State Governor Kathy Hochul promised to continue to fund programs against anti-Asian hate at a rally on March 16, 2022, marking the one-year anniversary of the Atlanta Spa Shootings.⁵⁴ However, the initiatives to address anti-Asian violence have not matched the onslaught of anti-Asian incidents.

The fear among members of the AAPI community in New York City remains or has deepened. Many AAPI persons have changed their behavior in response to bias-motivated attacks and harassment, including closing shops early, avoiding community events, or public transportation. Some have opted not to report incidents to the police because they feel that their concerns would not be properly addressed.⁵⁵

C. Endless Tide

Meanwhile, anti-Asian hate incidents continue to trend upward. From March 19, 2020 to December 31, 2021, a total of 10,905 hate incidents against AAPI persons were reported to Stop AAPI Hate. Of those incidents, 4,632 occurred in 2020, and 6,273 occurred in 2021.⁵⁶ Those of Chinese descent report the most hate incidents with 42.8% of the total, and reports by AAPI women make up 61.8% of all reports.⁵⁷ The majority of incidents occur on the street (31.2%) and at businesses (26.9%). The top three types of discrimination reported are harassment (66.9%), physical assault (16.2%), and avoidance or shunning (16.1%).⁵⁸

According to a June 2021 study published by the Center for the Study of Hate and Extremism, the first quarter of 2021 saw a 189% increase in hate crimes nationwide compared to the same time period in 2020. This was primarily driven by a 262% increase in hate crimes in New York City, a 200% increase in San Jose, and a 140% increase in San Francisco.⁵⁹

The Anti-Defamation League also reports that, according to FBI data, racial bias accounted for 63% of all reported hate crimes in the U.S. in 2020 and that anti-AAPI hate crimes rose 64%—from 179 in 2019 to 294 in 2020.⁶⁰ In 2020, the FBI documented 8,263 hate crimes (of which 22 were murder offenses) across the country, representing a 13% increase relative to 2019 and the highest absolute number of incidents since 2001.⁶¹



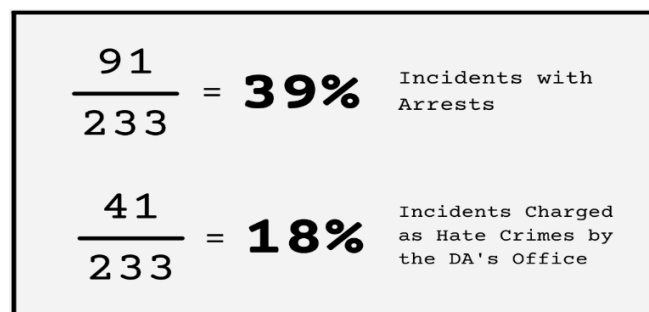
2. Analysis of New York Anti-Asian Incidents⁶²

In spring 2021, the AAVTF assembled a research team to collect and analyze available information on anti-Asian incidents, and to contribute unique data about anti-Asian violence in New York City. An “anti-Asian incident,” for purposes of this study is an attack, whether physical or verbal, against a victim who was Asian or at least appeared to be of Asian descent and there was an early concern that the commission of the crime or the selection of the victim may have been racially motivated.⁶³

The team examined 233 anti-Asian incidents in the New York City area that occurred in the first three quarters of 2021 and were reported as potential hate crimes in either the news media⁶⁴ or in publicly available information from local government agencies.⁶⁵ There were 231 perpetrators and 248 victims.⁶⁶

Does reporting anti-Asian incidents lead to productive, meaningful outcomes? There is admittedly more than one definition of success and more than one metric for success. Because this study sought to evaluate the response of the criminal legal system and law enforcement authorities, it focused on the actions of the police, local prosecutors, sentencing judges, etc.

Of the 233 anti-Asian incidents, 91 led to an arrest. Local DA’s offices pursued hate crime charges in 41 incidents. To date, there have been convictions for hate crimes in 7 of the incidents covered in the database. Another 20 prosecutions with hate crime charges are still open matters and have not reached their conclusions.



Not every incident identified in the database can lead to an arrest and not every arrest should lead to hate crime charges. And not every hate crime prosecution should lead to a hate crime conviction. Finally, not every conviction should lead to jail time. There are numerous constitutional standards and holistic, problem-

solving options today in the criminal legal system. However, this empirical analysis is a valuable opportunity to evaluate what is happening in response to the alarming rise in anti-Asian incidents. If unjust or ineffective numbers of perpetrators are being arrested, charged with hate crimes, being convicted of hate crimes, or being sentenced appropriately, then reforms beyond simply increased reporting by victims may be necessary. This opportunity should not be ignored; otherwise, the current resignation and doubt among weary and frightened AAPI communities about the efficacy of reporting will persist.

A. The Number of Incidents

The first task in creating this database was to identify incidents committed against AAPI persons that may constitute hate crimes under New York State law. Using geographic and time parameters and the sources described in Appendix B, the AAVTF identified 233 incidents across the first three quarters of 2021.

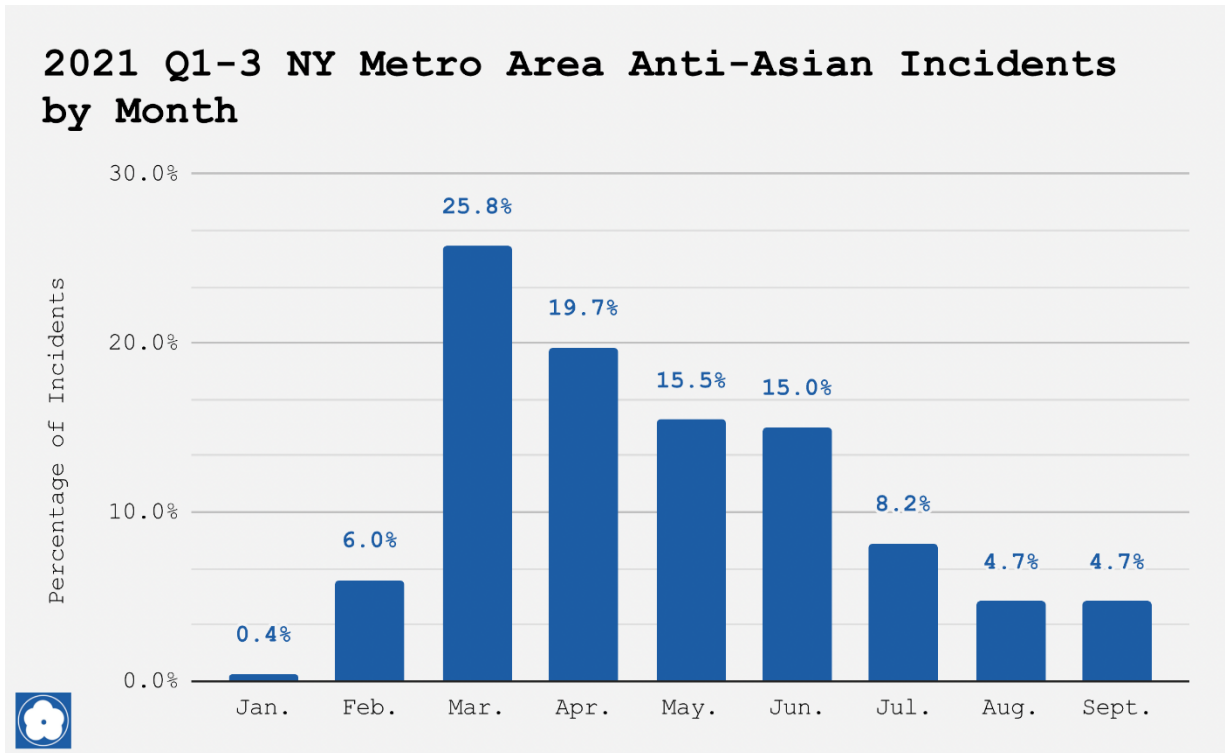
There are numerous other efforts to identify and count incidents in New York City and some have produced numbers different from 233. For example, the NYPD reported only 118 anti-Asian hate crimes for the same time period.⁶⁷

The variation in the numbers can be bewildering. But an organization's count of anti-Asian hate crimes depends on its objectives, sources, and criteria for what constitutes an anti-Asian incident.⁶⁸ Counting incidents is therefore a complex task. Yet reporting and counting are crucial parts of an effective response to hate crime. Centralized data collection would facilitate consistency and allow better analysis.

B. Date

One data point that was available across all information sources was the date of the incident.⁶⁹ Of the 233 incidents recorded in the database, fewer than 1% occurred in January, 6% occurred in February, 26% in March, 20% in April, 16% in May, 16% in June, 8% in July, 5% in August, and 5% in September.⁷⁰ The distribution of the incidents by date has a single peak in March. See Figure 1 for the distribution of incidents by month.

Fig. 1: Date

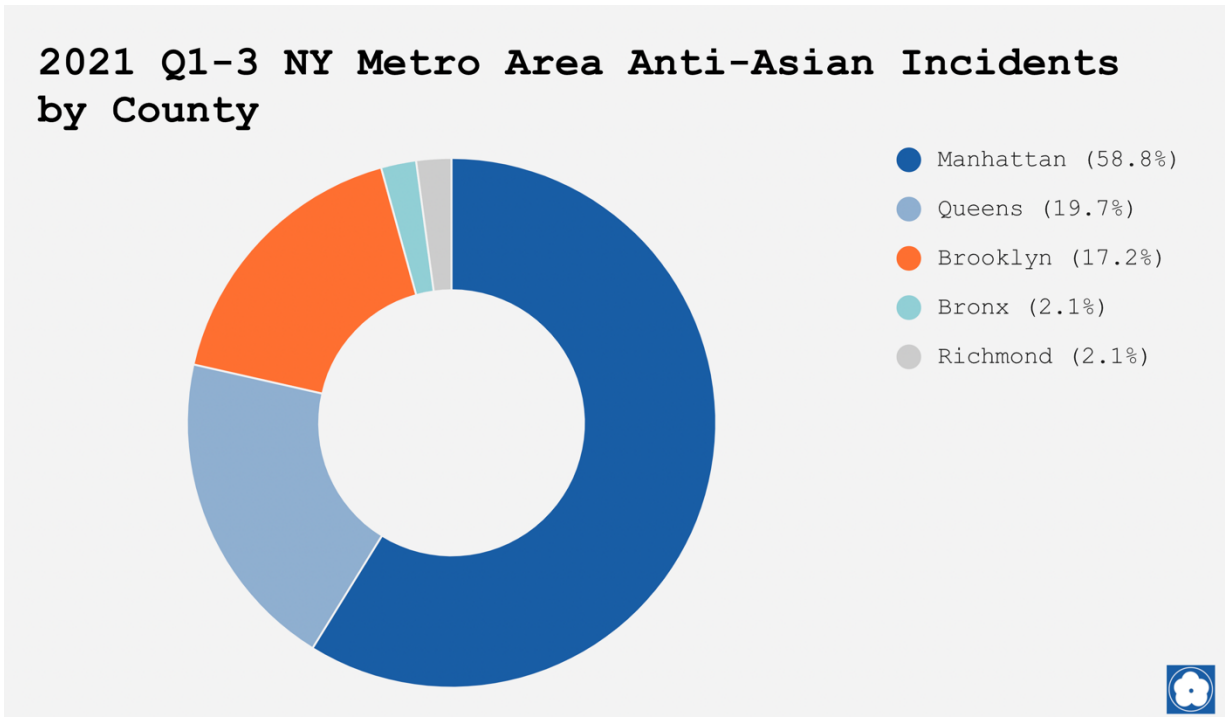


C. Location

Information about the location of the incident was also available across all sources, but there were varying levels of detail. The NYPD's Hate Crimes Dashboard ("HCD") provided the least specific information for location, with only the county and precinct where an incident occurred. For incidents identified only in the HCD, the exact locations may be unknown.

Manhattan saw the most incidents out of any county with 137 incidents or 58.8% of all incidents. Another 19.7% occurred in Queens, 17.2% in Brooklyn, 2.1% in the Bronx, and 2.1% in Richmond County. See Figure 2 for the distribution of incidents by county.

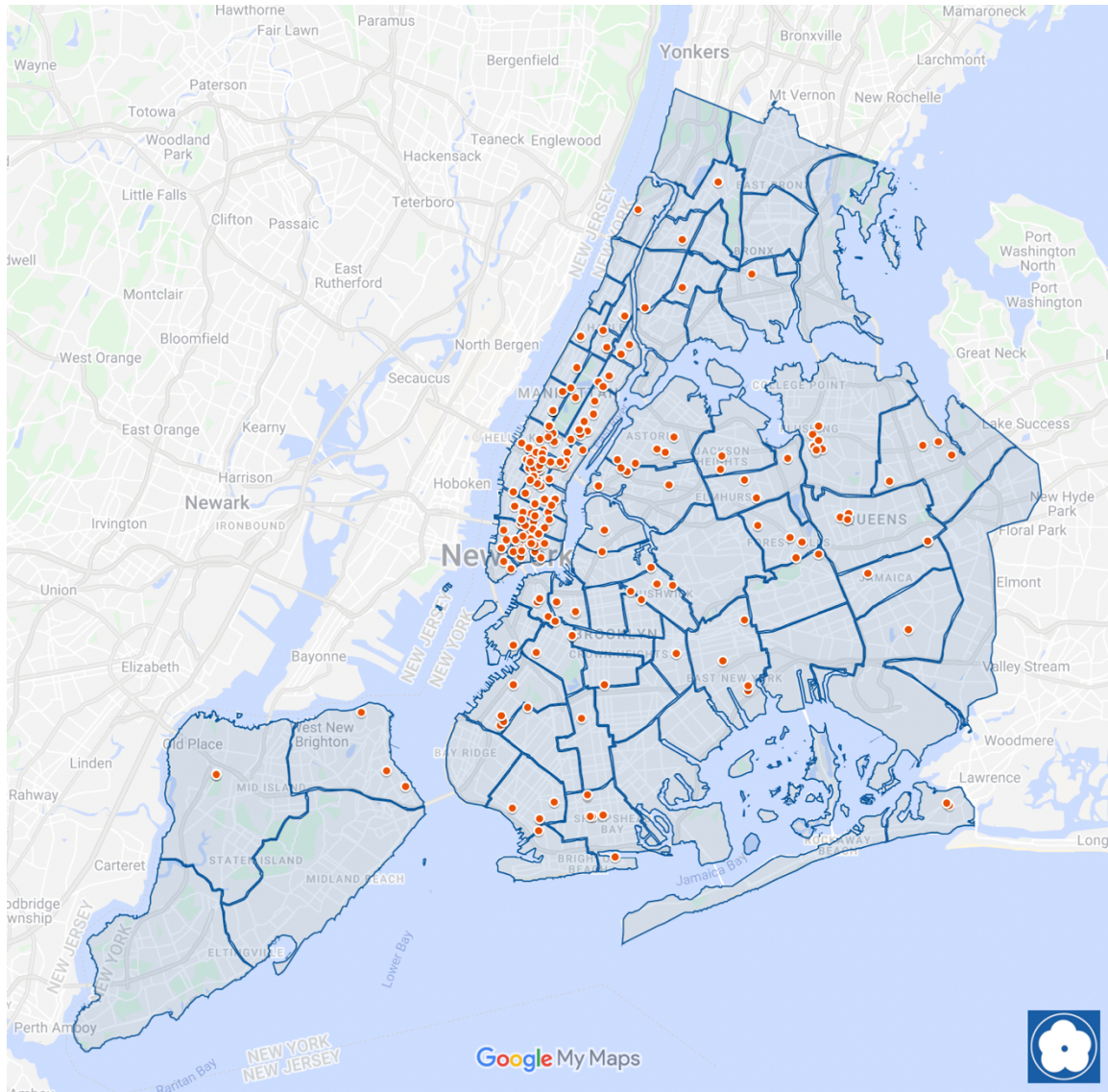
Fig. 2: Anti-Asian Incidents by County



See Figure 3 for a map of incidents. Each red dot represents one incident. As stated above, since not all incidents have exact location data, Figure 3 features approximations of locations and is not an exact record. The blue lines on the map represent NYPD precinct boundaries.



Fig. 3: Incident Map for New York City



The busiest precinct in the database was the 14th Precinct (a/k/a the Midtown South Precinct) with 29 incidents. This precinct encompasses the majority of Times Square. The second busiest precinct was the 5th Precinct with 15 incidents. The 5th Precinct includes much of Manhattan’s Chinatown. Notably, 97 of the incidents, or 41%, occurred in Manhattan precincts south of Central Park.

See Figure 4 for the percentage distribution of incidents across the city’s precincts. See Figure 5 for a map of incidents in select precincts in Manhattan.



Fig. 4: Distribution of Incidents Across Precincts

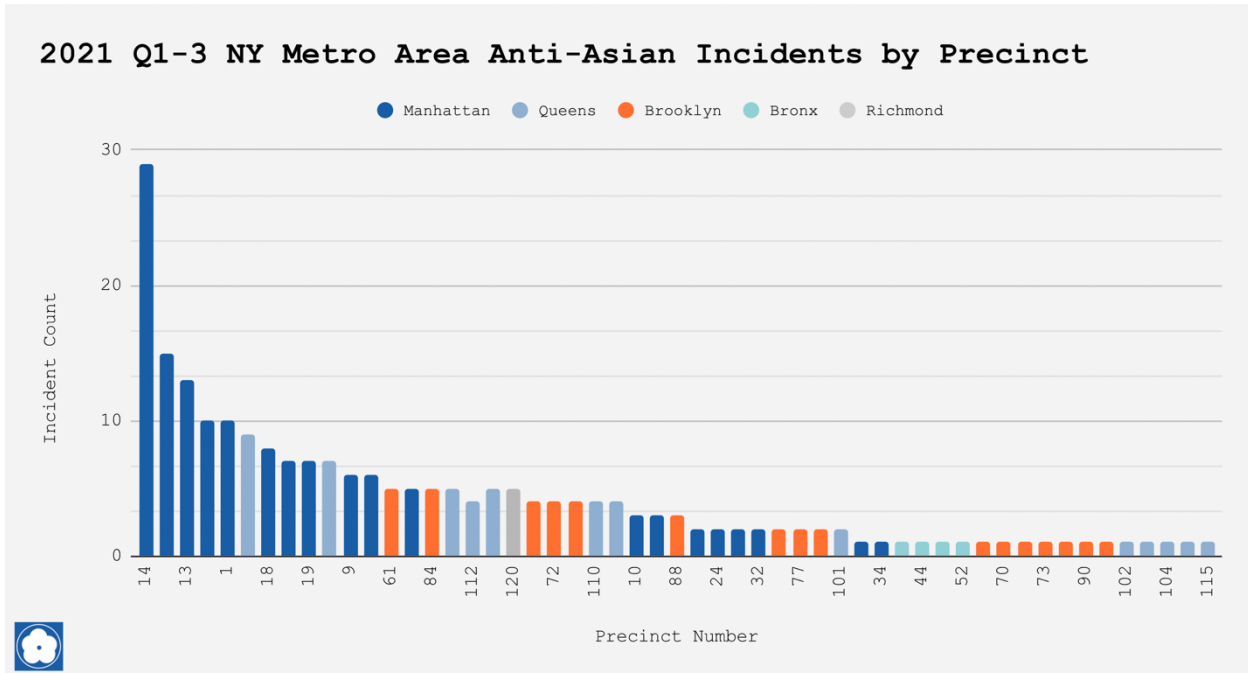
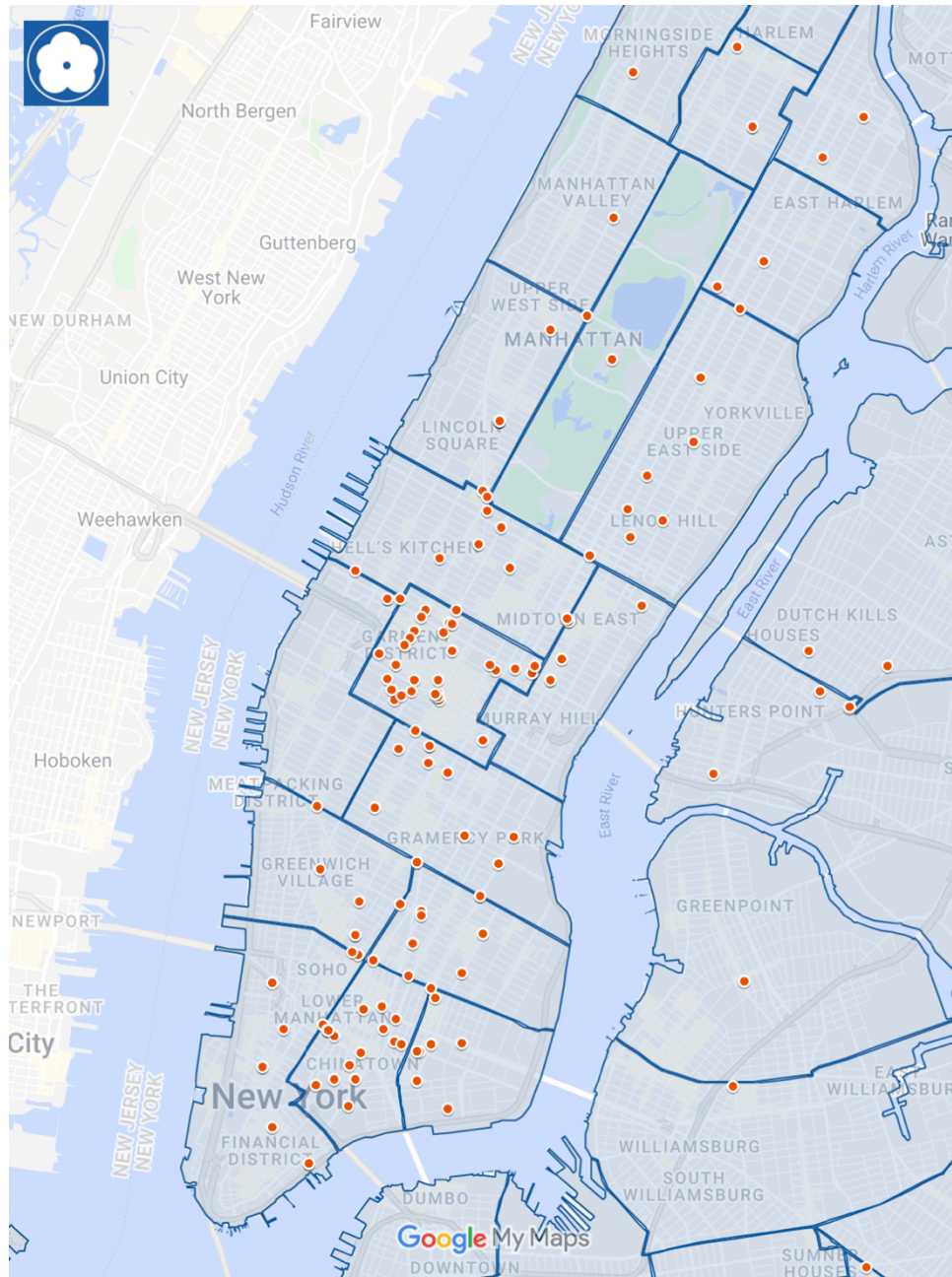




Fig. 5: Incident Map Manhattan

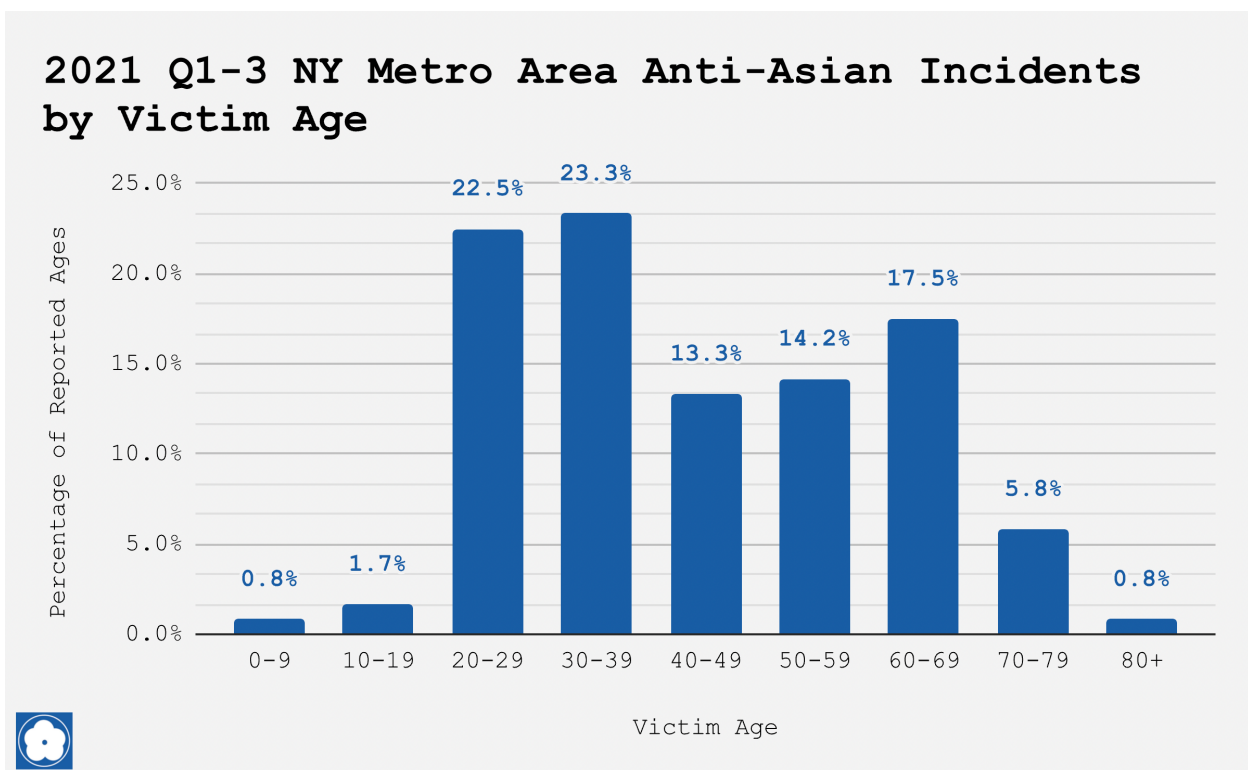


D. Victim Age and “Gender”

The database identified 248 victims across 233 incidents.⁷¹ The official government sources did not provide any demographic information about the victims. News sources reported the ages of 121 victims.⁷²

Using this partial data, the database divided the victims into five groups based on their ages; the groups were defined in increments of 9 years. The mean of the reported ages was 44 years old and the median was 41 years old. 59% of reported victims were between the ages of 20 and 49 and another 24% were above the age of 60. This distribution is shown in Figure 6.

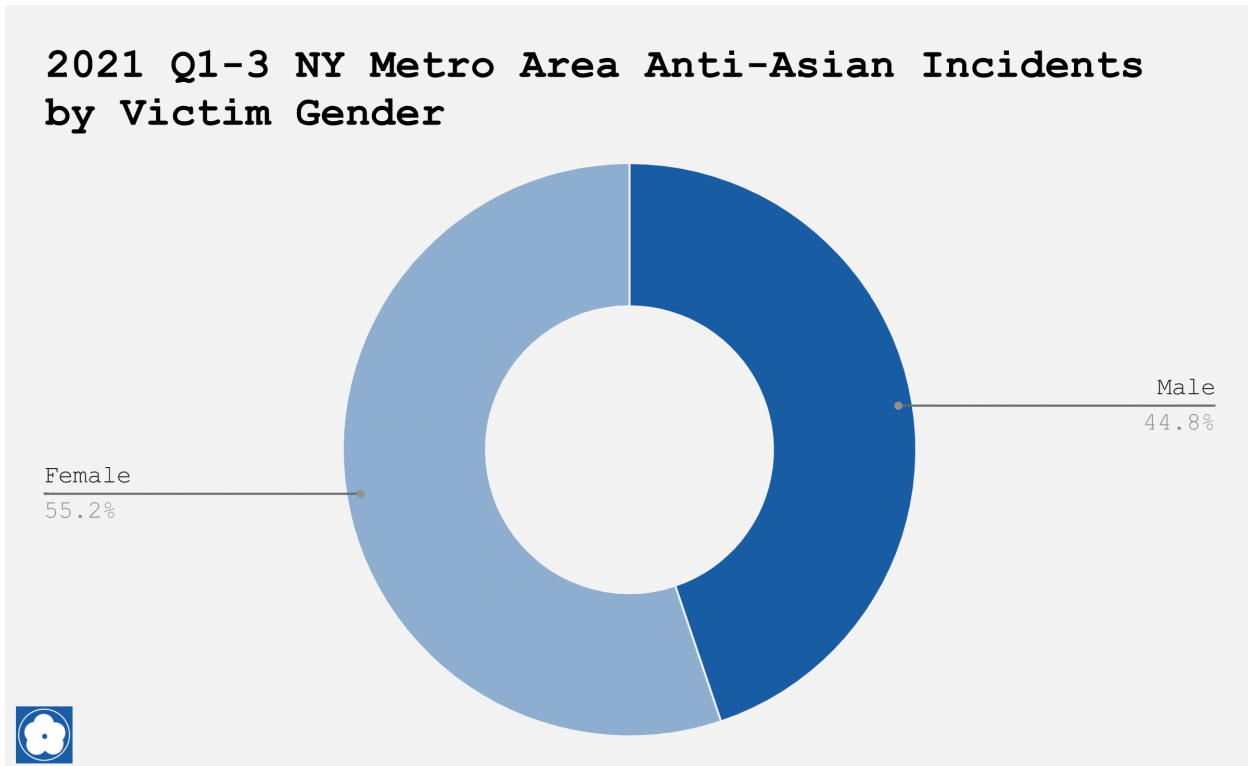
Fig. 6: Victims by Age Group



News sources provided gender information for 145 of the 248 victims.⁷³ Of the 145 victims, 55% were female and 45% were male. See Figure 7 for the distribution of reported victim genders.



Fig. 7: Victims by Gender



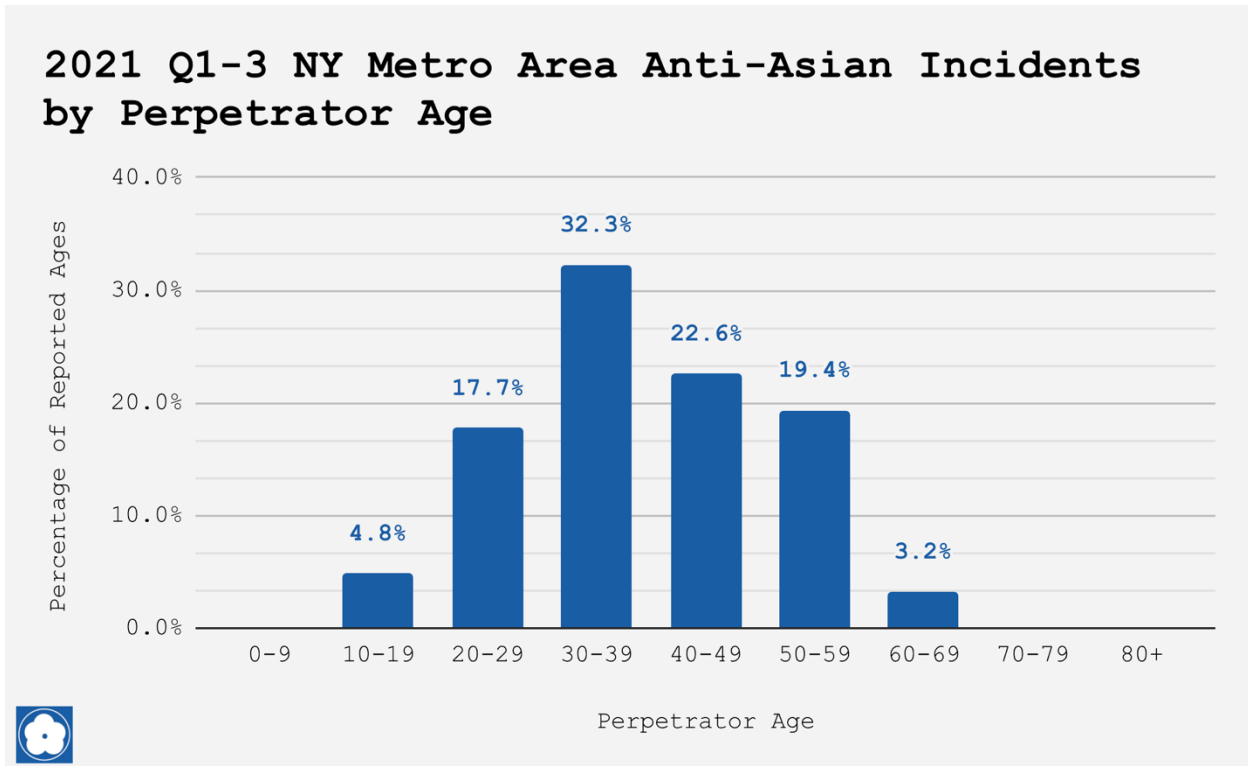
E. Perpetrator Age and “Gender”

The database identified 231 perpetrators across 233 incidents.⁷⁴ Perpetrator age was ascertained for only 62 individuals. The government sources used in the database provided very minimal information about the age and gender of perpetrators.⁷⁵

The 62 perpetrators were divided into five groups based on their ages; the categories were defined in increments of 9 years. The mean of the reported ages is 39 years old and the median is 38 years old. The distribution of perpetrators’ ages has one peak from 30-39 years. This distribution is shown in Figure 8.

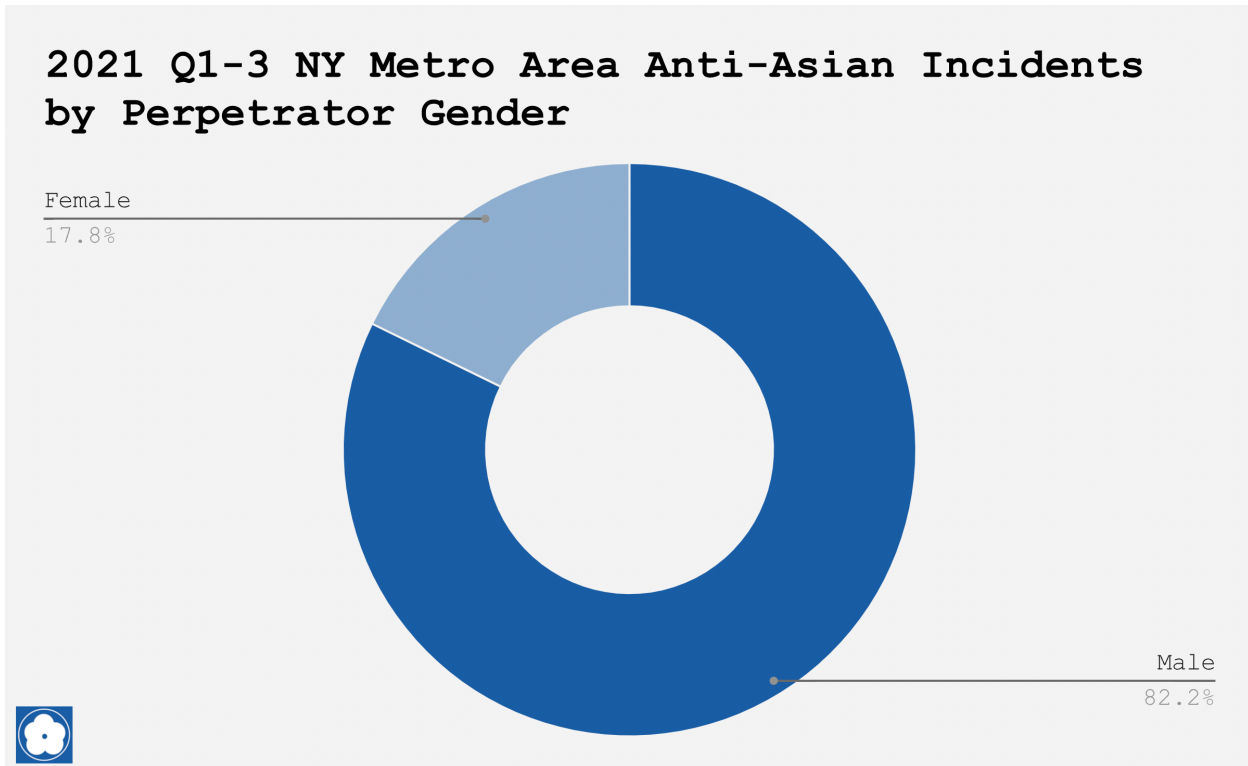


Fig. 8: Perpetrators by Age Group



The sources used provided gender information for 170 of the 231 perpetrators. Using this limited data, 82% were male and 18% were female. See Figure 9 for the distribution of reported perpetrator genders.

Fig. 9: Perpetrators by Gender



F. Evidence of Anti-Asian Intent

The most important element in hate crimes is the motive. In New York, the hate crime statutes require a particularly high showing for motive: “A person commits a hate crime when he or she commits a specified offense and either . . . intentionally selects the person against whom the offense is committed or intended to be committed . . . or intentionally commits the act or acts constituting the offense *in whole or in substantial part* because of a belief or perception” regarding a protected characteristic.⁷⁶

There are numerous ways to prove motive. For example, there can be recordings or recollections of verbal statements made by a perpetrator at the time of the incident. The database noted whenever a source reported such statements in describing what happened at an incident. Approximately 88 of the 233 incidents or 38% had anti-Asian statements made at the scene. A small sampling of the hateful words appears below. They include well-known slurs, newly coined phrases that relate to the COVID-19 pandemic and other oft-repeated sentiments.



- "Go back to China!"
- "Chinese virus!"
- "God damn cat eater!"
- "F--king ch-nk!"
- "Ch-nk bi-ch!"
- "You f-king ch-nks!"
- "F--k you. You don't belong here, you Asian!"
- "Asian slut, you brought the virus!"
- "You're a monkey!"
- "Chinese mother-f—ker!"
- "You brought coronavirus here! I'm going to punch you in the face!"

G. Offense Type

The 248 victims in the database were attacked, humiliated, threatened, and degraded. Some were seriously, physically injured. A few such as Yong Zheng,⁷⁷ Than Than Htwe,⁷⁸ and Yao Pan Ma⁷⁹ were tragically killed.

The database divided the incidents based on offense type into seven categories: homicide, sex offenses, assault, criminal mischief or property damage, theft, verbal harassment, and physical harassment.⁸⁰

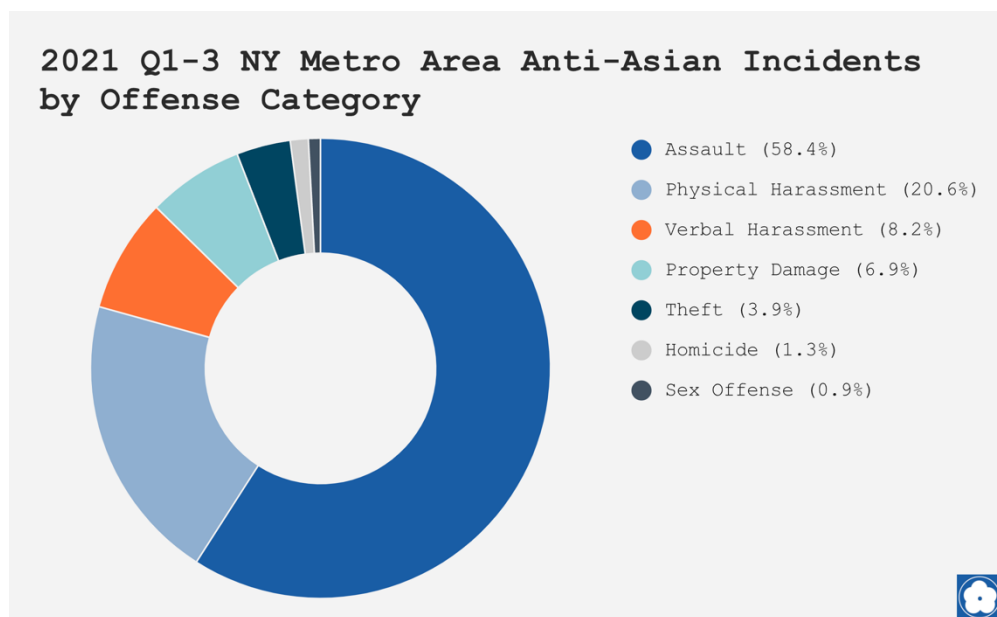
Out of the 233 incidents, 59% were assault, 20% were physical harassment cases, 8% were verbal harassment cases, 7% were criminal mischief or property damage cases, and 4% were thefts. In addition, there were three homicides and two sex offenses. See Figures 10a and 10b for the incident count and percentages.



Fig. 10a: Offense Type - Count and Percentages

Offense Category	Count	Percentage
Assault	136	58.4%
Physical Harassment	48	20.6%
Verbal Harassment	19	8.2%
Property Damage	16	6.9%
Theft	9	3.9%
Homicide	3	1.3%
Sex Offense	2	0.9%

Fig. 10b: Offense Type - Count and Percentages



H. Post-Reporting Outcomes

What happens after victims report anti-Asian incidents to the police or to the media? The AAVTF has worked to answer this important question over the past year. We are aware of no other study that does. News media often report the immediate moments following incidents but rarely continue their coverage to the

end. Press releases from the DA's Offices in 2021 were few and far between. And the public-facing digital websites managed by government agencies do a poor job of providing current and complete information. As a result, the findings below represent a unique contribution to the discussions about anti-Asian hate crimes in New York.

The first steps after the report of a possible hate crime are investigation and/or arrest. Whether the police succeed in making an arrest depends upon many variables. For example, the NYPD may not be able to identify a suspect due to lack of sufficient eyewitness or video evidence. 39% or 91 incidents out of 233 incidents in the database led to at least one arrest. There was a total of 85 arrestees and 94 arrests across the 91 incidents.⁸¹ 61% or 142 incidents, as of April 15, 2022, have not resulted in an arrest.⁸²

The database traced with varying degrees of success the paths of 64 prosecutions.⁸³ See Figure 13 for the incident count for arrests and for hate crimes charged by the DA's Office by county.

Fig. 13: Arrests and Outcomes by County

	Manhattan	Queens	Brooklyn	Richmond	Bronx	Total
Incident Total	137	46	40	5	5	233
Incidents w/ Arrests	57	14	18	2	0	91
Incidents with Hate Crimes Charged by DA's Office	30	6	5	0	0	41

We learned the following about the 64 prosecutions:

- The DA's Offices charged a hate crime in 41 prosecutions.
- Of the 41 prosecutions with hate crime charges, 30 of the underlying incidents, or 73%, had evidence of anti-Asian language or slurs being used by the perpetrator.
- The 41 prosecutions with hate crime charges all involved bodily contact, injury or death or threat of injury or death.
- Seven of the 41 prosecutions have ended in convictions for hate crimes.
 - On February 16, 2021, in Flushing, Queens, Patrick Mateo shoved Lee-Lee Chin-Yeung to the ground, causing her serious injury.⁸⁴ In



August 2021, he pleaded guilty to Aggravated Harassment in the Second Degree as a hate crime, and he entered into a one-year sensitivity training with New York Counseling for Change. He appears before the court for periodic compliance updates.⁸⁵

- On March 30, 2021, near the Times Square subway station in Manhattan, Graiglee Michaud verbally harassed the victim as she was accompanied by her minor children with “Asian slut ... you brought the virus.” Then he spat on the victim and knocked her cell phone out of her hand onto the subway tracks. He pleaded guilty to Aggravated Harassment in the Second Degree as a hate crime and was sentenced to 90 days in jail.⁸⁶
- On April 7, 2021, in Manhattan’s Chinatown, Cheyenne Taylor shouted at an Asian-American victim who was speaking Mandarin with a friend, “Go back to your country,” and then slapped her on the face, leaving her eye swollen. Cheyenne Taylor pleaded guilty to Attempted Assault in the Third Degree as a hate crime and was sentenced to a conditional discharge where she must comply with an 8-month substance abuse program called the Nathaniel program. She will appear for compliance purposes in court in April 2022.⁸⁷
- On April 7, 2021, Janaria Kelley elbowed a 42-year-old Asian man in the chest in a Manhattan subway station, while shouting “F—k you! If you’re not Bruce Lee, then f—k off.” The defendant had six prior arrests, including one for forcibly touching a 66-year-old Asian woman the month before. Janaria Kelley pleaded guilty to Attempted Assault in the Third Degree as a hate crime. According to the Manhattan DA's Office, the sentence is 90 days in jail, three years on probation, and a program with the New York Counseling for Change as a condition of probation.⁸⁸
- On May 1, 2021, at Grand Central Terminal in Manhattan, Adam Traversiere hit one victim in the head with a bag of chips and then encircled another group of victims, while verbally harassing them. Witnesses recall him saying, “Get the f--- out of here” “You don't belong here.” “Dangerous.” Adam Traversiere pleaded guilty to



Attempted Assault in the Third Degree as a hate crime and was sentenced to 60 days in jail.⁸⁹

- On June 13, 2021, Jon Matos was on his motorcycle following the two victims when he got off his motorcycle and advanced towards them with his arms up and his fists clenched, while shouting “Asian Chinese c-nt.” He pleaded guilty to Aggravated Harassment in the Second Degree as a hate crime and received a Conditional Discharge along with a drug rehabilitation program.⁹⁰
- On August 2, 2021, in midtown Manhattan, Peter Brown struck the victim, causing the victim to fall and hit his head on the ground. The victim suffered substantial pain and swelling. Peter Brown yelled “Ch—k” during this attack. He pleaded guilty to Assault in the Third Degree as a hate crime and was sentenced to 1.5 to 3 years in prison.⁹¹
- As of April 15, 2022, 20 of the 41 prosecutions with hate crimes are still open matters and have not reached their conclusions. This group includes the defendant Jarrod Powell, who is currently facing charges of murder for the killing of Yao Pan Ma.⁹²
- 13 of the 41 prosecutions where the DA’s Offices pursued hate crimes involved formal diagnoses of mental illness. For example, in nine prosecutions, the defendants were found to be “mentally unfit” after a 730 proceeding and were then committed to mental health services.⁹³ A few prosecutions ended in dispositions that involved mental and/or emotional health counseling.
- Three of the 23 prosecutions where the DA’s Offices decided **not** to pursue hate crimes also involved mental illness. One prosecution led to a formal 730 finding of mental unfitness, while the other two prosecutions resulted in non-hate crime misdemeanor convictions with mental and emotional health counseling.
- One of the 41 hate crime prosecutions in Manhattan ended in a plea to the violation of disorderly conduct, and the defendant received a conditional discharge where one condition was to participate in a restorative justice program along with their victim. The AAVTF applauds the consideration of

a broad array of options, including non-incarceratory ones, in the prosecutions of anti-Asian incidents.

Following what happens from the reporting of incidents to actual legal outcomes is important on many levels. Like all Americans, Asian New Yorkers want to know and deserve to know how their police, their prosecutors, their courts, and their laws are working.

The AAVTF made tremendous efforts to ascertain the information in this database. We share this information in the hope that it sheds light on what is working and on what needs to be improved. One glaring problem is the lack of easy access to this information which, in turn, leads to the lack of accountability. Such information should not be so difficult to access.⁹⁴ The lack of meaningful access to information about what is happening in the prosecutions of anti-Asian incidents and the reasons for those dispositions demoralizes the community, discourages AAPI victims from reporting, and erodes public faith in the rule of law.

3. Invisible to the Law, Even in High Visibility Moments

Since the onset of the pandemic and the hateful rhetoric of former President Trump and so many others, AAPI persons have been advised by the federal, state, and local governments to report, report, and report any anti-Asian incidents that occur. Despite increased reporting in 2021, attacks seemed to have increased with no end in sight. Meaningful justice continues to elude the AAPI community. Each of the five boroughs in New York City has its own elected DA, and each DA's Office varies widely in operation. Nevertheless, based on the AAVTF's experience over the past year, Asian Americans who reported as directed often, and consistently throughout the five boroughs, had painful and frustrating experiences.

A. The Case Against Patrick Mateo

The prosecution of Patrick Mateo—one of the few hate crime prosecutions in 2021—offers some insights into why justice is elusive. On February 16, 2021, Patrick Mateo shoved Lee-Lee Chin-Yeung, a fifty-two-year-old Asian woman, to the ground outside a bakery in Flushing, Queens.⁹⁵ The victim required ten stitches to close a gash in her forehead that she suffered when she collided with a metal newspaper stand on the sidewalk.⁹⁶ According to the victim's family, the incident began with Mateo claiming that the victim was standing too close to him. Mateo then became visibly upset, uttered curse words, told the victim to move away from him, and pushed the victim's face. At some point during the encounter, the victim felt scared and attempted to pepper spray Mateo. The confrontation ended with Mateo throwing a box of spoons at the victim and hurling the victim "like a rag doll" to the concrete pavement.⁹⁷

A tremendous swell of media attention ensued.⁹⁸ The victim's daughter took to Facebook and wrote that "her mom was pushed with such force that she hit her head . . . and passed out on the floor."⁹⁹ Several high-profile members of the AAPI community also posted about the incident online, raising awareness and calling the online community to action. For example, actress Olivia Munn, a friend of the victim's daughter, made an online post that described the attack, included pictures of Mateo, asked internet users to help identify Mateo, and tagged NYPD Precinct 109.¹⁰⁰ Other celebrities, such as Awkwafina and Gemma Chan, also posted about the incident.¹⁰¹

This online fervor and social media attention was an instrumental factor in the arrest and charge of Mateo for his actions.¹⁰² Mateo was eventually arrested on February 18, 2021 and charged with Assault in the Third Degree (assault with the intent to cause physical injury and harassment)-- a misdemeanor offense.¹⁰³ A Police Department spokesman at the time commented that Mateo's "motives . . . were unclear" and that the incident was "not currently being investigated as [a] hate crime[]." ¹⁰⁴ Similarly, the Queens DA's Office declined to prosecute Mateo under New York's hate crime statute¹⁰⁵ or Aggravated Harassment in the Second Degree.¹⁰⁶ The case was assigned to a junior Assistant DA, and it was unclear what resources were provided to support the investigation and prosecution.

New facts then surfaced. Mateo himself disclosed to a news reporter that he had shouted racially charged language at the victim and told her that "you are in [A]merica . . . NOT CHINA! Please give me space with coronavirus."¹⁰⁷ A February 26, 2021, *New York Times* article reported Mateo's use of this racially biased language.

In March 2021, the AAVTF reached out to the Queens DA's Office to discuss the prosecution of hate incidents in general, and the Mateo case specifically. On March 10, 2021, members of the AAVTF met with members of the Queens DA's Office to discuss the Mateo case and brought to their attention the *New York Times* article, which eventually would serve as the basis for a search warrant for Mateo's text messages.

On March 26, 2021, a representative of the AAVTF also attended a presentation at St. John's University School of Law regarding Black and Asian solidarity, during which the Queens DA's Office was asked whether it was doing enough to combat anti-Asian violence. Their response was "[w]e care about it, [but the] community has to report [incidents]" and "[we] can't prosecute as hate crime just because [the perpetrator and victim] are different races."

After an afternoon program hosted by the New York Governor's Office on March 30, 2021 and a meeting with the same office on April 5, 2021, AAVTF representatives questioned why the Queens DA was not prosecuting the Mateo incident as a hate crime.

This was followed by more communications between the AAVTF and the Queens DA's Office, during which the Office signaled continued unwillingness to acknowledge the racially biased nature of the incident.

Separately, on April 4, 2021, the AAPI community held a "NYC Stop Asian Hate Rally" demanding, among other things, that DA Katz properly investigate and prosecute the Mateo case and protect the AAPI community in Queens.

The next month, AABANY declined to participate in a celebratory "We Belong Here; Queens Rises Against Hate" rally held on May 2, 2021 by the Queens Borough President, on the grounds that the rally was to conclude at the very bakery in front of which Mateo carried out his attack. Given the inaction of the Queens DA's Office, such plans were an affront on the AAPI community.

On May 10, 2021, the Queens DA's Office finally sought a hate crime charge against Mateo.¹⁰⁸ A press release by the Office informed the public that the investigation had been ongoing, and DA Katz expressed that she "appreciate[d] the community's patience as [the Office] gathered needed evidence to establish a hate crime in this particular circumstance."¹⁰⁹ Assistant DAs Michael Brovner and Brinet Rutherford were assigned to prosecute the case.¹¹⁰

On August 13, 2021, Mateo pleaded guilty to aggravated harassment in the second degree (a misdemeanor hate crime), assault with intent to cause physical injury, and harassment in the second degree.¹¹¹ As part of the plea, Mateo is required to complete a year of sensitivity training through New York Counseling for Change.¹¹² This sensitivity training includes weekly meetings, which focus on anger management and pinpointing psychological underpinnings that caused Mateo's crime. If he completes the program, Mateo will be granted a conditional discharge and there will be a full order of protection issued. If he does not complete the program, Mateo will serve a year minus a day in jail and there will be a full order of protection issued.

The outcome of the Mateo case is at once encouraging and disheartening. On the one hand, it is a case study of how social media, press attention, AAPI community activism, and efforts by the AAVTF made a meaningful impact on a hate crime case and helped secure an outcome of which both the victim and AAPI community are proud.

On the other hand, the serendipitous “perfect storm” of factors and voices will not be present for all AAPI victims. Without any one of these contributing factors, it is uncertain whether Mateo would have ever been indicted for aggravated harassment in the second degree (the hate-crime-enhanced harassment charge) and taken the guilty plea. Thus, while the outcome may be touted as a triumph for the AAPI community, it was undoubtedly hard-earned. And the net result is that hate crimes and bias incidents against AAPI victims are often not recognized and not punished for what they truly are.¹¹³

B. Indifference: Behind the Scenes of Other Efforts to Get Prosecutorial Attention

A sobering reality is that for the vast majority of incidents involving acts of violence against members of the AAPI community, the harms suffered by AAPI individuals go unnoticed and the crimes and violations suffered by AAPI individuals and the AAPI community remain unaddressed. Many cases handled by the AAVTF over the past year unfortunately reveal a reluctance to investigate and prosecute incidents involving AAPI victims as hate crimes.

i. David Kim

On June 4, 2020, several individuals harassed and physically threatened David Kim and his friends following a vehicle collision involving the parties. At or around the intersection of 149th Street and 34th Avenue, the vehicle of the alleged perpetrator failed to make a stop at a stop sign and collided with the vehicle in which Kim was traveling. The police arrived at the scene and the parties exchanged insurance information.

Not long after the police left the scene, the alleged perpetrator and his companions who were traveling in his vehicle started to verbally harass Kim, Kim’s girlfriend, and Kim’s friend—all of whom are of Asian descent. The alleged perpetrator used racist and anti-Asian taunts, calling Kim a “f--king Ch-nk.” among other things. Several of the perpetrator’s acquaintances repeatedly yelled “kungpao chicken” at the victims and “people like you caused Corona.” The alleged perpetrator and his friends also physically threatened and intimidated Kim and the other victims. They surrounded the vehicle in which Kim was traveling and would not let Kim and the other victims leave the scene. In fact, the alleged perpetrator and his friends also contacted additional individuals, who then arrived at the scene in a red tow truck

and further escalated the situation, by joining the others who were surrounding the victims' vehicle. Some of these individuals also brandished iron bars taken from the tow truck.

During the time that Kim and the other victims were trapped in their vehicle, the alleged perpetrator and his friends continued to verbally harass and physically intimidate the victims until the police eventually arrived in response to a 911 call that Kim made and dispersed the mob. After the incident, Kim attempted to file a police report regarding the incident. He was not allowed entry into the local police precinct, however, because of access restrictions due to the COVID-19 pandemic and Black Lives Matter protests that were occurring at that time.

Kim was later connected to attorneys through the Alliance for Asian American Justice and the Asian American Legal Defense and Education Fund.

On May 17, 2021, counsel for Kim met with the Queens DA's Office to discuss the incident. Following the meeting, Kim's counsel also provided video files from the dashboard camera of the victims' vehicle. The footage captured (1) the collision between the vehicles due to the alleged perpetrator's failure to stop at a stop sign, (2) the alleged perpetrator and his friends surrounding the victims' vehicle, (3) the red tow truck arriving at the scene and being parked directly in front of the victims' vehicle to block access to the intersection, and (4) Kim's 911 call to the police while trapped within the victims' vehicle.

After the initial meeting, Kim's attorneys reached out again to the Queens DA's Office to inquire about the results of their investigation and whether DA Katz intended to bring charges against the alleged perpetrator and the other individuals involved. Their letter recounted the June 2020 events, referenced materials that Kim and his counsel provided to the Queens DA's Office, laid out reasons why Kim's attorneys believed that the alleged perpetrator and his colleagues should face criminal charges, noted that Kim would be available for an interview, and requested a response from the Queens DA's Office. The letter also articulated a basis to charge the alleged perpetrator and his colleagues with a hate crime or, at a minimum, criminal charges for unlawful imprisonment, menacing, disorderly conduct, and criminal nuisance.¹¹⁴

The Queens DA's office subsequently met with Kim and Kim's lawyers also provided additional corroborating facts regarding the incident that they had

obtained through interviews with Kim’s girlfriend and Kim’s friend. Kim’s lawyers also offered to make Kim’s girlfriend and Kim’s friend available for interviews with the Queens DA’s Office. However, the Queens DA’s Office informed Kim and his counsel that it would not bring any charges in this matter and declined to interview the other victims or bring in the alleged perpetrator for questioning.

If the David Kim case resulted in nothing more than inaction on the part of the Queens DA’s Office, one cannot help but wonder: what else must a victim do to achieve access to justice? The case study reveals that proper documentation of evidence, including evidence of assailants appearing to act with racial animus, have no value in the face of prosecutors that refuse to investigate fully. The case study also sheds light on a predisposition to believe that factors other than racial animus—here a car accident—were the only motivating factors for the conflict between the parties.

ii. **Melissa Lok**

AABANY also attempted to assist an AAPI woman, Melissa Lok, who reported an incident at a grocery store in Manhattan where she alleges a woman harassed her, hit her with a heavy bag, and called her “stupid Chinese” repeatedly. She attempted to record the series of events on her phone, solicited help from bystanders, and called 911. Ms. Lok chased the assailant to a nearby building, and the police arrested the assailant. She claims she was billed \$474.97 for the EMS treatment she received. The Manhattan DA’s Office investigated the matter for two months and conducted multiple interviews with Ms. Lok, but ultimately dismissed the case. Ms. Lok questioned whether the investigation was robust, and whether relevant video was preserved and obtained by the DA’s Office. She also felt that the DA’s Office accused her of instigating the incident, did not appreciate the trauma she experienced, and held her aggressive pursuit for justice against her.

Ms. Lok reached out to AABANY for assistance and AABANY was able to obtain a meeting with the hate crimes unit of the Manhattan DA’s Office. We were told that a robust investigation was conducted, including video pulls and witness interviews, and after much internal discussion, they decided they were not able to prosecute due to the inability to prove any charges beyond a reasonable doubt. Prosecutors suggested that the videos available were not supportive of Ms. Lok’s allegations, that Ms. Lok herself appeared to be an instigator, and that there were problems with her account of the incident. AABANY was assured that the Office did not

come to the decision lightly. In the course of the meeting, the Manhattan DA's Office also suggested that the hate crimes statute could be amended to provide prosecutors with more flexibility. They also shared that the Office has been involved with hate-crime training initiatives with the NYPD and volunteered to provide training for lawyers trying to help the community. AABANY assisted Ms. Lok in finding pro bono counsel. We are not aware of any further developments in the matter since then.

In this particular case, despite a very vocal victim who reported an incident and had advocates pressing for review and consideration, she was unable to gain closure. It is difficult to second-guess judgment calls when perspectives on the evidence differ so greatly. The matter speaks to the complexity of these issues, a sense of helplessness in the community, the prevalence of hate in everyday lives, and the trauma inherent in an individual's attempt to find justice.

iii. Other HEART Cases

Other instances of violence against the AAPI community in New York have been reported to AABANY through its Hate Eradication Active Response Team (HEART) program.¹¹⁵ The most common reported incidents include verbal harassment from community members in Queens (*e.g.*, "Go back to China" statements and use of derogatory terms) and neighbors making verbal threats against an AAPI individual's property, physically intimidating the AAPI individual, and using racially charged language during a property dispute.

Members of the AAPI community have also expressed frustration with the lack of respect exhibited by the NYPD when victims try to report hate incidents. In February 2022, an elderly AAPI couple reported to the police that a tenant in their two-family home in the Bronx had threatened them with a knife and hurled racial epithets at them. The report was met with indifference from the NYPD and no hate crime charge was explored. This and many similar incidents reported to the AAVTF suggest a disturbing trend where police choose not to investigate—and prosecutors decline to charge—hate crimes against the AAPI community. This, in turn, contributes to distrust of law enforcement within the community along with a sense of invisibility.

The unnecessary and often arbitrary barriers that victims face when trying to report anti-Asian violence to law enforcement extend, as well, to witnesses of these

incidents. In the fall of 2021, the AAVTF was contacted because a witness was present during a hate incident on the subway. The witness took photographs of a man screaming at two young Asian women who were speaking Chinese. During the man's tirade, he mentioned "China" multiple times and then spat on the back of one woman as she tried to move away from him. The witness attempted to report the incident to Transit Bureau officers who asked her to call a police bureau. She called the police bureau and 911, but the members of law enforcement she spoke with refused to open an investigation because she was not the victim. The witness ultimately sent an email with details of the incident and the photographs to the Hate Crimes Task Force but received no response or acknowledgement in return.

Other community members have reported to the AAVTF several incidents where reports to the NYPD have been ignored or gone unanswered. This indifference to reports of anti-Asian hate incidents inevitably contributes to the futility that members of the AAPI community feel when being told, yet again, that they should "just report," because reporting is met with dismissiveness.

* * * * *

As summarized above, AABANY's work through its Anti-Asian Violence Task Force and HEART program over the past year brought it in direct contact with many AAPI individuals who encountered incidents of hate and violence. We come away from this experience with the following learned lessons. First, prosecutions of matters involving anti-Asian violence are often marked with indifference and inaction on the part of state prosecutors and law enforcement. Second, even competent legal counsel and properly documented evidence often are not enough to compel prosecutors to investigate and prosecute crimes. Lastly, a victim's search for justice is heavily impacted by the attitude of law enforcement at the time of complaint. For example, several AAPI persons have reported to AABANY about damage and threats of damage against property in disputes with tenants and neighbors, and these cases have been laced with racial epithets and anti-Asian sentiment. Yet, AABANY has found that they have been dismissed by law enforcement, leaving the AAPI victim with no recourse.

We recognize that working in a DA's Office is an extremely difficult job. Overworked and underpaid, Assistant DAs take on public service willingly. Our critiques are not meant as an attack on prosecutors. We express our frustration in the hope of prompting productive change. We conclude with some hopeful signs.

Current Manhattan DA Alvin Bragg took office on January 1, 2022. In four months in office, DA Bragg has increased outreach to the AAPI community, listened to its recommendations and sought funding to implement many of those policy recommendations.

C. Injustice Under the Law

The AAPI community today feels invisible, and this is not a new phenomenon. It is rooted in Western legal history,¹¹⁶ accentuated by economic competition, and legitimized by racist ideology. America is often described as a nation governed by the rule of law. From the U.S. Constitution to city ordinances, however, the law has often been weaponized to create winners and losers, creating a specific economic and social order. The law was constructed for decades to exclude Chinese and then all other Asians from the legal, political and social life of the American nation.¹¹⁷ It traces back to the California Crimes and Punishment Act of 1850, which stated that “[n]o black or mulatto person, or Indian, shall be permitted to give evidence in favor of, or against, any white person.”¹¹⁸ In 1853, George Hall used this statute to argue that his conviction for the murder of a Chinese miner named Ling Sing, based on the testimony of Chinese witnesses,¹¹⁹ must be overturned because the Chinese—similar to the Blacks, Mulattos and Native Americans—cannot testify against a white man. The *Hall* case effectively authorized violence, expulsion, and property confiscation against the Chinese, rendering them invisible under the law. In the following decades, Filipinos and South Asians would suffer the same actions.¹²⁰ The federal government adopted these same exclusionary principles with Executive Order 9066, leading to Japanese internment during World War II.¹²¹

The Vincent Chin case was the very first time that federal hate crime laws were used in a case involving an Asian-American victim.¹²² However, in the 40 years since Vincent Chin’s murder, the prosecution of Asian hate crimes has rarely been a part of the larger mainstream conversation about hate crimes. Without the narrative of this history embedded in the American mainstream historical consciousness, law enforcement often fails to recognize anti-Asian elements in a crime. Without instantly recognizable symbols such as the noose and the swastika, police and prosecutors struggle to clearly identify anti-Asian hate.

With a historical exclusion from the protection of the law, accompanied by perpetual foreigner treatment and racial bias, Asian Americans still feel invisible under the law. Although legal exclusions such as that used in the *Hall* case are no

longer the law, they left a political, legal, and social legacy which persists to the present day, with an impact that continues to be felt by the AAPI community.

4. A Call to Action

As President Biden exhorted in his first prime-time address in March 2021: “Asian Americans, who have been attacked, harassed, blamed and scapegoated . . . they’re forced to live in fear for their lives just walking down streets in America. It’s wrong. It’s un-American. And it must stop.”¹²³ But it has not stopped. Where do we go from here?

The *Rising Tide* report contained several proposals for next steps to combat anti-Asian hate. Through the ongoing work of the AAVTF, including dialogue with state and local government officials, community leaders, and other stakeholders, AABANY expands upon those recommendations for legislative and policy reform. We now call upon members of the legal community, law enforcement, and members of local, state, and federal governments to devote serious attention and resources to the following.

A. Improve Access and Transparency in the Reporting of Hate Crimes Data

New York State, through the Department of Criminal Justice Services (“DCJS”), collects data from all police agencies and the Office of Court Administration (“OCA”) on hate crimes. A fraction of the available data is compiled and released to the public pursuant to legislative mandates and executive orders. We applaud the passage of the Hate Crimes Analysis & Review Act (S.70/A.2230) which was signed into law by Governor Kathy Hochul on December 23, 2021.¹²⁴ The Act requires the Division of Criminal Justice Services to publish additional helpful summary data about victims and perpetrators of hate crimes in its annual reports. However, the additional data in these annual reports do not address the need for a centralized, publicly accessible, and up-to-date database with capabilities to search, map, and disaggregate the data so the public is better aware of where and against whom hate crimes are occurring.

Anti-Asian hate incidents are widely underreported. What can we do to improve the accessibility, reliability, and accuracy of the data so that we can allocate resources to this issue appropriately?

First, law enforcement agencies must report data on all hate incidents, including anti-Asian hate incidents. 2020 was the fourth consecutive year in which the number of law enforcement agencies providing data to the FBI declined.¹²⁵ Law

enforcement departments fail to report hate crimes for a variety of reasons, including lack of resources or funding, lack of data collection requirements (or insufficient requirements), incomplete (or non-existent) hate crime statutes, other departmental priorities, and a lack of training regarding how to identify or respond to hate crimes.

Improving public disclosure around hate incidents, investigations, and prosecutions would promote public safety and community trust in law enforcement. Mandating a minimal level of reporting for the public serves the public interest in government transparency and allows the public to understand the nature of the problem. Given the volume of hate incidents occurring in New York, the state should not merely ensure that the minimum requirements of the federal Jabara-Heyer No Hate Act¹²⁶ are met, but it should also develop a comprehensive tool for collecting data on hate incidents, including anti-Asian hate incidents.

Second, a comprehensive, publicly accessible database of all reported hate crimes and bias incidents throughout New York State must be established. No comprehensive tool exists for locating and obtaining information on all allegations of bias incidents and hate crimes reported to the police. And the currently available reporting does not provide sufficient data to connect information to reported incidents and appears to be omitting incidents mentioned in news reports. Thus, while AABANY and other non-governmental organizations have endeavored to track hate crimes and bias incidents through reporting systems by the NYPD, Mayor's Office for the Prevention of Hate Crimes ("OPHC") Hate Crime Notification System, and NYS Unified Court System, these systems present incomplete information and, at times, do not correspond or conflict with each other.¹²⁷

A comprehensive, centralized database of hate crimes and bias incidents should, at a minimum:

- Gather all incidents reported to official government agencies, such as local and state police, as well as other local and state agencies, including any human rights commissions, local EEOC offices, and schools;
- Consolidate in one easily accessible location specific data points about incidents, including but not limited to:
 - any bias statements made at the scene of the incident;

- details from the police report or complaint, omitting personally identifiable information about the victim;
 - incident location, date, and time;
 - information on NYPD classification of the incident;
 - information on prosecutorial charges;
 - information about the nature of the incident and the category of the incident;
- Allow the public to track reported hate crimes and bias incidents through the criminal justice system, including having easily accessible information about case dispositions as a matter of public record;
 - Include filtering, searching, and mapping functions so the public knows where and when hate crimes are occurring; and
 - Be under the purview of a statewide authority with responsibility for the database because resources and funding for local authorities vary.

Third, in addition to creating a centralized, publicly accessible database of all reported hate crimes and bias incidents, state and local governments should consider creating a new method by which members of the public can make requests for information about hate crimes and bias incidents. Because current reporting does not capture all allegations of bias incidents and hate crimes, individuals and organizations in New York must resort to the Freedom of Information Law (“FOIL”) as a method for obtaining information about incidents. However, the law enforcement FOIL exception is ambiguous and enables police departments to issue broad denials of information requests without providing sufficient explanation, inhibiting the public’s ability to review important statistics about hate crimes. Any governmental authority that is established with responsibility for the public database of hate crimes and bias incidents should provide a mechanism allowing the public to access information independent of FOIL.

In our analysis, one factor was repeatedly cited as contributing to the increase in anti-Asian violence, but we have no data points to properly analyze it: the mental health of the offenders. News reports and anecdotal accounts from victims and

witnesses indicate that perpetrators of many of the incidents of anti-Asian violence either appeared mentally ill or had a history of apparent mental illness. Although we support increased mental health resources and mandating of mental health treatment when needed, we do not possess any data with which to analyze the correlation between mental health and violence against the AAPI community. We believe this is an area in which reporting can be improved.

DCJS, which releases hate crime offender information through the Hate Crimes Analysis and Review Act, has access to Office of Court Administration (“OCA”) records related to the criminal cases charging hate crimes. DCJS’s report could include data that reveals some information about the mental health status of offenders. Under New York mental competency laws, a defense attorney can request a proceeding to determine if a defendant is an “incapacitated person.” Such person is a defendant who “as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense.”¹²⁸ To initiate such a proceeding, a judge must be satisfied that the defendant *may* be an incapacitated person, and if so, *must* issue an order of examination.¹²⁹

Once the court issues an order of examination, two psychiatric examiners will evaluate the defendant and issue reports and recommendations on whether the defendant is an incapacitated person.¹³⁰ This process is known as the “730 Exam.” If found to be an incapacitated person and the charge is a misdemeanor level offense, that charge is dismissed.

As has been highlighted by the above rules, data related to whether a 730 Exam was conducted and the outcome of 730 Exams, has significance that will allow us to interpret the data and make recommendations towards solutions. We must collect this data and release it so we can have an informed discussion regarding the correlation of mental health and hate crimes and bias incidents.

Information related to a 730 Exam is confidential and often results in cases being dismissed. DCJS therefore can uniquely access, scrub identifying information, and release the macro numbers such that an informed analysis can be performed.

An additional data source may exist for those charged with hate crimes who become incarcerated. Whether an offender received mental health treatment and what type of treatment received may inform recommendations to mitigate and

prevent crime. This data can also be scrubbed to prevent the release of confidential information.

B. Treat Community as Victim and Investigative Partner

Section 485.00 of the New York Hate Crimes Act contains legislative findings recognizing that hate crimes are unique in that they not only harm the individual victim but also the group and community to which the victim belongs:

[Hate Crimes] . . . tear at the very fabric of free society. Crimes motivated by invidious hatred toward particular groups not only harm individual victims but send a powerful message of intolerance and discrimination to all members of the group to which the victim belongs. Hate crimes can and do intimidate and disrupt entire communities and vitiate the civility that is essential to healthy democratic processes.¹³¹

Thus, every time a hate crime is perpetrated, there are at least two victims: the person who suffered the attack and the group to which that person belongs. How does this impact how we treat and prosecute hate crimes?

First, prosecutors' offices should do more to recognize that the community has an interest in the proper resolution of hate crime cases. This interest may be separate and distinct from that of the immediate victim. Both the community, through designated interest groups, and the victim should be consulted given their respective interests on matters related to sentencing, plea deals, and the status of cases. Both should be kept apprised of developments in the prosecution of the cases.

The New York City local prosecutors have thus far made significant efforts to work with AAPI communities in response to the rise in anti-Asian hate. These efforts include meeting with numerous organizations and individuals and hosting events and making presentations. But there is still room for improvement. For example, more frequent press releases and social media updates would be effective ways to communicate more broadly with AAPI New Yorkers who are not specifically invited to meetings or unable to attend. Recently, the Office of DA Alvin Bragg has been issuing press releases more frequently, thereby keeping the community informed of developments and initiatives.

Second, law enforcement should recognize the value of reaching out to and cooperating with the community and interest groups to facilitate the investigation of hate crime cases. Members of the community may have information the police lack and are likely more willing to communicate that information to local groups like AABANY than they are to government authorities. This information may lead to more successful prosecutions. For example, a victim who does not speak English well may not understand a slur that is directed at her during a hate crime attack. However, other members of the community who are present may have heard and understood the slur.

Recognition of the community as victim and investigative partner is essential to fulfilling the legislative purpose of the Hate Crimes Act. This will lead to more appropriate case resolutions and more successful prosecutions.

C. Develop Better Guidance and Standards for Categorizing Incidents as Possible Hate Crimes

Anecdotal evidence suggests that anti-Asian incidents, even when reported to official channels, are not being recognized as possible hate crimes and are therefore not being investigated or pursued appropriately. Why is this?

One reason is the lack of guidance as to what constitutes a hate crime. Rather than defining what a hate crime *is*, New York Penal Law Section 485.05(2) provides what it is *not*: “Proof of race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of the defendant, the victim or of both the defendant and the victim does *not*, by itself, constitute legally sufficient evidence satisfying the people’s burden . . .” (emphasis added).¹³² This is akin to defining an elephant as not a donkey. We cannot expect someone to recognize what an elephant is by looking for something that is not a donkey. What is required is providing affirmative guidance and examples of what a hate crime is. The following is provided by way of example and is not meant to be exhaustive:

- Evidence of expressions from the perpetrator that include well-settled slurs, hostile language or gestures offensive to the protected group, such as references to foreignness, that occur close in time to the conduct or in explanation of the conduct should be considered to be presumptively legally sufficient evidence that satisfies the People’s burden.



- Evidence that the events preceding the incident drew attention to the victim's race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation immediately prior to or during the perpetrator's conduct is presumptively legally sufficient evidence that satisfies the People's burden.
- Evidence that the defendant selected victim(s) due to the defendant's belief that the victim(s) belonged to a protected group that was more likely to have valuables, less likely to report the crime, or other stereotypes is legally sufficient to satisfy the People's burden.
- Evidence that the defendant was part of a hate group or had a history of making bias-related statements, including using bias-related symbols or depictions against individuals of a particular race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation, may be considered as possible evidence to satisfy the People's burden.
- Evidence that the defendant has perpetrated multiple violent acts, close in time to each other, against persons of a particular race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation may be considered as possible evidence to satisfy the People's burden.
- Evidence that the victim was in or near an area commonly associated or frequented by members of a particular race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation, especially if it is otherwise unprovoked, may be considered as possible evidence to satisfy the People's burden.

We also recommend providing guidelines to enable more effective hate crime investigation techniques, such as scripts for first responders to hate crime incidents and other public-facing officials.

D. Reform the Hates Crimes Law Legislatively

The Hate Crimes Act of 2000 ("HCA") codified in Article 485 of the New York Penal Law ("NYPL") enhances the punishment of certain crimes when they are committed with a bias motive. In many reported hate crimes cases, there were facts

that appeared to warrant an HCA charge, but due to language in the current statute, law enforcement was unable or hesitant to do so. Two small changes to the statutory language can significantly affect the scope of cases where a Hate Crime can be charged and remove any ambiguity over whether a charge is appropriate. First, the word “substantial” should be removed such that a hate crime is committed if it is “in whole or in part” because of a person’s protected characteristic. Second, the “specified offense” limitation of the HCA should be removed. And third, the offense of aggravated harassment, which currently appears in a separate section of the NYPL, should be reclassified into the HCA.

i. Removing the “substantial” requirement

A crime may be charged as a hate crime under the HCA when a person selects a victim or commits a specified crime when they are motivated, “in whole or in *substantial* part” due to a belief or perception about a person’s race, color, national origin, or other protected classes.¹³³ The effect of being charged “as a hate crime” is that the level of the crime, and therefore punishment, rises.¹³⁴

Because the statute does not define the term “in whole or in substantial part,” the common and ordinary meaning of those terms are to be applied.¹³⁵ Webster’s Dictionary defines “substantial” in at least five different ways, including, “considerable in quantity; significantly great” as well as “being largely but not wholly that which is specified.” In *People v. Fox*, the only case to discuss the definition of “substantial part” in the context of the HCA, the court consulted the dictionary meanings and held this term to mean, “a considerable portion or amount.”¹³⁶

The lack of clear lines about when a crime is motivated, “in substantial part” by a belief or perception about race, or other protected class¹³⁷ creates confusion about when a hate crimes enhancement is chargeable or appropriate.

Many acts of violence have numerous motives, and hate crimes are no different. Because a defendant has multiple “reasons” to attack another person does not negate that the HCA was enacted to prevent one of them from being based on race, ethnicity, or any of the other protected classes. Instead of focusing on whether there are *other* motives or trying to quantify each motive, this statute should focus simply on whether *just one* of those reasons is because of the victim’s protected class. Removing the word “substantial” accomplishes that goal.

ii. Removing the “specified offenses” requirement

Second, the HCA should be revised to eliminate the need for a “specified offense” to be committed. Under the current statute, only certain offenses can be designated as hate crimes.¹³⁸ This list of “specified offenses” is narrow and arbitrary. The codified legislative findings under NYPL § 485.00 do not indicate why these crimes were selected and not others. For example, Rape in the First Degree (NYPL § 130.35) can be a hate crime, but for some unexplained reason, Rape in the Third Degree (NYPL § 130.25(3)) cannot. Notably, the criminal prohibition against Graffiti (NYPL § 145.60) cannot be a hate crime under the statute even if the graffiti expresses well-known racial slurs. Other excluded offenses that could be committed with a bias motive include: Criminal Obstruction of Breathing (N.Y. Penal § 121.11), Endangering the Welfare of a Child (N.Y. Penal § 260.10), Endangering the Welfare of an Incompetent or Physically Disabled Person (N.Y. Penal § 260.24), Unlawful Dissemination of an Intimate Image (N.Y. Penal § 245.15), or Forcible Touching (N.Y. Penal § 130.52). Therefore, the legislature should revise the HCA to apply to “all offenses” unless the offense is *explicitly excluded*. This revision will ensure that all crimes committed because of bias or hate are properly designated as hate crimes.

The only offenses that may need to be excluded from the HCA would be the hate crimes contained presently in the Aggravated Harassment section of the Penal Law that predate the HCA and already have enhanced sentences to be discussed *infra*.¹³⁹

iii. Reclassifying Aggravated Harassment

Third, the “aggravated harassment” offenses that involve bias or hate speech should be reclassified into the HCA. These crimes should be renamed from “Aggravated Harassment” to a name that makes it immediately apparent that they are hate crimes. Aggravated Harassment in the Second Degree could be renamed as a “Criminal Bias Incident” and Aggravated Harassment in the First Degree could have names that identify the bigoted criminal conduct such as “Criminal Display of a Noose,” or “Criminal Display of a Swastika.” The name of an offense has a strong effect on how a crime is reported, policed, and prevented.

“Hate crimes” as popularly understood, include both the sentencing enhancement under the HCA as well as a host of other crimes targeted at and motivated by a hatred of another protected class. These other crimes are found in the Aggravated

Harassment statutes of the NYPL. Aggravated Harassment in the First Degree (NYPL § 240.31), a class E felony, prohibits actions such as drawing or displaying a swastika¹⁴⁰ or noose,¹⁴¹ cross-burning,¹⁴² or the damaging of premises primarily used for religious purposes,¹⁴³ when done “with intent to harass, annoy, threaten or alarm another person,” because of a belief regarding race, ethnicity, or any other protected class. Aggravated Harassment in the Second Degree (NYPL § 240.30(3)), a class A misdemeanor, penalizes threats of physical contact, spitting, and other harassing physical contact, when done with a bias or hate motive.

These non-HCA hate crimes make up a large portion of the hate crimes committed in New York State. Of the 488 hate crimes reported to law enforcement in New York State in 2020, almost 45% were harassment crimes.¹⁴⁴ Paradoxically, these crimes are not found in the Hate Crimes section of the Penal Law, but in the “Offenses Against Public Order” section. In fact, they are excluded from the “specified offenses” of the HCA, and thus ineligible to be charged “as a Hate Crime” under the HCA, a result that defies logic and common sense.

To add to the confusion, Aggravated Harassment in the Second Degree is the name given to multiple crimes.¹⁴⁵ The vast majority of cases where this crime is charged involve harassment using a telephone, not the subsection based on bias or hate motivation. For example in 2021, the NYPD charged 2,829 defendants with Aggravated Harassment in the Second Degree, but only 12 of these arrests were for the hate crime version of the statute.¹⁴⁶ The bulk of those charged with this crime committed an identically named, but completely different crime.¹⁴⁷ If convicted of N.Y. Penal § 240.30(3), the defendant’s criminal history would simply indicate a conviction for Aggravated Harassment, with no indication that it was a bias or hate crime.

The confusion caused by the names and classification of these crimes can have real consequences in reporting and policing these incidents. The language of Aggravated Harassment in the Second Degree is nearly identical to Harassment in the Second Degree, a non-criminal offense.¹⁴⁸ While a crime can result in an arrest even if not personally observed by police, non-criminal “petty offenses” require an officer to personally observe them.¹⁴⁹ Therefore, if an officer is unaware of NYPL § 240.30(3) and instead mistakes it for Harassment in the Second Degree, they will not take a report or initiate an arrest.

Reclassifying hate speech that is an element of aggravated harassment into the hate crimes section of the Penal Law is consistent with the purpose of the HCA, which is to penalize crimes that harm entire communities. The legislature, in enacting the HCA, stated that, “[c]rimes motivated by invidious hatred toward particular groups not only harm individual victims but send a powerful message of intolerance and discrimination to all members of the group to which the victim belongs. Hate crimes can and do intimidate and disrupt entire communities and vitiate the civility that is essential to healthy democratic processes.”¹⁵⁰ The same applies to the bias-motivated crimes that currently appear in Article 240, rather than the HCA. If our recommendation is adopted, an arrest or conviction on a bias-motivated crime would inform the public that the defendant had committed a hate crime, not that they had merely committed harassment.

E. Fully Fund Hate Crimes Units of Law Enforcement and Prosecutors’ Offices

In AABANY’s February 2021 *Rising Tide* report, we called for (1) sufficient funding and (2) full-time staffing of the NYPD’s Asian Hate Crimes Task Force and of the Hate Crimes Units within New York DA’s Offices. On March 16 and March 22, 2021, AABANY Board Director and AAVTF member Chris Kwok testified before the New York City Council Committee on Public Safety to stress the importance of implementing these proposals.¹⁵¹

To combat anti-Asian violence effectively, we need to fund this effort at both the city and state level. That has not been done. We note that NYPD officers with the requisite linguistic skills and cultural competency are volunteering their time to the NYPD’s Asian Hate Crimes Task Force, which means committing additional time on top of their regular work for the NYPD. We repeat our call for (1) sufficient funding and (2) full-time staffing of the NYPD’s Asian Hate Crimes Task Force and of Hate Crimes Units within New York City DA’s Offices. The Manhattan DA’s Office has also been calling for \$1.6 million in funding from City and State legislatures for the expansion of its Hate Crimes Unit.¹⁵² AABANY supports this request.

Senate Bill S.2987-A,¹⁵³ which was signed into law by Governor Kathy Hochul on December 23, 2021, declares racism to be a public health crisis and establishes a “racial equity working group” that will develop recommendations to reduce or eliminate racial and ethnic disparities. But the statute states that members of the working group shall receive no compensation.

Fully funding hate crimes units is essential because, to make any laws effective, there must be enforcement. Enforcement requires investigation, arrest, and prosecution. To that end, both local police departments and DA's offices need dedicated investigators who have the time and motivation to fully investigate allegations of hate incidents. Periodic audits should be performed to ensure that dedicated funds for hate crimes prosecution are being used solely by Hate Crimes Unit personnel at law enforcement agencies and prosecutors' offices.

Despite the large number of incidents reported in the news and on social media, very few are classified as hate crimes. The lackluster response to date of law enforcement to incidents of anti-AAPI violence minimizes the vicious hate at the root of these attacks and creates the impression that these attacks can persist with impunity. Moreover, the appropriate treatment of reports of anti-AAPI violence is further hindered by language and cultural barriers, which would be resolved with a full-time dedicated staff of legal professionals who have the cultural and linguistic competence to handle complaints and reports.

F. Establish and Fund Diversion Programs, Training in Cultural Sensitivity, and Trauma-Assisted Counseling for Law Enforcement Agencies and Victims' Assistance Programs

A key response to combating anti-Asian hate and bias incidents is anti-bias and cultural sensitivity programs for the general public, perpetrators of anti-Asian incidents, and victims. A two-pronged proposal to (i) fund anti-bias programming for defendants through the OCA, and (ii) fund training in cultural sensitivity and trauma-assisted counseling for law enforcement agencies and victims' assistance programs, could provide restorative justice in the form of diversion programs for perpetrators, and could also make law enforcement and victims' assistance more effective.

Anti-bias programming for defendants through the OCA should be a centralized, top-down initiative from the Governor's Office, allowing the State to gather and maintain data and metrics on the program to monitor its effectiveness. The program could resemble court-ordered anger management programs, last six months to a year, and be modeled after existing resources.

For example, New York Counseling for Change currently provides treatment for defendants on a variety of issues, including bias crimes.¹⁵⁴ Some state hate crime

statutes explicitly provide for diversity awareness programs and funding mechanisms for those programs.¹⁵⁵

A pilot program can be established in Brooklyn, the Bronx, or Nassau County, building upon existing resources. In Brooklyn and the Bronx, Common Justice operates a 12- to 15-month violence intervention program. The program has dealt with hate crimes, including one on the New York subway in which a young Jewish woman was targeted and badly beaten on Hanukkah.¹⁵⁶ The pilot program would augment or complement other restorative justice programs by providing specific anti-bias programming. This program would comply with Assembly Bill A.1202, which, if passed in the Senate and enacted into law, would require defendants convicted of hate crimes to undergo “a program, training session or counseling session directed at hate crime prevention and education.” The program would provide an alternative to incarceration and promote restorative justice for both perpetrator and victim in hate crime cases. The program may take advantage of federal funding through the Jabara-Heyer No Hate Act.¹⁵⁷ A program like this could take advantage of resources already existent in the community. For example, a curriculum might be developed that teaches young perpetrators of hate crimes about the history of AAPI persons in America. Similar trainings provided to perpetrators of anti-Semitic hate crimes have been successfully held at Holocaust centers and museums in New York.

Funding training in cultural sensitivity and trauma-assisted counseling for law enforcement agencies and victims’ assistance programs is also critical. Communicating with hate crime and incident victims and witnesses in a compassionate, sensitive, and culturally appropriate manner is essential for building and maintaining trust in our governmental institutions. A statewide initiative would help to eliminate deficiencies and inconsistencies across jurisdictions. Trainings can also be modeled after existing programs in certain jurisdictions or at the DOJ’s Office of Victim Services. For example, the Hate Crimes Unit of the Manhattan DA’s Office has already begun such trainings with new graduates from the police academy this spring.

In addition to training law enforcement agencies and victims’ assistance workers, it is important to educate the general public about instances of anti-Asian hate. The AAVTF has initiated a campaign to promote the inclusion of a course on Asian-Americans and the Law at law schools in the New York area. Letters were sent to law schools in New York requesting that a course on Asian Americans and the Law

be added to the course offerings.¹⁵⁸ The letters noted that deep ignorance of Asian American history, culture, and contributions is one of the root causes of violence against Asian Americans now and throughout the history of this nation. The next step would be to promote courses on Asian-American history in universities and high school as well. Other states such as New Jersey, Illinois, and Connecticut have taken steps to implement such courses in K-12 public education grades; New York State should do the same. The concepts of permanent foreignness and invisibility, which foster anti-Asian violence, are addressable by long-term research, scholarship, and teaching.¹⁵⁹

G. Widely Publicize Options for Reporting Hate Crimes and Bias Incidents and Make Additional Options Available

On August 21, 2021, an article was published detailing a study of Asian-American victim response rates to hate incidents compared against victims of other ethnicities.¹⁶⁰ In short, AAPI hate crime victims were more than 39% less likely than Hispanic or Black hate crime victims to report a hate crime to the authorities and more than 54% less likely to report a hate crime compared to a white victim. The reasons AAPI victims chose not to report included: (1) the victim did not consider the crime to be serious enough to report; (2) the victim did not know whether a hate crime had occurred; and (3) reporting is inconvenient. Reasons (2) and (3) are readily addressable by law enforcement and victim services. The community affairs branches of these organizations must make a concerted effort to hold community meetings and distribute information explaining, in multiple languages, exactly what constitutes a possible hate crime and recommending that the victim report the incident even if they are uncertain that a hate crime occurred. Furthermore, reporting should be made more convenient by permitting victims to report at places other than an official law enforcement channel.

A consistent theme among victims of hate crimes is that they often do not feel comfortable reporting to the police the bias incident or hate crime they experienced. This hesitation, whether due to language barriers, concern about the effectiveness of police response, or other fears, can be mitigated if victims are permitted to report hate crimes in ways and locations that facilitate comfort. Many AAPI persons go to their local community centers, places of worship, and parks; these locations are often places where information is exchanged. Community groups should be working closely with government groups to facilitate reporting. Having a dedicated NYPD officer or other governmental liaison, who can speak Asian

languages, present to receive reports of hate crimes for a certain number of hours each week would allow AAPI persons to report these crimes in a more familiar and comfortable setting.

At the very least, state and local governments should publish guides in multiple languages that can be distributed to AAPI persons so that they know where and how they can report hate crimes and bias incidents.¹⁶¹ These guides should include an overview of the places (websites, locations, phone numbers, etc.) where a person can report a hate crime, what to expect during a report, information about how the report will be used, and how a person can keep track of what actions are taken, if any, regarding their report.

AABANY also recognizes that there are alternatives to law enforcement in addressing anti-Asian hate. Currently, and especially where law enforcement falls short, the burden of keeping AAPI individuals and the AAPI community safe has fallen on volunteers. The government could provide funding and official support to otherwise informal support systems where AAPI persons can take advantage of the opportunity to travel in groups.¹⁶² Similarly, organizations¹⁶³ which provide chaperones to assist elderly AAPI persons should be encouraged and funded. By working with organizations already present in the community, state and local governments will be able to take advantage of networks and relationships that are already established.

H. Mandate, Fund, and Improve the Training on the Investigation of Hate Crime Reports Across Relevant Government Agencies

We recommend improved training across all government agencies that are likely to receive reports of possible hate crimes. Cultural competency and specific training are essential to ensuring that governmental agencies are properly equipped to respond to hate crimes and bias incidents. AABANY suggests that any training currently implemented should provide a mechanism to solicit and incorporate suggestions and comments. If training is absent or insufficient, AABANY suggests that state and local government work with the federal government, AABANY, public interest groups, and community-based organizations to build out an appropriate curriculum.

Part of this training should be familiarizing government agencies and their employees with language translation tools. Providing greater, even if more

expensive, access to language translation would greatly enhance the response to hate crimes. Many private companies offer online applications or physical translation devices that can translate in real time. Investment in these tools would greatly facilitate state and local governments' ability to combat anti-Asian violence and hate crimes.

I. Revisit Bail Reform

The bail landscape in the United States is ever evolving. New York has passed three different bail reform laws in less than four years, and many other states have recently also passed bail reform legislation or have bail laws that appear susceptible to reform. Reforms aimed at reducing the jailed population and mitigating economic and racial inequities, are important. Carefully crafting bail laws, which significantly limit the liberties of individuals who are innocent until proven guilty, is essential.

Bail determinations should consider public safety and whether the defendant poses a risk of danger to the community, in addition to guidelines that preserve individual liberty and ensure non-discrimination. After two years of increased incidents of hate crimes against Asian Americans, it is clear that innocent members of the AAPI community have unfairly paid the price of "equitable justice."

In 2019 and 2020, New York passed sweeping criminal justice legislation intended to reduce the pretrial detainee population: the number of people jailed after facing criminal charges but while still awaiting trial. By restricting the use of cash bail for nearly all misdemeanor and nonviolent felony charges, the bail reform laws rightfully aimed to reduce the number of pretrial detainees jailed simply because they could not afford bail.

Under the bail reform laws as amended in April 2020, almost all misdemeanors and non-violent felony offenses are not bail eligible. Almost all hate crime cases resulted in no bail, with the offender released after arraignment. According to the DCJS, 187 arrests were made for hate crime incidents in 2020.¹⁶⁴ Of these arrests, only 40 cases were for bail-eligible offenses; prosecutors were not allowed to ask for bail in over 78% of the hate crime cases in New York State.¹⁶⁵ In many attacks, prosecutors charged only assault in the third degree, due to the difficulty of proving hate motivation. While third-degree assault is a violent charge involving

substantial pain to the victim, it is not a bail-eligible offense, even if a person is accused of multiple incidents of such violence.¹⁶⁶

In April 2022, New York revised its bail laws after Governor Kathy Hochul and the state legislature reached agreement on a budget for fiscal year 2023. Governor Hochul sent legislators a ten-point plan with public safety proposals to adjust the 2020 criminal justice reforms, including by: (i) allowing bail determinations for the most serious felonies to be informed by factors such as criminal history and history of firearm use and possession, (ii) making repeat offenses subject to arrest and bail eligible, (iii) making hate crimes offenses subject to arrest and not merely a desk appearance ticket, and (iv) making gun-related offenses bail eligible.

AABANY supports all four of Governor Hochul's bail reform points.

First, bail-eligible crimes should be expanded to include all crimes involving violence or the threat of violence. Under the 2020 law, violent crimes would not be bail eligible unless they caused serious physical injury (*i.e.*, a substantial risk of death, serious and protracted disfigurement, or loss of use of a bodily organ) or if they caused physical injury with a weapon. As mentioned above, since prosecutors have had such a hard time finding sufficient ways to charge attackers with hate crimes, we must allow perpetrators to be held when they commit acts of violence.

Second, we also agree that repeat offenses should be bail eligible. While people should be given second chances, third or fourth or fifth chances should not always be given. The new reforms make this a matter of sound discretion.

Third, we also support Governor Hochul's third point to make all hate crimes subject to arrest. However, we recommend that one subset of aggravated harassment crimes,¹⁶⁷ which made up over 50% of hate crimes arrests in 2020—and are not within the hate crimes statute—also be subject to arrest and bail eligible. Specifically, Aggravated Harassment in the Second Degree, in which a defendant strikes, shoves, kicks, or otherwise subjects another person to unwanted physical contact or threatens to do so due to the defendant's belief that the victim belongs to a particular group, is an offense that only allows a police officer to issue a desk appearance ticket. That means that the defendant is only given a ticket to appear in court. If judges are allowed more discretion to set bail for hate crimes and bias-motivated aggravated harassment, fewer hate crime perpetrators would simply

receive a desk appearance ticket and judges would be afforded an opportunity to issue an order of protection in favor of the victim.

Fourth, we agree that anyone with an illegal gun should be eligible for bail.

Although Governor Hochul's reforms are a step in the right direction, they must account for aggravated harassment and other loopholes. We also continue to recommend that the pretrial detention statutes in New York, as in the federal statutes, must contemplate whether the person charged poses a danger to the community. We believe a solution is possible that preserves individual liberties, ensures non-discrimination, and protects the safety of the public and of a community that has been subject to an endless and unwarranted tide of hate and violence.

* * *

Appendix A: Abbreviations Key

AA: Asian American

AABANY: Asian American Bar Association of New York

AAPI: Asian American Pacific Islander

AALFNY: Asian American Law Fund of New York, Inc.

AAVTF: AABANY Anti-Asian Violence Task Force

DA: District Attorney

DCJS: NYS Department of Criminal Justice Services

DOJ: U.S. Department of Justice

FBI: Federal Bureau of Investigation

FOIL: Freedom of Information Law

HCA: NYS Hate Crimes Act of 2000

HCD: NYPD's Hate Crimes Dashboard

HCTF: NYPD's Hate Crimes Task Force

OCA: NYS Office of Court Administration

OPHC: New York City Mayor's Office for the Prevention of Hate Crimes

NAPABA: National Asian Pacific American Bar Association

NHPI: Native Hawaiian and Pacific Islander

NYPD: New York City Police Department

NYPL: New York Penal Law

NYS: New York State

T3 Project: Turning the Tide Project

US or U.S.: United States of America

WebCrim: WebCriminal database of the NYS Unified Court System

WHIAAPI: White House Initiative on Asian Americans and Pacific Islanders

Appendix B: Some Methodological Details About Database

A. Title and Scope of Database

The Anti-Asian Incident Database for the New York Metro Area was created by the AAVTF to identify potential anti-Asian hate crimes and to track their legal outcomes and is the source for the numbers, statistics and charts shown in Part 2 of this report. Post-reporting events varied from follow-up investigations by specialized police units to arrests and prosecutions by local district attorney offices.

Definition of “Incident”: For the purposes of this database, an “incident” means an attack, whether physical or verbal or otherwise, against an Asian person or persons. Many of these incidents fit within the legal definitions of penal offenses in New York State. The incidents ranged from yelling slurs and threats at a person holding a Korean flag to killing another person by stabbing them multiple times with a screwdriver.

Definition of “Anti-Asian”: Though all 233 incidents were against Asian people or people who appeared to be of Asian descent, not all were conclusively motivated by race. “Anti-Asian” for purposes of this study means that the victim was Asian or at least appeared to be of Asian descent *and* that there was an early concern that the behavior or the selection of the victim may have been racially motivated.

Geography & Timeline: The database limited its geographic scope to New York City and covered the first three quarters of 2021 from January 1, 2021 through September 30, 2021.

B. Sources of Data

Almost all of the 233 incidents in the database were found through English language news sources and through various public-facing digital sources of the NYPD and the New York City Mayor’s Office.¹⁶⁸ Because this research began during the spring of 2021 when the COVID situation in New York City remained a big health concern, the research team limited our efforts to what was available via the Internet, email, or meetings across Zoom and other similar platforms.

The news sources included top local newspapers and tabloids, big broadcasting companies, and five social media sources. The official government sources were the

HCD, the CompStat 2.0 website, the OPHC Hate Crime Notification System, and WebCrim. The HCD and the OPHC's notification system are specially created to communicate information about hate crimes to the public. If an incident was reported in the news, the HCD, and/or the OPHC's notifications, it was recorded as an entry in the database. CompStat 2.0 was used to supplement location information for each entry. If an arrest and the name of the arrestee were reported for an entry, WebCrim was used to track the legal developments.

News Sources: The database relied upon traditional news sources such as the *New York Times*, the *New York Post*, the *New York Daily News*, as well as ABC News, NBC News, and CBS News.

Additionally, there were five social media sources categorized as news sources. Three accounts are managed by New York City government agencies. They are the NYPD's HCTF official Twitter page (<https://twitter.com/nypdhatecrimes>), the NYPD Asian HCTF official Twitter page (<https://twitter.com/nypdasianhctf>), and the NYPD Crime Stoppers official Twitter page (<https://twitter.com/nypdtips>). These pages post information about incidents during the very early stages of investigation. Notably, these Twitter pages do not appear to practice the same degree of information control as the government sources described in the next section. For instance, they freely report or retweet news items containing personal information about the perpetrators and victims of incidents. Often, they are asking the public for help in identifying perpetrators caught in video segments. For these reasons, we decided to categorize these Twitter pages as news sources and not as government sources.

The other two social media sources are respectively owned by Sarah Y. Kim, an assignment editor for ABC7 New York, and CeFaan Kim, an ABC correspondent. Both work for a news organization that has been very active in reporting on anti-Asian incidents.

NYPD HCD: The HCD is a digital source that records select incidents reported to the NYPD and referred by responding officers to the HCTF. The HCTF then determines which incidents are potential hate crimes, and these are the ones listed on the HCD. The HCD provides the precinct, date, bias category, bias type, offense description, and the number of arrests made for each incident recorded. Note that the number of arrests can be zero.

The precinct number is the only location data on the HCD. Because the HCD does not provide an exact place for its incidents, the research team utilized another public-facing tool called CompStat 2.0 to attempt to locate the cross streets of each incident.

New versions of the HCD are released on a quarterly basis. These updates add incidents from the immediately preceding three months and also incorporate any changes to earlier incidents. For example, one common change is when an arrest has been made. The HCD, however, does not account for any new determinations after the incident passes out of the jurisdiction of the NYPD. For example, even if a local DA's Office decides to charge a perpetrator with a hate crime at arraignments or in the grand jury, that incident will never be added to the HCD, so long as the HCTF did not classify the perpetrator's crime as a hate crime.

CompStat 2.0: This is another digital source operated by the same internal NYPD department that runs the HCD. Compstat 2.0 (<https://compstat.nypdonline.org/>) provides the following information for all crimes reported to the NYPD to date: the date, time, cross streets, and crime type of an incident. The research team manually matched each incident on the HCD against an Asian victim to its companion listing on CompStat 2.0 to deduce stronger location data for our database.

OPHC: The violent crime notification system managed by the OPHC (<https://www1.nyc.gov/site/stophate/Initiatives/notification.page>) is another government source used in the database. The OPHC was established in September 2019. One of its mandates was to engage in the prevention of hate crime by promptly releasing information about potential violent hate crimes to the community. The OPHC's *weekly* email notifications describe potential violent hate crimes that have occurred in the past two weeks. The information on the OPHC includes an incident number, motivation, type, community board, district, date/time of incident, date/time reported to the NYPD, date/time referred to the HCTF, and administrative response to the incident. This OPHC information is shared with various local community organizations, including the AAVTF. The OPHC receives its information directly from the HCTF¹⁶⁹ and other municipal agencies such as the New York City Human Rights Commission and the New York City Administration for Children's Services. The majority of incidents reported by the OPHC likely originates from the HCTF's records.

Content Differences Between News Sources and the Government Sources:

More than half of the anti-Asian incidents reported by the OPHC appear later in the quarterly updates of the HCD; some incidents, though, appear only in the OPHC notifications and do not appear again in the HCD. Because the weekly OPHC notifications are intended to notify community members about incidents *as soon as possible*, the OPHC designation as a possible hate crime is occurring during very early stages of the police investigation. Later, by the time of the release of the HCD quarterly update, the HCTF is likely to have determined that some incidents are not hate crimes. In other words, the different release times of the OPHC notifications and the HCD updates and ongoing investigations lead to the gaps in their content.

A second reason for the gaps between the OPHC and the HCD is that, unlike the HCD which reports hate crimes of any nature or severity, the OPHC only reports “violent” incidents. Incidents categorized as “violent” include assault crimes, homicides, sex crimes, violent felonies under Section 70.02 of the New York State Penal Law, and strangulation.¹⁷⁰ Notably, this list does not include Harassment 2 and 3, two of the most common charges recorded for hate crimes.

There were also noticeable discrepancies in the content of the news sources versus the government sources. Quite frequently, an incident would be reported only in news sources or only in the government sources and not in both. For example, out of the 233 total incidents, 79 incidents appeared only in news sources, 65 incidents appeared only on the HCD, and 13 incidents appeared only on the OPHC notification system.

WebCrim Database: The NYS Unified Court System’s WebCriminal database (“WebCrim”) (https://iapps.courts.state.ny.us/webcrim_attorney/AttorneyWelcome) is a publicly accessible website for all criminal cases that have been arraigned in a New York State court¹⁷¹ and now have a future court date.¹⁷² If a case no longer has a future court date, the case will disappear from the database. WebCrim is searchable using either the case or summons number, or the name of the defendant. For each case, WebCrim provides a variety of detailed information including the court part, presiding judge, name of the defendant, year of birth of the defendant, incident date, arrest date, defense attorney information, past and future court appearance dates, arraignment charges, dispositions, and motions.

Case or summons numbers are not easily obtained pieces of information to the general public; we could only track prosecutions where we knew the arrestee’s name. Often,

the HCD described the fact of an arrest but not the name of arrestee. Matching incidents on the HCD to news reports revealed the names of some arrestees, but not all.

As a result, the number of prosecutions tracked in the database, namely 64 prosecutions, is fewer than the total number of incidents that led to an arrest, namely 91. The database was unable to figure out the names of all the arrestees and, thus, was not able to track their prosecutions.

C. Metrics

Date: The database tracked the dates of occurrence of incidents from the first three quarters of 2021. The accuracy of the incident dates reported may vary; where we could, we tried to resolve any discrepancies in the incident date by checking against multiple sources.

Location: The database included the locations of the incidents. If an exact location was not reported, an approximate area was given.

County: The database listed the county in which the incident occurred. The counties include: New York, Queens, Kings, Bronx, and Richmond.

Precinct: The database also looked at the NYPD precinct in which incidents occurred. No precinct was recorded if an incident occurred on the boundary of two precincts, or if the location of the incident was indeterminate.

Victim's Age and Gender: The database monitored the age and gender of victims. The purpose was to observe whether certain demographics of Asians were being targeted. In many incidents though, the age and gender of the victims were not reported, so this data was not known for every victim in the database. Also because this database wholly relies on the descriptions in the news and government sources, its accuracy is only as good as the accuracy of the sources. Finally, the sources were likely not always sharing a *self-reported* age or gender. Instead, some reports were sharing best guesses based on appearances or eyewitness accounts.

Perpetrator's Age and Gender: Once again, the age and gender of the perpetrators were not reported for every incident. Using only a subset, the database analyzed the mean and media ages of perpetrators and also noted the age distribution. For the age of the perpetrators, those described as a "teenager" or another age identifying term were counted in their respective age groups even though their exact age was not known. For

any perpetrator who was involved in several incidents in the database, their age and gender were only counted once.

Evidence of Anti-Asian Intent: The database noted any verbal statements of perpetrators made during the incidents that were reported in news sources or government sources. These notations included confirmed statements as well as unconfirmed statements. Such statements are important because they are often regarded as reliable evidence of racist motives.

Offense Type & Nature of Offense: The Offense Type column of the database sorted the incidents into seven (7) groups: verbal harassment, physical harassment, criminal mischief, theft, assault, homicide, and sex offenses. The Nature of Offense column provided brief narratives of the incidents.

Homicide: Homicide is the killing of another and causing their death. There have been attempted homicides and completed homicides.

Sex Offenses: Sex offenses are sex acts prohibited by law which can include, but are not limited to rape, criminal sexual acts, sexual abuse, aggravated sexual abuse, forcible touching, and sexual misconduct. Anti-Asian motives have troubling implications for sex offenses because of strong stereotypes about Asian women as submissive, hypersexualized objects.

In March 2021, eight people were killed (six of whom were Asian women) in a shooting spree at three metropolitan Atlanta spas. Many Asian women work in the service sector such as salons, spas, and hospitality, in which there are negative perceptions of Asian women as being hypersexual, submissive, and sexual deviants. The perpetrator allegedly struggled with a sex addiction, and he blamed the victims for his inability to control his impulses. The Atlanta killing spree demonstrated the dangerous intersection of race and gender compounded with negative perceptions of Asian Americans.

Physical Harassment: Physical harassment is any intentional act causing injury or trauma to another person by way of bodily contact.

Assault: Assault is generally defined as intentionally putting another person in reasonable apprehension of an imminent harmful or offensive contact. Assaults include beating, punching, spitting, kicking, inflicting harm with weapons, and any other act

that will put someone in harm and fear for their safety. Physical injury may not be required, and many of the anti-Asian attacks fall under this category of assault.

Verbal Harassment: Harassment can take many forms and includes verbal abuse that is an attempt or act that makes an individual and group feel uncomfortable, humiliated, threatened, and intimidated. Verbal abuse can include bias or hate-motivated conduct. Many reported incidents involved verbal harassment. Asian Americans have been called derogatory terms, had racial slurs directed at them, and are associated by default for the spread of COVID. Many have been told to go back to their country, that they do not belong here in the United States, and that they were responsible for COVID with terms like “Kung Flu” and “China Virus.”

Property Damage: Property damage is the intentional and malicious destruction of another person’s property. It is also known as vandalism or criminal mischief. Vandalism has been commonly committed to demonstrate anti-Asian sentiment especially during the outbreak of COVID.

The effects of vandalism and property damage are serious because they are committed in public as a display of hate of Asian Americans. Their visibility may encourage others to act in a similar manner. Repairs to property can be costly and many businesses and individuals may not be able to afford them.

Theft: Theft is the act of stealing without the consent of the owner and with the intention of depriving the owner of their property. There is a common notion that Asians are one of the most vulnerable targets when it comes to thefts and robberies because it is assumed that Asians do not use banks and carry cash around on their person. A second related belief is that many Asian establishments operate on a cash-only basis.

Violence and injuries can easily occur as a result of theft. In February 2021, a victim was thrown to the ground, punched, kicked, and then robbed of her belongings. In September 2021, a victim was punched twice while collecting cans and then the perpetrator stole the cans. Another instance involved a victim who was injured while having her purse grabbed.



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- ¹⁶ In the Summer of 2021, AABANY introduced its Hate Eradication Active Response Team (HEART) program to assist community members who have experienced anti-Asian bias incidents or hate crimes. HEART is designed to help survivors navigate complex legal systems and social services, such as reporting to police or other relevant agencies, assisting in the prosecution of the alleged perpetrators, and seeking counseling and mental health services.
- ¹⁷ AABANY also organized or hosted over a dozen events throughout 2021 to address anti-Asian violence in New York City, including a program on how corporate leaders can help address the surge in anti-Asian violence and support their AAPI employees, speeches at multiple rallies including one by AABANY Executive Director Yang Chen on the “virus of racism” at an Anti-Hate rally at the Bronx DA’s Office, and virtual programs for lawyers and community members on how to combat violence against Asian Americans.
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- 41 *Criminal Section Selected Case Summaries (US v. Nicholson)*, Dep't of Just. (Jan. 6, 2022), <https://www.justice.gov/crt/criminal-section-selected-case-summaries#hatecrimes>.
- 42 Letter from Senator Mazie Hirono and Representative Grace Meng to Attorney General Merrick B. Garland, U.S. Cong. (Sept. 20, 2021) (on file with AABANY).
- 43 *Id.* The numbers cited in this letter are national statistics. Fact sheets published by California State University list an 833% increase in Asian hate crimes in New York City from 2019 to 2020, and a 262% increase from the first quarter of 2020 to the first quarter of 2021. FACT SHEET: ANTI-ASIAN



PREJUDICE MARCH 2020 – CENTER FOR THE STUDY OF HATE & EXTREMISM, <https://www.csusb.edu/sites/default/files/FACT%20SHEET-%20Anti-Asian%20Hate%202020%203.2.21.pdf#:~:text=Anti-Asian%20hate%20crime%20in%2016%20of%20America%E2%80%99s%20largest,negative%20stereotyping%20of%20Asians%20relating%20to%20the%20pandemic> (last visited Mar. 2, 2022); ANTI-ASIAN HATE CRIME REPORTED TO POLICE IN LARGE US CITIES: 2021 & 2020, <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.csusb.edu%2Fsites%2Fdefault%2Ffiles%2FAAPI%2520City%2520Chart%20As%2520of%2520May%252028%25202021%25205%2520PM.docx&wdOrigin=BROWSELINK> (last visited Mar. 2, 2022).

- ⁴⁴ Dep't of Just. Oversight Hearing, C-Span (Oct. 27, 2021), <https://www.c-span.org/video/?515521-1/attorney-general-garland-testifies-senate-judiciary-committee-oversight-hearing>.
- ⁴⁵ Readout of Justice Department, HHS Listening Session on the Bipartisan COVID-19 Hate Crimes Act with Organizations Representing Communities Impacted by Hate, Dep't of Just. (Oct. 6, 2021), <https://www.justice.gov/opa/pr/readout-justice-department-hhs-listening-session-bipartisan-covid-19-hate-crimes-act>. On October 29, 2021, Attorney General Merrick Garland met with members of the Congressional Asian Pacific American Caucus (CAPAC) to discuss issues of critical importance to the AAPI community including language access in the judicial system, anti-Asian hate crimes and rising anti-Asian xenophobia. *CAPAC Members and Attorney General Garland Discuss China Initiative, COVID-19 hate Crimes Act, and Language Access*, Cong. Asian Pac. Am. Caucus (Oct. 29, 2021), <https://capac-chu.house.gov/press-release/capac-members-and-attorney-general-garland-discuss-china-initiative-covid-19-hate>. The discussion also addressed a need to revise or end the DOJ's own China Initiative, which has resulted in numerous false accusations against scientists and researchers based on their ethnicity. *Id.*
- ⁴⁶ Press Release, Dep't of Just., Justice Department Will Award More Than \$21 Million to Prevent and Respond to Hate Crimes (Oct. 28, 2021), <https://www.justice.gov/opa/pr/justice-department-will-award-more-21-million-prevent-and-respond-hate-crimes>.
- ⁴⁷ WHIAAPI was renamed as the White House Initiative on Asian Americans, Native Hawaiians and Pacific Islanders in the May 28, 2021 Executive Order on Advancing Equity, Justice and Opportunity for Asian Americans, Native Hawaiians and Pacific Islanders. Exec. Order No. 14031, 86 Fed. Reg. 29,675 (May 28, 2021).
- ⁴⁸ *Id.*
- ⁴⁹ *Id.*
- ⁵⁰ *Id.*
- ⁵¹ New York City Department of Health and Mental Hygiene, *Health of Asians and Pacific Islanders in New York City* (Dec. 10, 2021) available at <https://www1.nyc.gov/site/doh/about/press/pr2021/dohmh-releases-api-report.page>.
- ⁵² Watkins & Bromwich, *supra* note 14.
- ⁵³ See, e.g., Zoraiz Irshad, Opinion, *Poor media coverage of anti-Asian hate crimes worsens historical issues*, DAILY BRUIN (Apr. 26, 2021), <https://dailybruin.com/2021/04/26/opinion-poor-media-coverage-of-anti-asian-hate-crimes-worsens-historical-issues/> (“News coverage of the incident attempted _____”).



to whitewash it, with law enforcement agencies hesitating to label it as a racially motivated crime.”); Alexis Benveniste, *Connie Chung: The media is miserably late covering anti-Asian violence*, CNN BUSINESS (Mar. 21, 2021), <https://www.cnn.com/2021/03/21/media/asian-american-journalists-reliable/index.html> (“Newsrooms were rushing to describe this shooting as not racially motivated, [Asian American Journalists Association] president and Washington Post reporter Michelle Ye Hee Lee said.”); Morgan Ome, *Why This Wave of Anti-Asian Racism Feels Different*, ATLANTIC (Mar. 17, 2021), <https://www.theatlantic.com/ideas/archive/2021/03/cathy-park-hong-ai-asian-racism/618310/> (“I’m already seeing media trying to whitewash this incident,” [the poet and essayist Cathy Park Hong] wrote, “saying it’s not racially motivated, taking words of the police over the stories of these women.”). Some news reports of Michelle Gao’s death did not identify her as Asian. See, e.g., *Woman pushed to her death in front of New York subway train*, GUARDIAN (Jan. 15, 2022), <https://www.theguardian.com/us-news/2022/jan/15/new-york-subway-woman-pushed-to-death>; *Nearby witness says fatal NYC subway push was “surreal”*, CBS NEWS (Jan. 17, 2022), <https://www.cbsnews.com/news/subway-push-nyc-nearby-witness-surreal/>.

- 54 Checkey Beckford, Gov. Hochul Joins Times Square Rally Demanding Justice for Victims of Asian Hate, NBC NEWS (Mar. 16, 2022), <https://www.nbcnewyork.com/news/local/gov-hochul-joins-times-square-rally-demanding-justice-for-victims-of-asian-hate/3603133/>.
- 55 See Nicole Hong & Jonah E. Bromwich, *Asian-Americans Are Being Attacked. Why Are Hate Crime Charges So Rare?*, N.Y. TIMES (Oct. 26, 2021), <https://www.nytimes.com/2021/03/18/nyregion/asian-hate-crimes.html>. See also Kimmy Yam, *NYC subway station death of Michelle Go leaves Asian Americans reeling*, NBC NEWS (Jan. 19, 2022), <https://www.nbcnews.com/news/asian-america/nyc-subway-station-death-michelle-go-leaves-asian-americans-reeling-rcna12650>; Precious Fondren & Ashley Southall, *Woman Followed and Fatally Stabbed in Her Chinatown Apartment*, N.Y. TIMES (Feb. 13, 2022), <https://www.nytimes.com/2022/02/13/nyregion/murder-chinatown-nyc.html>; Jamie Nguyen, *Opinion, For an Asian American woman like me, Christina Yuna Lee’s death hits too close to home*, TODAY (Feb. 18, 2022), <https://www.today.com/news/essay/christina-yuna-lee-murder-asian-american-rcna16830>; Michelle Lee, *Opinion, Why Christina Yuna Lee’s homicide is personal to Asian American women like me*, WASH. POST (Feb. 23, 2022), <https://www.washingtonpost.com/opinions/2022/02/23/christina-yuna-lee-murder-asian-american-women-fear/>.
- 56 Aggie. J. Yellow Horse et al., *Stop AAPI Hate National Report*, *supra* note 10, at 1.
- 57 *Id.* at 2; see also, Drishti Pillai et al., *The Rising Tide of Violence and Discrimination Against Asian American and Pacific Islander Women and Girls*, STOP AAPI HATE and National Asian Pacific American Women’s Forum, May 20, 2021, at 2, <https://stopaapihate.org/aapi-women-and-girls-report/> (finding that AAPI women and girls report hate incidents 2.2 times as often as AAPI men).
- 58 Yellow Horse, Jeung & Matriano, *supra* note 10, at 2, 5.
- 59 *Anti-Asian Hate Crime Reported to Police in Large US Cities: 2021 & 2020*, Ctr. for the Study of Hate and Extremism (June 1, 2021), <https://www.csusb.edu/sites/default/files/AAPI%20City%20Chart%20As%20of%20May%2020%2C%202021%20130%20AM.pdf>.



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- ⁶⁰ ADL Deeply Alarmed by 2020 FBI Hate Crimes Data; Reiterates Calls for Increased Reporting, Anti-Defamation League (Aug. 30, 2021), <https://www.adl.org/news/press-releases/adl-deeply-alarmed-by-2020-fbi-hate-crimes-data-reiterates-calls-for-increased>.
- ⁶¹ Press Release, FBI Nat'l Press Off., FBI Releases Updated 2020 Hate Crime Statistics (Oct. 25, 2021), <https://www.fbi.gov/news/press-releases/press-releases/fbi-releases-updated-2020-hate-crime-statistics>.
- ⁶² All figures in this section are based on information known as of April 15, 2022.
- ⁶³ More methodological details are described in Appendix B of this report.
- ⁶⁴ The news sources included traditional news sources like the *New York Times*, the *New York Post*, the *New York Daily News*, as well as ABC News, NBC News, and CBS News and five social media sources. Three of the social media sources were accounts managed by New York City government agencies: the HCTF official Twitter page (linked [here](#)), the Asian HCTF official Twitter page, and the NYPD Crime Stoppers official Twitter page. See fuller discussion in Appendix B, *infra*.
- ⁶⁵ The official government sources used by the database are the HCD, the OPHC Hate Crime Notification System, and WebCrim. Each of these sources is described in greater detail in the Appendix. Also note that two incidents were identified through information obtained directly from the DA's Office in Manhattan.
- ⁶⁶ A few perpetrators were responsible for more than one incident and some incidents had multiple victims.
- ⁶⁷ For the entire year of 2021, the NYPD counted 133 anti-Asian hate crimes. See Stephanie Pagones, *NYC Hate Crimes Nearly Doubled As Anti-Asian Attacks Soared 343%, Police Say*, FOX NEWS (Feb. 21, 2022), <https://www.foxnews.com/us/nyc-hate-crimes-2021-anti-asian-manhattan-da-alvin-bragg>; see also NYPD HATE CRIMES DASHBOARD, <https://app.powerbigov.us/view?r=eyJrIjoiYjg1NWl3YjgtYzgzOS00Nzc0LTkwMDAtNTgzM2I2M2JmYWY1IiwidCI6IjIOWY1N2ViLTc4ZDEtNDZmYi1iZTgzLWEyYWZkZDdjNjA0MyJ9> (last visited Apr. 26, 2022).
- ⁶⁸ As stated earlier, an “anti-Asian incident” for purposes of this study is an attack, whether physical or verbal, against a victim who was Asian or at least appeared to be of Asian descent and there was an early concern that the commission of the crime or the selection of the victim may have been racially motivated.
- ⁶⁹ Occasionally there were mistakes or discrepancies among the sources, but the dates were generally confirmed.
- ⁷⁰ As the database relies almost entirely on news sources and official government sources, waning public interest in anti-Asian violence can result in significant underreporting, especially in the later months of the first three quarters of 2021.
- ⁷¹ Some incidents had more than one victim.
- ⁷² Note that the government sources and the news sources did not cover all the same incidents. For a full discussion of their content differences, see the Appendix.



- ⁷³ The government sources did not provide any demographic data about victims. The database's reliance on media sources was more constraining in the case of gender because these sources' descriptions of gender often appeared to be based on how a victim presented, as opposed to how a victim self-identified.
- ⁷⁴ Some perpetrators committed more than one incident.
- ⁷⁵ The HCD and the OPHC did not share such information about perpetrators. WebCrim provided a birth year for arrestees, but many perpetrators were not arrested. *See* the Appendix for more details about the limitations of WebCrim. Also, note that a birth year without a birth date meant that the exact age of a perpetrator was not knowable.
- ⁷⁶ *See* N.Y. Penal Law § 485.05 (emphasis added). For an extensive discussion of this statutory standard, *see* section 4 of this report.
- ⁷⁷ Yong Zheng was stabbed to death on February 26, 2021 when he tried to help victims of a robbery in Brooklyn. Christina Fan, Asian-American Community Mourns Loss of Yong Zheng, Good Samaritan Who Was Fatally Stabbed While Trying to Stop Robbery in Brooklyn, CBS N.Y. (Mar. 3, 2021), <https://www.cbsnews.com/newyork/news/yong-zheng-brooklyn-memorial/>.
- ⁷⁸ Corina Knoll, A Family, a Dream and a Season of Fear, N.Y. TIMES (Sept. 9, 2021), <https://www.nytimes.com/2021/09/21/nyregion/than-than-htwe-death.html>. Ms. Htwe died after an attempted robbery on July 17, 2021, which caused her to fall down subway stairs and to hit her head.
- ⁷⁹ Yao Pan Ma was stomped on the head while collecting cans in April 2021 and later died of his injuries on New Year's Eve, Manhattan Dist. Atty's Office, *supra* note 5.
- ⁸⁰ These categories were created strictly for the database. Importantly, the New York State legislature allows the enhanced penalty as a hate crime only for certain, specific offenses under the Penal Law. For a detailed discussion of this approach, *see* section 4 of this report.
- ⁸¹ The number of incidents where an arrest was made and the number of arrestees are different numbers for two reasons. First, an arrestee is defined as an individual whom law enforcement arrests for at least one of these incidents. There were a few individuals arrested for committing more than one incident. Second, two incidents were committed by multiple perpetrators and hence, had multiple arrestees.
- ⁸² The NYPD arrest rate for anti-Asian hate crimes appears to be slightly lower than the arrest rate for hate crimes overall in 2021. "Hate crimes were up 96 percent in 2021. But only 219 people were arrested for hate crimes last year, even though there were 524 hate crime complaints. In comparison, there were 265 hate crime complaints and 91 arrests in 2020, according to the NYPD." Using these numbers to calculate arrest rates for overall hate crimes, the rate was 42% in 2021 and 35% in 2020. *See* Adam Manno, NYC Mayor Eric Adams ousts head of NYPD's hate crimes unit after she blasted Asian-American victim for filming attacker and fewer than half of complaints resulted in arrests, DAILY MAIL (Mar. 1, 2022), <https://www.dailymail.co.uk/news/article-10565137/NYC-Mayor-Eric-Adams-ousts-NYPDs-head-hate-crimes-unit-unit-slow-act.html>.
- ⁸³ The database defined a prosecution as a criminal proceeding against an arrestee that relates to one specific incident. So if one individual was arrested and charged with crimes for several incidents, the database listed and analyzed those prosecutions separately for that one individual. Why was the



database able to trace only 64 prosecutions given that there were 85 arrestees and 91 incidents with an arrest? First, the HCD listed the fact of arrests but routinely leaves out the names of arrestees. The news media identified some names, but not all names. Thus, the names were not known for some arrestees. Without names, as Appendix B and section 4 describe, there were serious obstacles to finding out the details about prosecutions. For some arrests, the cooperation of the various DA's Offices was the only source of information.

- 84 Alexandra E. Petri & Daniel E. Slotnik, *Attacks on Asian-Americans in New York Stoke Fear, Anxiety, and Anger*, N.Y. TIMES (Oct. 15, 2021), <https://www.nytimes.com/2021/02/26/nyregion/asian-hate-crimes-attacks-ny.html>.
- 85 The Patrick Mateo prosecution involved serious advocacy efforts from the AAVTF. Their success and more details about the disposition are laid out in section 3 of this report.
- 86 The complaint with these facts was provided by the Manhattan DA's Office. The case number is CR-011027-21NY.
- 87 CeFaan Kim, *Asian woman slapped during Chinatown hate crime speaks out*, ABC 7 EYEWITNESS NEWS (Apr. 23, 2021), <https://abc7ny.com/asian-hate-crime-bias-attack-chinatown-new-york/10542107/>; John Annese, *Woman charged with hate crime after slapping Asian victim for speaking Mandarin outside Manhattan ice cream shop: cops*, N.Y. DAILY NEWS (Apr. 20, 2021), <https://www.nydailynews.com/new-york/nyc-crime/ny-arrest-anti-asian-hate-crime-slap-20210421-oe4tfejkqzfwntbf5pisohty62i-story.html>.
- 88 Tina Moore, *Suspect charged with hate crime for attacking Asian man in subway station*, N.Y. POST (Apr. 8, 2021), <https://nypost.com/2021/04/08/suspect-charged-with-hate-crime-for-attacking-asian-man-in-nyc-subway/>; Thomas Tracy, *Asian man waiting for Manhattan subway hit in chest by bigoted stranger invoking Bruce Lee*, N.Y. DAILY NEWS (Apr. 8, 2021), <https://www.nydailynews.com/new-york/nyc-crime/ny-manhattan-subway-station-anti-asian-attack-20210408-4ifiz63w5zanflgicbblchlhwq-story.html>.
- 89 The complaint with these facts was provided by the Manhattan DA's Office. The case number is CR-009570-21NY.
- 90 The complaint with these facts was provided by the Manhattan DA's Office. The case number is CR-015754-21NY.
- 91 The complaint with these facts was provided by the Manhattan DA's Office. The case number is CR-008691-21NY and the indictment number is 02081/2021.
- 92 Manhattan Dist. Att'y's Off., *supra* note 5.
- 93 There were repeat offenders among this select group of 730 findings. One person was accused of committing 3 separate incidents in 3 prosecutions and another person was accused of committing 4 separate incidents in 4 prosecutions. A 730 proceeding determines if a defendant is an "incapacitated person" under New York Criminal Procedure Law § 730. For further explanation, *see* the discussion in part 4 of this report.
- 94 The AAVTF submitted 13 FOIL requests to the NYPD to obtain information on hate crime incidents. Our initial request was rejected. A second request was submitted in November 2021, citing case law



to establish a right to the information. Responses were finally received six months later but information continued to be incomplete.

⁹⁵ Petri & Slotnik, *supra* note 77.

⁹⁶ *Man arrested, accused of shoving woman to ground outside Queens bakery*, ABC 7 EYEWITNESS NEWS (Feb. 18, 2021), <https://abc7ny.com/queens-bakery-assault-flushing-asian-woman-assaulted-olivia-munn/10350461>.

⁹⁷ Petri & Slotnik, *supra* note 77. As one witness described, Mateo uttered expletives before tossing a box of spoons at the victim and then “do[ing] a football sack and push[ing] her to the ground.” *Man arrested, accused of shoving woman to ground outside Queens bakery*, ABC 7 EYEWITNESS NEWS (Feb. 18, 2021), <https://abc7ny.com/queens-bakery-assault-flushing-asian-woman-assaulted-olivia-munn/10350461>; see also Press Release, Queens Dist. Att’y’s Off., Queens Man Indicted by Grand Jury on a Hate Crime Charge for Attack on Asian Woman Outside Bakery in Flushing (May 10, 2021), <https://queensda.org/queens-man-indicted-by-grand-jury-on-a-hate-crime-charge-for-attack-on-asian-woman-outside-bakery-in-flushing>.

⁹⁸ Petri & Slotnik, *supra* note 77 (“The attack on Ms. Cheng’s mother, which was highlighted by celebrities and gained widespread attention on social media.”).

⁹⁹ *Olivia Munn says Asian woman, friend’s mom, hurt in shoving*, YAHOO! (Feb. 17, 2021), <https://www.yahoo.com/now/olivia-munn-says-asian-woman-022248399.html> (quotations and internal citations omitted).

¹⁰⁰ Olivia Munn (@oliviamunn), TWITTER (Feb. 17, 2021 12:01 PM), <https://twitter.com/oliviamunn/status/1362084698197909508>; see also *Olivia Munn says Asian woman, friend’s mom, hurt in shoving*, YAHOO! (Feb. 17, 2021), <https://www.yahoo.com/now/olivia-munn-says-asian-woman-022248399.html>.

¹⁰¹ Awkwafina (@awkwafina), Instagram (Feb. 15, 2021), https://www.instagram.com/p/CLUd75xleGG/?utm_source=ig_embed&ig_rid=1f112712-5197-4ff6-af17-eea27379c955; Gemma Chan (@gemma_chan), Twitter (Feb. 17, 2021), https://twitter.com/gemma_chan (retweeting Olivia Munn’s post on Feb. 17, 2021 at 12:01 PM).

¹⁰² *Arrest in NYC assault on Chinese woman after Olivia Munn called for public’s help*, ABC 11 EYEWITNESS NEWS (Feb. 20, 2021), <https://abc11.com/olivia-munn-sam-cheng-leelee-chin-yeung-patrick-mateo/10356747/> (“A man has been arrested for allegedly attacking a Chinese woman in New York after actress Olivia Munn helped call public attention to the crime.”).

¹⁰³ *Man arrested, accused of shoving woman to ground outside Queens bakery*, ABC 7 EYEWITNESS NEWS (Feb. 18, 2021), <https://abc7ny.com/queens-bakery-assault-flushing-asian-woman-assaulted-olivia-munn/10350461/>; see also N.Y. Penal Law § 120.00 (McKinney 2021).

¹⁰⁴ Petri & Slotnik, *supra* note 77.

¹⁰⁵ N.Y. Penal Law § 485.05 (McKinney 2021).

¹⁰⁶ N.Y. Penal Law § 240.30 (McKinney 2021) (making it a crime when an individual “[s]trikes, 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,

religion, religious practice, age, disability or sexual orientation, regardless of whether the belief or perception is correct”) (emphasis added).

¹⁰⁷ Petri & Slotnik, *supra* note 77.

¹⁰⁸ Press Release, Queens Dist. Att’y’s Off., Queens Man Indicted by Grand Jury on a Hate Crime Charge for Attack on Asian Woman Outside Bakery in Flushing (May 10, 2021), <https://queensda.org/queens-man-indicted-by-grand-jury-on-a-hate-crime-charge-for-attack-on-asian-woman-outside-bakery-in-flushing/>.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Press Release, Asian American Bar Ass’n of New York, Asian America Bar Association of New York Commends NYPD and the Queens DA’s Office for Obtaining Guilty Plea in Patrick Mateo Case and Demands Continued Vigilance and Justice for Anti-Asian Violence Victims and Survivors in New York (Jan. 24, 2022), https://cdn.ymaws.com/www.aabany.org/resource/resmgr/press_releases/2022/PR_Mateo_aav_012422_FIN.pdf.

¹¹² New York Counseling for Change is the successor to Queens Counseling for Change. *See* NEW YORK COUNSELING FOR CHANGE, LLC, <https://www.nyc4c.org/about> (last visited Mar. 10, 2022).

¹¹³ *See supra* Part 2.

¹¹⁴ In their attempts to hold the alleged perpetrator and his friends accountable for their actions, Kim and his lawyers pursued other legal remedies as well. In May 2021, Kim filed a complaint with the NYC Commission on Human Rights, which described the events that transpired during the June 5, 2020 incident. A copy of this filing was previously shared with the Queens DA’s Office as well.

¹¹⁵ *See supra* note 16.

¹¹⁶ This exclusionary concept had deep roots in Roman law, going back to 531 CE, when Emperor Justinian codified a series of laws called the Corpus Juris, or body of Civil Law. The Corpus Juris did not permit Jews to testify against orthodox Christians. This body of law had deep and pervasive influence on both civil and common law jurisdictions, including the United States. *See* JEWISH HISTORY SOURCEBOOK: JEWS AND THE LATER ROMAN LAW 315-531 CE, <https://sourcebooks.fordham.edu/jewish/jews-romanlaw.asp> (last visited Apr. 25, 2022).

¹¹⁷ Gabriel J. Chin, ‘A Chinaman’s Chance’ in Court: Asian Pacific Americans and Racial Rules of Evidence, 3 U.C. IRVINE L. REV. 965 (2013); *see* Act of May 6, 1882 (Chinese Exclusion Act), ch. 126, 22 Stat. 58 (repealed 1943) (effectively barring Chinese immigration for ten years and banning Chinese people from becoming US citizens).

¹¹⁸ Act of Apr. 16, 1850, ch. 99, § 14, 1850 Cal. Stat. 229, 230, *amended by* Act of Mar. 18, 1863, ch. 70, § 1, 1863 Cal. Stat. 69, 69, *repealed by* Act of Mar. 30, 1955, ch. 48, § 1, 1955 Cal. Stat. 488, 489; *People v. Hall*, 4 Cal. 399 (1954).

¹¹⁹ Michael Traynor, *The Infamous Case of People v. Hall* (1854), HIST. SOC’Y (Cal. Sup. Ct.), Spring/Summer 2017 at 2.



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- ¹²⁰ Denny Chin & Kathy Hirata Chin, *“Kung Flu”: A History of Hostility and Violence against Asian Americans*, 90 FORDHAM L. REV. 1889, 1912 (2022).
- ¹²¹ Exec. Order No. 9066, 3 C.F.R. §§1092-93 (1942); *see* Korematsu v. United States, 323 US 214 (1944).
- ¹²² Claire Wang, *New YA Book Details How Vincent Chin’s Killing Galvanized Asian American Activism*, NBC News (Apr. 16, 2021), <https://www.nbcnews.com/news/asian-america/new-ya-book-details-vincent-chins-killing-galvanized-asian-american-ac-rcna691>.
- ¹²³ *Transcript of Biden’s prime-time address to the nation*, CNN (Mar. 11, 2021), <https://www.cnn.com/2021/03/11/politics/transcript-biden-covid-prime-time-address/index.html>.
- ¹²⁴ The Hate Crimes Analysis & Review Act was amended by Senate Bill S.7807 which was signed into law by Governor Hochul on February 24, 2022.
- ¹²⁵ FBI CRIME EXPLORER, <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/hate-crime> (last visited Apr. 26, 2022) (reporting that hate crimes data was received from 16,313 of 18,473 law enforcement agencies in the country in 2017; 16,188 of 18,558 law enforcement agencies in 2018; 15,772 of 18,674 law enforcement agencies in 2019; and 15,138 of 18,625 law enforcement agencies in 2020); *see also* ADL Deeply Alarmed by 2020 FBI Hate Crimes Data; Reiterates Calls for Increased Reporting, ADL (Aug. 30, 2021), <https://www.adl.org/news/press-releases/adl-deeply-alarmed-by-2020-fbi-hate-crimes-data-reiterates-calls-for-increased> (noting that reported hate crimes in 2020 increased despite that for the third straight year, the number of law enforcement agencies providing data to the FBI declined).
- ¹²⁶ S. 1086, 117th Cong. (2021).
- ¹²⁷ *See supra* Part 2 Section H.
- ¹²⁸ CPL § 730.10(1).
- ¹²⁹ CPL § 730.30(1).
- ¹³⁰ CPL § 730.20.
- ¹³¹ N.Y. Penal Law § 485.00.
- ¹³² N.Y. Penal Law § 485.05(2).
- ¹³³ N.Y. Penal Law § 485.05(1).
- ¹³⁴ N.Y. Penal Law § 485.10.
- ¹³⁵ *See* McKinney’s Cons. Laws of N.Y., Book 1, Statutes § 232; *People v. Ilardo*, 48 N.Y.2d 408 (1979).
- ¹³⁶ *People v. Fox*, 17 Misc. 3d 281, 292 (Sup. Ct. 2007).
- ¹³⁷ The term, “race, or other protected class” or “protected class” is used herein to include every protected class listed in N.Y. Penal § 485.05: “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.”
- ¹³⁸ N.Y. Penal Law § 485.05 (3).



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- ¹³⁹ Donnino, Practice Commentary, McKinney's Cons. Laws of N.Y., Book 39, Penal Law § 240.30 and 240.31 (noting that N.Y. Penal § 240.30(3) and § 240.31 were added to the Penal Law in 1982, "in response to the harassment of people because of their race, color, religion or national origin").
- ¹⁴⁰ N.Y. Penal Law § 240.31(3).
- ¹⁴¹ N.Y. Penal Law § 240.31(5).
- ¹⁴² N.Y. Penal Law § 240.31(4).
- ¹⁴³ N.Y. Penal Law § 240.31(1).
- ¹⁴⁴ NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES CRIMINAL JUSTICE RESEARCH REPORT, HATE CRIME IN NEW YORK STATE 2020 ANNUAL REPORT (September 2021) (listing a total of 488 reported hate crime incidents in New York state in the year 2020 and among those crimes, a total of 219 that are either Aggravated Harassment in the First or Second or Harassment in the First Degrees).
- ¹⁴⁵ The crime called "Aggravated Harassment in the Second Degree" is found at N.Y. Penal § 240.30, but has six different subsections which are different crimes with different elements. Only one of these is the "hate crime" of § 240.30(3).
- ¹⁴⁶ NYPD Arrest Data Year to Date, NYC OPENDATA (updated Feb. 3, 2022), <https://data.cityofnewyork.us/Public-Safety/NYPD-Arrest-Data-Year-to-Date-/uip8-fykc>.
- ¹⁴⁷ 2010 of the 2829 charges were for N.Y. Penal Law § 240.30(2) which criminalizes "making a telephone call ... with no purpose of legitimate communication."
- ¹⁴⁸ Cf. N.Y. Penal Law § 240.26(1); *see also* Donnino, Practice Commentary, McKinney's Cons. Laws of N.Y., Book 39, Penal Law § 240.31 (comparing N.Y. Penal Law § 240.30(3) to this statute stating, "[o]rdinarily, such conduct would only constitute harassment in the second degree, a violation [Penal Law § 240.26]. However, when the conduct is 'hate' based, it is a violation of the second-degree crime, a class A misdemeanor [Penal Law § 240.30(3)].").
- ¹⁴⁹ Donnino, Practice Commentary, McKinney's Cons. Laws of N.Y., Book 11A, CPL § 140.10 ("For a 'petty offense,' the authorization for a police officer to make an arrest is substantially more restrictive...[B]eing told that a person committed a 'petty offense' is an insufficient basis for an arrest of that person when the offense was not committed in the officer's presence.").
- ¹⁵⁰ N.Y. Penal Law § 485.00.
- ¹⁵¹ Chris M. Kwok, Bd. Dir., Issues Comm. Chair, Asian Am. Bar Ass'n of N.Y., Statement to the New York City Council Committee on Public Safety (Mar. 16, 2021), <https://blog.aabany.org/wp-content/uploads/2021/03/STATEMENT-OF-CHRIS-M-1.pdf>; Chris M. Kwok, Bd. Dir., Issues Comm. Chair, Asian Am. Bar Ass'n of N.Y., Statement to the New York City Council Committee on Public Safety (Mar. 22, 2021), <https://blog.aabany.org/wp-content/uploads/2021/03/AABANY-stmt-re-Hate-Crime-Units-032521-FIN.pdf>. As of the date of this report, the New York City Council has yet to act.
- ¹⁵² *See* Press Release, Manhattan Dist. Att'y's Off., D.A. Bragg Announces Plans to Expand Hate Crimes Unit (April 11, 2022), <https://www.manhattanda.org/d-a-bragg-announces-plans-to-expand-hate-crimes-unit/>.
- ¹⁵³ NYS Senate Bill 2987-A, <https://www.nysenate.gov/legislation/bills/2021/S2987>.

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- ¹⁵⁴ See NEW YORK COUNSELING FOR CHANGE, LLC, <https://www.nyc4c.org/> (last visited Mar. 10, 2022).
- ¹⁵⁵ See, e.g., Mass. Gen. Laws Ann. ch. 265, § 39.
- ¹⁵⁶ Daniel Prendergast, *Jewish women mistaken for Muslims assaulted in hate crime*, N.Y. POST (Sep. 14, 2017), <https://nypost.com/2017/09/14/jewish-women-mistaken-for-muslims-assaulted-in-hate-crime/>.
- ¹⁵⁷ S. 1086, 117th Cong. (2021).
- ¹⁵⁸ In the New York area, as of Spring 2022, Fordham, CUNY, and Syracuse law schools offer a course on Asian Americans and the Law. Spring 2022 Course Descriptions and Program Planning Information, <https://www.law.cuny.edu/wp-content/uploads/page-assets/academics/courses/offerings/CUNY-Law-Spring-2022-Course-Booklet.pdf> (last visited Apr. 9, 2022); LAW 774 - ASIAN AMERICANS & THE LAW, http://coursecatalog.syr.edu/preview_course_nopop.php?catoid=29&coid=192388 (last visited Apr. 9, 2022). At AABANY's urging, Columbia, Cornell and New York Law School have indicated that they plan to add such a course to their curriculum. AABANY plans to meet with the deans of other law schools in New York to discuss how such courses may be best implemented.
- ¹⁵⁹ Li Zhou, *Why a new law requiring Asian American history in schools is so significant*, VOX (July 20, 2021), <https://www.vox.com/2021/7/20/22576138/asian-american-history-illinois-law> (discussing a new Illinois law called Teaching Equitable Asian American Community History Act (TEAACH)); Susan Dunne, *Senators push to mandate Asian American studies in Connecticut public schools amid surge of racist attacks*, HARTFORD COURANT (Feb. 26, 2021), <https://www.courant.com/coronavirus/hc-news-coronavirus-connecticut-anti-asian-racism-20210225-7skl3dpxvna4phd3jebtcyb53e>. While a curriculum is being developed, we urge organizations and institutions to consider reenacting the numerous trials from the AABANY Trial Reenactment series, including Minoru Yasui in Portland, Oregon in 1942 for violating a military curfew on “all persons of Japanese ancestry” to the murder of Vincent Chin in 1980s Detroit at a time of anti-Japanese racism in a depressed auto industry. See AABANY TRIAL REENACTMENTS, <https://reenactments.aabany.org/> (last visited Apr. 26, 2022).
- ¹⁶⁰ Brendan Lantz & Marin R. Wenger, *Are Asian Victims Less Likely to Report Hate Crime Victimization to the Police? Implications for Research and Policy in the Wake of the COVID-19 Pandemic*, CRIME & DELINQ., Aug. 20, 2021, at 1.
- ¹⁶¹ See KNOW YOUR RIGHTS, https://cdn.ymaws.com/www.aabany.org/resource/resmgr/2021aav/KnowYourRights_Online_0513.pdf (last visited Mar. 2, 2022); see also WHAT IS A HATE CRIME?, https://cdn.ymaws.com/www.napaba.org/resource/resmgr/hate_crimes/toolkits_languages/hate_crimes_-_english.pdf (last visited Mar. 2, 2022).
- ¹⁶² Jessica Chia, *Keys, Wallet, Pepper Spray: The New Realty for Asian-Americans*, N.Y. TIMES (June 8, 2021), <https://www.nytimes.com/2021/05/20/nyregion/asian-americans-attacks-nyc.html>.
- ¹⁶³ See PROTECT CHINATOWN, <https://www.protectchinatown.com/> (last visited Apr. 26, 2022).
- ¹⁶⁴ N.Y. DIV. OF CRIMINAL JUSTICE SERVS., HATE CRIME IN NEW YORK STATE 2020 ANNUAL REPORT 6, <https://www.criminaljustice.ny.gov/crimnet/ojsa/hate-crime-in-nys-2020-annual-report.pdf>
- ¹⁶⁵ See *id.*

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- ¹⁶⁶ Many perpetrators of anti-Asian hate offenses have significant criminal histories. Prior to 2020, many of these defendants would have been detained and prevented from committing additional acts of violence. Under the 2020 bail reforms, many perpetrators were instead released within hours after their arrest and free to continue their attacks.
- ¹⁶⁷ N.Y. Penal Law § 240.30(3). If our recommendation in Part 4.D.iii, *supra*, to reclassify aggravated harassment offenses involving bias or hate speech into the HCA is adopted, this change would not be necessary.
- ¹⁶⁸ We learned of a limited number of incidents from other sources. These included meetings with the local DA's Offices, the World Journal, a Chinese language newspaper which is headquartered in Queens or AABANY's HEART program which assists survivors of anti-Asian violence.
- ¹⁶⁹ The standard language at the top of the notifications reads as follows: "The NYPD Hate Crime Task Force has made a preliminary determination that the incidents below may be violent hate crimes." See Emails addressed to aavtf@aabany.org from OPHC - Office for the Prevention of Hate Crimes OPHC@cityhall.nyc.gov.
- ¹⁷⁰ See FREQUENTLY ASKED QUESTIONS AT THE NYC OFFICE FOR THE PREVENTION OF HATE CRIMES, <https://www1.nyc.gov/site/stophate/Initiatives/notification.page> (last visited on Mar. 24, 2022).
- ¹⁷¹ There are several limitations to WebCrim as a source. One is that it only includes matters that have been arraigned in New York Criminal Court. So if an arrest developed into a juvenile justice matter in New York Family Court or if an arrest ended in the issuance of a desk appearance ticket and no arraignment has happened yet, those arrests and incidents would not appear in WebCrim.
- ¹⁷² Additionally, WebCrim removes cases from its database after a case has reached a final disposition. Our research team only realized this practice midway through working with WebCrim. So if a case reached a final disposition fairly quickly after an arrest, we may not have seen it on WebCrim before it disappeared.

Thank You

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Thank you to White & Case LLP, Paul, Weiss, Rifkind, Wharton & Garrison LLP, and Morvillo Abramowitz Grand Iason & Anello P.C. for their assistance on this paper, with particular thanks to Dougal Forrest, Jake Lee, Zidong Liu, Johan Tatoy, Jennifer H. Wu, and Stephanie Zhang.

Thank you to Janelle M. Eng, Megan L. Gao, Ryan T. Leung and Annaliese Y. Wee, who volunteered many hours as members of the Task Force research team.

Thank you to Joe Gim for his contributions to the proposed legislative reforms to hate crimes laws.

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We also thank and acknowledge the AABANY Staff and Interns who supported the Task Force:

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Thank you to NAPABA for a grant that supported this paper and to STOP AAPI Hate, Asian Pacific Policy & Planning Council, Chinese for Affirmative Action, and San Francisco State University's Asian-American Studies Department.